



Conflict | Law | Peace
Innovations for Rule of Law Promotion and Transitional Justice

Impulse Paper No. 3:

**Mobile Courts, Legal Clinics and Microjustice:
How to Improve Access to Justice for People in Fragile Contexts?**

December 2018

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I. Introduction

In order to render justice and foster social order, state services must be accessible and respective decisions enforceable. For a variety of reasons, ranging from geographical to social to normative barriers, access to justice tends to be limited in fragile, conflict-affected societies. In recent years, several innovative approaches to improve access to justice in challenging environments have been tested. With mobile courts and police stations, states attempt to reach out to their citizens where these institutions are not permanently available. In legal clinics, law students provide free legal advice to clients who cannot benefit from state services due to poverty and discrimination. Microjustice approaches aim at enabling marginalized persons to overcome bureaucratic barriers and effectively utilize the possibilities that their legal system provides to improve their social and economic situation. This impulse paper assesses the advantages of these approaches as well as their shortcomings, and looks out for other, innovative instruments to improve access to justice in fragile contexts.

II. Conceptual approach

Three main categories of access to justice barriers can be distinguished.

1. Factual obstacles

Access to justice can be limited due to factual, external circumstances. Geography and climate are two of the main factors. Remote areas that are sparsely populated and hard to reach are often not prioritized by public institutions such as the police and courts. For people living in such areas, a journey to urban centres, where these institutions are based, is associated with high costs, which not everybody can bear. A renowned example is the vast territory of the Amazon region in Brazil. In other cases, climate only seasonally prevents people from travelling. Mountainous areas such as the Himalayas are inaccessible when passes are blocked by snow and the risk of avalanches and landslides is high. Security risks constitute an additional barrier not only in conflict and post- conflict scenarios, but also in areas with high levels of crime. While one would rather think of loosely controlled, rural territories affected by transnational crime, such as drug trafficking, this can also be the case in urban areas such as gang-controlled slums.

2. Social and economic obstacles

A number of barriers prevent citizens' access to justice even if the state and its institutions exist next door. A widespread obstacle is poverty. Court fees and the costs of advice and representation can be limiting; however, corruption tends to be the larger problem. Illiteracy, which is linked to poverty, must be mentioned as well. If a person cannot read official documents, he or she is *de facto* dependent on the assistance of relatives, friends or paid services. This situation always implies the necessity to disclose personal and possibly intimate information to others. This can be particularly problematic for women who seek assistance against domestic violence or intend to exercise their right to divorce in conservative, patriarchal societies. In countries such as Afghanistan or Pakistan, gender-based discrimination is therefore one of the strongest access to justice barriers. However, other groups are also victims of marginalisation and discrimination, ranging from persons with disabilities who cannot benefit from state services without specific assistance, to members of minority groups who are not sufficiently familiar with the local court language, to internally displaced persons and refugees. Further social and economic obstacles could be added here; this list is not exhaustive.

3. Normative obstacles

Normative obstacles prevent people from accessing state institutions because their legal, moral, ethical or ideological views do not comply with the fundamentals of the state, its law and its institutions. To begin with, many indigenous groups have maintained their traditional forms of dispute resolution. The underlying values as well as the norms and procedures applied in such mechanisms differ significantly from those of the state in most cases. Members of these groups usually prefer to resolve conflicts among themselves instead of turning to the state, which can, however, constitute a last resort if conflicts escalate. Another example is that of ideological (religious or political) groups that control territories and render judicial services according to their own ideas and concepts. For example, the Taliban operate mobile courts in many provinces of Afghanistan, which are considered legitimate and effective and therefore preferred by parts of the population.

III. Mobile institutions and other efforts of the state

In recent years, states have tested different instruments to improve access to justice in challenging environments. Mobile institutions, for instance courts, police stations, legal advisory teams and conflict-related museums reach out to remote territories and bring state services to the people.

Mobile courts are not a new invention. The post-colonial constitutions of several African states provide for them, such as those of Sierra Leone (1963) and the Democratic Republic of Congo (1979). However, to the extent known, the institutions have been activated only much later. In all of the following cases, international donors, particularly UNDP, were involved. Mobile courts have been operating in the Democratic Republic of Congo since about 2004, in Somalia since 2008, in the Central Africa Republic since 2009, and in Uganda since 2013. Beyond the African continent examples are reported from East Timor and Brazil, where ships and buses have been reaching out to the population of the State of Ampá since 1996. The main function of mobile courts is exercising criminal justice in remote areas. In some scenarios, the focus is directed towards crimes committed in armed conflict (e.g. DRC). However, there are also other functions; in Uganda, for instance, mobile courts serve to provide justice to refugees in the country's largest and oldest refugee settlement, Nakivale. The existing evaluations and assessments of the effectiveness of mobile courts do not provide a coherent picture. However, there seem to be some recurring difficulties. Where state courts are dysfunctional due to the lack of properly trained personnel and resources or corruption, mobile courts will probably not function better than those residing in cities. An example from Sierra Leone exemplifies this: Since the main reason for the failure of trials in Sierra Leone was the absence of witnesses at the trial, a judge drove to villages and held hearings where it was closest to those people who were involved the case. However, the results of this effort were sobering. The van's and other resources' use was not properly controlled; after a while it became apparent that they were misused for private purposes. Another problem revealed was that the official language, English, was also used in the mobile court, which made it difficult, if not impossible, for clients who were mostly not familiar with that language to communicate with the judge. Moreover, it is difficult to strictly observe fair trial guarantees when mobile courts are used, for example when extending custody unlawfully until the arrival of the travelling judge.

