

Issue 1, April 2025

# REFRAMING NARRATIVES

ANTI-TRAFFICKING FROM THE GROUND UP



Global Alliance Against Traffic in Women

# Reframing Narratives

## Anti-trafficking from the ground up

Issue 1, April 2025

**Theme:** *(In)formal Pathways to Justice*

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*Global Alliance Against Traffic in Women (GAATW)*

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The Global Alliance Against Traffic in Women (GAATW) is an international network of 100 NGOs from all regions of the world that advocates for the rights of migrants and trafficked persons. GAATW members provide direct assistance to migrants and trafficked persons, run information campaigns, and engage in policy advocacy at the national and regional levels. The International Secretariat of the Alliance is based in Bangkok, Thailand, and supports its members with research, knowledge building, and international advocacy. We focus on women's rights to mobility and decent work.

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## Introduction

Caroline Robinson

Welcome to *Reframing Narratives: Anti-Trafficking from the ground up*, the first edition of an annual Global Alliance Against Traffic in Women (GAATW) publication series. This series will provide a unique GAATW perspective on emerging issues in the anti-trafficking field. Rather than ranking anti-trafficking responses or estimating case numbers – tasks better suited to others – we focus on sharing the experiences and efforts of our members and allies to combat trafficking around the world. This publication aims to foster dialogue across global movements, connecting those working in varied fields – from migration, women’s rights and labour organising to climate change, corporate accountability, and conflict with anti-trafficking. Through practical and concrete examples from GAATW’s diverse members and allies, we will show how we are advancing a rights-based approach to human trafficking. Importantly, these stories not only highlight the challenges faced but also reveal shared principles of practice that will help guide the field. In this publication, you will find both the complexity of our work and the common threads that connect one to the other.

### *Introduction to GAATW*

GAATW is an Alliance of more than 100 non-governmental organisations from Africa, Asia, Europe, and the Americas working to promote and defend the human rights of migrant and trafficked women in the context of an increasingly globalised labour market. GAATW prioritises the value of experience and the role that community-based organisations and women play in creating new knowledge and providing valuable insight into issues affecting women’s lives, including migration and work. GAATW believes that this intersectional feminist expertise is crucial in evaluating anti-trafficking and labour migration regimes and advocating for policies that protect the rights of migrant women.

### ***Why a new annual publication?***

This publication, *Reframing Narratives: Anti-trafficking from the ground up*, will present GAATW's positions on key issues and themes, including the connections between anti-trafficking, migration, labour organising, and women's rights. Each issue will prioritise a specific theme, provide reflections framed in theory that are both accessible and transferrable, and will be supported by practical examples to show how these issues are developing in order to foreground GAATW members' and allies' engagement with them. We hope this publication will serve as an advocacy tool, provide valuable insights, and present examples of current work by members and allies. Above all, we will seek to start a conversation about global principles of practice for the anti-trafficking sector.

### ***Summary of this issue: (in)formal pathways to justice***

This inaugural issue explores the formal and informal mechanisms that shape migrant and trafficked people's access to justice. While formal justice systems provide essential protections for migrant women facing exploitation, many women navigate alternative routes to seek redress, safety, and recognition. This issue explores the interaction between legal systems and real lives. It shares the experiences of practitioners in pursuing cases on behalf of migrant women, the reasons for their efforts and the outcomes. This issue starts as we mean to go on, centred on the experiences of migrant women and those who work alongside them. In so doing, we share their many (in)formal pathways to justice.

### ***Why this issue at this time?***

The year 2025 marks the 25<sup>th</sup> year of the adoption of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the UN Trafficking Protocol). It is a time for reflection by many in the anti-trafficking field on whether this criminalisation and immigration control treaty, which first established the definition of human trafficking as we now know it, has achieved its aims. In 2008, GAATW memorably reflected on the often negative impact of anti-trafficking legislation on the human rights of migrant women in its publication *Collateral Damage* (GAATW, 2007). One lingering question has centred on whether the UN Trafficking Protocol has enhanced justice systems, or is instead overly focussed on the criminalisation of perpetrators whilst ignoring the needs and wishes of those who have been trafficked (Demeke, 2024). Over the years, GAATW and its members have underlined the barriers migrant women face in accessing justice, including: narrow definitions of trafficking which exclude certain categories of workers or conflate trafficking with sex work; poor understanding of human trafficking by police and prosecutors; barriers to migrant women accessing formal legal systems; and limited or no funding for legal services to support migrant women (see GAATW, 2017).

