

Better Policies & Laws for Future Generations: Applying the World Future Council Standard

An Application Tool Kit

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Introduction

The *World Future Award: Better Policies for a Better World* aims to identify and celebrate better practices among hundreds, indeed millions, of local, national and international policies and laws that are being set in place to promote sustainability, development and human rights. The World Future Council has designed a universal *Future Justice Law & Policy Standard*.¹ This Standard helps those giving the award to choose among many candidate laws and policies, and could provide guidance for others seeking to ensure their laws and policies can contribute to sustainability for future generations.

How Can a Law or Policy be a Best Practice?

Laws and policies can support universal values. The best practices in law and policy for sustainable development will contribute to future justice, embodying the highest standard of sustainability, respect for human rights and protection of the environment.² They will, in both their intention and their actual effect on the ground, work to defend the interests of future generations.

However, most laws and policies are enacted by local or national societies through their chosen empowered authorities – they are specific tools for each community in its unique social, environmental, economic and cultural context. *What works well in one reality might not work in another.* However, it is important to find and promote excellent new laws and policies that are

¹ Marie-Claire Cordonier Segger and Rajat Rana, *Selecting Best Policies and Law for Future Generations: A Legal Working Paper for the World Future Council by the CISDL (Centre for International Sustainable Development Law)*, 10 May 2008, p. 3.

² *Ibid.*

delivering on sustainable development. How to determine that a law or policy is most worthy of a global award?

The Future Justice Law & Policy Standard

In order to assess candidate laws and policies, the World Future Council has designed a universal *Future Justice Law & Policy Standard*. In essence, this standard seeks to answer the following fundamental question: **What are the rules, practices and policies whose adoption could radically enhance the prospects of sustainability of life on our planet, to promote the integrity of future generations?**

The *Future Justice Law & Policy Standard* is based on the universal 2002 *New Delhi Declaration Principles of International Law on Sustainable Development*³ that was developed through a decade of consultation and study by the International Law Association. It is founded, therefore, on the following seven principles:

1. The duty to ensure sustainable use of natural resources
2. The principle of equity and the eradication of poverty
3. The principle of the precautionary approach to human health, natural resources and ecosystems
4. The principle of public participation and access to information and justice
5. The principle of governance and human security
6. The principle of integration and interrelationship, in particular in relation to human rights and social, economic and environmental objectives
7. The principle of common but differentiated obligations

This *Future Justice Law & Policy Standard*, in the form of *principled criteria*, is not meant to let ‘the best become the enemy of the good.’ It is not a ‘gold standard’ for sustainable development law and policy-making and implementation. Rather, the *Future Justice Law & Policy Standard* is pragmatic, focusing on what the laws and policies aim to do, and what their effects have been. It lays out a series of objective and inter-related questions that can be

³ *Ibid.*

used to assess, *in a qualitative way*, how a law or policy is contributing to sustainable development.

How is the Future Justice Law & Policy Standard applied?

This *Future Justice Law & Policy Standard* is meant to be used, as a qualitative assessment tool, in three ways:

1. World Future Award: Better Policies for a Better World – The Standard can be used to guide the WFC’s inquiries and reports to the Jury of the World Future Award, forming a qualitative but universal basis for the Council to identify laws and policies that can be identified and celebrated.

2. Promoting Better Policies and Laws – The Standard can be used by civil society, experts and policy-makers to assess laws and policies which make strong contributions to sustainability, teasing out their most important elements so that they can be understood and promoted in different cultures, societies and regions of the world.

3. Policy-Making for Sustainability – The Future Justice Standard might also be used by law and policy-makers to consider additional elements for a new law or policy. Though the Standard is actually designed to provide a qualitative evaluation of a law or policy within its own social and legal context after several years of experience and effects, it could also provide a source of inspiration for new laws and policies affecting future generations.

The first and most important ones to apply the Standard, therefore, will be World Future Council staff preparing a short evaluation report to present to the World Future Award jury, to assist them in selecting award winning laws and policies.