The mobile police stations (MPS) that are operated in the Palestinian Territories since 2016 seem to function much better. These vans, which are staffed with well-equipped police officers, have expanded the presence of the Palestinian Civil Police and improved patrolling capabilities. Ties with local constituencies that face the challenge of restricted mobility and security threats could be established and deepened. In addition, access to justice for women has been improved through the presence of female officers in every MPS team.

Mobile legal advisory teams constitute an important tool to raise the citizens' awareness of their rights. So far, they have been tested mainly in less fragile contexts such as Kyrgyzstan, Georgia, Ukraine, and Colombia. The so-called 'bus of solidarity' takes state-paid Kyrgyz lawyers to remote areas where they provide free legal advice primarily to those who cannot afford going to court. Interestingly, marginalized people have not been the only group to benefit from the free service. Representatives of the *aksakal* courts, state-sponsored 'councils of elders' that resolve disputes at a local level, have equally approached the bus to improve their legal knowledge. In Georgia, several regional legal advice offices have been established. Their free legal advice is also offered via phone, Skype, Facebook and their own online platform, which shows how access to justice can be improved

by using digital technologies. A similarly creative use for the promotion of a free legal advice programme exists in Ukraine. Here, five regional legal advice offices have been established which include mobile advisory teams that travel in the respective areas. Finally, the – partly mobile – the *casas de justicia* of Colombia are worth mentioning because they combine legal services with social assistance. Overall, mobile legal advisory teams seem to be a highly effective instrument not only to inform citizens about their rights and the possibilities to resolve disputes, but also to improve the linkages between state, hybrid and non-state justice institutions, as the example from Kyrgyzstan exemplifies.

Besides mobile courts that can be deployed to prosecute crimes related to armed conflict (e.g. DRC), mobile museums can fulfil transitional justice functions. However, travelling exhibitions that inform citizens about the respective conflict and its impact are used only in few countries so far, including Colombia and Mali.

A few other instruments that states can use to extend access to justice are worth mentioning. Paralegals increasingly engage in conflict mediation. However, general statements about the effectiveness of this approach are unfeasible because of the very diverse types of paralegals that exist in different countries. Recurring doubts concern their professional training. Furthermore, bar associations and lawyers could be involved more actively in providing access to justice to people in need. In Afghanistan, for instance, lawyers must handle a small number of cases for free every year, or pay a fee that is used for the same purpose. In contrast, state-run legal aid systems are problematic because of the lack of independence of the involved lawyers. Finally, legal awareness programmes, i.e. campaigns to inform people about their rights and possibilities to enforce them, are important. An interesting side effect of such campaigns is the increasing demand of justice services, which can increase pressure for reforms if the state institutions do not deliver their services properly.

IV. Legal clinics and other initiatives of civil society

In legal clinics, law students under the supervision of experienced lecturers, lawyers or justice officials provide free legal advice to clients who cannot benefit from state services due to poverty, illiteracy or discrimination. As mentioned at the outset, discrimination can be based on diverse grounds, such as gender, disabilities and ethnic background. Reports from Afghanistan indicate that this approach can be fruitful in several regards. Here, students at several universities engage in donor-funded legal clinics that are linked to local Gender Focal Points of the Ministry of Justice, i.e. offices where women can discuss matters with female law professionals. This linkage enhances access to justice for women, which is particularly challenging in Afghanistan. Besides, the participating law students benefit from the practical experience they gain in their work at the legal clinics. In Ukraine, legal clinics also offer advice to IDPs. In South Africa, legal clinics focus on marginalized groups in townships. It should be noted that while such clinics certainly help many people enforce their rights, the underlying inequalities and discriminations also need to be addressed.

V. Microjustice and other legal empowerment concepts

Microjustice initiatives empower marginalized persons in challenging environments to overcome bureaucratic barriers and seize the opportunities for professional and economic growth that existing legal systems provide. The idea is inspired by the concept of microcredits. Microjustice thus mainly focuses on matters of private and economic law, such as family and inheritance law, property law, but also administrative law. In the slums of Kenya's capital Nairobi, microjustice services range from birth registration to the legal advice on the conclusion of microfinance agreements. The approach is related to the concept of street law, which aims at informing people – particularly youth – about the rights, rules and duties that are relevant on a day-to-day basis. Finally, the use of digital technologies bears further opportunities for legal empowerment of people living in fragile contexts, a topic which is covered by another, recent impulse paper (no. 1/2018).

VI. Contributors

This paper is based on a talk among experts who convened at the German Federal Foreign Office on 27 November 2018 for an open exchange of ideas. On behalf of RSF Hub, Tilmann J. Röder (moderation), Anna Pröhl and Viktoria Vogt participated. RSF Hub is grateful to all scholars and practitioners who contributed to this paper:

Marion Höltken, GIZ

Dr Lothar Jahn, GIZ

Kathrin Jansen, GIZ

Britta Madsen, Human Rights expert and project evaluator

Robert Pfeiffer, legal expert

Dr Karin Rölke, GFA Group

Dr Mindia Vashakmadze, Max Planck Foundation for Intl. Peace and the Rule of Law

About RSF Hub

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Contact

General:

Prof. Dr. Matthias Kötter and Dr. Gregor Walter-Drop

Postal Address: Freie Universität Berlin • Otto-Suhr-Institut für Politikwissenschaft (OSI)

Arbeitsstelle Transnationale Beziehungen, Außen- und Sicherheitspolitik (ATASP)

Ihnestraße 26 • D-14197 Berlin

For the 'innovations' series of talks and impulse papers:

Dr. Tilmann J. Röder • E-Mail: tilmann.roeder@fu-berlin.de

Proposed Citation

RSF Hub: *Mobile Courts, Legal Clinics and Microjustice: How to Improve Access to Justice for People in Fragile Contexts?* Impulse Paper No. 2, December 2018.

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