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RIGHTS FOR SUSTAINABILTY

Reforming Global Sustainable Development Governance: A Rights-Based Agenda

Achieving sustainable development entails a global transition—away from prevailing inequitable and ecologically destabilizing patterns of development, to modes of development based on shared prosperity and environmental protection. Global governance plays a crucial role in this shift. Global governance refers to the complex of institutions, mechanisms, norms, and policies that shape global processes, mediate relations between actors, and provide a framework for cooperation in addressing global challenges. Currently, it includes the United Nations system, the Group of 20, the World Trade Organization, international financial institutions, and hundreds of international treaties and soft law instruments on trade, the environment, and development.

In the context of a transition to sustainable development, global governance needs to enable a transformation of economic and social processes and structures to achieve development and environmental sustainability; to integrate areas of policy making to achieve co-benefits; and to address consequences (e.g. of environmental and economic changes to the poor) of their interactions. It will need to effectively regulate the behavior of states and non-state actors, mobilize resources, implement and enforce commitments, and give countries the space and capacities to successfully chart their own pathways to change.

Global governance for sustainable development will by no means be neutral. The process of sustainable development will have winners and losers: old technologies, practices, and forms of social organization – and actors invested in their persistence – have to give way to new ones. Global governance will need to steer this process in favor of the marginalized and voiceless: the poor and future generations. Governance for sustainable development requires a democratic, pro-poor, inclusive, and rights-based stance.

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Core elements of sustainable development governance

The first Earth Summit – the UN Conference on Environment and Development in 1992 – described the general contours or guidelines of global governance for sustainable development through the Rio Declaration on Environment and Development, Agenda 21, and the Rio Conventions.

International action and cooperation
Governments of individual nations remain primarily responsible for implementing sustainable development, through national strategies, policies, plans and processes. But no nation can achieve sustainable development on its own. Environmental problems such as climate change are trans-boundary or global in nature and thus requires international responses. Moreover, underdevelopment and poverty in developing countries are to a large extent the result of unfavorable international economic relations, such as in trade, debt and development finance. Deepening international integration and interdependence expose poor countries to instability and uncertainty in other parts of the global economy. International cooperation and governance play a crucial role in shaping international economic processes, managing environmental problems, and providing enabling conditions for the success of sustainable development efforts in individual countries, especially developing countries.

Differentiated action: the principle of common but differentiated responsibilities
International cooperation must follow the principle of common but differentiated responsibilities, whereby action demanded of countries is differentiated according their contribution to causing unsustainable development and capacity to respond to it. This translates to developed countries taking on greater commitments and supporting poorer countries by providing assistance such as finance and technology to enable them implement their own sustainable development commitments.

"Polluter pays" principle
Parties that are responsible for environmental damage must bear the costs of paying for or avoiding them.

Policy integration and coherence
Economic, social and environmental factors are interconnected. Sustainable development rests on the simultaneous and positively reinforcing advance of objectives in each of the three areas (e.g. poverty eradication, social empowerment, and environmental conservation). This requires the integration of economic, social and environmental concerns and goals in the design and implementation of policy interventions and legal frameworks. Coherence of approaches and policies across all sectors is also necessary to ensure that efforts in one sector support rather than undermine efforts in others.

Enhanced access to participation, information, and justice
Sustainable development requires the empowerment of a broad range of actors to participate in all levels of decision-making, including women, youth, indigenous people, non-government organizations, workers and trade unions, farmers, the scientific community, local businesses and local authorities. Authorities should foster public awareness and education, and people should have access to information relevant to their environment and development. People must also have access to means of redress and remedy. In short, governance must be based on democracy, inclusiveness, transparency, accountability, justice, and active citizenship.

Precautionary principle
Institutions of governance should allow for the use of caution when confronted with the threat of harm, despite the absence of scientific certainty on the likelihood or magnitude of the threat. Moreover, in the lack of scientific certainty that an action or policy is harmful, the burden of proof that it is not harmful falls on actors taking the action.

Reforming global sustainable development governance: to what end?

