



The Project Cycle in Rule of Law Assistance

Project Cycle Paper No. 1

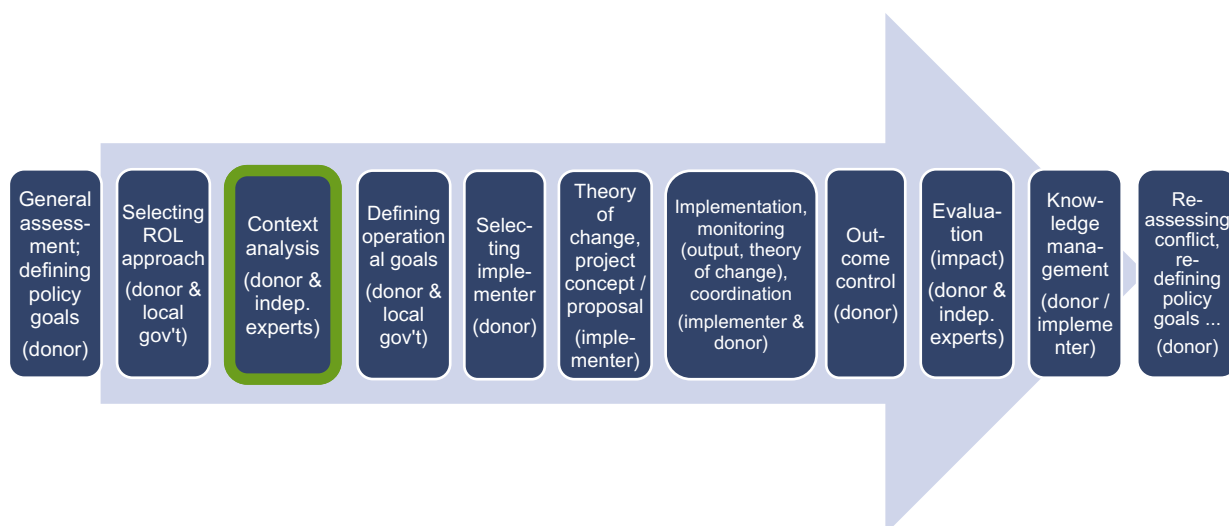
Context Analyses

March 2021

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I. Introduction

This paper is part of a series on the project cycle in rule of law assistance. Based on an expert talk, it does not aim to examine the topic comprehensively, nor is it an instruction for practitioners. It is rather meant to share thoughts, raise questions, and by this inspire scholars as well as practitioners to continue thinking about *context analyses*, striving to improve them and thus strengthen rule of law assistance in general.



Graph: The project cycle in rule of law assistance (simplified)

When planning and implementing projects in the field of rule of law assistance, the assessment of the respective context takes a central position. Two phases can be distinguished. The first – a general, political, socio-economic and (in some contexts) conflict-related assessment – is usually realised by the donor agency. It is the basis for determining concrete policy goals – such as “stabilisation” or “sustainable development” – and the decision of whether or not to use rule of law assistance as an

instrument to achieve them. In this early phase of the project cycle, perspective and methodology must be suitable in order to at least recognise the legal dimension of a conflict and its possible resolution. The result of this step in the analysis is not only the realisation of whether rule of law assistance is suitable for achieving policy goals, but also – if so – which specific approach should be chosen. Examples of such approaches include anticorruption in the justice sector, support of constitution building processes or strengthening access to justice for vulnerable groups.

The second phase is a *specific context analysis* performed to gain a reliable basis for the subsequent project design. It must capture the object of investigation and the conditions that influence it as precisely as possible. Using one of the aforementioned examples, a specific context analysis could scrutinise a country's judiciary, its political and economic environment and gateways for impermissible interference and corruption. This paper focuses on this second phase of the context analysis.

