

Interfaces

3rd Annual Conference of the Law and Development Research Network

Leiden

19-21 September 2018

OVERVIEW OF PANELS

1. **A Socio-legal Approach to Taxation in Developing Countries: Towards a research agenda for the study of taxation and development** **Convenor: Rex Arendsen**

The main research question to be addressed in this panel is how socio-legal research can be addressed in the relationship between taxation and development, and what research questions, methodology and disciplines are relevant for this new research agenda. More specifically, some of the questions addressed in this panel are: How do global discourses in taxation influence local realities in countries in the Global South? How did current complexity of changing actors and coalitions come to be and what are its consequences for developing countries? And: is taxation in the end an instrument or a result of development?

- *Taxation and (Local) State Development: A case study from colonial Indonesia.* **Maarten Manse**, Leiden University
- *Yours, Mine, or Ours? Fragmentation and consolidation in the tax administration support framework for developing countries.* **Wouter Lips** and **Dries Lesage**, Ghent University
- *Taxation and Street Level Bureaucracy. A socio-legal research on sustainable revenue mobilization in the global South,* **Jelte Verberne**, NWO-WOTRO Science for Global Development
- *A Socio-legal Methodological Approach to the Study of the Legal Transplant of International Tax Standards,* **Irma Mosquera Valderrama**, Leiden University

2. **The Role of Law for Mobile People in an Interconnected World** **Convenor: Carolien Jacobs**

We are living in a highly globalized world that is characterized by high levels of mobility of people. Such mobility can be triggered by both push-and pull factors; people flee because of insecurity or natural disasters, they migrate for longer periods in search of labour opportunities, or they travel back and forth between living and working space. We can note a ‘*stretching* of social, political and economic activities across frontiers’ (Held et al. 1999). This leads to increasing interconnectedness between different spaces. To some extent this interconnectedness is also reflected in expanding legal relations; in transnational and international law. But this might not always be adequate to capture the justice needs of mobile people, nor might they know how to claim their rights and to get access to justice in their new context. The papers in this panel will look at some of the causes of mobility and explore the consequences of it in legal, socio-legal, and societal terms, and people’s responses to it.

- *Legal Lacunae: The absence of law for the development of Small Island Developing States,* **Sam Adelman**, University of Warwick
- *Can Sustainable Mobility Mitigate Urban Inequities in African Megacities?* **Edna A. Odhiambo**, University of Nairobi
- *Women Migrant Worker’s Access to Information in the Pre-Departure Phase: Case studies of the women in Indramayu,* **Eva Maria Putri Salsabila**, University of Indonesia
- *Case Study: Legal needs assessment of persons affected by natural disasters in Rudaki District, Tajikistan,* **Zulfikor Zamonov**, UNDP/Graduate Institute of International Development Studies
- *Should We Stay or Should We Go? A case study in mobility and exile from South Sudanese refugees in Uganda,* **Bruno Braak**, Leiden University

3. Children's Rights in Context: Gaps, institutions and challenges **Convenors: Ton Liefwaard, Sulistyowati Irianto and Hoko Horii**

This panel deals with the concept of children's rights from two perspectives: universal standards and specific local context. It explores the difference between the two perspectives, ways in which the two perspectives diverge or converge (including implementation, vernacularization, translation), impacts from one to another, politics and socio-economic factors that play a role. The discussion on the one hand aims to evaluate the international framework for children's rights, on the other hand aims to assess the effectiveness of the localization process.

- *The Role and Resistance of Working Children's Movements in the Development of International Child Labour Law*, **Edward van Daalen**, University of Geneva
- *How Do the Indonesian Police Officers Deal with Child Marriage?*, **Sulistyowati Irianto**, University of Indonesia
- *The Child's Right to Nationality in the Turkish Republic of Northern Cyprus*, **Marieke Hopman**, Maastricht University
- *Overlap between Formal and Informal Children Protection Systems in Kenya*, **David Ngira**, Utrecht University
- *Measuring Human Rights? The experience of constructing a Child Poverty Indicator*, **Enrique Delamonica**, UNICEF

The following two panels are part of a stream on 'Shifting Frontiers in the Law and Governance of Development Cooperation' **Convenors: Philipp Dann, Celine Tan and Siobhán Airey**

This set of two panels seek to engage in an interdisciplinary conversation drawing from debates in political economy and law and development, on the changing architecture of contemporary international development assistance. The focus here is to map, assess and critique the changing ways in which law, governance, policy and practice on financing for development are currently being formulated and implemented. These panels aim to draw together a thematic focus on the changing modalities of financing for development, more crucially reflecting not only on the impacts of development finance which have been the traditional focus of law and development scholars – through substantive prisms such as poverty reduction, environmental sustainability, health, education and rule of law interventions – but on the broader political economy of and institutional and governance frameworks of financing for development.

4. Accountability and Institutional Governance of International Development Finance

As new forms of financing development cooperation are introduced and existing ones shift, new modes of governance and new questions of providing accountability occur. This panel wants to highlight and interrogate the importance of these new developments for the legitimacy of development finance, especially in the context of the Sustainable Development Goals (SDGs) but also beyond. It invites speakers to engage with accountability issues – from an international as well as bottom-up or social accountability or other perspectives. At the same time, the panel shall engage with the more general discourse on accountability that has a special dimension in the area of development cooperation. As one of the ubiquitous 'magic words' (and neologisms) since the 1990s and especially in the development field, it is often connected to the managerialism that seems to reign supreme here. We would like to inquire critically into protagonists and motives of this discourse and also into alternatives to the dominant managerialist understanding of accountability. Is there a critical notion of accountability that could be especially relevant and suitable for the development field, perhaps especially in the age of financialization?

