

Law and Development: The Role of the Judiciary in implementing Agenda 2030

EAMJA CONFERENCE 2016, Kampala, Uganda

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The Commonwealth

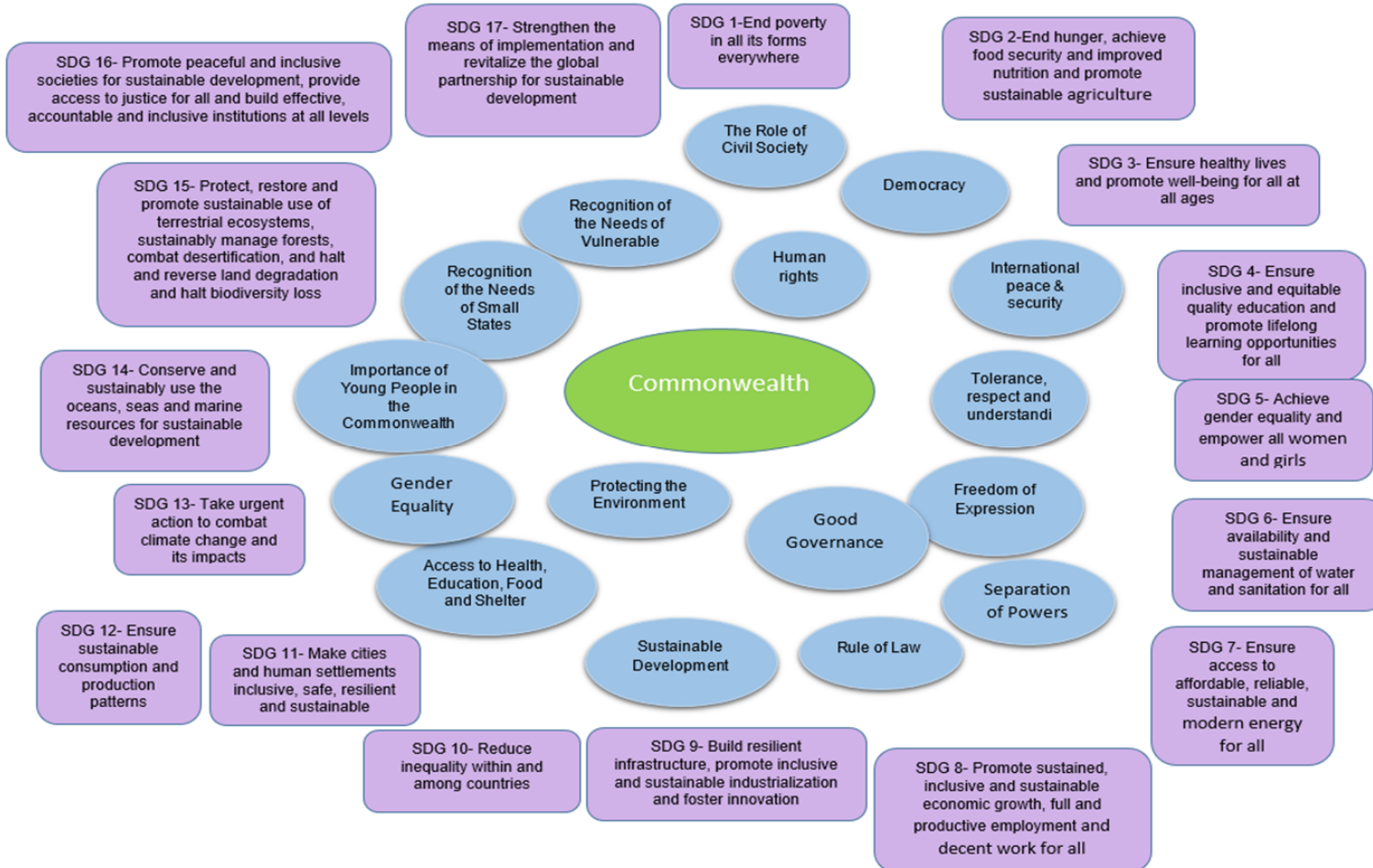
Transforming our world: the 2030 Agenda for Sustainable Development (Agenda 2030)