Whilst there has been a heavy-handed drive towards prosecutions and criminalisation from major players such as the United States government through its annual Trafficking in Persons Report, many formal legal systems have remained outside the reach of migrant women whose rights have been violated (Chuang, 2014). This edition considers how migrant women and practitioners are navigating these obstacles, and where they are turning when formal or mainstream legal systems are failing. It focusses on the ways in which practitioners are testing and broadening justice systems through strategic litigation and by creating their own justice mechanisms through People's Tribunals, offering the possibility of a more participatory, person-centred pathway to justice. Examples shared by GAATW members and allies provide insight into why such methods are being used, what the outcomes are, and the elements of success or barriers to progress that might provide learning for others seeking justice for migrant women.

In October 2024, GAATW asked its membership to detail their organisational methods of social change. Through a short online survey, they asked what traditional and non-traditional strategies members use to drive a change agenda. GAATW's Migration Programme Lead Alfie Gordo's article details the findings from this survey. Around half of GAATW's membership (42 organisations) listed social actions that had been used to bring about change. These include collecting facts and testimonies, raising concerns and complaints with United Nations experts, and highlighting human rights violations publicly. A significant number of respondents mentioned having used either strategic litigation (two thirds of respondents) or alternative justice mechanisms (one third of respondents) as vehicles for change. This issue explores just how and why these routes are being used, and with what results for migrant women.

### *Methods used for compiling this publication*

This publication was first discussed with members at the GAATW International Members Congress and Conference in October 2024. All members had received the survey on methods of social change by this time. Professor Nivedita Prasad spoke on the subject, sharing a range of examples of (in)formal pathways to justice from around the world, and members shared their own examples of using formal and informal legal systems to drive social change. Those who engaged were invited to share examples from their own work for inclusion in this publication. Members were asked a series of questions about how they had used these mechanisms, in what context, why, and with what consequences. Responses were then used to produce detailed case studies from each member, reflecting on the use of each mechanism and key principles or considerations.

### ***(in)formal legal systems as engines of social change?***

This edition features two articles by Professor Nivedita Prasad, one on People's Tribunals, defined as non-legal settings that provide a public space to present charges and have them investigated and assessed by experts, and another on strategic litigation, defined as legal proceedings that seek structural change through the development of new standards. They are supported by a detailed conversation with Siriporn Skrobanek, one of GAATW's founders, about her first-hand experience of joining women's rights activists at three People's Tribunals, or Women's Courts, in Europe and Asia.

Prasad considers why women seeking justice and their allies have departed from formal legal systems to embark on People's Tribunals. Motivating factors include the failure of formal legal systems to provide people with justice, as well as the desire to create spaces for those whose rights have been violated. She provides examples dating back to 1966 of how People's Tribunals have been used, particularly by women and marginalised groups, and how NGOs and partners have built on successes to develop standards for practice in this area.

In her article on strategic litigation, Prasad considers how formal legal systems are used to bring about social change in the human rights context. She reflects on the use of strategic litigation in helping to develop the law and to clarify legal questions as well as raising the profile of injustices and building coalitions. Prasad and other contributors to this publication underline the significance of support to claimants through this process and of partnership across organisations and actors seeking social justice.

People's Tribunals and strategic litigation serve a critical role in driving social change. However, both entail risks to those whose rights have been wronged. This publication and the case studies it contains underline the benefits and challenges of the two mechanisms. The following section considers emerging principles for practice, which could be used when drawing on these mechanisms.