The world today is not lacking in laws, norms and institutions for advancing economic, social and environmental goals (see Table 1). A set of specialized global institutions in the economic and social-development domains were established around the United Nations system in the immediate post-war era. This includes the International Monetary Fund, the World Bank, the General Agreement on Tariffs and Trade (later the World Trade Organization), and various specialized UN agencies such as the International Labour Organization, the Food and Agriculture Organization and the World Health Organization, as well as UN funds and programs such as the UN Development Programme and the UN Children's

<table>
<tr><th colspan="4">Table 1. Institutions and laws in global governance, according to main mandate</th></tr>
<tr><th></th><th>Economic
Economic growth and stability</th><th>Social
Social welfare and equity</th><th>Environmental
Environmental protection</th></tr>
<tr><td rowspan="3">Institution</td><td>Group of Eight/Group of Twenty
World Trade Organization
International Monetary Fund
World Bank Group
UN Conference on Trade and Development</td><td>International Labour Organization
Food and Agriculture Organization
World Health Organization
UN Education, Scientific and Cultural Organization
UN Children's Fund
UN Women</td><td rowspan="2">UN Environment Programme
Global Environment Facility</td></tr>
<tr><td colspan="2">UN Economic and Social Council</td></tr>
<tr><td colspan="3">UN Commission on Sustainable Development</td></tr>
<tr><td rowspan="3">Law (hard and soft)</td><td>Uruguay Round agreements</td><td>Millennium Development Goals
Declaration on the Rights of Indigenous Peoples
Convention on the Elimination of All Forms of Discrimination Against Women</td><td rowspan="2">Rio Conventions
Kyoto Protocol
Other international environmental agreements</td></tr>
<tr><td colspan="2">International Covenant on Economic, Social and Cultural Rights
Busan Partnership on Effective Development Cooperation</td></tr>
<tr><td colspan="3">Agenda 21
Rio Declaration on Environment and Development</td></tr>
</table>

Fund (United Nations 2009). The 1972 UN Conference on the Human Environment kicked off the development of global environmental governance with the establishment of the UN Environment Programme in 1975 and the negotiation of a large number of international environmental agreements in the decades that followed. In 1992, the Earth Summit attempted at a convergence of development and environmental governance through the program of action contained in Agenda 21. The Commission on Sustainable Development was also created to monitor and review progress towards sustainable development.

Despite this impressive body of laws and institutions, the world finds itself far off track in realizing the vision of sustainable development. Global economic growth continues to severely strain the environment. Humanity's ecological footprint now exceeds the planet's biocapacity by over 50%, and three of nine planetary boundaries that define the safe operating space for human life on Earth have been breached (Rockström et al. 2009). Inequality is on the rise. In 2005, the ratio of the per capita income in the richest 20 countries to that in the poorest 20 was \$59 to \$1, from \$42 to \$1 in 1990 (IMF 2010). One out of three persons today or about 1.75 billion people live in acute deprivation in terms of health, education and material standard of living (UNDP 2010). There are 80 million more income-poor people in 2005 compared to 1981 if the fast-growing economies of the BRIC countries (Brazil, Russia, India and China) are excluded. And close to a billion people do not even have the very basic condition for human existence that is adequate food.

This failure reflects partly the shortcomings in the global sustainable development governance, at which there have been efforts of reform starting at least from the 2002 World Summit on Sustainable Development in Johannesburg. The perceived inadequacies of global sustainable development governance often center on institutional weaknesses and gaps, particularly the lack of integration, fragmentation, incoherence, weak implementation, and the weakness of the environmental pillar:

- Current sustainable development institutions are too weak and fragmented;

- Fragmentation – of treaties, financing, and overall authority for environmental and sustainable development governance – has resulted in a lack of policy coherence;
- The three pillars of sustainable development – environmental, economic, and social – lack integration in the UN system and in global, regional, and national policies;
- Enforcement capability is lacking in many cases, as are financial resources to aid implementation and/or build capacity for sustainable development, leading to a "policy-implementation disconnect";
- Integration of sustainable development into decision-making is lacking at all levels, especially in the wider macro-economic policy domains of finance and trade;
- When considered in the context of international or global governance institutions as a whole, including the UN system and International Financial Institutions (IFIs), the environmental pillar is weak in authority, priority and profile, and capacity relative to the economic pillar (Bernstein and Brunnée 2011).