To apply the Future Justice Standard, researchers can follow a five-step process:

1. Identify the law or policy;
2. Scope key features for analysis;
3. Select three knowledgeable and legitimate informants to evaluate the law or policy;

4. Apply the principles to the policy;
 - 4.1. Focusing informant expertise
 - 4.2. Questionnaire for Qualitative Evaluation
 - 4.3. Research for Qualitative Evaluation
5. Prepare the Future Justice Law & Policy Evaluation Report.

This Application Took Kit provides guidance for each step of the process.

APPLYING THE WORLD FUTURE COUNCIL FUTURE JUSTICE STANDARD

GUIDELINES FOR LAW/POLICY EVALUATORS

1. Identify the Policy or Law

The first step in selecting better laws or policies is to identify the specific policy or law being studied. This includes simply laying out, in a brief description, specific identifying aspects of the law/policy.

The description serves to identify the specific law or policy being evaluated. Essentially, it involves very briefly outlines the title of the specific law/policy measure, the context in which the measure was enacted (by which authority, in which national and international circumstances), and the audience whose behavior it sought to change.

Sample: *Germany's Renewable Energy Sources Act (Feed-in Tariff Law)*

- **Specific title of law/policy:** Act on granting priority to renewable energy sources (Renewable Energy Sources Act), of 21 July 2004
- **Context in which enacted:** Negotiated and enacted by the German Parliament during the debates on clean energy and climate change in 2004, after entry into force of the Kyoto Protocol of the UN Framework Convention on Climate Change.
- **Target audience:** All power generation utilities in Germany.

2. Scope Key Features for Analysis

The second step scopes the key features of the specific policy or law being studied, providing general information that helps to explain the law or policy.

The scoping serves to establish key comparable data on the different measures being evaluated. Essentially, it involves briefly summarizing key features of the law or policy such as the purpose and objectives, relevant actors, influence and impact of the law or policy, and transferability or applicability of the law/policy.

Sample: *Germany's Renewable Energy Sources Act (Feed-in Tariff Law)*

- **Purpose and Objectives:** Encourage the generation of electricity from renewable energy sources.
- **Relevant Actors:** Power generation facilities, citizens, local government decision-makers.
- **Methods and Modalities:** In addition to granting priority to renewable energy sources for generation of electricity, the Act makes it compulsory for operators of power grids to give priority to feeding electricity from renewable energies into the grid and to pay fixed prices.
- **Influence and Impact:** The law changed the face of power generation in Germany, and has spread to provide a model for the rest of Europe as well as other countries.
- **Transferability and Applicability:** The law could be applied in any other jurisdiction where a power grid exists, and can be reinforced by strong business practices, impact assessment and public participation laws, and social attitudes which discourage corruption or bribery, theft, falsification of inspections or certificates, and shirking of environmental responsibility.

3. Select Knowledgeable and Legitimate Informants

The third step involves selecting three informants who can be contacted in order to knowledgeably answer questions about the policy or law. These informants are key to the process of applying the principles. They are needed to form a *qualitative basis* for evaluation of the law or policy. In order to ensure a fair process, it is necessary to verify that the informants are able to provide an independent, knowledgeable and legitimate opinion. However, there are

different kinds of legitimacy and knowledge. It is recommended that the three informants be able to provide very distinct views and expertise about the law or policy, and the society's experience with its effects.

3.1 Policy maker informant: The first informant answers questions from the perspective of the government or organization in charge of creating and/or applying the law/policy. Their legitimacy derives from their knowledge of the origins and intentions of the law/policy, and their experience in designing/applying it.

3.2 Civil society informant: The second informant answers questions concerning the impact on the affected community and its citizens. Their legitimacy derives from the respect accorded to them by their community, their reputation as a community leader, and their understanding of the needs of their community and how the policy meets these needs.

3.3 Academic informant: The third informant is ideally an independent and knowledgeable expert in the field, such renowned academic, who answers questions regarding the more technical aspects of the law/policy, and is able to provide a perspective on the comparative advantages and/or disadvantages of the law/policy with other similar laws/policies. Their legitimacy derives from established academic criteria such as expertise, reputation and recognition by scientific/legal peers, and peer-reviewed publications in the relevant field.