### ***Overview of the case studies: (in)formal pathways to justice***

The 14 case studies featured here have been shared by 11 GAATW member organisations and allies, from Ecuador, France, Kenya, Indonesia, Mexico, India, Canada, Bangladesh, Austria, Chile, and Serbia.

In Ecuador, the *Comité Permanente Por La Defensa de Los Derechos Humanos* (Committee for the Defence of Human Rights, CDH) supported families of people who had been incarcerated to seek justice for the violations of their human rights in national courts, the regional Inter-American Commission on Human



Rights, and at the United Nations. The European Sex Workers' Rights Alliance (ESWA) writes about its own regional intervention, supporting strategic litigation against the French government at the European Court of Human Rights (ECtHR).

The Federation of Women Lawyers in Kenya (FIDA-Kenya), partnered with the Initiative for Strategic Litigation in Africa (ISLA) to act as joint “amici”, or expert witnesses, in a case against the Kenyan government for its failure to prevent the exploitation of Kenyan migrant domestic workers under the *kafala* system in Saudi Arabia. Similarly, Solidaritas Perempuan, which defends women's human rights in Indonesia, sought justice for an Indonesian migrant domestic worker who had been subjected to violence and abuse in Malaysia, by using public pressure to ensure her case was properly heard.

In Mexico, Brigada Callejera, which defends the human and labour rights of sex workers, gave support for reviewing the legal case of a murdered trans sex worker from a gender perspective. They also share a case study of supporting a group of sex workers seeking justice after a client raped and abused them. Women's Initiatives (WINS) India writes of joining a Supreme Court mandated expert panel to promote the rights of sex workers and to advance decriminalisation. Peers Victoria Resources Society (Peers), which supports sex workers in Canada, writes about their constitutional challenge to the Canadian Protection of Communities and Exploited Persons Act (PCEPA, 2014), which criminalises the buying of sexual services.

Bangladesh Nari Sramik Kendra (BNSK), an organisation advocating the rights of workers in Dhaka, shares its use of a state convened People's Tribunal, the *Gono-Shunani*, to try and bring home a migrant woman who had been falsely imprisoned in Saudi Arabia. In Indonesia, Solidaritas Perempuan joined the Steering Committee of the People's Water Forum, a People's Tribunal acting in parallel to the World Water Forum, to defend communities' right to water. LEFÖ – Information, Education and Support for Migrant Women (LEFÖ), which supports migrant women in Austria, shared two case studies: firstly, their support to Asian women who had been subjected to domestic servitude yet denied justice due to their perpetrators having left the country; and secondly, their engagement in the feminist People's Tribunal to advocate for state accountability in femicides.

Fundación Libera contra la Trata de Personas (LIBERA) filed a criminal complaint with the Chilean Public Prosecutor's Office and sought international remedies, including via the United States Tariff Act (1930) and the United Nations Special Rapporteurs, for human trafficking for forced labour of Venezuelan and Haitian migrant agricultural workers. Finally, ASTRA - Anti-

Trafficking Action sought cross-border justice for people trafficked by companies engaging in public investment projects in Serbia, including in the locations in which the companies involved have offices, and before United Nations treaty bodies.

### *Key principles for practice emerging from the publication*

This edition has shown how both formal and informal pathways to justice can serve to bring about social change. It has provided insight on how a complex and formal legal mechanism such as strategic litigation can be useful to drive change and raise the profile of issues. It also brings forth rich examples of how People's Tribunals can enable people to create spaces for power over how and by whom their case is heard. Examples of such mechanisms in practice from Asia, Africa, Europe, and the Americas demonstrate how GAATW members are drawing on these and other formal and informal justice systems to drive change when faced with severe obstacles to justice through standard means. The following section provides an overview of the principles for practice that can be drawn from both mechanisms, which, distinct as they are, share a common goal: to enable migrant women to assert their rights and seek justice.