The main options for reform being considered attempt to address these weaknesses (see Box 1). These options can be grouped into three main actions: strengthening the integration and coordination of the economic, social and environmental pillars; enhancing the environmental arm of global governance; and institutional streamlining.

These options have their merits. Still, often overlooked are deeper systemic issues essential to sustainable development governance.

Vision
Despite the strong consensus for reform, there is little evidence of a shared vision of sustainable development (Bernstein and Brunnée). The lack of institutional coherence is to a large extent rooted in differences in perspectives and approaches to achieve sustainable development. For many governments, the pursuit of economic growth at all cost through market-enhancing policies remains the overriding approach to development and goal of governance. Global

Box 1. Options for reforming the Institutional Framework for Sustainable Development (IFSD)

Enhancing UNEP. *Universal membership in the UNEP Governing Council (from current 58 members). No change to mandate and minimal financial implications. Some analysts conclude that broad and active participation in the Governing Council and the Global Ministerial Environmental Forum of observer countries amounts to de facto universal membership.*

Establishing a new umbrella organization for sustainable development. *New institution exercising executive functions, possibly founded on existing intergovernmental and secretariat entities. It would enhance integration of sustainable development in the work of institutions covering economic, social and environmental pillars. Established by General Assembly resolution or legal instrument.*

Establishing a specialized agency such as a world environment organization. *Specialized agency based on the model of United Nations agencies such as the World Health Organization (WHO) and FAO, which are hybrid normative and operational entities. It would be the global authority on the environment, providing policy guidance to other United Nations entities working on the environment and multilateral environmental agreements.*

Reforming the Economic and Social Council and the Commission on Sustainable Development. *In relation to the Economic and Social Council, possibilities that have been raised include strengthening the coordination role of the Council in relation to sustainable development, for example, by establishing a "sustainable development segment" to engage more closely with the reports of the various functional commissions and entities such as UNEP. Another possibility involves merging the Economic and Social Council with the Commission on Sustainable Development into a council on sustainable development. Mention has also been made of upgrading the Commission to a sustainable development council, which could be achieved through a General Assembly resolution.*

Enhancing institutional reforms and streamlining existing structures. *A consortium arrangement for environmental sustainability, headed by a high-level governing body. An instrument or set of instruments would structure relationship with existing institutions.*

Source: United Nations General Assembly 2010.

economic institutions also promote economic policies that undermine the achievement of social and environmental goals pursued in other pillars of governance. For instance, economic liberalization policies – enforced through adjustment lending by the Bretton Woods Institutions and binding trade rules in the WTO – have curtailed the space and capacity of developing country governments to provide social services, to pursue endogenous economic development, and protect their domestic economies from unfair competition and external sources of instability.

Power

Power relations underpin governance: what interests prevail determines what kinds of policies and rules are enforced; which actors are positioned to shape, influence, and ultimately benefit from them; and whose rights are respected and whose are constrained. Global governance is characterized by power asymmetries between the global North and South, and also between elites and the poor and marginalized within them. Governments of developed countries use their influence over global economic institutions and forums to advance the interests of transnational corporations and international finance (Nayyar 2010).

Women still face deeply-rooted barriers to participation in decision-making from the household level to governance institutions. Indigenous peoples' knowledge, practices and institutions are marginalized or undervalued.

These asymmetric structures have led to asymmetric outcomes. Neoliberal economic policies promoted by global economic institutions in the last three decades have increased the freedoms and entitlements of multinational corporations, international finance, and technology proprietors, while constricting policy space for developing countries and eroding rights and environmental protections for the people, especially women, small farmers, workers, indigenous groups and other marginalized sectors. These asymmetries also explain why rules in areas that are of interest to developing countries and the poor are weak or do not exist, such as formal rules in sovereign debt renegotiation, rules for corporate behavior, or a global social floor for workers.

Moreover, global governance structures remain state-centric. Although there is a general trend of non-state actors being given formal recognition in multi-stakeholder processes at global, regional, and country levels, there is also a counter-trend of narrowing policy space for CSOs in many areas. CSOs need to be recognized as independent development actors in their own right in the whole range of economic, social and environmental dimensions. As such they should be accorded equal treatment and role in the governance architecture.

