

**Webinar on approaches to Expert Panels and People's Tribunals  
Jan. 25, 2017, 9:30 am EST**

**Notes**

**Participants included:**

**CEJIL (based in Argentina, Costa Rica and the U.S.):** Alejandra Vicente, Cecilia Baubeta, Francisco Quintana, Marcela Martino

**Center for Human Rights and Development (based in Mongolia):** Urantsooj Gombosuren

**CRR (based in the U.S.):** Rebecca Brown

**FIAN (based in the Netherlands):** Andrea Nuila Herrmannsdorfer

**HRLN (based in India):** Kranti L.C. (presenter)

**Lawyer (based in Colombia):** Ana Lucia Maya Aguirre

**LRC (based in South Africa):** Steve Kahanovitz (presenter)

**Red ANA:** Ivonne Garza

**ESCR-Net (based in multiple locations):** Daniela Ikawa, Susie Talbot (presenter), Chris Grove, Sergio Rozalén, Joie Chowdhury

**Daniela Ikawa (ESCR-Net):**

In the next weeks there will be a series of webinars on new projects proposed during the GSM. These projects include: expert panels, an access to justice initiative and trainings for judges. There will be two channels through which the SLWG can engage in discussing these new projects. One channel will be the webinars. The other channel will be through comments on the SLWG draft work plan, which will be sent out on Jan. 30 to all members of the SLWG.

The webinar today will focus on expert panels and people's tribunals. The two members who presented the idea of expert panels at the General Strategy Meeting (GSM) were Steve Kahanovitz and Kranti LC. Steve has served as a lawyer and later national director of the Legal Resources Centre (LRC) in South Africa. The LRC, established in the late 1970s, is South Africa's largest public interest, human rights law clinic, with more than 65 lawyers and staff and 4 regional offices within the country. Kranti is the executive director of the Human Rights Law Network (HRLN) in India. HRLN, established in the late 1980s, is a nationwide network of more than 200 lawyers and paralegals across 26 states/union territories. Steve and Kranti will both present on the topic today. Also presenting is Susie Talbot, ESCR-Net's Legal Director who has worked on the issue of people's tribunals particularly via her academic research.

During the webinar today, it will be important to consider how the SLWG can engage with such a project. How can we add the most value as a group?

**Steve Kahanovitz (LRC):**

At the GSM, there was an extraordinary amount of expertise in ESCR in the room and it inspired the idea that it would be possible to put together an expert panel on socio-economic issues as an expedited way to resolve disputes. This would be far less costly than courts and panelists would have specific knowledge of complex ESCR situations that may enable them to craft creative remedies. To provide some background on expert panels in South Africa: in the late seventies, early eighties, there were dramatic shifts in labor law in South Africa. Due to the particular context of an apartheid state, new panels of adjudicators were compelled to take on certain issues and did so, successfully. If ESCR-Net (especially the SLWG) were to engage with the idea of expert panels, it would mean positioning the network to be able to provide a way to resolve certain disputes. So for example, if there was a water dispute, where a water pipeline was to be laid or, for instance with respect to access to water, and say this dispute was between a local government and a community of 300 people, taking the matter to court would entail a very long and complex process. ESCR-Net in such a case could approach the community and let them know that we have a panel (of say, 5, 10 or 15 people) and we can help them resolve the dispute at hand more efficiently and at less cost than the court system. The dispute resolution process could involve fact finding on the ground, listening to all parties, assessing local evidence and so on, and then by agreement of all parties, the panel would deliver a decision at the end.

How is such a panel constituted? The methods used in South Africa involved asking people to write on the reasons why they would like to be on the panel. We could approach member organizations to suggest names of people to contact. Some people could be headhunted too of course. Within the context of the network, we would have to think about the kind of training that would be needed for the panelists. There are a number of groups that provide trainings with respect to third party interventions, for example Acas in the UK, and there are also many others in South Africa and in other countries. We would initially have to actively look for disputes, and then advertise our panel as a new and efficient way to resolve disputes.

One issue to consider is how to address costs- we could, for example, initially ask those in power to defray costs - it would likely still be more cost-effective for them than pursuing litigation through the court system. We may also have to look for funding. We will also need to decide whether persons on the panel will be paid a fee or not.

**Kranti L.C. (HRLN):**

Our briefing with the CESCR sparked thinking regarding the network initiating an expert panel (specifically a question the members had regarding how to relate to complaints that come to them when there can be, depending on the complaint, a lack of expertise).

To give a sense of how such a panel might work: let us consider the example of the Indian People's Tribunal (IPT). This is an alternate people's court that voices the struggles of grass root organizations and affected communities. It was established in 1993

and focuses on issues concerning human rights and environmental justice. It helps to amplify the voices of those directly affected by human rights violations and to strengthen democracy.

How it works: there is a secretariat, which may be approached to organize an inquiry. An expert panel, chaired by a judge, and consisting of retired judges, retired bureaucrats, academics, journalists and so on is then formed to conduct the inquiry. The panel will conduct a site visit, and meet with and record the statements of affected persons and government officials. If the abuse affects a large number of people, a public hearing is organized. Relevant state or non-state officials and agencies are provided an opportunity to depose before the tribunal. The panel then first shares its interim recommendations and subsequently a detailed report is released at a public event. The report comprises research and the findings and recommendations of the Tribunal. The goal is to inform public opinion and potentially change government policy. Some of the areas covered by the tribunal include, human rights violations perpetrated by the World Bank in India, extra judicial killings, enforced disappearances, environmental degradation by corporations, workers' rights, and land acquisitions by corporations.

In some cases, public interest litigation is filed on the basis of the tribunal reports to obtain relief for the victims.