II. Defining the object

The definition of the object and the context is essential for the research question and methodology of any context analysis. The *object* is usually an aspect or area of *legal – but not necessarily state – governance* where problems seem to exist. An object of investigation could be, for example, the independence and integrity of the judiciary of a country.

Analyses that directly focus on – apparently – obvious reasons for such problems, such as development deficits, might not find the *root causes* of such problems, which may lie in the broader *political, socioeconomic or cultural context*. The added value of specialist context analyses is that they can identify such root causes and explain their *impact* on the object of investigation. Such root causes could be, for example, informal forms of power distribution among elites that originate from colonial interventions into the social fabric of a country, or judicial corruption that is facilitated by patronage networks developed during an armed conflict. If such root causes are not understood, projects aimed to tackle problems will probably only scratch the surface but not lead to any sustainable change.

Analysing legal governance is difficult due to its *dynamic character*. Norms and institutions exist in every human society but identifying and understanding them can be particularly challenging when different types of norms and institutions coexist (*legal pluralism*). In volatile, conflict-affected environments their relevance and interrelationship can change extremely quickly. Therefore, a profound analysis must take in consideration important *factors of change* and may have to model scenarios of potential future developments.

III. Perspectives on the object

The decision as to who should carry out an analysis – and this includes: with which perspective – depends on the subject matter in question. However, legal governance in its complexity can only be grasped in a *multidisciplinary* way. Disciplines that may come into consideration include law, political sciences, anthropology and other social sciences, but also other disciplines like geography if the thematic area is water governance, or linguistics if different local languages are of relevance.

It must be borne in mind that experts analysing social interaction, which is always part of legal governance, are never neutral; as we all, they have their own – often unconscious – *presumptions and blind spots*. They might also tend to over- or underestimate certain factors in their analysis. The formation of *interdisciplinary teams* can alleviate the risk of such inevitable individual bias leading to distorted results. Interdisciplinary teams integrate different perspectives and by this enable mutual correction as well as *critical self-reflection* of the position and perspective of the involved analysts. To ensure unbiased results, such self-reflection should be systematically done at beginning, during and at the end of a context analysis.

Including *local experts* into expert teams means including another analytical perspective. They can enormously support the quality of an assessment as they are usually more familiar with the context than international experts and they can more easily gather information. By this they can also accelerate the process. However, they will bring along their own presumptions and blind spots, which also need to be minimised through self-reflection and/or mutual correction in mixed teams.

Furthermore, cooperation between *practice and science* can make a decisive contribution. If involved in context analyses from the beginning, scholars can help defining the object and scope of the analysis as well as its methodology. Both sides benefit from such cooperation: donors and analysts on the one hand, as the quality of an analysis could be further improved, as well as the scientific community, which can gain insights that they would not have without taking part in such a process.

A specific form of bias that needs to be addressed results from *isomorphism*, i. e. the ostensible similarity of norms, institutions and processes in the donor country (or the countries where the analysts come from) and the analysed context. Both might have similar legislation, court systems etc.; however, these might function in very different ways. Isomorphism-based presumptions can be unconscious, but at times similarities are intentionally used to convince donors of project ideas by representing them as – apparently – familiar.

Moreover, *conflicts of interests* can also impact the results of context analyses. For this reason, organisations that – rightly or wrongly – expect to be tasked with the implementation of a subsequent project should not be commissioned to prepare such studies. Analyses that they prepare on their own as part of the preparation of project proposals may be excellent, but they must also be read with some caution.

IV. Methodology

As a general rule, standard methods of social sciences can be applied, depending on which sub-branches are involved in an analysis. Examples include *stakeholder analyses*, *process analyses* and diverse techniques for the critical assessment of written and oral sources, for the interpretation of court decisions, and for the preparation and use of statistical instruments such as questionnaires.

Triangulation, i. e. the use of multiple sources of data and multiple approaches to analysing them, is important to enhance the quality of analyses. As mentioned above, combinations of different scientific disciplines, local and international experts, practitioners and scholars are possibilities can reduce bias and blind spots.