A rights-based approach to global sustainable development governance reform

To address the abovementioned concerns, the general thrust of reforming sustainable development governance should be towards greater democratization and strengthening people's rights. A rights-based approach would entail the following:

Redefining the goal of governance

A rights-based approach reframes the processes and outcomes of sustainable development as entitlements to which people individually and collectively possess an inherent claim. As claims, they yield duties and responsibilities on other actors and institutions to fulfill them. In this approach, the goal of governance becomes that of advancing and protecting - as a matter of duty - the whole array of substantive and procedural rights associated with sustainable development.

Addressing power imbalances

A rights-based approach leads to an analysis of constraints to the realization of rights embedded in power structures. It demands that institutions of governance work to secure social arrangements where rights can be best realized. This usually involves countervailing the power of actors behind unsustainable development. Moreover, translating sustainable development governance processes and outcomes as rights increases the "assets" of poor and vulnerable groups vis-à-vis powerful actors, and facilitates systemic transformation.

Addressing social and economic inequities

Democratizing governance must go hand in hand with promoting greater equity in the distribution of wealth upon which power rests. The transition to sustainable development pathways therefore requires the democratization of access and control over productive resources and "environmental space" within and between countries to ensure that the needs of all, especially the poor and marginalized, are met without breaching ecological limits. This implies a shift in property rights regimes towards greater emphasis on more democratic, cooperative, and community-based forms of resource ownership and stewardship.

Addressing implementation and accountability

Strengthening rights mechanisms enhances the capacity of the poor and marginalized to claim entitlements and push duty-bearers to deliver on their sustainable development commitments. A rights-based approach also leads to an analysis of responsibilities of actors and institutions when rights are unfulfilled, and thus facilitates in locating accountability and in seeking remedy.

Addressing policy integration and coherence

Various substantive rights such as the right to work, education, and health offer bridges across the economic, social, and environmental dimensions of sustainable development. A rights-based approach provides tools for institutions and actors to consider the impact of their policies on the realization of other rights and development goals. By focusing on individual and collective human dignity, a rights-based approach can also strengthen the social pillar and establish proper balance and interaction among the three pillars.

Five recommendations for strengthening a rights-based framework for international sustainable development governance

Lessons learned in the past 20 years since the Earth Summit have led civil society organizations to uphold human rights as the basis for sustainable development governance. It is high time for states, international financial institutions (IFIs), and trade organizations to go beyond the narrow and inordinate focus on economic growth. Instead, a **rights-based approach** to sustainable development governance is called for to provide a holistic and coherent framework for responding to the environmental, social, and economic crises; addressing existing power imbalances between and within nations; and ensuring people-centered strategies and implementation at the global and national levels.

The following concrete proposals for action are forwarded in order to create an enabling environment for upholding a rights-based framework for sustainable development and institute stronger mechanisms for their monitoring, review, and compliance:

1. Establish Multi-Stakeholder Sustainable Development Councils

The institutional framework for sustainable development needs to ensure public participation in policy formulation and decision-making processes in order to strengthen democratic governance, ownership and policy coherence. To this end, multi-stakeholder sustainable development councils (MSDCs) should be established at the international, national and sub-national levels. These should be mandated to promote integration of the three pillars of sustainable development, promote effective implementation at all levels and promote institutional coherence based on Agenda 21, Rio+ resolutions, the Declaration on the Right to Development and other human rights norms and conventions. These should ensure the meaningful and effective participation of all stakeholders, particularly major groups, at all levels of decision making and in the follow-up to Rio+20.

The various mandates for the Sustainable Development Council should include the conduct of social, economic, environmental and human rights audits of new treaties, agreements, legislation, programs or projects being negotiated or introduced by governments, and their implementation.

At the international level, the Sustainable Development Council should be under the UN General Assembly and its mandate should include oversight of policies of multilateral institutions including international financial institutions as well as trade and investment agreements. At the national and sub-national level, the SDCs should follow the principle of subsidiarity to enable citizen participation up to the grassroots level.

