TOWARDS POSTCOLONIAL, PEOPLE-CENTERED, AND INTERSECTIONAL APPROACHES
Considering Feminist Perspectives on Rule of Law Support

Workshop Series
organized by the RSF Hub
Free University of Berlin & Berlin School of Economics and Law

Towards Intersectional Access to Justice
Workshop Report (November 2022)

I. Introduction

On November 15th, 2022, the RSF Hub (Research and Knowledge Transfer Hub for Rule of Law Support) organized a workshop with the title "Towards Intersectional Access to Justice." It was part of a workshop series leading to a roundtable event in February 2023 to discuss feminist perspectives on the practice of rule of law support. In order to break down the broad conceptual discussion on the overall definition of feminist foreign policy, the workshop focused on analyzing three central fields of rule of law support from the perspective of distinct principles that have been emphasized by critical research for many years.

Access to Justice constitutes a relatively new element to rule of law support, described as the legal empowerment alternative that goes beyond the "rule of law orthodoxy"[1] or the "rule of law assistance standard menu."[2] Approaches reach from awareness raising for rights and legal aid in concrete cases to strategic litigation, evidence-based advocacy campaign and the capacity building for key justice actors. Similar to other fields of rule of law support, the crosscutting issue of gender equality has become an essential component of project designs. Yet too often gender is simply equated with the empowerment or protection of women and girls. The political debate on feminist foreign policy has the potential to overcome this binary understanding of gender and to add further dimensions of marginalization. Against this

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[1] *See* Golub, Stephen 2003. Beyond Rule of Law Orthodoxy: The Legal Empowerment Alternative. *Carnegie Endowment for International Peace* (Working Paper). https://policycommons.net/artifacts/977384/beyond-rule-of-law-orthodoxy/1706510/.

[2] *See* Hartwig, Patrick 2019. The 'Rule of Law' Impasse? Overcoming conceptual ambiguity and thinking beyond the orthodox approach to rule of law reform in post-conflict societies. *International Journal on Rule of Law, Transitional Justice and Human Rights* 10: 163-176.

background, the workshop aimed to analyze the field from an intersectional perspective to draw possible lessons for a future practice. To what extent can the practice of access to justice programming be considered intersectional? Whose issues are at the center of empowerment? How to design projects capable of including multiple forms of marginalization at once?

The workshop was structured in three parts: Pilar Domingo and Tillmann Schneider gave inputs on general overview on legal empowerment and access to justice, followed by contributions by Judyannet Muchiri and J. Jarpa Dawuni on intersectional perspectives on access to justice. Lothar Jahn and Jens Koschel provided insights from the perspectives of the funding and practice of access to justice project and Deval Desai a concluding reflection. The workshop was organized and moderated by Sarah Biecker and Robert Poll on behalf of the RSF Hub.[3]

II. Access to Justice and Legal Empowerment

With the notions of legal empowerment and access to justice, the field of international rule of law support has overcome an exclusive focus on top-down institutional capacity building. However, as Pilar Domingo and Tillmann Schneider pointed out in their inputs, a real paradigm shift is far from being observable.

Rule of law programming is still rather state-centered and often misses to innovate and rethink its approaches. While traditional rule of law interventions tend to focus on normative regulation, such as advice and advocacy for human rights commitments, the impact on experienced inequalities and injustices is often little or none. Similarly, international donors seem to have difficulties moving beyond state institutions and meaningfully engage with the non-state justice sector, such as customary and informal justice systems that are responsible for the vast majority of dispute resolution in the world.[4] Against this background, Jens Koschel underlined the efforts already undertaken by the German Federal Foreign Office to move from the usual focus on state institutions towards aiming at the empowerment of a more diverse set of justice actors.

Tillmann Schneider focused in his input on the relatively new phenomenon to work with civil society organizations and include paralegals as target groups of international rule of law support.[5] While the practitioners in focus are different, methods remain mostly the same, including training and efforts to formalize their roles through legislative advice. The approach bears its own difficulties and might be less of a departure from traditional rule of law support than sometimes assumed. Paralegals are often met with distrust by state representatives and

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[3] We thank all workshop participants for an open und inspiring exchange and Nicole Sherstyuk and Rifka Lambrecht for assisting with the organization of the workshop and the writing of this report.

