

ActInCourts 2019 Copenhagen Workshop

Meghan Wise University of British Columbia
ActInCourts Assistant



Overview

Page 2 – Overview

Page 3 – Introduction

Page 4 – ActInCourts Copenhagen Participants

Page 5, 6, 7 – The Three Themes

Page 7 – Outcomes and Moving Forward



SSHRC  CRSH

Introduction

ActInCourts (Activism in International Courts) network members came together on October 7th and 8th 2019, at the University of Copenhagen's iCourts, in the Faculty of Law, for a two-day workshop to facilitate an in-depth collaborative inquiry of the three overarching themes informing the ActInCourts Partnership Development Grant (PDG) project.

The workshop served three critical functions. It provided a unique opportunity of collaboration among network members to further clarify and identify the driving issues behind the three themes. It advanced the sharing of knowledge among the partner institutions to allow for pinpointing pertinent data and research that can be engaged to expand, enrich, and support the aims and goals of the ActInCourts project. Lastly, it provided the opportunity to collectively envision how to effectively expand academic and human rights practitioner partnerships, networks, and collaboration.



Network Members Copenhagen Workshop 2019

ActInCourts Copenhagen Participants

Lisa McIntosh Sundstrom, (ActinCourts PI)

Associate Professor, Department of Political Science, University of British Columbia

Rachel Cichowski

Professor, Department of Political Science, University of Washington

Lisa Conant

Professor, Department of Political Science, University of Denver

Heidi Nichols Haddad

Associate Professor of Politics, Pomona College

Courtney Hillebrecht

Associate Professor, Department of Political Science, University of Nebraska

Filiz Kahraman

Assistant Professor, Political Science, University of Toronto

Dilek Kurban

Fellow and Lecturer at Hertie School of Governance in Berlin

Freek van der Vet

University Researcher, Erik Castrén Institute of International law and Human Rights, University of Helsinki

Mikael Rask Madsen,

Director of Center of Excellence for International Courts (iCourts), Faculty of Law, University of Copenhagen

Vanessa Kogan

Director, Justice Initiative, Moscow, Russia

The Three Themes

There are three driving themes of the ActInCourts PDG project.

The first is the impact and authority of international courts. We ask questions such as: Are practitioners and NGOs gatekeepers to international courts, why or how? Are their applications more likely to be implemented by governments on the domestic level, what are the reasons for this?

Our second theme is external drivers of legal mobilization: repression and funding. How do repressive measures by governments against civil society and NGOs affect how rights advocates litigate at international human rights courts? What role do global funders play in selecting which cases go to court?

Our final theme concerns mobilizing human rights strategies. How do lawyers transfer their legal expertise from one place to another? How do the relationships among NGOs, victims, and lawyers in various contexts affect how lawyers choose which cases to work on? Do lawyers pursue new cases that can set new precedents or is case selection motivated more directly through client needs and wants?

During the October 2019 Copenhagen workshop, network members explored these core themes and underlying questions. This process helped to construct a meaningful framework for future PDG work and research.

Theme One: Impact and Authority of Courts

The concept of authority is salient to understanding how relationships and networks are being engaged and functioning as part of the courts. The issue of compliance was identified as a point of tension requiring further exploration and clarification in what compliance looks like and how it interacts with or impacts issues of effectiveness and authority. In thinking about the definitional frameworks of authority, and the issues of effectiveness and impact, it was noted that compliance does not equate to effectiveness, thus the concepts of effectiveness and impact must be seen as two issues distinct from that of compliance. The issue of who defines authority of international courts was also raised. What does authority look like from a legal or symbolic context?

Additionally, it was noted that the roles of NGOs and lawyers in facilitating effectiveness requires deeper exploration to better understand to what extent activists are playing a role in pushing or influencing these relationships. Members also identified a further need to differentiate between liberal democracies and authoritarian regimes when analyzing these issues. For example, who or what drives or influences a domestic government to comply under a democratic

framework versus an authoritarian framework? Do rights advocates play systematically different roles in these two types of political regimes?