**The first is solidarity and alliance building**, forming broad coalitions, whether drawing on different expertise to intervene in legal cases, or to achieve justice beyond borders, to build momentum and awareness, or to bring greater safety in numbers. In the case of strategic litigation, partnerships have enabled organisations to offer mutual support and to draw on a broad range of perspectives and expertise. For example, in FIDA Kenya's case, it has acted as joint-*amici* with ISLA to provide expert witness contributions. LIBERA has established a network of organisations in countries in which those at the head of supply chains have offices to hold companies liable for exploitation committed in Chile. ESWA supports its member organisations and partners with community, health, and feminist organisations to form a broad coalition of support for sex workers' rights. Brigada Callejera drew on solidarity from the REALTRANS collective, comprised of trans women and sex workers who provided peer support throughout the case.

People's Tribunals have solidarity at their core, often emerging from social movements. The committees behind the People's Water Forum supported by Solidaritas Perempuan included legal aid networks and local organisations that could then support access to the legal process in case of criminalisation of those who had engaged in the Forum. Likewise, BNSK attributes the success of the public hearing to seek recruitment agency accountability to its partnership with civil society, legal organisations, and government. CDH used its networks to

support the development of a People's Tribunal whilst simultaneously filing a court case against the Ecuadorian state.

**The second is needs-led support for claimants,** before, during, and after engagement in any intervention. This means assessing the risks and benefits of an action and clearly communicating that to the claimants. In many cases, strategic litigation does not result in direct outcomes for the claimants and yet can take time, effort, and bring risk of re-traumatisation or other negative mental health outcomes. The practical needs of claimants whilst cases are ongoing have to be planned for, including considering how testimony can be safely taken, where needed. In its case study LEFÖ notes the importance of “informed decision-making by the affected women” and of considering the possible negative health impact of engagement. They also looked to the future to identify possible harms that may come from engagement for the women.

Whilst People's Tribunals can be empowering processes in their own right, and enable claimants to shape both the process and the narratives surrounding their case, they also carry risks of re-traumatisation and possible reprisals. CDH outlines its work to risk assess such possible outcomes by continuously monitoring the situation, providing psychosocial support, designing protection protocols, and working with civil society organisations to ensure collective support. They also highlight the need to ensure claimants' testimonies and documentation are safely stored and used.

**The third is challenging stigma.** Many of the case studies highlight the value of using both formal and informal legal systems as a means of bringing about change in the way certain groups of individuals are viewed and treated under the law. We see in many of the case studies how both strategic litigation and People's Tribunals can be used to draw attention to the impact of the criminalisation of sex work in law, and its conflation with exploitation. In such cases, the process can be as significant as the outcome. By forming a broad coalition of advocates to challenge criminalisation of labour rights and migrant rights groups, Peers ensures that a strong human rights position is articulated and amplified. Applying a strong gender lens to its cases, Brigada Callejera and the lawyer Arlen Palestina were able to reverse previous discriminatory legal arguments made on the assumption that sex workers did not deserve justice for violence committed against them.

**The fourth is challenging globalised corporate power** by forming alliances with organisations in countries where companies have offices to hold them to account via multiple legal systems. ASTRA and LIBERA have traced actors across the supply chains connecting them to their offices around the world. Both organisations describe drawing on different mechanisms to hold companies

accountable for abuses and exploitation in their supply chains. These tactics seek to connect civil society organisations in the same manner that companies are connected across global supply chains. In some cases, organisations are turning to the US government to ban the import of products affected by forced labour. This strategy relies on their acting in good faith and in the interests of the claimants.

FIDA Kenya has sought to hold the Kenyan state to account for its role in the human rights violations of Kenyan migrant workers in Saudi Arabia. In so doing, it has highlighted the role of the state in monitoring the actions of private companies and ensuring remedies are provided to those whose rights have been violated. Similarly, BNSK used a People's Tribunal to apply pressure on the Bangladeshi government to revoke the licence of the recruitment agency implicated in the abuse of Tania, a migrant woman in Saudi Arabia.