- The theme of the EAMJA annual conference - “Transformation of Judiciaries in East Africa for Improved Service Delivery: Successes, Challenges and Strategies”, the role of individual judges and the judiciary, as a collective entity, towards the attainment of the 17 Sustainable Development Goals, enshrined in Transforming our world: the 2030 Agenda for Sustainable Development (Agenda 2030).
- 17 Sustainable Development Goals (SDGs), 169 Indicators
- seek to build on and complete what the Millennium Development Goals (MDGs) did not achieve.
- seek to realize the human rights of all and to achieve gender equality and the empowerment of all women and girls.
- are integrated, interlinked and indivisible and balance the three dimensions of sustainable development: the economic, social and environmental.
- will stimulate action over the next 15 years in areas of critical importance for humanity and the planet.
- Focus on five **Ps** [**People, Planet, Prosperity, Peace, Partnership**]-Agenda 2030 is a plan of action for people, planet and prosperity, expected to be implemented by all countries and all stakeholders, acting in collaborative partnership, through bold and transformative steps which are urgently needed to shift the world onto a sustainable and resilient path.
- Main theme: Transformation

Commonwealth values & the normative basis of the SDGs

- The 17 SDGs mirror the 16 core values and principles of the Commonwealth
- The SDGs are premised in shared principles and commitments [purposes and principles of the Charter of the United Nations, grounded in international legal instruments, international human rights treaties, informed by other instruments and the outcomes of all major UN conferences and summits, African Union's Agenda 2063, New Partnership for African Dev't etc.]

Commonwealth values & the SDGs



Commonwealth values & the normative basis of the SDGs

- **Country-specific challenges and vulnerabilities** are recognised [most vulnerable countries-**African countries, LDCs, landlocked developing countries (East African countries qualify)** and small island developing States, countries in situations of conflict, as well as the specific challenges facing the middle-income countries-lack of adequate human resources, limited funding, low information and communication technologies, public ignorance of the law, weak service delivery, unfavourable legal frameworks, institutional inefficiencies, exposure to environmental and climate change risks, etc.
- **Measurement of performance**-[recognize lack of baseline data for several of the targets, need to support strengthening data collection and capacity building]
- Promote **national ownership**: country-led and country-driven. -no 'one size fits all' approach