- *Can the World Bank Inspection Panel Work with the New World Bank Safeguards?*, **Stephanie de Moerloose**, University of Buenos Aires and University of Geneva
- *Mechanisms and Features of Accountability at the AIIB*, **Thomas Dollmaier**, Humboldt University
- *Rule of law assistance, international rulings and the politicization of the judiciary: Studying power and resistance in Peru and Argentina*, **Julia Liebermann**, TU Darmstadt
- *World Bank Rulemaking and the Evolution of the Global Order*, **Philipp Dann**, Humboldt University

5. **Transnational and International Law Implications for the New Frontiers of Development Finance**

Development finance is being mobilised to respond to a myriad of domestic and international challenges from financing the ambitious SDG agenda as well as tackling mounting transboundary challenges posed by climate change, health epidemics, political conflict and economic insecurity. These changes impact not only on the domestic legal and governance systems of countries in receipt on such financing but also on countries' engagement with transnational and international legal regimes. This panel considers how the framework of development cooperation intersects with other regional and multilateral regimes for international relations, including international economic law, global environmental governance and the regime for international humanitarian protection. It also explores the implications of more recent shifts in ideas about development e.g. the increasing prominence and significance ascribed to finance in the global economy, for the governance of development, and of development finance in particular.

- *The Financialisation of ODA via the SDGs: The risks and challenges of porous governance regimes*, **Siobhán Airey**, University College Dublin
- *Jumping over Political Barriers in Blended Finance through Political Risk Insurance*, **Tuğba Karagöz**, Julius Maximilians University, Würzburg
- *Technification as Transnational Governance: The role of credit information sharing technologies in the financialization of market-based development finance*, **Jeremy Okonjo**, University of Kent
- *Regulating New Frontiers: The privatisation of development finance and new transnational governance*, **Celine Tan**, University of Warwick

6. **Access to Justice for Children: From theory to practice** **Convenors: Ton Liefwaard, Sulistyowati Irianto and Hoko Horii**

This panel discusses the concept of access to justice for children – how it is conceptualized and substantiated, more in general and in specific contexts, from both legal and interdisciplinary perspectives. The interplay between different conceptual, theoretical and legal frameworks, between different institutions and actors, and between law in the books and law in practice will be further explored with the aim to identify the key requirements for an effective operationalisation of access to justice for children in practice.

- *Access to Justice- How to operationalize this concept for children?*, **Ton Liefwaard**, Leiden University
- *Access to Justice for Children in Asylum Procedures*, **Stephanie Rap**, Leiden University
- *The Dutch Children's Ombudsman and Access to Justice of Children: Law and practice in a changing landscape*, **Katrien Klep** and **Marielle Bruning**, Leiden University
- *Access to Justice for Children in Canadian Family Law and Child Protection Cases*, **Mona Paré**, University of Ottawa

- *Once Sexually Abused, Twice Victimized: Access to justice for child victims of sexual violence in Hai District*, **Isabella Warioba** and **Ines Kajiru**, Mzumbe University
- *Access to Justice for Children Victim of Sexual Violence: Voices from children in Yogyakarta and Depok*, **Tirtawening Parikesit**, University of Indonesia

7. Interfaces between Formal and Customary Land Administration Systems *Convenors: Fordam Wara and Bernardo Almeida*

Despite being the de facto system of governance for large tracts of land worldwide, customary land administration systems have, since colonial times, been challenged by rules, institutions, and practices of the state. This scenario is, however, changing. Especially in the last two decades, through paths such as indigenous peoples' movements, there have been substantial changes in the way customary land administration systems have been perceived and acknowledged by state laws in Sub-Saharan Africa and Southeast Asia. However, while there has been noteworthy progress in the legal recognition and integration of customary land administration systems, internal opposition, political dilemmas, and practical problems remain significant. Furthermore, this movement towards a stronger legal recognition of customary systems comes at a time when problems such as population growth, urban expansion, and climate change become more acute and further complicate this recognition. To understand the problems, dilemmas, and challenges that the legal recognition of customary land tenure systems brings, it is necessary to investigate their interface with the formal systems. The papers in this panel encompass a number of examples where the role of customary institutions, rules and practices are analyzed, and the steps taken for their stronger or weaker integration into formal systems are debated.

- *Access to Justice at Lower Courts: A comparative perspective of customary law courts and magistrates courts*, **Paidamwoyo Mukimbiri**, Ezekiel Guti University
- *Negotiating the Interfaces of Formal Laws and Customary Practices in Nigeria: Halted eviction of Ugbo-Okonkwo community in Enugu*, **Victor Onyebueke**, University of Nigeria, Nsukka
- *The Interface of Statutory and Customary Land Law in Africa: Legal pluralism or fusion?* **Liz Alden Wily**, Leiden University
- *Women Struggles in Social Forestry: Case study on women farmer communities in East-Sumba, Indonesia*, **Iva Kasuma**, University of Indonesia
- *Platinum Mining in South Africa: Understanding the new shape of legal pluralism*, **Janine Ubink**, Leiden University

8. Where Law Meets Power: Analyzing legal mobilization and counterpower in Law and Development Studies *Convenor: Jeff Handmaker, discussant/chair: Kinnari Bhatt*

Law-based, civic-led advocacy has long been an important means for addressing rule of law deficits and problems of development and governance more generally. Authoritarian regimes, corruption and the limitations of formal rule of law mechanisms to deliver impartial justice have forced legal advocates to think creatively. This has resulted in some interesting examples of civic-led legal instrumentalism through both informal and formal structures, aimed at pursuing social justice. In this panel, we explore these trends through the analytical lenses of legal mobilization and counterpower in the context of climate change, children's rights, state capture and law-based, civic-led social justice advocacy.