4. Apply the Principles to the Policy

4.1 Focusing Informant Expertise

The fourth step starts with a series of specific questions to 'warm up' and focus the informants. A few sample questions are provided below. While not exhaustive, they provide ideas as to the kinds of questions which could be asked prior to using the Standard itself with the informants. Informant replies to these questions can also provide extra detail for the description and scope.

Policy Maker Informant #1 – Government/agency design

- What is the objective of the law/policy in your view?

- Why was the law/policy designed the way it was, what were the most controversial issues?
- How does the law/policy concretely attain its objectives?
- What is the expected outcome of the law/policy? (If before implementation).
- How has the outcome measured up to expectations? (If implementation already begun).
- If the law/policy could be modified or otherwise improved, what would you recommend?

Civil Society Informant #2 – Community/citizen impact

- Were you invited to provide input into the law/policy and if so, at which point in time; before, during or after implementation?
- If such a public participation mechanism existed, how did it function and were citizens able to effectively ask questions or express concerns?
- Was information about the law/policy readily available to the public?
- How do members of the affected community perceive the impact of the law/policy in question?
- What are the direct and indirect impacts of the law/policy in the given community?

Academic Informant #3 – Third party technical assessment

- Does the law/policy in question resemble any another or is it *sui generis*?
- If *sui generis*, how does the specific law/policy in question compare to others? What are the differences and comparative advantages or disadvantages with other similar law/policies?
- What is the expected outcome of the law/policy? (If before implementation).
- How has the outcome measured up to expectations? (If implementation already begun).
- What is your assessment of the objectives of the law/policy?
- What is your assessment of the outcome of the law/policy?

4.2 Questionnaire for Qualitative Evaluation of the Law/Policy

Then, each of the three informants must provide their own views on each of the specific questions of the Standard itself, from the *qualitative* view point of their

own unique and legitimate knowledge and expertise. As such, the interviewer should ideally record each of their replies in a straightforward and unbiased way, and then correlate the replies afterwards.

Sustainability is defined in many different ways, in distinct societies, and all these questions are meant to be answered qualitatively by the informant from within the policy/law's regional, social, cultural, environmental context.

1. The duty to ensure sustainable use of natural resources

Law and policy-makers, by virtue of their role as stewards of natural resources, have a duty to ensure that these resources are used in a way that is economically, socially and environmentally sustainable so that they can be replenished over the long term. This principle focuses, in an integrated way, on the environmental and socio-economic durability of the law/policy.

1.1 Does the law/policy help to ensure that the Earth's scarce resources will be used in a more sustainable way?

1.2 Does it help to address a common concern of humankind (such as climate change, global extinction of species, collapse of world fish stocks)?

1.3 Does it respect natural areas, artifacts and traditional knowledge, all of which are the common heritage of humankind?

2. The principle of equity and the eradication of poverty

Laws and policies can contribute to equity and poverty eradication, or make conditions more unequal for the peoples affected by the measure. They can also affect the ability of future generations to fulfill their needs. This principle focuses on the law/policies impact on its society, recognizing that often, social conditions are already vastly unequal and ensures that a law/policy can improve quality of life for the peoples affected.

2.1 Does the law/policy help to address pressing poverty and human rights challenges?

2.2 Does it demonstrate respect among generations, by including provisions that take into account the needs and aspirations of future generations of life?

2.3 Does it promote respect within the present generation of life, by promoting social justice, equity for all peoples, an end to gender discrimination, respect for

the rights of indigenous peoples and local communities, eradication of poverty and less discrimination among species?

3. The principle of the precautionary approach to human health, natural resources and ecosystems

Laws and policies can place ecosystems and societies at risk, and make it possible for societies to address these risks. Often, a new law or policy is enacted as part of a community's broader set of rules for risk management such as impact assessment laws and policies, rather than including specific provisions within the law/policy itself, and this must be taken into account by evaluators. This principle focuses on whether the law/policy helps to ensure that where science is not certain, risks are wisely and equitably managed.

3.1 Does the law/policy promote prevention and precaution in the face of scientific uncertainty about a threat of serious or irreversible harm?