Theme Two: External Drivers of Legal Mobilization: Repression and Funding

The exploration of theme two focused on two areas. These were: varieties of backlash against courts and responses of various actors (including nonstate organizations), and varieties of repression.

The first area of focus looks at varieties of backlash by governments and how courts learn from backlash. Moreover, not only governments and courts, but also different types of nonstate actors using courts play a role in backlash against court jurisprudence; for example, how do conservative or business groups fit in over time? Undertaking an historical analysis of backlash can help to identify possible patterns or cycles of backlash and what types of responses and strategies have been used to address backlash. For example, what are the transnational response strategies to backlash? We further need to understand what role courts play in responding to backlash. It was noted that the difference between backlash and merely contentious relationships needs further clarification. We also need a better definitional framework around varieties of backlash. The group also raised questions about possible opportunities that come about through backlash. For example, what are some of the positive outcomes or opportunities backlash creates? How do responses to backlash create new approaches and processes of pushback?

A second focus centered around varieties of repression used by governments to hamper legal mobilization. This included asking how or why lawyers, NGOs, or civil society experience repression and what the different resources each group has to counter or protect against repression. One major question is the role of funding, and how both donors external to member states and NGOs seeking funding for legal mobilization are targeted and react to repression. Further, how are different areas of law used in relation to repressive politics? For example, how or why do activists change strategy in relation to which area of rights to pursue? The question of whether repression drives or dampens mobilization transnationally or domestically is also raised.

Theme Three: Mobilizing Human Rights Strategies

Through analysis of the third theme, network members identified the importance of scrutinizing the different phases of legal processes. The phases include the “social phase,” litigation phase, compliance phase, and implementation phase.

Areas of interest for the litigation phase focus on four aspects. One, a better understanding of strategies around inadmissible or “lost cases” and if there are follow up strategies to bring a claim about again. What do NGOs learn from “lost cases” and what are the variety of responses? Two, how do they manage to adapt and change? Three, the need to unpack who is involved in

this phase (ex. individuals, groups, repeat lawyers). And finally, four, how are activists or groups involved in the process of and response to court judgements?

The compliance phase involves the execution of judgments while the implementation phase involves aspects of reporting, monitoring, and reform efforts. It was noted that further reflection and work is needed to understand how to clearly differentiate between the compliance phase and the implementation phase.

The “social phase” involves consciousness raising through actions like protests, lobbying, public pressure, social media platforms, or grassroots activism. These actions, influences, and pressures are important factors to incorporate into analysis. Understanding the broader use of human rights language in pressuring states is also worth examining. Lastly, investigating how politics relates to this phase must also be considered. For example, how do “mega politics,” domestic politics, localized politics, or coverage of politics influence this phase?

Outcomes and Moving Forward

Network members discussed the scope of focus moving forward. There was discussion that focusing on European systems created too narrow of a scope. Inviting individuals working on or in African courts was a point of interest moving forward when thinking about who could or should be brought in to expand the network. An overview of the literature will help to reassess focus and see where practitioners could be drawn into the process and ways of engagement. A shared document has been set up for network members to create a database of academics and practitioners are working in pertinent fields and may be valuable collaborators for the next phases of the PDG project. Network members also seek to prioritize the publication of research, and hope to publish a special journal issue.

Moving forward, network members will meet at the University of Denver in May 2020 for a pre-workshop ahead of the Law and Society Association Annual Meeting. Additionally, the vision of how to construct the proposed 2021 pilot practitioners’ school in Toronto was discussed, and potential models were proposed. None is a perfect fit, but they offer a good foundation to think about how such a process can be successfully modeled to include practitioners, academics and graduate students in a meaningful, practical, and pedagogically sound process.

The Copenhagen workshop was a successful process of collaboration that facilitated the sharing of knowledge and expertise. The development that has evolved out of this opportunity has allowed for a deeper and more focused understanding of the different components needed to support and facilitate the next steps of the Partnership Development Grant.