Overview of panels and papers

INTERFACES
3rd Annual Conference of the Law and Development Research Network

Organized by The Van Vollenhoven Institute for Law, Governance and Society (VVI)

Van Vollenhoven Institute for Law, Governance & Society

LDRN Law & Development Research Network

Universiteit Leiden

Preliminary overview of panels and papers INTERFACES (version: 23.05.2018)

3rd annual conference of the Law and Development Research Network, 19-21 September

Please note: this overview is still subject to change. It is merely meant to give you a first impression of the content of the conference.

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, Leiden University**

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 came 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, Dries Lesage, Ghent University.
- *Taxation and the Informal Business Sector in Uganda: An Exploratory Socio-Legal Research.* Jelte Verberne, Wageningen University.
- *A socio-legal methodological approach to the study of the legal transplant of international tax standards,* Irma Mosquera Valderrama, Leiden University.

2. **Where law meets power: Analyzing legal mobilization and counterpower in Law and Development Studies. Convenor: Jeff Handmaker, discussant/chair: Kinnari Bhatt, both International Institute of Social Studies (EUR)**

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 the School of Law, University of the Witwatersrand, South Africa
- *Legal Mobilization as Counterpower: Explaining the Potential of Law-Based, Civic-Led Social Justice Advocacy*, Jeff Handmaker and Sanne Taekema, Integrating Normative and Functional Approaches to the Rule of Law (INFAR) Project, Erasmus University Rotterdam
- *The 'judicialisation of health': social justice and inequality in polarized Brazil,* Fabíola Gomes, University of Brasília and Erik Bähre, Leiden University
- *The life Esidimeni tragedy in South Africa: Government policy failing the most vulnerable*, Deon Erasmus, Nelson Mandela University

3. Access to justice for children: From theory to practice - convenors: Ton Liefaard and Sulis Irianto

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 Liefaard, Leiden Law School
- *Access to justice for children in asylum procedures*, Stephanie Rap, Leiden Law School
- *The Dutch Children's Ombudsman and access to justice of children: Law and practice in a changing landscape*, Katrien Klep & Marielle Bruning, Leiden Law School
- *Access to justice for children in Canadian family law and child protection cases*, Mona Paré, University of Ottawa
- *Once sexually abused, twice victimised: Access to justice for child victims of sexual violence in Hai District (+48),* Isabela Warioba, Mzumbe University & Ines Kajiru, Mzumbe University
- *Access to justice for children victim of sexual violence: Voices from children in Yogyakarta and Depok*, Tirtawening, University of Indonesia

4. Children's Rights in Context: Gaps, Institutions and Challenges- convenors: Ton Liefaard and Sulis Irianto

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

- *Lost agency in international children's rights' discourse: case of child marriage in Indonesia*, Mies Grijns and Hoko Horii, Leiden University

- *How the Indonesian police officer are dealing with child marriage?*, Sulistyowati Irianto, University of Indonesia
- *The child's right to nationality in an unrecognized state*, 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.

5. 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, Faculty of Law, University of Buenos Aires and Faculty of Law, University of Geneva
- *Mechanisms and Features of Accountability at the AIIB*, Thomas Dollmaier, Faculty of Law, University of Humboldt

- *Hybrid Agreements: Political Economy of Human Rights Practice in Large-Scale Development Projects.* Irene Hadiprayitno, Leiden Institute for Area Studies (LIAS) and BA International Studies, Leiden University
- *Human Rights and Finance and the Politics of Accountability in Finance for Development,* Johan Horst, Centre of European Law and Politics, University of Bremen

6. 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
- *Where Domestic Policy, Law and Practice Meet International Assistance. Rule of Law Assistance, International Rulings and the Politicization of the Judiciary: Studying Power and Resistance in Peru and Argentina*, Julia Liebermann, TU Darmstadt
- *Regulating New Frontiers: The Privatisation of Development Finance and New Transnational Governance*, Celine Tan, School of Law, University of Warwick

7. Interfaces between formal and customary land administration systems- convenors: Fordam Wara, University of Pretoria and Bernardo Almeida, Leiden University

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
- *Mambo ya Zamanii: Customary Law and Sacred Forests' Conservation in North Pare, Tanzania*, Agustina Alvarez
- *Negotiating the Interfaces of Formal Laws and Customary Practices in Nigeria: Halted Eviction of Ugbo-Okonkwo Community in Enugu*, Victor Onyebueke, University of Nigeria
- *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

8. The role of law for mobile people in an interconnected world- convenor: Carolien Jacobs, Leiden University

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.