**The fifth is recognising strategic litigation and People's Tribunals as social change processes** rather than solely focussing on their tangible legal or policy outcomes. In many of the case studies, grave injustices are identified and re-litigated either by advancing cases through the courts to try and broaden legal understanding, or by advancing informal processes through People's Tribunals. In some cases, the way claimants have been treated by legal systems has caused great harm to them and their families. Strategic litigation or Peoples Tribunals can, if executed with care, serve to reverse this impact. CDH presents a powerful example of seeking alternative justice for the relatives of people who had died in prison through a People's Tribunal. The hearings within that process then led to a better understanding of the complicity of the Ecuadorian state in the violation of people's constitutional rights and ultimately led to a lawsuit seeking and achieving reparations.

In the case of Peers' constitutional challenge, the judge decided the PCEPA, legislation criminalising clients of sex workers, was constitutional. However, the personal testimony highlights the significance of hearing arguments about sexual autonomy in court that challenged the status quo of denying sex workers' rights. Through its engagement in the Feminist Tribunal on Femi(ni)cide Initiative, LEFÖ recognises that whilst there could be legal or policy outcomes, it may simply serve as a space for people to share experiences and to make injustice visible. This, if appropriately delivered, in a space where people are so often spoken for, is a fine objective indeed.

## **Conclusion**

This publication recognises the many barriers faced by migrant women seeking to access legal systems. It highlights their inequality and the injustices

perpetrated by such systems. It considers the rich tradition of women seeking their own pathway to justice through People's Tribunals and looks back with Siriporn Skrobanek at what lessons can be drawn from that history. It also explores the contrasts and complementarity of the two social change tools, strategic litigation and People's Tribunals. Professor Nivedita Prasad provides her insight into how both can be used as methods of social change but cautions not seeing either as a panacea. Through 14 varied case studies from 11 GAATW member organisations, the publication underlines five core principles that apply to both methods when used as tools for social change.

However, this is just the start of the conversation; there will be many more examples to share, and much to learn. A central principle of this annual publication is to reframe narratives, and from there let the conversation flow and turn these five principles into ten, twenty and so on. Much is made in the anti-trafficking field of silver bullets and single answers, but migrant women's lives and experiences are far too varied and complex for that. We share these findings with care and with an invitation to respond, in the hope that through this deliberation we will build a progressive movement for change.

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# The Context of Starting a Social Change Agenda

Alfie Gordo

GAATW was born out of the women's movement in various countries in 1994. The first decade witnessed the foundations of GAATW's work in anti-trafficking by building evidence that challenged mainstream and vulnerability-based anti-trafficking discourse and initiatives. As a membership alliance, GAATW has been consistent in its political position of adherence to the human rights framework while being self-critical and engaging in periodic reviews to improve its practice and demand human rights for all migrants, regardless of the work they do or their legal status. GAATW looks beyond disempowering victim frameworks and advocates for assistance and social justice for distressed migrants and trafficked persons.

In 2018-2019, GAATW underwent an external organisational review with a series of discussions which resulted in the creation of a document, the [2020-2030 Theory of Change \(TOC\) of GAATW](#). Feminist understanding and analysis of trafficking and women's work and migration are key components of the TOC. The process has pinpointed the distinct challenges faced by GAATW members and the communities they serve on the ground. One such challenge, for example, is that the dominant narratives and discussions that shape responses to trafficking, labour migration, and labour rights are highly problematic and often exacerbate the difficulties encountered by migrant workers, especially women. Based on the challenges affecting the Alliance and the understanding of the global contexts, GAATW came up with four long-term objectives to focus on: shifting the understanding of trafficking to see it as a result of economic trends, gender inequality, and weakened labour rights (including sex workers' rights); responding to challenges faced by migrants with a focus on their autonomy and labour rights; fostering dialogue among movements for a shared feminist view of labour migration; and advocating for policies that recognise and support women workers and their representation in decision-making processes.

Throughout, GAATW has engaged in thematic consultations, knowledge-building initiatives, and field visits with members and allies. Many member organisations of GAATW have been providing support and services to migrants and trafficked persons, especially women, in various regions of the world. Members have been involved in social and structural transformations within their communities through campaigning for policy changes, engaging in

participatory action research, coordinating community organising projects, facilitating access to justice, and raising awareness about the experiences and needs of migrants and trafficked persons. These collective actions firmly ground the Alliance's advocacy and strategic directions for its future work.

