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‘Customary Justice and Legal Pluralism in War-Torn Societies’

an international conference
co-organized by:

**The United States Institute of Peace
The George Washington University (Peace Studies & Culture in
Governmental Affairs Program)**

**to be held in
October 2009, in Washington DC**

Concept Note:

Call for Papers and Institutional Expressions of Interest

Conference Premise

Over the last two decades international peace-building doctrine has enshrined as one of its core tenets that (re)building systems of justice that meet the acute needs and intense demands of war-torn societies is an essential and early post-conflict priority. The field of post-conflict rule of law that has developed to meet this need has focused primarily on reforming a well-known triad of formal justice institutions – the judiciary, the police and the corrections system -- and on revising the legal framework and infrastructure in the model of an ideal western system. These efforts have been widely criticized as yielding limited results in large part because they fail to account for local socio-cultural concepts and practices of justice.

While customary justice systems – also known as informal, traditional, or non-state justice systems -- often do embody local understandings of justice, these have most often been overlooked or avoided as unfamiliar or incompatible with the project of rebuilding a modern state. However, a burgeoning body of recent research suggests that in many countries these are the systems that are most accessible and thus relevant to the majority of the population. Simply

ignoring this operative reality will certainly not help peace-building and state-building efforts and in many instances may actually undermine them.

Yet, the very terms used to refer to and study these systems shape the thinking of analysts and policy-makers in problematic ways. The terms “customary” and “traditional” are particularly misleading because the institutions and practices so named are far from static, and have often been dramatically transformed by recent social and political dynamics -- not least of all war itself. Meanwhile terms such as “informal” and “non-state” ignore the many cases in which customary law is state-sanctioned and even state-regulated.

Perhaps most problematically, when these systems are considered they tend to be treated as distinct from, and entirely unrelated to, modern justice systems. The dichotomies implicitly suggested by terms such as informal/(formal); non-state/(state); traditional/(modern)) ignore how different types of systems interact with and define each other. This complex intertwining ultimately produces highly complex and hybridized legal landscapes. Inasmuch as formal/state/modern institutions and practices fundamentally shape customary/informal/non-state ones -- and vice versa -- it behooves those who want to make relevant and realistic rule of law policies to understand and account for the blurriness and interactions between systems that is so central to the experience and practice of the population.

Here, we provisionally adopt the term “legal pluralism¹” in an effort to move beyond approaches that look at different systems -- customary or formal -- in isolation, in order to tackle the very complexities raised by the (co)-existence of multiple legal systems and practices. We use this term to refer to the encompassing range of customary, hybrid, and “purely formal” institutions and practices that jointly constitute the legal topography in so many war-torn contexts; and to draw particular attention to the mutually defining interactions between these systems. This term also suggests an approach to justice reform that defines a different point of departure, namely an empirical understanding of the range of dispute resolution mechanisms and how and why they work in actual practice. Finally, it points toward the importance of adopting strategies that will necessarily be provisional, incremental, and tailored to context, rather than based on ideals, in order to account for socio-cultural, political and practical realities of the justice landscape in war-torn societies.

Conference Objectives

The United States Institute of Peace and The George Washington University (Peace Studies & Culture in Government Affairs Program) are co-organizing a conference to be held in Washington DC in October 2009, as a first step toward mainstreaming consideration of legal pluralism in post-conflict rule of law policy-making and practice. In recent years, a number of institutions and researchers have begun to develop data, produce reports and engage in the field

¹ We recognize the existing literature on the concept of legal pluralism. Here we seek to extend the concept to the field of post-conflict rule of law to mark a shift from a normative-based approach that focuses on state institutions to an empirical-based approach that considers a fuller range of dispute resolution systems.

on the questions of customary justice systems and legal pluralism.² However, much of this work remains largely experimental and there have been few opportunities to share findings or to develop coordinated policy-approaches.

A number of recent studies have looked at the role customary justice can play in transitional justice strategies, i.e. dealing with the particular legacies of conflict by bringing perpetrators to justice and fostering reconciliation. Rather than considering transitional justice, this conference will focus on the longer-term processes of (re)building justice systems that can effectively resolve everyday (rather than war-derived) disputes and crime in a manner that is accepted and considered legitimate by the population.

Specifically, this conference will bring together practitioners, policy-makers and researchers to:

- Assess the current state of knowledge about legal pluralism and its relevance to post-conflict rule of law efforts, in order to identify lessons learned as well as gaps that require further research;
- Compare methods and approaches to empirical-based analysis of legal pluralism and its contribution to rule of law strategies and policies, in order to identify best practices;
- Identify and assess the variety of program initiatives that address legal pluralism (for example, training efforts, paralegal programs, capacity building, linking formal and customary systems, dialogue, addressing harmful practices, etc.) in order to “catalogue” these program approaches and best practices;
- Identify training needs and models that can help mainstream a more robust and context-adequate consideration of legal pluralism amongst post-conflict rule of law practitioners and policymakers.

Conference Participation

We invite expressions of interest in two forms of participation in this conference: individual and institutional.

Individuals:

Individual scholars, practitioners, or policy-makers interested in participating are invited to submit the following to the conference organizers by May 15, 2009:

- Abstracts of papers based on original empirical research that address the core concerns of this conference.

² A non-exhaustive list of institutions that have done recent noteworthy work are: DFID, IDEA, Max Planck, NRC, peacebuilding initiative, PRI, UNDP, USAID, USIP, World Bank.