- *Legal Lacunae: The absence of law for the development of Small Island Developing States,* Sam Adelman, Warwick University
- *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 Zamanov, UNDP/Graduate Institute of International Development Studies
- TBA, Bruno Braak, Leiden Law School

9. Policy meets practice in human-rights based approaches to development- convenor: Wouter Vandenhole, University of Antwerp

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
- *UNICEF and the HRBA to advancing the right to water and sanitation in the Bas Fleuve region of the DRC*, Rachel Hammonds, University of Antwerp
- *The Opportunities and Pitfalls of the Human Rights-Based Approach to Development*, Arne Tostensen, CMI
- *HRBA and International Organisations: Achievements and Challenges*, Arne Vandenbogaerde, 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: Feby Kartikasari, Leiden University

Despite robust written legal framework for environmental protection and management that it has, Indonesia still records poor environmental conditions. In 2018, Indonesia's Environmental Performance Index is ranked 133 out of 180 countries, while and its capital city, 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 judiciary in bridging the gap between written environmental legal framework and their 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, University of Indonesia
- *Environmental Adjudication's Reform in Indonesia. Does It Go to 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

Panel description and presenters TBA

12. Corporations, Investment and Law and Development- convenor: Liliana 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 (affiliation?)
- *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**
Panel description TBA

- *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
- *A study of corruption: Towards the improvement of the respect for state law via the consideration of non-state law*, Anicee Van Engeland, Cranfield 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: the challenges of regulating agricultural expansion through land use and zoning laws- convenors: Ward Berenschot and Otto Hospes**
Panel description TBA

- *Decentralization To Govern Natural Resources; Role Of The Central Government In Theory And Practice, Learning From Plantation Sector*, Josi Khatarina, University of Melbourne
- Other papers TBA

15. **Islam, family law and the practice of marriage and divorce –convenor: Annelien Bouland, Leiden University**

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
- *"Navigating and negotiating normative pluralism in Senegal. The cases of an Imam, a judge and a délégué de quartier."*, 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 –convenors: Elvis Fokala and 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 six papers. Four 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 Abeba University
- *Enforcing Children's right to development in Africa: The capacity approach*, Elvis Fokala, Abo Akademi University
- *Advancing access to justice for the poor and the vulnerable in Ethiopia through legal clinics: A reflection on constraints and opportunities,* Mizanie Abate, Addis Abeba University
- *Access to justice by victims of corporate abuses in the extractive industries in Africa: Beyond a state-focal accountability system*, Chairman Okoloise, Univeristy 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

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.

- *Civil codification in countries in transition: Lessons from a project for the codification of private law in Kosovo*, Cristina Poncibo, University of Turin
- *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 Raheem Shaila, King's College London
- *The evolution of the system of government in Timor-Leste from text to constitutional practice*, Ricardo Cunha
- *TBC,* Tilmann Röder, Free University Berlin

OVERVIEW OF WORKING GROUPS

1. Vulnerability: an interface between law and justice- moderator: 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 proposed working group forms a continuum to the LDRN PhD School 2018 (Åbo, 11-15 June 2018), which will gather 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.

2. Policy meets practice in human-rights based approaches to development- convenor: Wouter Vandenhole, University of Antwerp

Human Rights-Based Approaches to Development: between hybridization and replication?
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?

3. Preventing water wars: Where practice meets theory- by Jacqueline Vel and Bernardo Almeida, Leiden University

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

1. **On the interfaces of law and development: where A2J meets legal development – key note by Jan Michiel Otto**
   TBA

2. **The crises in development aid and the need for retrospective research – key note by Steve Golub**

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.

3. **Nine-tenth of the law – key note by Christian Lund**

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.

4. **Women, Islam and the law (provisional title)- key note TBC**

5. **Plenary discussion: The problem of knowledge in legal cooperation programs**

How well are legal cooperation projects connected to the existing legal system and expertise within their social context? How to overcome or at least mitigate such a problem?

Do they have a solid knowledge base, or is there in Carothers' words a serious 'problem of knowledge'? Impact has proven terribly hard to measure. Are there indicators we can work with, or can problems of knowledge be solved differently? And how can cooperation processes by analysed and improved?

In this session we give the floor to practitioners and their experiences and insights, discussing some of the real and wicked problems of 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 Badikabinga, Legal Adviser, Rule of Law for the Commonwealth Secretariat
- Alexandre Cordahi, Adjunct Professor Rule of Law for Development Institute (LUC Rome Campus) and senior expert in EU funded rule of law projects and programmes.
- Naoshi Sato, Attorney at Law, Former JICA Rule of Law advisor
- Michael Klode, Train the Trainers Programme, GIZ, Palestinian Territories (TBC)
- Representative of the Dutch Ministry of Foreign Affairs (TBC)