17 SDGs

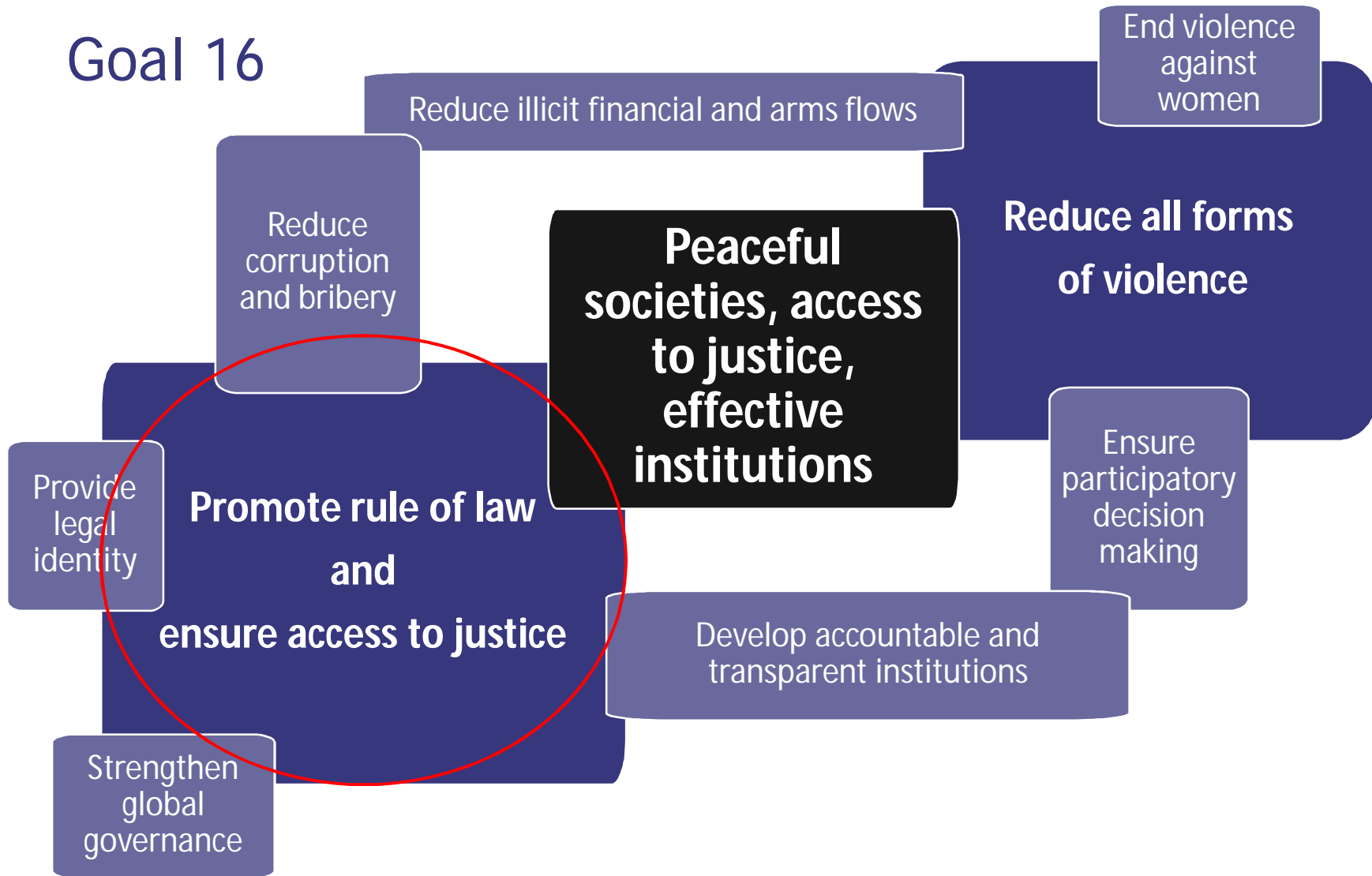
SUSTAINABLE DEVELOPMENT GOALS



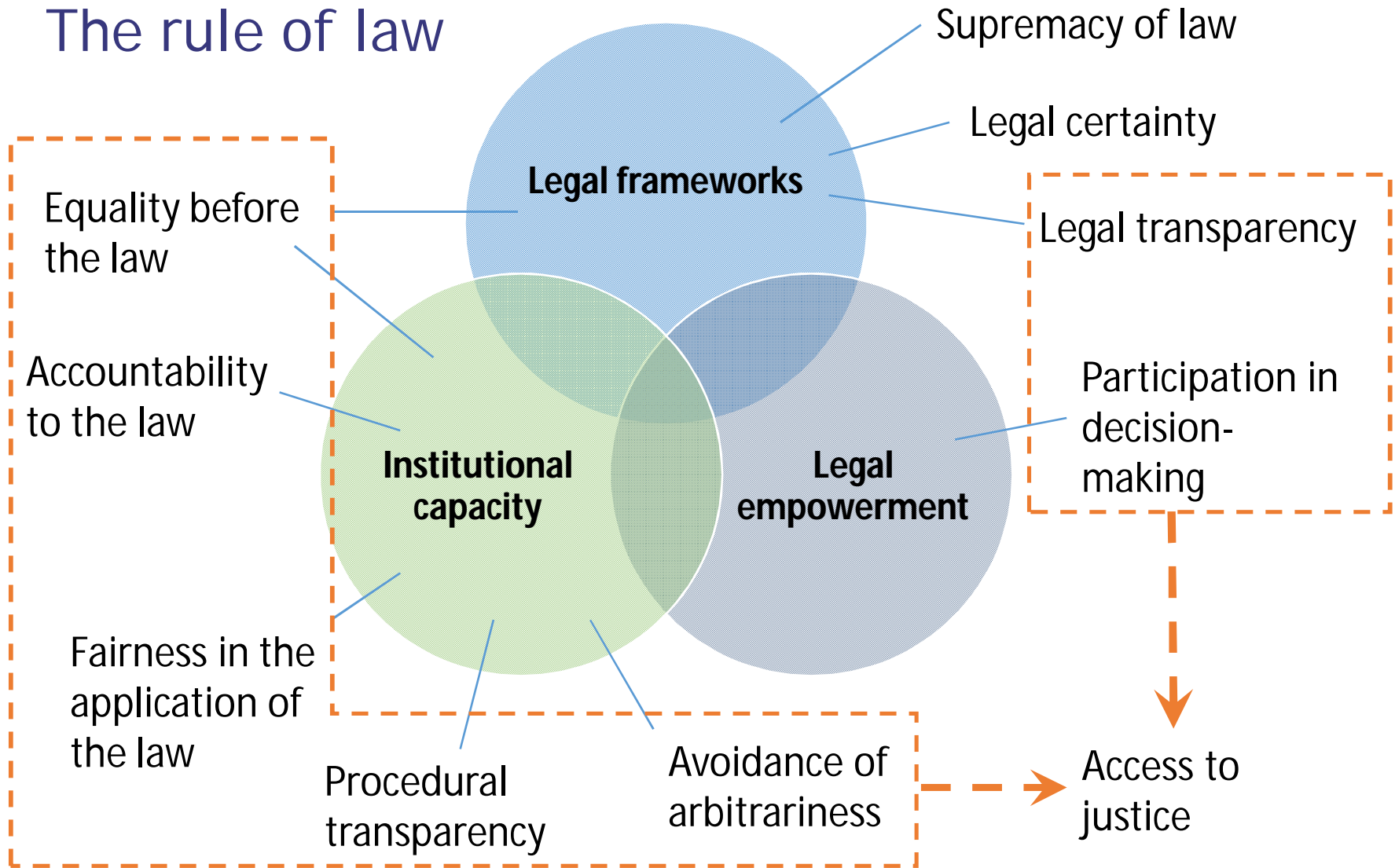
Institutional response to SDGs

- Show ability to drive progress across the entire 2030 Agenda.
- Development and implementation of national strategies to achieve SDGs
- Track and report own progress towards each target.
- Communicate to national leadership role for advancing national development priorities.
- Advocacy to ensure that resources needed are provided.

Goal 16



The rule of law



Judiciary and SDG 16: Direct role

- Reduce all forms of violence and related death rates;
- End abuse, exploitation, trafficking and all forms of violence against and torture of children;
- Promote the rule of law and ensure equal access to justice for all;
- Reduce illicit financial and arms flows, strengthen the recovery and return of stolen assets and combat all forms of organized crime;
- Substantially reduce corruption and bribery in all their forms;
- Develop effective, accountable and transparent institutions at all levels;
- Ensure responsive, inclusive, participatory and representative decision-making at all levels;
- Provide legal identity for all, including birth registration;
- Ensure public access to information and protect fundamental freedoms;
- Building capacity to prevent violence and combat terrorism and crime;
- Promote and enforce non-discriminatory laws and policies for sustainable development.

Judiciary as an enabler

- Rule of law is considered to be an enabler for the realisation of the other SDGs
- Judicial intervention is anticipated in areas where the States will apply policy and legislative interventions to address challenges and where Agenda 2030 has directly placed on States the obligation to meet targets premised in the law.
- As an enabler of sustainable development, rule of law is the hub and the other 15 goals are the spokes in the network.
- Goal 17 represents the universe that embraces the 16 goals and enables their coming to fruition

Judiciary and SDGs 1-15: Enabling role

- Example of Goal 13 on Climate Action:
- the judiciary has a role to play in tackling climate change;
- providing equal access to justice;
- determining and not deferring climate change claims;
- upholding the rule of law;
- tasking and forcing all stakeholders to take climate change seriously;
- explaining and upholding the fundamental values underpinning the law;
- promoting environmental values and putting a price on them;
- assisting the progressive and principled development of climate change law and policy;
- making reasoned and evidence-based decisions.
- The same can be said to be relevant to all the other goals when it comes to the application of legislation and policy.