2. Establish Ombudspersons for Future Generations

Sustainable development implies that the current generation has obligations to safeguard and lay down the conditions for the well-being and progress of future generations. Therefore it is crucial to institute a paradigm shift in the understanding of stakeholders in sustainable development by expanding these to include future generations.

For this purpose an Office of the Ombudsperson, or High Commissioner for Future Generations should be estabished at the national and international levels to act as the advocate for the interests and needs of future generations in the context of promoting sustainable development. This office should have an agenda-setting and monitoring role in close co-operation with civil society to help address the short-termism and incoherence of policy formulation, and the lack of accountability of states, institutions and other powerful actors (such as transnational corporations) for violations of human rights including the rights of future generations.

At the national level, the Office of the Ombudsperson should be independent of the executive, with access to information, legal powers and duties to report, monitor and examine progress by government and public bodies advocating for the interests and needs of future generations. This institution would be expected to consider petitions from the public to enhance stakeholder participation in sustainable development policy making, implementation and monitoring. It should be backed by a Committee of Experts which includes representatives from civil society.

At the international level, the Office of the Ombudsperson may report to the proposed Sustainable Development Council and mandated to consider complaints from civil society; act as an independent centre for research and expertise on long-term implications of social, economic and environmental policies; and acts as an advocate for the interests of future generations in the context of sustainable development across the family of UN organisations and other multilateral agencies. (World Future Council 2012)

3. Adopt legally binding instruments for the implementation of Principle 10

People's right to have access to information, to participate in decision making and to have access to justice on matters related to the environment is already enshrined as Principle 10 of the Rio Declaration. The United Nations Environment Program has come up with guidelines for national legislation in support of Principle 10. However it is high time to go beyond voluntary implementation towards binding commitments.

This can take the form of a new global convention on Principle 10 to ensure that peoples right to information, participation and remedy is adopted worldwide. A scaled down option would focus on the development of new regional legally binding instruments similar to the UNECE Aarhus Convention.

At the same time, at the national level states should codify Principle 10 through national legislation. Governments should make measurable and time bound commitments to improve laws, institutions, and practices. In particular, states should establish clear regulatory frameworks that protect the right to information, freedom of expression, freedom of assembly, the right to effective political participation, and the right of all to administrative and judicial remedies. Governments should aslo assist impoverished and marginalized groups to promote their meaningful and effective partticaption. (Banisar et al 2011)

4. Enhance international development cooperation for sustainable development

Sustainable development is a right for all and is the common obligation of the community of nations while adhreing to the principle of common but differentiated responsibility. These commitments should be translated into binding obligations to provide transfers of adequate finance; transfers of appropriate and assessed technology; and demand-driven capacity building.

Developed countries should fulfill financing commitments to provide 0.7% of the gross national income to official development assistance and $100 billion in public climate finance by 2020. In addition to this states should introduce new and innovative sources of finance for sustainable development such as the taxes on currency and financial transactions; monetization of IMF Special Drawing Rights, and other sources.

New cooperative institutions and arrangements between countries, and regions are also necessary for the responsible stewardship, conservation, and equitable and sustainable use of global and trans-boundary commons and resources such as the atmosphere, oceans, forests, river systems, and so on.

5. Adopt a strong regulatory framework for business and the financial sector

With most of investible resources today concentrated in large financial institutions and big corporations, it is the responsibility of states to regulate the behavior of these economic actors to ensure that they contribute to advancing long-term and collective welfare of the people and the planet. Such a regulatory framework includes progressive taxation and transfers schemes to encourage socially and environmentally responsible behavior and promote greater equity; right-to-know provisions that would require corporations to make regular and timely public disclosure of their operations and investments; independent cradle to cradle lifecycle accounting of their production and commercial operations; independent technology assessments; mandatory human rights impact assessments; multi-stakeholder oversight mechanisms; and mechanisms for redress.

Large financial institutions that are "too big to fail" should be subjected to even greater public or social regulation. Their governance must include representatives from other stakeholders including workers, communities and government. They must be required to adopt social and environmental criteria for their investments, put limits to speculative transactions and implement human rights safeguards.

IBON International is a division of IBON Foundation. It engages in capacity development for human rights and democracy around the world.

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