

# INTRODUCTION TO THE SPECIAL ISSUE

Yüksel Sezgin, Guest Editor

Despite its prevalence in academic circles both as a sociological and political phenomenon—particularly among anthropologists, lawyers, social scientists and alike—legal pluralism has long been neglected by international organizations and donor agencies which have recognized solely the legal system of the state and systematically refused (on ideological as well as technical grounds) to engage with non-state or informal justice mechanisms. In recent years, however, we have been witnessing a resurgence of interest in legal pluralism outside of the academia, particularly in circles that can be broadly defined as ‘programmatically communities’. These seem to be going through a major paradigm shift and gradually switching their lenses away from what Golub (2003) calls the state-centered orthodoxy of rule of law to non-state law and legal systems.

The United Nations Program for Development (UNDP), for instance, was among the very first organizations that recognized the significance of informal justice mechanisms and incorporated legal pluralistic perspectives into its legal empowerment of the poor initiative that was launched several years ago. Similarly, the World Bank has established its own program, Justice for the Poor (J4P), which in a fairly short time has grown into a robust and very productive program that has not only significantly contributed to the growing legal pluralism and development literature but has also implemented very successful legal empowerment and access to justice projects in a number of countries in Africa, East Asia and the Pacific. In addition to the UNDP and the World Bank’s flagship programs, the United States Institute of Peace (USIP), the United States Agency for International Development (USAID) and the International Development Law Organization (IDLO) have also played a pivotal role in popularizing the concept of legal pluralism among the members of programmatic communities through their publications and on-the-ground access to justice projects dealing with the informal sector.

The main reason for the international community’s growing interest in issues pertaining to customary or informal justice systems is the realization that a comprehensive approach to economic growth, poverty reduction and human

development entails an engagement with normative orderings beyond the state's reach. These constitute the backbone of the wide normative systems that determine allocation and ownership of natural resources and land titles in many societies in the developing world. With that understanding, programmatic communities have increasingly promoted the idea of integrating legal empowerment programs focused on non-state sectors into broader socio-economic development projects so that the underserved groups will have greater access to informal justice mechanisms and be able to utilize them for their individual and socio-economic well-being. Engagement with non-state legal systems is, however, a double-edged sword. They can be effective—often much more so than the formal system—in maintaining peace and order at a relatively low cost. However, non-state legal systems (tribal, customary, religious etc.) are also known for their lack of compliance with international human rights norms and standards (e.g., gender inequality, inhumane, cruel punishments and unfair trials). As indicated by a recent report on plural legal systems by the International Council on Human Rights Policy (ICHRP) (a review of which can be found in this volume) the main challenge for international organizations which have wanted to engage with non-state justice mechanisms has been ensuring compliance by these polycentric structures with international human rights standards (ICHRP 2009). In fact, recognizing the complexity of task at hand, the United Nations (UNICEF, UNIFEM, UNDP) has recently commissioned an extensive study<sup>1</sup> on informal justice systems and their impact on fundamental rights and freedoms—particularly those of women, children and minorities—in order to standardize minimum rules of engagement for UN agencies that interact with various informal justice mechanisms around the world.

The issue of human rights under informal justice systems has been also on the agenda of two recent conferences that brought together academics and representatives of international organizations and donor agencies in Washington D.C. (2009) and Copenhagen (2010). These well-attended international meetings have been particularly instrumental in facilitating a broader discussion of legal pluralism in policy circles and identifying potential areas of interest and collaboration between academics and practitioners. As many participants indicated, academic and programmatic communities could greatly benefit from exchange of ideas and further engagement and cooperation with one another. In fact, this is to a great extent true. The programmatic community has the human resources,

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<sup>1</sup> The study is being currently undertaken by the Danish Institute for Human Rights, and the final report is expected to be made public in early 2011.

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organizational and fiscal skills while the academic community possesses intellectual, theoretical, methodological expertise, and is capable of understanding sociological, ethnographic and political forces that shape non-state justice mechanisms in various parts of the world. Despite their overlapping interest and the great potential for collaboration, however, there continue to exist some profound ideological and philosophical differences between the two worlds, in addition to persisting methodological and theoretical differences that seem to hinder further exchange of ideas and cooperation. For example, it is not uncommon to hear in academic circles a distrusting member cynically questioning the 'real' reasons behind the sudden interest of an international organization (e.g., the World Bank) in engaging with plural legal systems, or complaining about methodological shortcomings of a study conducted by programmatic communities. Similarly, representatives of development agencies often resent the academics who, they argue, fail to sufficiently grasp the institutional, political, technical and temporal constraints under which programmatic communities usually operate while working with informal justice mechanisms.

Thus, against this background, the present volume has been produced as a humble attempt to bring academic and programmatic communities closer to one another by bridging the existing philosophical and methodological gaps. To that end, articles included in the volume deal with the very question of human rights in the context of plural legal systems through various case studies from a range of countries from Israel, Egypt, India, Sierra Leone and South Africa to Bolivia and Guatemala. These highlight not only points of tension between international human rights standards and local practices but also practical solutions offered by state and non-state actors in legally pluralistic societies. Within this framework, the overall aim of the volume is to identify key lessons and offer policy recommendations for the benefit of practitioners and academics who engage with informal or semiformal justice mechanisms and encounter the same challenges in other parts of world.

Lastly I should avail myself of this opportunity to thank Prof. Gordon R. Woodman, Editor in Chief of the Journal of Legal Pluralism, for his encouragement, generous support and meticulous professional dedication without which this special issue would probably have not seen the daylight. For this, we, the authors, are truly indebted to him. Furthermore, in my capacity as the Guest Editor, I also extend my sincere gratitude to the authors for their hard work, patience and cooperation that has made the publication process a truly enjoyable experience for me.

Articles in this volume were originally presented at the 16<sup>th</sup> International Congress of the Commission on Legal Pluralism that took place in Zurich from August 31-September 3, 2009.

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