Conference report INTERFACES. 3rd annual conference of the Law and Development Research Network, 19-21 September 2018, Leiden

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Van Vollenhoven Institute for Law, Governance & Society
LDRN Law & Development Research Network
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Acknowledgements
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Introduction

INTERFACES was the third conference that was organised on the initiative of the Law and Development Research Network; a network that consists of institutional partners in both the global South and global North with an interest in the field of law and development. Next to this, individual members adhere to the network. Law and Development is a broad and diverse field where different disciplines and perspectives meet: black letter law meets social science, human rights scholarship meets political economy, legal anthropology meets international law, and so on. This diversity can be a challenge for academics and practitioners alike, as they try to find a balance between different worlds. At the same time, it can be an asset – innovative thinking, new ideas and challenging developments often take shape at the interface of different fields. For all these reasons, we have chosen "INTERFACES" as the central theme of our conference. Many contributions focused – implicitly or explicitly – on SDG16 on Peace, Justice and Strong Institutions. The conference provided ample opportunities for sharing knowledge and practices, for learning from each other, and for creating synergies.

The conference consisted of 4 key note lectures, 76 panel presentations, a plenary debate, 3 working groups, a book series launch, and a closing session. Around 130 participants from almost 30 different countries attended the conference. The following overview sheds light on a number of interfaces that were prominently discussed during the conference. Please note that the report zooms in on some of the contributions but is not exhaustive and does not pretend to cover all aspects that were discussed.[1]

Where legal development meets access to justice.

Legal rules are supposedly shaped, interpreted and applied in interactions between legislatures, judiciaries, government institutions, lawyers, legal education and research, at local, regional, national and international levels. But to what extent do these legal rules contribute to equal access to justice for all, as stipulated in Sustainable Development Goal 16? The conference kicked off with a key note speech by prof. em. Jan Michiel Otto who looked into the meaning of access to justice; with access being the more concrete concept, and justice the more abstract. 'Access is about the means, justice is about the goals', as Otto argued. But who defines what justice entails? Is this something that can be imposed from above, or is it up to the justice seeker to decide? What if a 16-year-old girl in Morocco is keen on getting married, despite legislation that forbids such a marriage? Such dilemmas show us the importance of not only studying barriers to access to justice, but also the importance of understanding locally prevalent notions about justice itself. Both access and justice hence need to be explored carefully to understand how justice can be accessible for all.

Many individual papers at the conference addressed issues about access to justice and it is striking to see how many different starting points one can choose when exploring the topic. Some start from the experiences of particular vulnerable groups of justice seekers in their socio-political and economic context, such as people with disabilities, or people displaced because of conflict or disasters, others depart from the procedural or substantive elements of the law and the extent at which they function adequately. Some contributions had a strong focus on legal

[1] For further reading, we suggest contacting the individual presenters as they are listed in the full programme overview.

institutions, access to courts, lawyers, and legal aid, others looked more into non-state mechanisms for dispute settlement such as customary or religious normative orders, or explored legal mobilisation initiatives of people themselves; initiatives that empower people to ensure their access to justice. Such initiatives are also revealing in regard to the functioning of the social contract between the state and its citizens, with citizens questioning the justice and security provided by the state.

Professor Em. Jan Michiel Otto talks about access to justice in his opening lecture

Where domestic policy, law and practice meet international assistance.

In international development assistance, numerous programs and projects are conducted in the fields of law and justice. How well are such projects connected to the existing legal system and expertise within their social context? Do they have a solid knowledge base, or is there in Carothers' words a serious 'problem of knowledge'? If so, how can such a problem be overcome or at least mitigated? Socio-legal research contributes to a better understanding of the way in which law can work to promote development, for instance by using and adapting legal transplants to ensure that domestic taxation schemes meet international standards as well as local realities.

