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Germany's Rule of Law Interventions, Like those Elsewhere, Need to Follow the Laws, Principles and Measures that Germany and the International Community Claim to Promote

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Abstract

This is a professional comment, and represents the views of the author.

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The German Government Foreign Ministry's (Auswärtiges Amt) recently issued a report (July 2019) on its plans for "Promoting the rule of law: a new strategy for the Federal Government" with the stated goals of "crisis prevention", "conflict management" and "peace building". It is filled with the standard sweet-sounding clichés, like "sustainability" and "doing no harm", which other governments and international organisations have routinely used — and in similar initiatives, over some five decades. Given that such previous initiatives have faced wide criticism, the German Government's recent statement is either grossly uninformed or deliberately irresponsible.

Indeed the German Government itself has already funded projects with this stated orientation, through international organisations and even some of its own agencies, with several decades of intervention into what is referred to as projects in the sector of RoL (Rule of Law), AoJ (Administration of Justice), and D/G/HR (in English) (Democracy/Governance/Human Rights). Germany has significant experience in participating in such interventions: in effect, they have supported what are the failures of the World Bank (of which Germany is a member) to follow international development and human rights law, and instead, have prioritised trade and short-term "growth". In place of rights and sustainability, the German Government has also supported similar failures within the United Nations system and also the EC (which Germany also funds) and in some of Germany's own initiatives (now expanding) through GIZ (Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH) and the Max Planck Foundation, promoting legal advice and training. A central issue is that these agencies and their projects have avoided adhering to public [measures of results or accountability](#), and the German Government seems to be continuing on the same path. The reality is that most of these projects, despite claims to the contrary, have been used to promote other, hidden, agendas. In this specific sector, funds can easily be directed to judges and foreign ministries in the hope of a more favorable outcome for a country's businesses or business sector. This can be to the exclusion of grassroots

democracy, civil society, human rights, and sustainability, particularly in terms of the survivability of the globe's minority cultures. In the very area of "rule of law" that, by definition, requires specific measures, accountability and citizen oversight, this new statement and plan is as empty as previous failures.

Public scrutiny of international interventions in this sector, like those the German Government is now expanding, has been sharply critical. And it is not new nor hidden, but dates back some four decades, starting in 1980 with an assessment of the U.S.A's activities in Latin America. Even then, one of the heads of the Ford Foundation referred to a list of standard projects in this sector as "[legal imperialism](#)." A more recent study refers to such projects as a form of illegal "[plunder](#)", promoting the rule of law in ways that are themselves in violation of international law. Critics reveal how decades of global projects in "[legal development](#)" are promoting globalisation as a new form of colonialism, in the name of rights but with little public oversight. The German Government shows no signs that it is learning from these failures. It has shown no signs that it will apply [new forms of accountability and oversight that do exist](#) to avoid similar problems.

One may have hopes for this initiative, but should also harbor no illusions concerning the potential underlying motives for this new strategy — given the deep dependence of the German economy on international trade and on international labor (both immigrants and foreign workers). There is also the direct conflict of interest of Germany's corporations with promoting local control, local cultural autonomy and sustainability of local resources, of individual rights and of oversight, overseas. The realities of several centuries of German history — with its recent and relatively shallow experience with the "rule of law" and the Enlightenment ideals of "social contract" and constitutionalism, its weak experience of federalism and a culture of public participation and government (bureaucratic "beamter" oversight) — all raise questions as to whether the German Government can offer anything special in this area. Germany's approach to unification in the Bismarck era (19th century), for example, is

still strongly reflected in German political and legal culture today. Germany's own domestic policies on the "Integration" of refugees, who hope for peace and a return to their homelands, and who generally wish to retain their traditions, are largely those of assimilation rather than full cultural co-existence or promotion of cultural sustainability and rights. Germany's past century of "unification" has also largely come at the expense of regional dialects and differences, as well as strong federalism and local sustainability. Further, the current "democratic" culture of Germany is characterised by little direct legal and citizen oversight of government and of industry or oversight of and participatory challenge to, a concentrated media. The German educational system and culture today largely patterns a political and legal outlook that is apolitical and disengaged, rather than one of direct citizen oversight and challenge to concentrated bureaucracies in their several spheres.