[4] On the global justice gap, *see* https://odi.org/en/about/our-work/working-group-on-customary-informal-justice/.

[5] *See* e.g., Maru, Vivek 2006. Between law and society: paralegals and the provision of justice services in Sierra Leone and worldwide. *Yale Journal of International Law* 31: 427-476; *or* Dereymaeke, Gwenaelle 2016. *Formalising the role of paralegals in Africa: A review of legislative and policy developments*. PASI, Open Society Justice Initative, and CSPRI. https://acjr.org.za/resource-centre/formalising-the-role-of-paralegals-in-africa-a-review-of-legislative-and-policy-developments.

formally trained lawyers but can also become or be perceived as watchdogs of the state. Therefore, some projects aim serve as facilitators for a dialogue between different national actors. However, project funding is often not sustainable enough to support the establishment and long-term embedment of paralegal structures in certain contexts.

The absence of a paradigm shift in rule of law support, as Pilar Domingo highlighted in her presentation, is strongly connected to organizational barriers between and within the epistemic communities of policy actors, practitioners, and academia. How to overcome problems of translations between disciplines and benefit from more cross-fertilization across different levels of engagement? Funding incentives and quotas by donors could nudge actors to overcome barriers and engage with each other more fruitfully. Moreover, academics should more often (be invited to) participate in projects, particularly in appraisal missions, to learn about project logic and language.

III. People-Centered Approaches and Intersectionality

One of the central critiques that has been formulated by scholarship on international rule of law support for many years has found increasing attention within policy discourses with the emergence of debates on feminist foreign policy: the lack of people-centered project designs. Projects are not always sufficiently informed by a direct assessment of the needs and interests of their envisioned beneficiaries. Next to organizational barriers and financial implications, another reason for the hesitation of international actors to commit to in-depth context analyses, might be the fear of being unable to account for the resulting complexity.

However, without a committed leap towards people-centered approaches that avoids the reproduction of binaries and the inequalities they produce, project development must engage an intersectional lens. The concept of intersectionality is an analytic tool to understand (and reflect upon the possibilities of overcoming) how different forms of inequality based on gender, class, race, sexual orientation, disability, and other forms of marginalization are entangled, reinforce another and thereby produce particular forms of oppression.[6]

When women are the designated target group of rule of law support projects, they are often victimized and described homogeneously, as J. Jarpa Dawuni highlighted in her input. Only an intersectional lens reveals that identities, privileges and needs of women differ, depending on their age, class, ethnicity, religion, sexuality and so on. Furthermore, an intersectional approach may also highlight that access to justice does not mean the same to all women in a certain context. Some might struggle to seek justice in state courts, institutions of customary justice or alternative dispute resolution, others might seek to be employed as judges.[7]

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[6] *See* e.g., Von Redecker, Eva 2021. *Praxis and Revolution: A Theory of Social Transformation*: Translated by Lucy Duggan. Columbia University Press: New York, at 17; *or* "What is intersectionality." *Center for Intersectional Justice*. https://www.intersectionaljustice.org/what-is-intersectionality.
[7] See Dawuni, Jarpa J. (ed.) 2022. *Intersectionality and Women's Access to Justice in Africa*. Lexington Books: Lanham.

Intersectional context analyses do not only increase complexity by highlighting different forms of marginalization but also their embeddedness in structural power asymmetries. In order to think about how to provide access to justice for whom, it is essential to reflect as well, what that justice might look like. Justice is an essentially contested concept, or as Deval Desai put it, a space where we contest fundamental questions of value in relation to another. Judyannet Muchiri argued accordingly to connect the field of access to justice and legal empowerment with the broader context of social justice work in order to meaningfully engage with systemic problems and the change of the status quo.