- Abstracts of papers that otherwise advance the field of understanding and engaging with legal pluralism in post-conflict societies.
- A statement of intention to prepare a short case study (5-10 pages) that describes, and assesses actual field programs and activities that were designed to address some aspect of legal pluralism. A format for case studies will be provided by the conference organizers.

Selected papers will be presented at the conference and may be published in an edited volume and/or made available on-line (see conference output section below).

Institutions:

Research, policy or practitioner institutions with active programs that address legal pluralism in post-conflict societies are invited to submit either or both of the following by May 15, 2009:

- A short statement (2-4 pages) that describes their program and primary researchers/managers. These will be considered for inclusion in the ‘Institutional forum’ (see below);
- Expressions of interest in co-participation in the conference. We are open to considering additional partnerships that enable us to expand participation in the conference and enrich its scope while still working within the primary parameters as outlined in this concept note.

Conference Format

The conference will include the following activities and sessions (notional):

- A session on the concept of legal pluralism and its implications for rule of law strategies.
- Case study sessions that provide in-depth overviews of both a) how legal pluralism is relevant to rule-of-law building efforts in particular contexts; and b) either assess ongoing or past policy strategies for engaging with it-or alternatively assess the impact of neglecting to engage with it.
- Thematic sessions that discuss and evaluate experience on a variety of topics, such as:
 - methodological approaches to assess legal pluralism
 - understanding and addressing so-called “harmful practices” in customary systems
 - identifying and addressing paradigmatic differences between systems (e.g. restorative versus punitive approaches)
 - exploring the consequences of promoting a range of alternative relationships between

formal and customary systems (ranging from constructive articulation to substitution and replacement)

- An institutional forum, in which institutions that have active programs of research or field activities that address legal pluralism in post-conflict societies will be invited to discuss and assess their work programs.
- A session that considers the practical actions and strategies that will help to mainstream an approach that recognizes legal pluralism, including training, instructional materials, networking resources, the institutionalization of knowledge-sharing forums, etc.
- We also invite institutions with active research or policy-oriented intervention programs to propose additional sessions for program consideration.

Conference Outputs

The aim of the conference is to produce concrete outputs that can be directly used by policy-makers and practitioners in developing strategies and programs that account for legal pluralism, and to synthesize the state of knowledge in this important emergent field of policy-relevant research. Specifically, we intend to produce the following:

- An edited volume or working paper series aimed at policy makers and practitioners, containing focused papers on best practices and lessons learned on methods of empirical research, programming options and policy development regarding legal pluralism;
- An on-line community of practice, hosted by the International Network to Promote the Rule of Law that will contain a library of relevant literature and an interactive facilitated forum connecting experts and practitioners on legal pluralism around the globe;
- A variety of other outputs oriented towards practitioner and/or academic audiences, as determined by participants.

Conference Organizers

Deborah Isser (JD, MALD) is a Senior Rule of Law Advisor at the United States Institute of Peace, where she directs a project on customary justice in post-conflict societies. She is the editor of a forthcoming edited volume of case studies on the role of customary justice systems in fostering the rule of law in post-conflict societies. She co-directs a project in Liberia, along with Stephen Lubkemann, entitled *From Current Practices of Justice to Rule of Law: Policy Options of the First Post-Conflict Decade*, that focuses on empirical research and legal analysis of the dual justice system, and implications for justice reform. She oversees the Institute's work on customary justice in Southern Sudan, and advises on its work in Afghanistan. In addition, she directs a project on property disputes in the wake of conflict and has worked on these issues in Iraq. Previously she served as a Senior Policy Advisor at the Office of the High Representative

in Bosnia Herzegovina, and a Special Advisor on peacekeeping reform at the United States Mission to the United Nations.

Stephen Lubkemann (PhD) is Associate Professor of Anthropology and of International Affairs at The George Washington University and an Adjunct Researcher at the Watson Institute for International Studies at Brown University. He has conducted extensive fieldwork on displacement, social and institutional change, and local governance in Mozambique, South Africa, Liberia, and Angola and on the experience and impact of diasporas among African refugees and migrants in Europe and the U.S. He is co-director of the USIP-sponsored policy research project *From Current Practices of Justice to Rule of Law: Policy Options of the First Post-Conflict Decade*. He has published numerous articles and book chapters on various aspects of societal transformation in war-torn societies. His recent book *Culture in Chaos: An Anthropology of the Social Condition in War* (University of Chicago Press, 2008) re-theorizes the social effects of violence in protracted conflict settings. A faculty participant in the Culture in Governmental Affairs and the Peace Studies Programs at GWU, he also serves on the Technical Board of the GWU African Center for Health and Human Security, as associate editor for *Anthropological Quarterly*, and is a co-founder of the GWU Diaspora Research Program.

Tanja Chopra (PhD Social Anthropology) is currently co-ordinator of the World Bank's 'Justice for the Poor' Program in Kenya. She recently authored three research reports exploring access to justice issues in Northern Kenya, an area where peace initiatives conflict with justice sector reform. Among other positions, she served as a political affairs officer for United Nations Transitional Administration in East Timor (UNTAET) and as electoral officer for the United Nations Assistance Mission in East Timor (UNAMET), as a Social Development Specialist with the World Bank in West Bank and Gaza and was a Visiting Fellow at Watson Institute (Brown University). She has worked as a consultant for UNDP, USAID, King's College, and other organizations. She has authored a number of journal articles and research reports on the interplay of local socio-political structures and state institutions.

Please send all submissions and inquiries to:

Elizabeth Mohan
emohan@usip.org
+1 202 429 1979