The specific categories that this recent plan chooses for its interventions are: "administrative strengthening", "parliamentary professionalisation", "decentralisation", an "independent judiciary" and "access to justice". These are the buzz words of the failed top-down approaches in international intervention in law and governance that reinforce the German legacy of the bureaucratic state, the undemocratic "beamter" mentality of the German Government, and similar approaches today of many international organisations. Some of the model projects proposed in this initiative will make unrepresentative "professional" judges further unaccountable, rather than increasing the role of the public (as jurors and judges). Or it will promote token representation rather than equal justice (equal access to lawyers, direct citizen oversight of bureaucracy, more public participation in lawmaking, and more public representation and participation in the judiciary).

While the German Government is claiming that it will act in this initiative to resolve international conflicts and to promote peace, the country has largely been the beneficiary of such conflicts, at least in terms of the flow of trained refugees to fill the country's economic needs. The German

Government has done little to oppose the processes that have led to these conflicts (the impacts of globalisation and its pressures on land, resources and cultures, as well as global resource competition) and has been mostly silent over the international wars for resources, including the oil to fuel sales of German automobiles and machinery globally. Nor has the German Government offered legal protections for international whistleblowers who have exposed what is happening.

My observations as a practitioner working in this sector for more than 30 years on five continents, including some experience with German institutions and projects, is that governments and implementing agencies knowingly choose to avoid measurements, standards and oversight in violation of the very ideals of "law" and "good governments" and "rights" that they claim to be transferring. They use "rights" and "rule of law" as mere labels, to undermine cultural rights and sustainability in order to promote trade, favoring business rights over communities and labor, and directing funds to government offices (like judges) in ways that buy favoritism for their country's business interests. Much is directed to promote "stability" in ways that makes inequalities in political power more rigid and that makes injustice more efficient. When money is thrown at "human rights" and dialogue, it is too often little more than a public relations tool that funds organisations that either provide favors or who will have no impact.

Actors in this sector continually claim that there can be no real outputs because results are "too hard to measure" or "too long term". Slogans are used to claim "good intent" while the agreements by government officials to pass paper laws that are nothing more than paper, are used to claim "commitments". When measures are developed, they are usually little more than lists of project inputs or checklists of transplants of features of the legal system in the country of the donor that is being replicated in the recipient country without recognising or correcting its inequities, inefficiencies, and other shortcomings. There is rarely any focus in these projects on long-term benefits, on real power balancing, effective citizen

oversight, protections of cultures, long-term sustainability, and fulfillment of the full set of human development needs and desires (spelled out under international law). This evasion and/or distortion of measures is an illusion that has been used to hide hidden agendas, corruption, and incompetence by those working in the sector, stemming from their own conflicts of interest.

If the German Government is being honest and professional, and if the German public wishes to achieve results that are consistent with international law and long term global interests, there are [codifications of international development law](#) that they can follow, as well as specific measures of "[development](#)", "[sustainable development](#)" and creating its [context](#), as well as some specific [measures of progress on human rights](#) and [human rights education](#).

There are also ways to improve the [integrity of evaluation systems](#) and to [improve the ethics of those working to implement projects](#) in this sector.

Countries of organisations engaging in legal development interventions must, themselves, be models of rule of law and open society in order to have legitimacy in this area. In 2020, I question whether that is the case in "Deutschland GmbH"/ "Germany, Inc." not only for the reasons above, but with this addendum on the inability to even have this debate in Germany, today.

There appear to be only two national outlets in Germany in which discussions such as this, on the German Government, can take place: the *Volkerrechtsblog: International Law & International Legal Thought* ("International Law Blog") of young legal scholars, directly under the funding of the Max Planck Institute for Public and Comparative Law, directly funded by the German Government (<https://voelkerrechtsblog.org/>), and the Global Public Policy Institute (GPPi) "*Peace Lab Blog*" (<https://peacelab.blog/>) that is directly funded by the German Government through the Auswärtiges Amt (the German Foreign Ministry). Both suppressed this debate, in both English and German, explaining directly that they sought to

protect the German Government from direct criticism and oversight.

I thank the editors of the *Journal of Law, Social Justice and Global Development* for allowing presentation of this view and hope this piece will not be unavailable in Germany, as many English publications outside of Germany now are as a result of recent Internet regulations supported by the German Government.

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