Women's and children's rights are other fields where international standards need to find connections with local realities. Processes of 'vernacularization' (Merry 2006) can help to make justice more accessible, but only when there is a certain level of acceptance locally. In her keynote lecture, Waheeda Amien argued for a gender-nuanced integration of Muslim Family Law in a secular legal framework. Drawing from case studies from India, Canada and South Africa, she showed the need for both external and internal incentives for justice to be effective.

International development finance is a field in which the links between domestic policy and international assistance are particularly strenuous. With new forms of financing development cooperation and a widespread turn towards 'blended finance', new modes of governance and questions around accountability arise. There are concerns however about the effects of the financialisation of development interventions and its influence on a) laws and institutions of the aid-recipient state, and on b) people and communities in the aid-recipient state that are the targets of ODA-supported blended finance initiatives. This is certainly a field that deserves more (research) attention.

Where law meets politics and power

Law is not neutral, as it is shaped by different kinds of politics. Several panels addressed tensions between lofty goals of law and development and practices on the ground, where abuse of power and practices of corruption can erode the functioning of the law and of legal institutions and decrease the legitimacy of the state. Interestingly, the law itself is also mobilised as a counter power for civic-led advocacy and as such is used as a 'weapon of the weak' (Scott) to address rule of law deficits and problems of development and governance more generally, as diverse case studies on climate change, children's rights, state capture, and social justice illustrated. Decentralisation can be another way to lay responsibility at a lower level and to engage people themselves in the modes of governing that they encounter.

Whereas the panel on legal mobilisation showed how law can be used as a source of (counter)power to trigger change, contributions to a panel on corruption called for the need to move beyond the law and look for additional solutions. Such solutions, have been sought in changing the political system, in involving the military, in organising collective action, or in efforts to transnationalizing norms.

Where peace meets conflict

Conflict and post-conflict contexts demand for different approaches to the field of justice when efforts need to be made to find sustainable peace and social cohesion. Several panels addressed challenges related to this by looking for instance at the role of law in state-building and reconstruction, national identity, and mobility. The 2011 Arab Spring for instance brought questions about national identity to the fore. During prior nationalist regimes, the issue had not been prominent, but they came to the surface in debates about constitution making. It was argued that law can be both a hindrance and a help to overcome national identity challenges.

The aftermath of conflict can provide a window of opportunity to introduce new laws and legal institutions and many different non-government actors are often involved to jointly address shortcomings in existing legal frameworks and justice systems. Resulting periods of transition pose challenges to the people affected; there can be legal uncertainty about which laws actually apply and about who has the power to decide, and mismatches can come to live if the new laws do not adequately reflect social reality and/or expectations. Such mismatches need to be carefully studied and addressed as they can cause societal unrest and jeopardize fragile peace processes.

Audience during plenary discussion in the main conference hall, 19 September 2018

Where state meets market and community-based organisation

Since the 1950s state, market and community-based organisation have, in alternating ways, been regarded as the prime movers of development. When the emphasis changed in the 1980s from the state to the market and to community-based organisation, development policies tended to promote a paradigmatic consensus: any given development problem could be approached by an adequate mix of state, market and CBOs. As a corollary, combinations of administrative law, private law and 'local laws' were sought to tackle development issues.

A recent shift in the relation between the national and international legislation and the market, is that corporations are no longer only valued for their contribution to economic growth and development, but increasingly scrutinized for their impacts on human rights and the environment. The interface between (multinational) corporations, the state (as regulator) and the international community (including the UN) that sets Guiding Principles constitutes a relevant field for the local communities where corporations carry out their activities.

Where state-based law meets non-state-based law

Legal and normative pluralism has a reality on the ground. Notably in remote areas and in fragile contexts, laws and legal institutions may have little impact locally. This raises questions whether other norms, authorities and practices can provide order and settle disputes, based on custom, religion, or other sources, and how they interact with state law.

Based on a forthcoming book publication, keynote speaker Christian Lund argued that if 'possession is nine-tenth of the law, legalisation is the last tenth. Legalisation is an appeal to the backing of a claim by the state and as such can be seen as powerful. Lund therefore argued not taking legal systems and laws for granted, and to see their importance, but to also look at the larger picture and the very mundane activities that can produce law.