- *Legal Mobilization for Climate Change Action: A child rights-based approach*, **Karin Arts**, International Institute of Social Studies (EUR)
- *Business, Legal Mobilization, and State Capture in South Africa*, **Jonathan Klaaren**, Wits Institute for Social and Economic Research (WISER) and University of the Witwatersrand

- *Legal Mobilization as Counterpower: Explaining the potential of law-based, civic-led social justice advocacy*, **Jeff Handmaker** and **Sanne Taekema**, Erasmus University Rotterdam
- *The 'Judicialisation of health': Social justice and inequality in polarized Brazil*, **Erik Bähre**, Leiden University and **Fabiola Gomes**, University of Brasília
- *The Life Esidimeni Tragedy in South Africa: Government policy failing the most vulnerable*, **Deon Erasmus**, Nelson Mandela University

9. **Policy Meets Practice in Human-Rights Based Approaches to Development** **Convenor: Wouter Vandenhole**

In a fair amount of development policies, programs and practices, human rights-based approaches to development (HRBADs) have been introduced over the last two decades by international organizations, donor countries and non-governmental organizations. Contrary to grassroots rights struggles induced from below, the adoption of HRBADs by local organizations and actors has often – if not always - been induced by external actors, be it donor states, international intergovernmental or non-governmental organizations.

Notwithstanding more empirical work on HRBADs since the mid-2000s, HRBADs remain poorly understood and implemented, and assessments of achievements and success have shown mixed results. Recent scholarship through the lenses of power and change may to some extent contribute to a better understanding. However, whether and how ‘the local’ context affects the ways in which human rights travel and transform remains unclear. More explicit attention for ‘the local’ in HRBADs may shed new light on the travel and transformation of human rights in action, as well as assist in understanding how and when HRBADs work (better). Whereas transformation may be welcomed as a token of the flexibility that allows HRBADs to adapt to and be appropriated by ‘the local’, it may also entail risks of cooptation if it can be transformed too easily and to too large an extent.

- *“Human Rights Based Approach to Development in Conflict Situations: Exploring local challenges and opportunities”*, **Deborah Casalin** and **Gamze Erdem Türkelli**, University of Antwerp
- *Un(Fit) for Purpose? Exploring the compatibility of different Official Development Assistance (ODA) modalities with a Human Rights Based Approach to Development*, **Rachel Hammonds**, University of Antwerp
- *The Opportunities and Pitfalls of the Human Rights-Based Approach to Development*, **Arne Tostensen**, Christian Michelsen Institute
- *HRBA and International Organisations: Achievements and challenges*, **Arne Vandebogaerde**, University of Antwerp
- *HRBAD in Post-Genocide Rwanda*, **Wouter Vandenhole**, University of Antwerp

10. **Revisiting the Issue of Compliance: Closing the gap between written environmental laws and their implementation in Indonesia** **Convenor: Andri Ramdhan Wibisana**

Despite a robust written legal framework for environmental protection and management, Indonesia still records poor environmental conditions. In 2018, Indonesia’s Environmental Performance Index is ranked 133 out of 180 countries, while its capital Jakarta, is ranked the third most polluted city in the world. This suggests there is a wide gap between written law and actual implementation.

This panel will discuss the role of the judiciary in bridging the gap between the written environmental legal framework and its implementation. It seeks to demonstrate the role of the judiciary in Indonesia in interpreting and applying certain environmental concepts and norms in both the Constitution and existing statutes, when dealing with environmental cases. The panel

also offers perspectives on how political and legal reforms have shaped judiciary systems, which have in turn helped the courts to improve their decisions. Indonesia's experience might provide instructive best practices to other jurisdictions facing similar environmental challenges, particularly those working to improve their own environmental adjudication systems.

- *Environmental Constitutionalism in Indonesia: The underutilization of Constitutional environmental rights in the Constitutional Court*, **Prayekti Murharjanti**, University of Sydney
- *Implementation of Laws and Regulations in Local Bureaucracies: The application of Indonesian licensing system in local areas*, **Feby Ivalerina Kartikasari**, Leiden University
- *Climate Change Litigation in Indonesia: Legal standing, liability rules and causation*, **Andri Ramdhan Wibisana**, University of Indonesia
- *Environmental Adjudication's Reform in Indonesia. Does it go into the right direction to improve the quality of decision?*, **Windu Kisworo**, Macquarie University

11. National Identity, Law and Development in North Africa **Convenors: Suliman Ibrahim and Jan Michiel Otto**

This panel is about the role of law in fostering and legitimizing national cohesion as a prerequisite to development in North Africa (Morocco, Libya, Egypt).