Bold and Transformative Steps for Agenda 2030

- Need to integrate SDG governance in the existing paradigm of programme planning and service delivery
- Individual judicial officers
- Judiciary as an institution, including the East African Court of Justice
- Judicial Training Institutions
- Judicial Service Commissions
- Planning and actions at **strategic**, **tactical** and **operational** levels
- Need to monitor performance

Monitoring performance

- Develop and use indicators to measure contribution to economy.
- Rule of law is multi-dimensional and multi-functional (a cross-cutting theme across governance) that it is often difficult to measure with time bound indicators.
- Rule of law interventions and legal reforms are rarely evidence based.
- Efforts have to be made within existing parameters, to measure aspects of rule of law that are measurable.
- Within limits of the doctrine of separation of powers, there will be need to work more closely with the Executive arm of government and entities responsible for conducting regulatory impact assessments to develop the relevant skills in monitoring and reporting and also accessing existing databanks.
- Measures of judicial performance could include: increased access to courts (in situ and online) revenue generated vis a vis costs/expenses in each circuit; providing employment to judicial staff; and money saved by reducing costs of litigation through court-managed mediation or arbitration
- The financial and social costs of litigation to the public and private sector should be of concern when they hamper development and divert resources (money and time) to costs of insurance and risk management.
- Some measures are more complicated to quantify and allude directly to rule of law but should be borne in mind while engaging with the government's statisticians: aspects like costs; the contribution of the judiciary to the national economy by creating an enabling environment for investment, leading to increase in the night economy due to increased personal safety and reduction of crime; fines generated; projects allowed vis a vis injunctions to stop income-money generating activities or investment etc.

Conscious use of law

- Law, as both a powerful normative system and an effective tool of social order and socio-economic dev't has not been consciously and diligently pursued as it should in Africa- Prof. Mashood Baderin
- Law and Development as 'a study of the conscious use of the normative system called "law" to help bring about economic dev't'- Justice Tawia Modibo Ocran
- Apply law to bring about dev't
- Embrace the holistic approach to socio-economic and environmental development and not focus only on a rights-based approach to judicial functions to address matters such as access to health, education; promotion of innovation, investment, among others.
- Contribute to and encourage the expansion of 'African jurisprudence' (study of general theoretical questions about the nature of laws and legal systems) of development - Profs. Josaphat Kanywanyi and Dani Wadada Nabudere

Leadership in law reform

- “We are under a Constitution, but the Constitution is what the judges say it is, and the judiciary is the safeguard of our liberty and of our property under the Constitution.” - Charles Evans Hughes, 11th Chief Justice, United States (1930-41).
- Judges breathe life into “dead statute.” -A. C. Gray
- Provide leadership in escalating proposals for legislative reform, within the limits of the doctrine of separation of powers [guidance -The Commonwealth (Latimer House) Principles] the power of judges to declare legislation to be unconstitutional and of no legal effect-without usurping the legislative power of parliament.
- Judicial activism/creativity - where vacuums exist in legal frameworks
- Judicial officers act as the alarm clock but have to make sure not to become the timekeeper (Mr. Justice Surendra Kumar Sinha-Chief Justice of Bangladesh)
- Institutionalise the practice-communicate a consolidation of recommendations for legislative reform advanced by the judiciary in case law, to the legislative authorities-in a manner similar to communication of Assent copies of statutes under the *Acts of Parliament Act*.

Promoting efficiency in the Judiciary for Dev't

- Judicial quality index
- Well-functioning courts
- Accessible courts more efficient by [implementing electronic filing platforms; eJustice; to manage hearing dates; and even to hold certain hearings through videoconference; reduced physical distance between courts and users.
- Meaningful and enforceable laws (that means transparency, fairness, predictability in court decisions and confidence);
- When there are enforceable contracts (so that there's promotion of business and commerce);
- When there is basic security (that means personal safety and protection of property, and an independent judiciary that safeguards both);
- When there is access to justice (that means concrete ways to invoke that safeguard); guaranteed access to cheap credit and financing, etc.

Addressing Capacity Needs

- The Bangalore Principles of Judicial Conduct impress upon judicial officers to maintain competence and diligence by taking reasonable steps to maintain and enhance their knowledge, skills and personal qualities necessary for the proper performance of judicial duties, taking advantage for that purpose of the training and other facilities that should be made available, under judicial control, to judges and keeping themselves informed about relevant developments of international law, including international conventions and other instruments establishing human rights norms.
- Training in skills of judge-craft and other relevant topics (and other opinion writing, sentencing, dealing with certain types of litigants and evidence, media and public relations, understanding of the wider social context to litigation, personal welfare issues) helps increase efficiency.
- Investing in judicial education in areas that are directly relevant to economic, social and environmental aspects of development, such as public policy, development, etc. is worthwhile.