Customary law has long been seen as the utmost important counterpart of state law, that has often been challenged by the state. Yet, despite an ongoing process of subordination of custom to the state, it is argued that in certain cases there is increasing equity between the two legal orders, especially when it comes to land tenure arrangements, where customary orders are no longer seen as relics of the past but as powerful and flexible, and capable to respond to changing local and transnational expectations. With it comes an acknowledgement of the potential of customary legal empowerment, as was argued in the opening address by Janine Ubink.

Where practice meets theory

Development practitioners, legal professionals and researchers constitute different professional groups that do not often exchange. Yet these encounters might be the most productive and essential interface to explore when trying to use the law as a tool to bring development, and when aiming to improve access to justice for all. Keynote speaker Stephen Golub pointed at the importance of carrying out retrospective research to capture the long-term effects of rule of law projects. Such effects are usually not measured within the relatively short time frames of projects, yet long-term sustainable change is often their aspired outcome. Longer-term, retrospective research might also reveal unanticipated impacts when studied properly.

Three working groups took place which addressed real-life problems and ample time was used to discuss dilemmas practitioners and researchers encountered when dealing with these problems. Interactive brainstorming was used to discuss ways forward in relation to the topics.

The first working group looked into the concept of vulnerability that is one of the buzzwords in contemporary human rights discourse, but one that is charged with sensitivities: Who has the power to define what vulnerability is? Who can be seen as vulnerable? This inevitably links to processes of in- and exclusion and therefore needs to be done in a careful manner. It was argued that vulnerability has mostly been used as a top-down concept, but to overcome some of the sensitivities, it needs to be more bottom-up and include the voices of the vulnerable.

The human rights-based approach to development is a typical example of an approach that has been introduced over the last two decades by international organisations, donor countries and NGOs as a way forward in development, but not enough research has been done one the

manner in which human rights travel and transform to local contexts. The second working group looked into this topic and discussed ways forward.

The third working group looked into water as a scarce resource about which conflicts arise and may arise even more in the future. On the basis of two case studies, participants in the working group discussed barriers for access to justice seekers in this regard; one case looked into a rural area in Indonesia, where justice seekers were not able to gain access to judicial institutions. In the second case, in a more developed tourist area, water was exploited excessively despite a functioning and accessible judiciary and good laws. The problem here was mostly with the particularities of the informal economy of the district and the municipal bureaucracy. This underlined the importance of considering the wider political context when addressing access to justice concerns.

During a plenary panel discussion practitioners presented their views on the problem of knowledge and how they dealt with it in their own work. They reflected on some of the debates at the conference, and agreed that going with the grain, consulting people with local knowledge and improving institutional memory were key for effective practice.

Practitioner Elizabeth Bakibinga talks about the problem of knowledge in legal cooperation programmes

Lessons to take for access to justice

Taken together, the conference contributions provide a rich overview of the field of law and development. Many of the contributions took interdisciplinary approaches to look at law and development, but also at the context of power relations, economic resources, social capital,

global trends, and local events. These different perspectives each offer novel insights that contribute to a more nuanced understanding of access to justice, its barriers, and efforts to improve it. The interface between research and practice proved at this conference to be the most fruitful and insightful one.

One overriding insight that permeated the three days' conference, concerned the manner in which politics and power play out to hinder or promote progressive change. Practice is often messy and practitioners might encounter unanticipated problems, harmful side-effects, or powers with different visions of development. In some contexts, legal education and empowerment, and creating social awareness could foster bottom-up initiatives for change in a rooted and sustainable manner. To improve access to justice for all, it is therefore important to have a good understanding of the context. Such an understanding can help to identify windows and opportunities for improvement. Efforts to improve access to justice do not necessarily have to be focused on either justice provider or justice seeker, but could also address inequalities or barriers that are located at the interfaces discussed during the conference and of which we provide an overview here.

Annex: Conference programme