In 2011 the so-called Arab Spring revolutions have brought questions about national identity to the fore. Seemingly such question had long been settled by the nationalist regimes that came after independence (Morocco, Tunisia) or military coups (in Egypt, Libya). But in the debates surrounding constitution making in Morocco, Tunisia and Egypt, and Libya, issues of national identity have resurfaced. Featuring prominently in these debates are questions such as those concerning Islam: what role, if any, to assign to it (and what interpretation thereof), and language and ethnicity: should Arabic remain the only state language and what status to accord to ethnic minorities and their languages. Even in Algeria, where no Arab Spring revolution occurred, such questions are incessantly debated. The panel aims to provide a forum for discussion on the role that law has played in finding acceptable solutions to these issues.

- *Libya's Identity-in-the-making- Lawless or Law-based: Which one may prevail, and why?* **Jan Michiel Otto**, Leiden University
- *The Role of Law in Addressing National Identity Challenges in Today's Libya: A hindrance or a help?* **Suliman Ibrahim**, Leiden University
- *Religion and Identity in Egypt: A study of political discourse on the constitution*, **Emad Abdul Latif**, Qatar University.
- *Identity Politics and the Monarchy in Morocco: The case of the Islamists and the Amazigh*, **Driss Maghraoui**, Al Akhawayn University
- *Language, Law, and National Identity in Morocco*, **Ahmed Ech-charfi**, Mohamed V University

12. Corporations, Investment and Law and Development **Convenor: Liliána Lizarazo Rodríguez**

One of the important issues in law and development is the role of the private sector in promoting development and the (optimal level of) regulation of its activities by the state or by international organizations. The role of the state has thereby been analyzed (and criticized) regarding the promotion or restriction of corporate activities in specific economic sectors and/or geographical areas by providing economic incentives or by limiting their activities. Countries also compete to attract foreign investment by providing incentives such as tax exemptions, export promotion zones or flexible labor market regulations (cf. the indicators of the Doing Business report of the World Bank). Recently a new issue has been added to the role of the state in regulating corporate activities, particularly in developing countries. This is, the need to create concrete commitments of the corporations regarding the respect for human rights and the environment when they develop their activities, not only where they have their registered office but also in host countries.

The interaction between state and non-state regulations and corporate activities, as well as the interaction between state law, international guidelines (such as the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinationals) and self-regulation (such as the codes of conduct) are the main issues that will be treated in this panel. The papers refer to various aspects of the interaction among (multinational) corporations, the state (as regulator), or the international community (including the UN) which condition the role of corporations in development.

- *Placing Causality in Law and Development Studies with Evidence from Brazil: The role of the law in foreign direct investment flows*, **Sarah Marinho**, University of São Paulo
- *The Limits of Managerial Approaches to International Development Law*, **Gustavo Arosemena**, Maastricht University
- *Analysing the Role of Business Entities in Developing Access to Justice under UN Guiding Principles on Business and Human Rights*, **Akiko Sato**, Attorney-at-Law of Kotonoha Law
- *The Case of Human Rights Impact Assessments of Trade and Investment Agreements*, **Liliana Lizarazo Rodríguez**, University of Antwerp and **Philippe De Lombaerde**, Neoma Business School

13. Corruption **Convenor: Jan Michiel Otto**

The lofty goals of law and development are in sharp contrast with the widespread practices of corruption. All over Asia and Africa the lack of integrity in public affairs has undermined the legitimacy of the state and of the legal system itself. Yet, in contrast to the decades of early statehood, in many countries corruption is now at least being discussed in the open, and in several countries addressed head-on. This panel not only takes stock of anti-corruption efforts in Kenya and Indonesia, it also explores alternatives for the regular law-based approach by looking at the potential of collective action in Africa, and at how ‘unofficial laws and practices’ like that of Islam may contribute. At the same time it criticizes international governance, for example in global health law, for assuming that national governments just can and want to ‘implement’ such law without taking into account the prevailing practices of corruption, and the need to combat them.

- *The Failure of Law and Legal Institutions in the Quest for Integrity in Public Affairs: A call for change of approach in the fight against corruption in Kenya*, **Eric Kibet**, High Court Nairobi
- *The Military Involvement in Combating Corruption in Indonesia: An experience from Soekarno and Soeharto regime*, **Oce Madril**, Gadjah Maha University
- *Leveraging Collective Action against Corruption: What can anti-corruption scholars learn from Elinor Ostrom?*, **Paul Ocheje**, University of Windsor
- *Sovereignty, Discipline and the Nation State in Global Health Governance*, **John Harrington**, Cardiff University

14. Where Law Meets Politics: Conceptual and policy challenges of regulating sustainable use of natural resources in Indonesia **Convenors: Ward Berenschot and Otto Hospes**

Seeing the need to balance economic development and environmental sustainability, states have designed and implemented different kinds of laws to regulate sustainable use of natural resources, including laws to restrict deforestation and agricultural expansion, laws to protect biodiversity, zoning laws, etc. At the same time, states have centralized, decentralized or recentralized powers over the making and implementation of these laws.

This panel focuses on the ways in the making and implementation of laws to regulate sustainable use of natural resources in the global South and processes of de/recentralization of powers over

such making and implementation are shaped by different kinds of politics. These politics could be bureaucratic politics but also multi-level politics, sovereignty politics and informal politics. This panel wants to discuss (a) what different and changing types of politics shape the making and implementation of laws to regulated sustainable use of natural resources (forest, land), (b) what does this imply for our understanding and conceptualization of the interface of state-based law and politics, and (c) why and how such interface can be transformed, if possible at all?