Nevertheless, one of the ideas behind people's tribunals is to allow for alternatives to people having to necessarily box themselves into a courtroom.

### **Susie Talbot (ESCR-Net):**

It would be important to consider how we connect the concept of people's tribunals with our core principles, the current political climate and the common charter for collective struggle. One issue to consider with respect to people's tribunals is that law is often represented as something apolitical or fixed. But it does evolve and is influenced by lobbyists, dominant stakeholders, mass movements and so on. The impact of power players on the law can be seen in how some things are perceived to be in violation of laws, while others are perceived as mere misfortune. Corporations in particular are rarely held accountable. In fact, states are often penalized or attacked for prioritizing human rights over corporate interests. People's law tribunals prioritize the perspectives of affected individuals and communities.

People's law tribunals have different aspects that are important to consider. These include among others:

- *Control*: The right or power of people to control issues affecting them;
- *Action*: The right or power of people to implement their alternate visions.

In philosophy and practice, people's law tribunals elevate the voices of the marginalized, and a focus on them ties in with the increasing significance of social movements.

Some of the key people's tribunals include: The Russell Tribunal (it's one of the earliest examples- it was established in the 1960s to examine US military action in Vietnam); The Permanent People's Tribunal (set up in the 1970s; it has had 43 sessions so far. It investigates, looking into issues other forums do not. The many areas that it considers as being within its competence to examine are aligned with issues that are of interest to our network); the Indian People's Tribunal; the Tokyo Women's Tribunal; and others.

These tribunals have no set way of operating. These are civil society versions of formal legal systems. Retired judges and other advocates generally make up the panels.

Some of the advantages include: they provide a record of non-dominant history, raise awareness, give greater agency to affected people and communities, foster participation, focus on consequences rather than punishment, elevate the centrality of the perspective of affected people and so on. There are criticisms as well of such tribunals including that the judgments are just opinions. (To counter: everyone's opinion counts.)

To consider as we move forward in thinking about this proposed project: what would it mean for us to set up such a tribunal whether it's an *ad hoc* tribunal or something more permanent?

**Daniela Ikawa (ESCR-Net):**

In the context of all the presentations, one thing to consider is: if we were to pursue this project, should we be thinking of a more formal framework like the one proposed by Steve, with strong quasi-judicial procedures, or something quite informal, almost approaching a campaign, or something in between, like what Kranti proposed.

Also to consider: should we be thinking about transnational claims or local claims?

We need to raise funds for this project but taking it on is still a possibility.

Inviting final comments from the group:

**Kranti L.C. (HRLN):**

ESCR-Net as a network should explore an international people's tribunal. This is very important, especially with respect to violations of human rights by corporations. Corporate bodies are now perpetrating the same kind of human rights abuses across the globe. We could use the same kind of strategies in response- there is a lot of shared learning to be accessed. Given the larger role of corporations in today's world, it is important for us to come together and respond to this situation.

**Rebecca Brown (CRR):**

Regarding the issue of what the tribunals should look like, I will briefly talk about two of

our experiences at CRR.

We organized one in Texas with Latino women who no longer had access to healthcare. This was very informal. The women themselves created the structure. The other people's tribunal was created in collaboration with another organization in Mexico. This one focused on the subject area of violence against women and had complex quasi-judicial and very formalized processes.

Both forums were structured very differently in light of how it would be used and what would have the most impact. Both were actually very effective because they were designed to have optimum impact given the advocacy targets. So an important question to ask when we think about how to structure a people's tribunal is: what change are we trying to effect?

**Andrea Nuila Herrmannsdorfer (FIAN):**

While we have not worked with a formal people's tribunal, we do have some related experience, and would be happy to share our experiences and brainstorm more. One issue to consider closely (and this has indeed been raised in the course of the presentations) is whether the outcomes can be linked not just to tools for lobbying but tools that could enable victims to take the matter to court, if they would like to do so. This may be helpful for victims.

**Susie Talbot (ESCR-Net):**

While considering this project, it is important to think of its continuity with other SLWG projects. One example would be the briefing with CESCR raised by Kranti.

One of the issues we confront is how to keep up the momentum of movements. People's tribunals do engage closely with systemic issues and can help address the issue of momentum.

People's tribunals can also flip the way we look at how forums generally address violations- for example it might start with a judgment and not end up in one. It can be a different way of looking at law and politics.

**Steve Kahanovitz (LRC):**

One way to start thinking about different approaches to structuring a panel, for example, Kranti's and mine, would be to make a column of the differences and similarities, and assess how those are perceived by affected communities. Different models bring advantages and disadvantages. Illustratively, while Kranti's more participatory scheme could make it more difficult to approach a remedy, a more formal tribunal could be quite costly- we may have to start with something smaller.

With regard to the issue of enforceable results, we would need to check arbitration

legislation in different domestic jurisdictions. Such legislation may allow for panel decisions to be enforceable if parties agree.

**Daniela Ikawa (ESCR-Net):**

If we do take on this project, there will be a planning process and this year would be devoted to planning. We may then start small as Steve suggests or plan further for something larger and more participatory.

**Kranti L.C. (HRLN):**

With respect to setting up a tribunal- just to share from our experience over the last two and a half decades. Initially, we could conduct investigations quite freely. However, in the last five years, as we take on corporations, there has been a lot of repression. When we were looking into nuclear power plants in the country, there was a major clamp down. Action was taken against the panel, accounts were frozen and so on. With respect to another recent investigation, there was police brutality involved, and groups asked the panel to hold off from releasing the report due to possible repercussions for local groups. We need to understand the context, sit down together to share experiences, and then see what would be possible.

**Daniela Ikawa (ESCR-Net):**

This will be a long-term discussion. Much appreciation for everyone who participated in today's webinar on expert panels and people's tribunals.

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