3.2 Does it place the burden of proof for demonstrating that a project or activity is safe, or that risks are reasonable, on the proponent of the venture?

3.3 Where there is insufficient scientific evidence, does it ensure that those most affected by a project can set the acceptable level of risk or threat?

4. The principle of public participation and access to information and justice

Laws and policies can use a drafting process that is transparent and participatory, but this principle focuses on how the policy ensures that it is implemented in a way that is transparent and inclusive. Many new laws or policies are contingent on broader existing transparency, public participation measures such as access to information rules consumer labeling schemes or public engagement programming, and this must be taken into account by evaluators.

4.1 Does the law/policy provide for public consultation and genuine engagement, in both its provisions and implementation?

4.2 Does it specifically provide for transparency and access to information for concerned citizens, local communities, and others who might be affected?

4.3 Does it provide avenues for appeal and redress for citizens, communities and others?

5. The principle of governance and human security

Laws and policies can contribute to good governance and human security, or detract from them. This principle focuses on whether the law includes, within its provisions, ways to ensure that people cannot take advantage of its provisions. It also focuses the evaluator's attention on existing legal or social norms that prevent all laws from being mis-applied, such as monitoring and assessment institutions, anti-bribery and corruption rules, as these mechanisms may be key to securing fair and just implementation of the law/policy.

5.1 Does the law/policy establish adequate institutions to ensure transparent, prompt, effective and fair implementation of its provisions?

5.2 Does it promote peaceful resolution of conflict, and help to ensure that human beings are able to live in freedom from fear, and freedom from want?

5.3 Does the law/policy include provisions to ensure that its intentions are not thwarted by corruption, bribery or unethical conduct, and provide appropriate penalties for abuse of rights, or for mis-implementation?

6. The principle of integration and interrelationship, in particular in relation to human rights and social, economic and environmental objectives

Laws and policies can contribute to fragmentation and territoriality between the very institutions that are meant to work together for sustainability, or they can encourage cooperation and integration. They can include specific mechanisms to make jurisdictions clear, promote institutional learning, and facilitate good inter-agency cooperation. Societies might also have other rules to do this, such as impact assessment, inter-agency consultation or cost internalization rules, which form part of the context of the law/policy and need to be taken into account in its evaluation. This principle focuses on how the law/policy encourages joined-up decision-making about sustainable development.

6.1 Does the law/policy integrate social justice and environmental protection into economic development plans and projects?

6.2 Does it ensure that development decision-making takes environmental and social impacts into account, providing for mitigation, modification or cancellation if necessary?

6.3 Does it provide or enhance benefits for the environment, and the society?

7. The principle of common but differentiated obligations

Laws and policies might address only a present problem, or they can take into account past inequalities, differing conditions and unequal capacities which affect the way obligations can be met. This principle focuses specifically on whether the law/policy could be appropriate for all societies or only for certain technological, scientific and cultural context, and whether the law/policy finds ways to ensure burdens and costs of implementation do not fall upon those least able to sustain them.

7.1 Does the law/policy take into account historical and other inequalities, including who has benefited from past activities and policies, when imposing obligations, and provide avenues to redress such inequalities where possible?

7.2 Is the law/policy appropriate and well-adapted to the society or region's present level of technology, scientific knowledge, human/financial resources, cultural values and traditions?

7.3 Does it avoid placing inappropriate burdens on vulnerable groups, or imposing costs on those least equipped to bear them?

At the end of the interviews, which should take no longer than 1–2 hours with each informant, the evaluator should have a chart filled out from each interview:

Future Justice Law & Policy Standard	
<i>Principle/criteria</i>	<i>How Addressed? Notes & Informant Comments</i>
1. sustainable use <i>(question 1; question 2; question 3)</i>	
2. equity <i>(question 1; question 2; question 3)</i>	
3. precaution <i>(question 1; question 2; question 3)</i>	
4. participation <i>(question 1; question 2; question 3)</i>	
5. governance <i>(question 1; question 2;</i>	

<i>question 3)</i>	
6. integration <i>(question 1; question 2; question 3)</i>	
7. differentiation <i>(question 1; question 2; question 3)</i>	

4.3 Research for Qualitative Evaluation

Qualitative Evaluation: The *Future Justice Law & Policy Standard* process is, fundamentally, an evaluation based on values and qualitative, rather than quantitative data. The informants are not being asked to explain *how much* the law or policy has addressed each point and there is no need at this stage to somehow *weigh* the impact. Rather, they are being asked to give a subjective view on *whether* and *how* the law or policy addresses the core principles.

