



Conflict | Law | Peace

Innovations for Rule of Law Promotion and Transitional Justice

Impulse Paper No. 4:

**South-South and Triangular Cooperation:  
Exchange of Experience in Rule of Law Promotion**

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**I. Introduction**

Many countries whose governments aim to strengthen the rule of law and seek international assistance to this end are faced with similar challenges. Sometimes these parallels are striking, for instance in the case of Colombia and Afghanistan. In both countries, insurgent groups that aim to build a fundamentally different state are fighting against government forces. In both, illicit narcotics businesses are under-mining law enforcement. Both have vast territories where state institutions are *de facto* absent; both have heterogeneous ethnic populations; and both are characterised by legal pluralism. Obviously, there are also significant differences. Afghanistan never endured colonial rule, which had a strong influence on Colombia's legal system; in Colombia, the active conflict between the government and the largest armed opposition group, the FARC, ended after long negotiations, while Afghanistan's government could only end hostilities with one smaller group; and in Colombia, a broad range of transitional justice measures are carried out while in Afghanistan past atrocities are covered up by an amnesty law. Despite these differences, lessons from Colombia would be of high interest to the Afghan government and civil society.

However, rule of law promotion and support to transitional justice processes is still mostly implemented by organisations based in Global Northern countries that are structurally different from

the countries in need. Usually they can offer the desired technical expertise, but they cannot bring in first-hand experience. At this point it should be noted that while this paper differentiates between organizations based in the Global North and the Global South, realities are oftentimes more complex. Many organisations employ staff from different parts of the world, many of these staff members have gained knowledge in different countries, and some organisations that focus exclusively in one country are based in another one. For example, Lawyers for Justice in Libya has its headquarters in London.

## II. Conceptual approach

In international cooperation, different approaches have been developed and tested that aim to take advantage of the experience of other countries that are facing similar challenges. South-South cooperation excludes actors from the Global North. Regional cooperation is here considered a subcategory of South-South cooperation. Triangular cooperation is fundamentally different as Northern actors are involved in the exchange; it can be combined with a regional approach.

## III. South-South cooperation (SSC) in rule of law promotion

### 1. South-South cooperation

South–South cooperation (SSC) is a theoretical concept and a set of practices based on a vision of mutual benefit and solidarity among the disadvantaged countries of the world. It conveys their hopes that they may achieve development by themselves through mutual assistance, and that this approach could transform the world order. In practice, SSC describes the exchange of resources, technology and knowledge between two or more countries of the Global South. Key features are mutual respect, cultural understanding and dialogue between the parties. In rule of law assistance, concepts promoted by traditional donors still tend to ignore local normative traditions; at the same time, their replacement by legal systems based on ‘Western’ concepts of statehood has over and over proved difficult. Southern partners seem to understand these challenges better due to their similar first-hand experience.

In the past two decades, non-traditional donors such as China, South Africa, India and Brazil have entered the field of international cooperation. However, they rarely get involved in matters of domestic law. Moreover, the very idea of SSC – to collaborate in non-hierarchical mutual relations – must be doubted due to their massive political and economic power. It should also be emphasised that many traditional donors have adjusted their approaches to rule of law promotion in recent years.

### 2. Practical experience in SSC

Brazil’s support to the Public Defenders’ Office in East Timor is an example of SSC aimed at strengthening the rule of law. The project was carried out by the Brazilian Cooperation Agency (ABC). Brazilian experts created linkages with local stakeholders whose interests were side-lined in the course of justice sector reforms. They developed a platform where local actors could articulate their discontent with the new legal system, and seek solutions of problems that arose mainly from the court language that they did not understand (Portuguese), and collisions between their traditional legal system and the newly introduced formal law. This case exemplifies the ability of SSC partners to create hybrid systems instead of adhering to formal templates. It also seems that the Brazilians’ ‘lived

experience’ as citizens of a country that slowly rose to economic prosperity and democracy resonated with East Timor’s challenges and struggles. Importantly, as S. Reheem Shaila explains, both countries ‘accommodate the existence of legal pluralism, as well as adopt a slower and prolonged approach by building networks with local stakeholders drawing on their post-colonial and development trajectories’.<sup>1</sup> However, these observations should not be generalised. Rule of law promotion under the SSR paradigm may not necessarily bring positive outcomes. More research in this area is needed.

### 3. Regional cooperation

Regional cooperation is a subcategory of SSC that is particularly important for rule of law promotion. Countries from the same world region oftentimes share similar legal, normative and – more broadly – cultural traditions, which can help in solving similar problems. This is particularly the case when they use the same language. The Arab Association of Constitutional Law, which was founded in 2014, is an example of a regional non-governmental actor that promotes, among other aims, the rule of law. In Latin America, the Inter-American Court of Human Rights plays an important role in the development of common constitutional standards. In the Pacific region, eleven island countries have identified access to justice as top priority to achieve the Sustainable Development Goals and endorsed regional level SSC as a ‘bold means’ to enhance the rule of law at a conference convened by UNDP. The African Union also has an SSC instrument: its African Peer Review Mechanism (APRM) is mandated to promote good governance as promulgated by Agenda 2063, which aims towards ‘an Africa of good governance, respect for human rights, justice and the rule of law’<sup>2</sup>. The African Union held a series of consultations that were undertaken with regional and national parliaments. These served as a way forward to promote constitutionalism and the rule of law on the continent.

## IV. Conclusion

In rule of law promotion, South-South cooperation in its very sense seems to be rare. In contrast, there are growing numbers of regional approaches that prove to be effective. Partly, Northern donors get involved and triangular forms of cooperation emerge. The transitions between these categories are rather fluid.

There are, however, common features. In all cases, collaboration on equal footing is envisaged; appropriate instruments are dialogues and other exchange formats rather than unilateral capacity building that may be the appropriate choice in different settings. Second, SSC and triangular forms of cooperation are most effective if they are open-ended or at least long term; only the first step of identifying the right partners and building trustful relationships can be very time consuming. Third, as all examples indicate, they offer learning effects for all parties, which should be embraced also by partners in Global Northern countries (in the case of triangular cooperation). Finally, experience from many of the afore-mentioned programs indicates that it is particularly fruitful to work with the younger generation of jurists who are keen to improve the rule of law in their countries but do not have the necessary knowledge resources, experience and networks for this purpose.

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<sup>1</sup> Sapna Reheem Shaila, *Shifting the Legal Borderlands of Rule of Law Programs – Brazilian Cooperation Agency (ABC) and Public Defenders’ Office in East Timor*. *Revista Estudos Institucionais*, 2 (5) 2019, 747.

<sup>2</sup> African Union Commission, *Agenda 2063*, p. 94.

## V. Contributors

This paper is based on a talk among experts who convened at the German Federal Foreign Office on 11th December 2019 for an open exchange of ideas. On behalf of RSF Hub, Tilmann J. Röder (moderation) and Ingrid Sinell 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 promotion 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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