Even though the *people-centred approach* is not a fully developed concept in rule of law assistance, its basic idea, i. e. putting the needs and interests of local communities or specific groups in the centre, can influence the methodology of context analyses. Depending on the thematic area, methods such as stakeholder meetings and surveys are suitable to ensure inclusive gathering of not only of information but also of expectations towards a planned assistance project.

V. Adaptive approach through continuous analysis

A thorough context analysis can decisively influence sustainable success not only in the planning phase but also during the implementation phase. Ideally, it is never completed, but continuously updated. Such sharpened context sensitivity throughout the entire project cycle allows for an informed adaptation to changing conditions. The effectiveness of such an *adaptive approach* largely depends on the accuracy of the information about changes in the context. If that information is not accurate, this inaccuracy is also transferred to the choice of instruments, approaches and methods for the project. Therefore, it needs to be collected with the same methodological prudence as during the context analysis. *Monitoring, evaluation and learning* (MEL) would also tremendously benefit from such an

approach as information is continuously gathered that forms the basis of these phases in the project cycle. Moreover, such an improved information basis would feed into general *conflict analyses*, facilitate defining new policy goals and help the development of follow-up projects.

There are different, pragmatic ways to enable context sensitivity, adaptation to changes and flow of information. First, donors could consider ways to keep the experts who have prepared a context analysis involved as independent advisers throughout the entire project cycle (*continuous context analysis*). Instead of disappearing from the scene after presenting their analysis they could be tasked to reassess the context at crucial stages of the project, and after the project's completion they could be an important source for an evaluation. To avoid conflicts of interest, experts previously involved in the preparation of a context analysis should not also be directly involved in the implementation or the evaluation of the ensuing project.

Second, a more *open project design* can do justice to the volatility of contexts, since adaptation is only possible if there is corresponding room for manoeuvre. Inception phases at the beginning of the project are a first step towards more precisely determining the needs and conditions on the ground and aligning projects more precisely with them. However, funding regulations might have to be adapted to enable such flexible ways of proceeding.

VI. Challenges

Some challenges have already been mentioned in other sections of this paper. A few need to be added. First, specialised context analyses can only be realised on site. Desk studies cannot replace the direct impression that can only be gained in visits and talks with local stakeholders. If international experts are involved, this can lead to a rise in costs, which is problematic if the planned budget of a subsequent project is relatively small. A possible solution lies in different donors collaborating by jointly commissioning context analyses.

Second, the funding modalities of donors play an important role at two points. If donors would like to profit from independent, specialised context analyses at least in important cases, e. g. particularly *fragile contexts*, they must be able to commission and monitor such analyses, which can be as time-consuming as the steering of a regular rule of law project. If they want to enable an adaptive approach, donors must align their funding modalities for this purpose, too.

Third, the information and insights gained through context analyses should be exhaustively used, which means that donors must create proper knowledge management systems for their own purposes and ensure that implementers, partners, evaluators and other stakeholders can also access them.

VII. Contributors

This paper is based on an expert talk held on 18 December 2020. On behalf of RSF Hub, Tilmann J. Röder (moderator), Johannes Socher and Alexander Weber participated. RSF Hub is grateful to all scholars and practitioners who contributed to this paper:

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About RSF Hub

RSF Hub is a project-based think tank funded by the German Federal Foreign Office fostering knowledge transfer between politics, academia and field practice in the area of rule of law assistance and related topics such as transitional justice. RSF Hub organises, in collaboration with various partners, expert talks and round tables. Team members teach at universities and train ministry staff, speak at events, contribute to blogs and publish academically. For more information on the Hub's activities see <http://www.fu-berlin.de/rsf-hub>.

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Proposed Citation

RSF Hub: The Project Cycle in Rule of Law Assistance: Context Analyses. Project Cycle Paper No. 1, January 2021.

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