While preparing for GAATW's 30<sup>th</sup> anniversary celebration and the International Members Congress and Conference (IMCC) in 2024, the International Secretariat (IS) launched an online survey to gather insights from our members on how they perceive their work as contributing to social change within their country or region. We wanted specific examples of their social and collective actions to reflect on their achievements, challenges faced, and strategies employed to tackle social justice issues.

Coincidentally, Professor Nivedita Prasad, a long-time ally of GAATW and former director of GAATW member Ban Ying in Germany, drew on her research in this area to partner with GAATW in this process.

The online survey titled *Methods of Social Change* served as a tool to understand how members effect social change, address societal challenges, and reflect on their learnings. We asked about traditional and non-traditional strategies members use to drive a change agenda that includes social actions, campaigning, organising, strategic litigation, People's Tribunals, transformative justice, and participatory action research. We sought to hear from our members about what has worked to bring about social change and where obstacles lie.

The online survey received 42 responses from 25 countries across all global regions, (41% response rate from 102 GAATW members). The questions revolved around members' work to facilitate social change, significant achievements and obstacles to meeting goals, and challenges encountered as well as the lessons learnt. While GAATW primarily addresses issues faced by women, many members also work with men, trans people, and children. However, for this survey, members focussed on their work with local and migrant women farmers, sex workers, and other workers in the informal economy.

As Figure 1 shows, all 42 respondents have used methods of social change. Efforts include collecting facts and testimonies of women as a way to combat state violence against sex workers, meeting with UN independent experts to raise concerns about the conflation of migrant sex work and trafficking, and holding press conferences to demonstrate human rights violations against sex workers in the implementation of anti-trafficking policies. In Canada, a campaign was launched in response to comments by a city councillor in Richmond, British Columbia, suggesting the use of bylaws to shut down massage

businesses under the guise of combating trafficking. GAATW member SWAN Vancouver, which provides support to women in these local businesses, argued that there was no trafficking occurring and that such actions could endanger women working there. They initiated a public campaign urging city officials to engage with SWAN and the women affected. After meeting with im/migrant women for their input, they used aliases for safety in their public communications and pressured the city to stop aggressive bylaw raids. Their efforts led to city councillors advocating for a review of bylaws related to massage businesses, resulting in a motion that was passed. However, there are concerns about the city’s genuine engagement with SWAN and the women, and the ultimate outcomes of the review remain uncertain. The situation reflects ongoing issues of misinformed anti-trafficking rhetoric and a paternalistic attitude towards im/migrant women in sex work.