After a plenary session in which the overall content and key questions of the panel on the interface of law and politics will be presented, academics from legal and political science will reflect on the key questions.

- *Introductory Note: Conceptualizing complex relationships between law and politics in the governance of sustainable use of natural resources*, **Otto Hospes**, Wageningen University, and **Ward Berenschot**, KITLV.
- *Decentralization to Govern Natural Resources: The role of the central government in theory and practice, learning from the plantation sector*, **Josi Khatarina**, University of Melbourne
- *Palm Oil Companies Navigating between the Laws and Forests: What are the local institutional contexts that shape their policies of No Deforestation, No Peat, No Exploitation?*, **Ahmad Dermawan**, **Otto Hospes**, **Katrien Termeer**, Wageningen University
- *Seeing Like a State from Below: How local governments interpret and use the national and provincial forest moratorium of Indonesia*, **Reonaldus Reonaldus** and **Otto Hospes**, Wageningen University
- *Contention and Collusion: Palm oil conflicts in Central Kalimantan*, **Ward Berenschot** and **Ribut Purwanti**, KITLV

15. **Islam, Family Law and the Practice of Marriage and Divorce** **Convenor: Annelien Bouland, Discussant: Waheeda Amien**

This panel focuses on the practices of marriage and divorce of Muslims across the globe. The relationship between state law, sharia differs greatly between countries. Whereas some countries have incorporated sharia norms in family law, in others such norms operate more informally. The heterogeneity in the interpretation of sharia further complicates this picture. So does the importance accorded to customary norms in certain regions.

Contributions to this panel explore how men and women and different authorities operate in these contexts; that is, how they navigate pluralities of norms, authorities and procedures in marriage and divorce. Contributions may also focus more particularly on the workings of reform or development initiatives being introduced in such plural landscapes.

- *To Marry or not to Marry? Male and Female Judges Dealing with Underage Marriage in Morocco*, **Nadia Sonneveld**, Radboud University
- *“Somewhat you’re stuck between values, duties and rights”:* Women, Islam and divorce in Tivaouane, Senegal, **Annelien Bouland**, Leiden University
- *Informal Family Dispute Resolution among Dutch-Moroccans Muslims: Recent debates and developments*, **Arshad Muradin**, Leiden University
- *A Story of Legal Pluralism: Faith-based arbitration in family law disputes*, **Angela Felicetti**, King’s College London/University of Bologna

16. Access to Justice for Development in Africa: A multi-actor perspective *Convenor: Sisay Yeshanew*

Despite the overall recognition of the importance of effective remedies for the realization of human rights, access to justice remains problematic at the national as well as regional levels in Africa. The relevant challenges extend from the formal (non)recognition of the substantive rights based on which remedies may be sought to the absence or weakness of institutions to resolve disputes over human rights in different contexts. Overlapping mandates of formal and informal dispute resolution mechanisms and procedural hurdles to accessing justice are major problems in many African countries. The proposed panel explores normative, institutional and procedural challenges to access to justice in selected development issues, such as disability rights, child rights, and natural resource-related rights, from the perspectives of the conducts of state and non-state actors. The panel is composed of four papers. Three researchers are part of a research network within the project 'Strengthening Human Rights Research and Education in Sub-Saharan Africa' (SHUREA).

- *Non-judicial Grievance Mechanisms in Land Disputes: Case studies from Sierra Leone and Somalia*, **Sisay Yeshanew**, Addis Ababa University
- *Access to Justice by Victims of Corporate Abuses in the Extractive Industries in Africa: Beyond a state-focal accountability system*, **Chairman Okoloise**, University of Pretoria
- *Access to Justice for Persons with Disabilities: Practical challenges of the implementation of disabilities act in Tanzania*, **Ines Kajiru**, Mzumbe University/University of KwaZulu Natal and **Isabella Warioba**, Mzumbe University/University of Antwerp
- *The right to access to justice of PWDs in civil proceedings in Ethiopia: A mere promise or a reality?* **Aschalew Ashagre Byness**, Addis Ababa University

17. Legal Change in the Aftermath of Conflict: A critical perspective *Convenor: Daniel Blocq*

In the aftermath of conflict, there is often a need for the development of new laws and legal institutions, and a myriad of non-government actors join forces to promote changes in existing legal framework and justice system. This panel offers a critical perspective on these processes of legal change. The papers consider cases in which new laws and legal institutions contribute to legal uncertainty on the one hand, and are based on assumptions that are not in sync with social reality on the other. In trying to understand how those situations emerge, the papers focus mostly on the role of donors, international NGOs, and foreign legal experts.