IV. Practical and Theoretical Challenges

From a practitioner's perspective, this raises a fundamental dilemma, as Lothar Jahn underlined. While better informed projects tend to have more success, an inherent component of project design is to reduce the complexity of a certain social reality. Therefore, target group descriptions for project proposals are typically employing generic labels, such as "indigenous people", "women in conflict" or "women in rural areas." While subsequent stakeholder analyses provide a space to specify issues and features of the chosen target groups to a certain degree, academic input is needed to develop proposal guidelines into a more intersectional direction.

From a theoretical perspective, it is important to highlight that a commitment to intersectional rule of law support might be no panacea. Deval Desai raised attention to what sort of legality emerges, when legal change is built in a highly complex and adaptive fashion. It can produce its own injustices by inducing high degrees of risk and unpredictability. As a consequent intersectional approach destabilizes systemic power structures, it is necessary to reflect, how this outcome can be reconciled with the stabilization paradigm, on which major domains of rule of law support (e.g., the GFFO's engagement) are built on.

Moreover, it is important to recollect that law is not only a site of contestation, but also a structure that can be subverted and instrumentalized to become a tool for oppression. Intersectional justice only understood as an analytic tool to identify and differentiate groups stands in continuity to the colonial production of legal pluralism as a means to rule. The crucial difference needs to be putting intersectional justice front and center as the normative goal of political interventions such as rule of law support.

V. Decolonization of Knowledge Production

Rethinking approaches to rule of law support from the normative goal of intersectional justice is a challenging endeavor. Its prospect of success is fundamentally linked to the decolonization of knowledge production. Only on that basis it is possible to deconstruct methodologies, both in academic research and project practice, in order to get closer to the real experiences and justice issues in contexts of international engagement.

J. Jarpa Dawuni highlighted the importance of storytelling to hear and understand the voices of people in focus and called in mind, how the use of (legal) narratives as a methodological approach was frowned upon for a long time in legal scholarship. Judyannet Muchiri referred to Kim Tallbears idea of "standing with" as a helpful starting point for knowledge production, requiring an understanding who one is standing with and what needs to change.[8]

The decolonization of knowledge production is a complex endeavor. A realistic starting point seems to be to increase efforts contextualizing approaches both in the identification of target groups and normative goals. Putting people in the center of rule of law support within a wider context of power and oppression requires their involvement in the process of project development. Additionally, critical reflexivity mechanisms are essential as both an accountability tool and guide for further engagements.

VI. Conclusion

Taking stock of how international rule of law support developed over the last two decades, reveals that a paradigm shift towards people-centered project design is still pending. While access to justice has certainly gained momentum within approaches to rule of law support, practices differ rarely from traditional top-down institutional capacity building.

Part of an explanation why that is certainly involves the identification of organizational barriers that impede meaningful interaction between policy actors, practitioners, and researchers across different levels of engagement. To change the status quo, funding incentives and quota requirements set by donors to expand cross-fertilization could prove helpful. To learn about project practice, academics should participate more in project appraisal missions and conversely, practitioners should seek a closer cooperation with academia both in context analyses for specific projects and the general review of their analytic methodologies (e.g., indicators, theories of change, etc.).

Thinking of access to justice intersectionally means not only to increase complexity by distinguishing and layering forms of marginalization on an analytic level but also to reflect what intersectional justice as a normative goal for rule of law support may look like. For that it will be helpful to approach access to justice more holistically by acknowledging its inherent embeddedness in structural power asymmetries and colonial continuities and reintegrating it into a larger framework of social justice.

Besides increasing links to the academic knowledge production, rule of law practice should also involve actual target groups more directly into the project development and further develop critical reflexivity mechanisms, such as evaluations as ways to enhance both accountability and guides for future engagements.

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[8] *See* TallBear, Kim 2014. Standing with and speaking as faith: A feminist-indigenous approach to inquiry. *Journal of Research Practice* 10(2): 1-7.

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About RSF Hub

The RSF Hub is a project-based think tank of the Free University of Berlin and the Berlin School of Economics and Law funded by the German Federal Foreign Office that is fostering knowledge transfer between politics, academia, and field practice in the area of rule of law support and related topics. RSF Hub organizes, 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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