SDG Governance

- Action has to be taken at all levels of the judiciary, to ensure that performance is measured against the targets set, starting at the strategic level-heads of the judiciary.
- Self assessment to gauge SDG and Agenda 2030 readiness (may contain a mechanism for evaluation of the judiciary against the regional and international standards and also enable the judiciary to self-assess, measure performance and prioritise areas for reform and strengthening.)
- Developing benchmarks- a baseline study (more preferably from 2015, when MDGs were sunsetted) will provide benchmarks and development of performance indicators
- Position institution to benefit from the resources availed globally for SDGs governance- **SDG 17**.
- **SDG 17**-Global efforts to mobilise finance, promote capacity building in developing countries to support SDG implementation; promote policy and institutional coherence and multi-stakeholder partnerships (knowledge sharing, expertise, technology and financial resources).
- The need to self-assess; gauge SDG readiness; develop indicators; institutionalise reflective learning practices and adoption of national best practices;

SDG Governance (2)

- It is anticipated and necessary that actions will have to be taken at the strategic, tactical and operational levels of judicial institutions, subject to the priorities of the National Development Plans (that shape many government spending and programme priorities), to inculcate the SDGs and Agenda 2030 in strategic plans, tactical plans in support of the strategic plans as well as in operational plans, processes and procedures as well as individual judicial officers' work plans.
- For example, in Uganda, the sector targets over the National Development Plan period (2015-2020) are to increase: public confidence in JLOS Services from 35 percent in 2014 to 50 percent in 2020; public satisfaction in JLOS Service delivery from 60 percent in 2012/13 to 75 percent in 2020; and case disposal rate from 42.7 percent in 2013/14 to 60 percent in 2020 (2nd National Development Plan 2015/16-2019/20). The focus of the JLOS sector during this plan's period includes; improving policy, legislative and regulatory framework; enhancing access to JLOS services particularly for vulnerable persons; and promoting accountability and the observance of Human Rights.

Building and fostering partnerships

- Within lines of authority, can be initiated at all levels- operational, tactical and strategic.
- Partnerships with academia, professional organisations, development partners, non-governmental organisations, civil society organisations
- Potential areas for value addition-introducing more components into the justice process e.g. psychotherapy, development economics analysis, impact assessment, victim assistance, behaviour analysis, resource mobilisation, capacity building, etc.

Role of the Commonwealth Secretariat

- Example of the partnerships envisaged and encouraged under SDG 17
- Capacity building and provision of short and long term experts to aid in the development and drafting of national laws and law reforms;
- Developing and promoting best practice on various thematic areas of law in the form of toolkits, guidelines, manuals, legal handbooks, benchbooks and model laws;
- Supporting law reform, enhancing the capacity of law enforcement and other justice agencies on various thematic areas of justice;
- Promoting procedural and cross-cutting issues in the administration of justice, such as: witness protection, international cooperation on criminal matters, judicial independence, effective court administration.
- Placing and mentoring justice officials in equivalent justice agencies and brokering of twinning programmes between national justice institutions in the Commonwealth.
- Research and development on emerging issues
- Development of a Legal Knowledge Exchange Portal for Commonwealth staff and government counterparts

The Commonwealth Strategic Plan

Commonwealth Secretariat Strategic Plan

2013/14 - 2016/17

Public Institutions

2. More effective, efficient and equitable public **governance**

- 2.3 Effective mechanisms ensuring the autonomous and harmonious operation of the three **branches of government**
- 2.4 National institutions effectively facilitating the administration and delivery of the **rule of law** and **justice**
- 2.5 Enhanced **judicial independence** in member countries

Commonwealth Judicial Bench Book

- Example of provision of technical assistance to judiciaries in East Africa.
- One of the rule of law tools developed by judicial officers in East Africa immediately after the adoption of Agenda 2030 and to be replicated across the Commonwealth [Asia under process, Pacific to follow].
- To be supported by national case books
- Seeks to promote integration of relevant international norms and standards in case law;
- Provide guidance on management of the courtroom as a safe environment [anonymization of information to protect identity, protect vulnerable witnesses and complainants, manage defence counsel -no intimidation or harassment, manage the media];
- Further extrapolate the role of a judicial officer as a resource mobiliser, a champion or voice for social and behavioural change, role model or educator in the community].
- CJEI to reduce the JBB into training modules to be used across the Commonwealth.

Thank You

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