Social / Legal Context: The interviewer must be ready to ask each informant to extend their replies, where necessary, *beyond the scope* of the law/policy in question. It may be necessary to consult other laws or regulations which are connected to the law/policy under consideration. For instance, if a law/policy does not contain explicit impact assessment, anti-corruption, or public participation provisions because it is well-known that the society/government in question already has functioning laws on these issues which ‘complement’ the law/policy and are applicable, the informant must be encouraged to speak of this context. There may also be a need to verify whether or not the law/policy has been affected by new laws, or whether the law/policy has recently been modified or updated.

Further Research & Analysis: It is often necessary to undertake additional research and analysis on issues that the three informants are not be able address confidently. Questions in the Standard that are most likely to require further research include:

- Does the law/policy promote respect within the present generation of life, by promoting social justice, equity for all peoples, an end to gender discrimination,

respect for the rights of indigenous peoples and local communities, eradication of poverty and less discrimination among species? (2.3, Equity)

– Where there is insufficient scientific evidence, does the law/policy ensure that those most affected by a project can set the acceptable level of risk or threat? (3.3, Precaution)

– Does the law/policy provide avenues for appeal and redress for citizens, communities and others? (4.3, Participation)

– Does the law/policy ensure that development decision-making takes environmental and social impacts into account, providing for mitigation, modification or cancellation if necessary? (6.2, Integration)

– Does the law/policy take into account historical and other inequalities, including who has benefited from past activities and policies, when imposing obligations, and provide avenues to redress such inequalities where possible? (7.1 Differentiation)

5. Prepare the *Future Justice Law & Policy* Evaluation Report.

Once the *Future Justice Law & Policy Standard* has been applied, a short 2–3 page *Evaluation Report* should be prepared on the candidate law or policy. This report will be provided to the Jury that makes World Future Award decisions, as a key element of our transparent, open and legitimate decision making process. The Jury will make their choices in accordance with their agreed process and criteria. Sections II and III of the Evaluation Reports for all laws/policies that are evaluated as Excellent or Good *according to our independent and universal standard* can also provide case studies of World Future Policies for the WFC website and for WFC publications.

5.1 Evaluation Report Template

I. Recommendation

This single paragraph briefly summarizes the evaluator’s conclusions and recommendation.

Candidate: This law/policy focuses on _____.

Evaluation: The informers agreed that it encourages _____ and _____, but doesn’t address _____ very well. In context, other laws on _____ and _____

complement this law/policy.

Points of Interest: The law/policy has also achieved _____ and _____.

Recommendation: This law/policy is an *Excellent / Good / Ineligible* candidate for the World Future Award.

II. The Candidate Law / Policy

This ½ page identification briefly describes the law/policy and highlights its key features. It will include, where appropriate, information gained in the ‘focusing the informant’ warm-up questions.

(i) Description of the Law/Policy

Specific title of law/policy: _____.

Context in which enacted: _____.

Target audience: _____.

(ii) Key Features of the Law / Policy

Purpose and Objectives: _____.

Methods and Modalities: _____.

Influence and Impact: _____.

Transferability and Applicability: _____.

III. Qualitative *Future Justice Law & Policy Standard* Evaluation Results

This 1 ½ page evaluation can be structured along the same template as the single interviews (see table above). It briefly summarizes the combined results of the three informant interviews principle-by-principle, **with footnotes to explain where informants did not agree on key points.**

IV. Annexes

The Annexes provide a space for other relevant information such as the names and qualifications of the informants, any special points or technical details about the law/policy, and information on who proposed the law/policy for the Award.

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