- *Legal Transplants and Development Aid: The curious case of Lusophone cross-influences in the definition of the nationality law of Timor-Leste*, **Patrícia Jerónimo**, University of Minho
- *Building Judiciaries of International Standards- A case study on the role of international donors in promoting judicial independence in Timor-Leste*, **Sapna Reheem Shaila**, King's College London
- *Legal Technical Assistance for Lawmaking – A case study from Afghanistan*, **Bernardo Almeida**, Leiden University
- *Vetting of State Agents in Fragile and Conflict-Affected Settings*, **Daniel Blocq**, Leiden University

OVERVIEW OF WORKING GROUPS

W1. Vulnerability: An interface between law and justice

Convenor: Viljam Engström

The working group will start with an introduction of two papers that will disseminate research results emanating from the research project *Vulnerability as Particularity — Towards Relativizing the Universality of Human Rights?* (RELAY) at the Åbo Akademi University Institute for Human Rights (<https://blogs2.abo.fi/vulnerability/>). One of these two papers (by Dr Viljam Engström) addresses the content of the concept of vulnerability in the IMF programmes and lending, critically discussing the role of rights and the vulnerability paradigm as a mechanism for social protection. The other paper (by Dr Mikaela Heikkilä and Maija Mustaniemi-Laakso) addresses the role and authority of (human rights) courts and other legal institutions in the identification of vulnerability as a legally relevant concept, analysing *vulnerabilisation* as an active legal process. The working group forms a continuum to the LDRN PhD School 2018 (Åbo, 11-15 June 2018), which gathered doctoral candidates from different disciplines to discuss the role of law in addressing vulnerability, inequality and discrimination in the North and in the South.

DESCRIPTION

Vulnerability, one of the buzzwords in contemporary human rights discourse, is typically used to refer to vulnerable groups and individuals whose rights are perceived to be at a particular risk of being violated (such as children, refugees and women). Vulnerability is invoked in a strife for substantive equality, by offering special protection to those most in need. Yet, the particularization inherent to this use comes with potential problems, such as selective protection, lowering of the general level of protection, disempowerment, and loss of agency. As such, any identification of vulnerability gathers considerable politico-legal significance. Vulnerability and human rights, it seems, are inherently intertwined. Yet, legal development is nascent, and the exact contours of the relationship between the two paradigms seem rather unexplored. While vulnerability in human rights law is commonly used to focus on particular populations, another strand of theorization presents vulnerability as of universal scope. Within legal discourse, then, there seems to be a paradoxical relation to the vulnerability concept; rights are on the one hand pictured as a necessary tool for protecting particular groups, while on the other hand falling short of addressing the causes of vulnerability. This paradox opens up for various uses of the concept of vulnerability as a means for making claims to rights. However, it also raises the question of the function of the vulnerability paradigm as an interface between social justice and law. This working group aims to take a critical look at vulnerability reasoning as a structural element of international human rights law, conceptions and functions of vulnerability, and the constitutive role of the vulnerability paradigm. The emphasis is in particular on identifying and critically exploring the function of vulnerability as a tool for setting preferences and for exercising authority. The working group aims to accumulate critical insights on the role of the vulnerability paradigm for human rights protection. However, the aim is also to transcend the conception of vulnerability of human rights law and to assess the usefulness of different conceptions of vulnerability for achieving justice.

W2. Human Rights-Based Approaches to Development: Between hybridization and replication?

Convenor: Wouter Vandenhole

Civil servants or NGO staff who seek to implement a human rights-based approach to development (HRBAD) often find themselves in a position of translators, intermediaries who translate or vernacularize international human rights norms into local contexts. This role of translator puts them in a tension between hybridization and replication. In case of hybridization,

international human rights norms are considered a given, and simply replicated at the local level. In case of hybridization, human rights norms are tailored to the local context. Too much replication may alienate the local community, too much hybridization may mean that support from the international community and donors is lost.

Questions to be addressed include:

- *When does a HRBAD become too hybridized by parallel service delivery?*
- *When and why does a HRBAD fail to strike a chord because it simply replicates international definitions and approaches?*
- *When and where are red lines to be drawn to hybridization, e.g. with regard to female genital mutilation; child labour; sexual and reproductive rights?*

W3. Preventing Water Wars: Where practice meets theory

Convenors: Jacqueline Vel, Herlambang Wiratraman and Bernardo Almeida

Water safety is becoming one of the main issues of the XXI century. In rural areas, the expansion of plantation and mining industries, and the enclosure of frontier areas with infrastructure is depleting water sources necessary for local agricultural production and cattle raising. In urban areas, safe and reliable drinking water provision is becoming a main concern for the population and local governments.

In this working group will discuss how we, as law and development experts and researchers, deal with this 'wicked problem' of securing citizens' access to sufficient and safe water. How do we analyse the problem and its main causes, considering our various disciplinary backgrounds? What would be the central question from your point of view? What would be your suggestion for solutions? To make the discussion more concrete the working group organisers have prepared a case study about access to water in the context of plantation development on Sumba Island, in Indonesia. We hope that discussing this case will help to link the theoretical insights you are familiar with to the practical problems faced in Sumba.

The results we are aiming for in this working group are:

- Input for the legal aid workers in the case (however general-) as inspiration for including new strategies in their work
- An interdisciplinary discussion on how we can contribute to promoting water safety in the world, and collaboration in thinking about constructive recommendations

OVERVIEW OF PLENARY SESSIONS

Access to Justice: Where should we begin?- opening lecture by Jan Michiel Otto

Convenor: Carolien Jacobs

Many of the contributions to the 2018 Third Conference of the Law & Development Research Network revolve around the theme of access to justice. This seems to be timely as governments from the global South and North, having united as ‘Pathfinders for peaceful, just, and inclusive societies’ have asked in their 2017 Roadmap for a joint research agenda, with a focus on access to justice.

If our network - or anyone else - would want to take up that challenge, then where should we begin? With ‘access’ or with ‘justice’? With the Global South or the Global North? With justice-seekers or with the legal system? With first-responders or state institutions? With law or social sciences? Should we begin with today’s state-of-the-art or with the groundbreaking work on access to justice by Cappeletti and Garth in the 1970s? Or could we perhaps resolve all of these questions by the magic word ‘Interfaces’?

In my presentation I will dwell upon such questions and touch upon related conceptual issues, illustrated with practical examples – thus trying to make a modest contribution to a shared vocabulary on access to justice.

The Crises in Development Aid and the Need for Retrospective Research – keynote by Stephen Golub

Convenor: Jan Michiel Otto

The keynote address for the conference will illuminate an acute irony in international development aid for law-and-development and related fields: Assistance for bolstering the rule of law, governance, democracy and civil society is inherently long-term in nature, yet there is a dearth of retrospective research that could indicate long-term impact and lessons. Retrospective research is informally characterized here as impact-oriented studies conducted at least several years (though if possible ten or more years) after donor support for a given project, program or NGO has ended. The talk will draw on Stephen Golub’s experience in development policy, academia and, especially, consulting for many major aid agencies.

Though subject to some modification, the talk will address how this retrospective research can help address three crises confronting law-and-development aid and related fields:

1. The impact crisis: the failure to demonstrate impact in these fields.
2. The political crisis: the reality that many aid recipient nations are creeping or even lurching away from seeking the rule of law, democratic stability and open societies.
3. The civil society crisis: the increasing, repressive pressure against civil society advocates and other reformers.

It will proceed to analyze why there so little retrospective research in these fields, with the reasons including the political economy of development aid. The talk will convert these general themes into concrete examples drawn from law-and-development. It will partly do so by contrasting legal empowerment (the use of law and rights specifically to benefit disadvantaged populations) with judicial reform efforts (which constitute part of a state-centered, nation-building narrative). It will then outline an initial process for undertaking the proposed research, including a preliminary stage to identify projects/programs/NGOs for appropriate retrospective study and the in-depth studies

themselves. The talk will conclude by highlighting the several benefits of such research for aid agencies and their partner populations.

Nine-tenth of the Law – keynote by Christian Lund
Convenor: Adriaan Bedner

The old aphorism that ‘possession is nine-tenths of the law’ suggests that property rights (‘the law’) is not merely about formal rights, but, more importantly, about the political and physical capacity to hold things of value; land, in particular. Possession, control of benefit streams, and the ability to exclude others from what is yours, generally requires instruments additional to rights on paper. Work on access and powers of exclusion advocate approaches to the understanding of resource benefits and control that are not centred around law. There can be little doubt that physical presence, force, and the threat of both, have been integral parts of how property in land has developed in Indonesia, and most other places on the planet.

However, law is both a solvent and a solidifier. To suggest that law and rights have no purchase in Indonesia or other postcolonial societies would be to overlook the pith of law and legalisation in contemporary land conflicts. Regimes change, and new laws, new rights, and new authorities not merely provides new structures, it equally melts away old rights and authorities, and land struggles, therefore, potentially remain open-ended. Consequently, the prospect of locking makeshift settlements into durable structures of recognition through legalisation and reference to law incentivises most landholders to invest attention and effort in legitimation and legalisation of possessions as property. Legalisation is an appeal to the backing of a claim by the powers of the state in order to solidify the right, ideally beyond the vagaries of different regimes. So, while possession may be nine-tenths of the law, the last tenth of recognition still matters a great deal. This talk is about the relationship between possession and recognition; how the last tenth of the law relates to the other nine.

Gender-Nuanced Integration of Muslim Family Law in a Secular Legal Framework -
keynote by Waheeda Amien
Convenor: Annelien Bouland

The notion of secularism has evolved and no longer only manifests as the traditional separation between religion and state. For instance, in South Africa, legal recognition is afforded to African customary law and there is the potential for religious personal and/or family laws to also be recognized while uniform laws govern everything else. South African law operates within a constitutional democracy, which requires consistency between law and human rights. The challenge is to ensure that recognition of cultural and religious personal and family laws does not undermine rights including gender equality.

Using the example of Muslim family law, I argue that when secularism accommodates religion and culture without being attentive to the nuances of religious and cultural laws, women’s rights can be negatively impacted upon. I offer an approach, which I call the Gender-Nuanced Integration (GNI) approach for gender-sensitive recognition and regulation of Muslim family law within a secular legal framework. The GNI approach recommends two phases: Firstly, to afford dignity to parties married by Muslim rites, Muslim family law must be afforded legal recognition within a secular legal framework. To ensure protection of women’s rights, Muslim family law must also simultaneously be regulated through legislation. The latter requires the legislative incorporation of progressive interpretations of specific features of Muslim family law to enable consistency with human rights. Secondly, by bringing Muslim family law within the parameters of a secular legal framework underpinned by human rights, a secular judiciary would have jurisdiction to pronounce on Muslim family law rules and practices. Through the adoption of progressive interpretations of Muslim family law that are consistent with human rights, a secular legislature and judiciary could play a significant role in contributing to the gendered reform of Muslim family law.

Plenary discussion: The Problem of Knowledge in Legal Cooperation Programs

Convenor: Janine Ubink

According to Carothers, the field of legal development cooperation suffers from a ‘problem of knowledge’. Programs to foster the rule of law abroad have mushroomed over the past decades, but well-grounded knowledge about what factors ensure success, and why, remains scarce, he argues.

Is there indeed such a ‘problem of knowledge’? And, if so, how to overcome or at least mitigate it? Impact has proven terribly hard to measure. Are there indicators we can work with, or should problems of knowledge be solved differently? And, thirdly, are legal projects sufficiently connected to the existing legal system(s) and expertise within their social context? This question is particularly pertinent in legal reform programs focusing on the customary justice sector, where there are high levels of geographical variation and customary law’s complex unwritten, negotiable and relational nature. Finally, there’s the question of how the cooperation *process* may be analysed and improved.

In this session we give the floor to practitioners and their experiences and insights, discussing some of the real and wicked knowledge problems in legal cooperation. We will – amongst others – focus on what they think the role of research may be in mitigating these problems.

Invited participants are:

- Elizabeth Bakibinga, Legal Advisor
- Naoshi Sato, Attorney at Law, Former IICA Rule of Law advisor
- Michael Klode, Advisor Law/Human Rights/Judiciary, GIZ
- Marianne Peters, Senior Policy Officer of the Dutch Ministry of Foreign Affairs

BIO KEYNOTE SPEAKERS

Waheeda Amien

Waheeda Amien is an Associate Professor and Deputy Dean of Internationalisation and Outreach in the Faculty of Law at the University of Cape Town. She holds a LLB from the University of Cape Town, LLM from the University of the Western Cape and Doctor in Law from the University of Ghent.

Her research specialization is in the area of Legal Pluralism and Human Rights in Personal and Family laws with special emphasis on Muslim Personal Law and Women’s Rights. In her area of expertise, Waheeda has published in- and reviewed articles for a range of books, journals and collections.

Apart from teaching in the Departments of Public Law and Private Law, Waheeda has also presented guest lectures on Legal Pluralism and Muslim Personal Law and Human Rights – and has been Visiting Professor at among others, the University of Maryland, University of Ghent, University of Lucerne, Queen Mary University of London, University of Antwerpen, McQuarie University and the University of Melbourne.

Since 1999, Waheeda has been involved in advocacy processes for the recognition of Muslim marriages in South Africa, including drafting submissions to the South African Law Reform Commission, Ministry of Justice and Constitutional Development and Department of Home Affairs.

Waheeda has provided expert opinions to a range of local and international firms and organizations including the United Nations Expert Group Meeting on *The Rights and Securities of*

Religious Minorities. She is a member of the Executive Body of the Commission on Legal Pluralism, an Attorney of the High Court of South Africa, an accredited Mediator with the Family Mediator's Association of the Cape (FAMAC) and has served as Chair of various civil society organizations and forums.

Christian Lund

Christian Lund is Professor at the Department of Food and Resource Economics, University of Copenhagen (clund@ifro.ku.dk). He is the author of *Law, Power and Politics in Niger. Land Struggles and the Rural Code* (Lit Verlag/Transaction Publishers) and *Local Politics and the Dynamics of Property in Africa* (Cambridge University Press). He currently works on a book manuscript: *Nine-Tenths of the Law. Enduring Dispossession in Indonesia*.

Stephen Golub

Stephen Golub is a widely recognized international development scholar and consultant with more than 25 years of experience in over 40 countries spanning the globe. His teaching has included courses on international development at Berkeley Law School and Central European University's Public Policy School, and on refugee policy at Tufts University's International Affairs Department. He has produced more than 40 publications for policy institutes, aid agencies and academic journals.

Prof. Golub has led global, regional and country-specific research initiatives and consultancies for Amideast; the Australian, Danish and Dutch foreign ministries; the Ford Foundation; the Global Network for Public Interest Law; the *Hague Journal on the Rule of Law*; the International Development Law Organization; the Open Society Justice Initiative; the U.K. Department for International Development; the U.N. Development Programme; and the U.S. Agency for International Development.

He currently is most focused on civil society advocacy, anti-corruption strategies, countering violent extremism, access to justice and legal empowerment. But his background also embraces such fields as human rights, governance, democracy, non-state justice systems, the rule of law and political economy analysis. He can be reached at sjgolub1@gmail.com.

Jan Michiel Otto

Jan Michiel Otto is emeritus professor of law and governance in developing countries. Since 1983 until 2017 he served as director of the Van Vollenhoven Institute for Law, Governance and Society (VVI), at Leiden Law School. He studied private law and specialised in development administration at both Leiden and the Free University of Amsterdam. In 1985 he co-founded the Council for Legal Cooperation between Indonesia and the Netherlands. In 1987 he defended his PhD thesis entitled *Aan de voet van de piramide: overheidsinstellingen en plattelandsontwikkeling in Egypte*, [At the foot of the pyramid, state institutions and rural development in Egypt.] He taught many courses in his field, both in the Netherlands and abroad.

He has conducted, published, and supervised socio-legal research on such topics as Indonesian environmental law, law courts, colonial history of law and administration, law-making in China, customary law and traditional authority in Africa, 'good governance' and development policy, Sharia and national law in Muslim countries, formalisation and land governance, access to justice in Libya, and primary justice in insecure contexts: South Sudan and Afghanistan. He served on advisory boards and committees in the field of law and development such as IDLO's Board of Advisers as vice-chairman, and CILC's Executive Board. His 'Sharia Incorporated. A Comparative Overview of Legal Systems of Twelve Muslim Countries in Past and Present' (Leiden University Press 2010) is widely read.