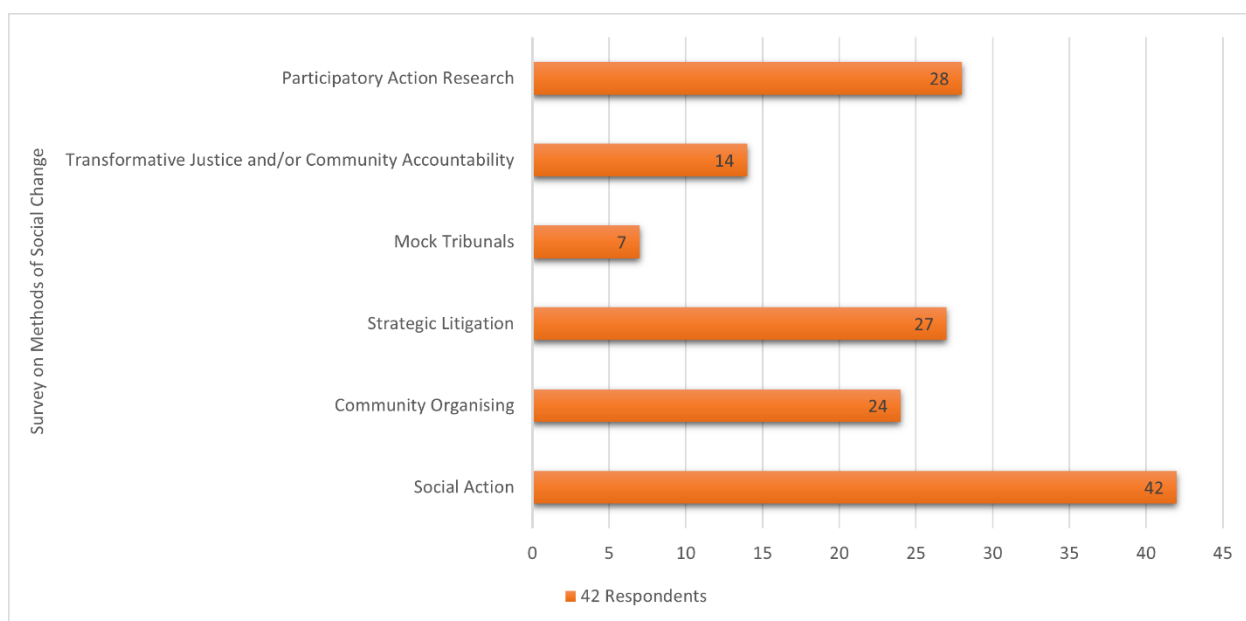


Figure 1 Total count of members who have provided examples of each approach to social change.

In Cambodia, Legal Support for Children and Women (LSCW) discusses the importance of educating and empowering community members to understand and exercise their rights, particularly in cases of government or private sector abuse. It emphasises the need for community outreach programmes and building a protection network. It highlights challenges of accessing justice and financial compensation for rights violations, alongside the limited knowledge of community members and the complexities of the judicial system. It also noted the deteriorating civic space in Cambodia. Meanwhile, other members integrate specialised interventions that focus on the risks and multiple forms of violence faced by migrants and refugees.



In North Macedonia, Open Gate/La Strada Macedonia has been engaged in social action aiming to enhance support and services for migrants and refugees in or transiting through North Macedonia, particularly vulnerable groups. Their key activities included an Intercultural Art Bazaar to promote cultural exchange and 15 storytelling events held in informal settings to share personal refugee experiences and foster empathy. These initiatives aimed to improve mental health support, cultural appreciation, and community connections. However, challenges were faced, as some local individuals held negative attitudes towards refugees and migrants, which hindered dialogue and acceptance. This has led to reflections on the need to debunk misconceptions and promote inclusive attitudes and spaces.

Other social actions include forming self-help groups for women to enhance financial independence and community solidarity. Campaigns advocating for the rights of women migrant workers and for establishing emergency shelters were also carried out.

Twenty-four, or 57%, of the respondents indicated they had used community organising to assert migrants' and trafficked persons' rights and challenge political inaction. In Indonesia, Solidaritas Perempuan was involved in the formation of informal women workers collectives where they organised women workers in ten provinces through leadership building and dialogues. This resulted in the formation of Feminist Economic Solidarity<sup>1</sup> to challenge the lack of state recognition of women's experiences.

In Mexico, Brigada Callejera introduced street journalism to cisgender and transgender sex workers through the creation of the independent newspaper *Noti Calle*. This publication features interviews with sex workers and their companions, highlighting their daily realities and current issues. The initiative was created to address the sensationalist way mainstream media often depicts sex work and human trafficking. The newspaper also educates sex worker communities about the tactics used by traffickers and raises awareness among young women who may not recognise that they are being trafficked.

Strategies for transformative justice and community accountability received 14 responses (33%) from members. These are alternative approaches to addressing harm, violence, and conflict, focussing on healing, systemic change, and collective responsibility rather than punishment and incarceration. An example from Women's Initiatives (WINS) India demonstrates that many women human rights defenders are not recognised for their leadership and

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<sup>1</sup> Feminist Economic Solidarity (FES) is a collective movement to build women's economic independence and foster organisations with feminist values as the foundation of their struggle.

contribution, even by their organisations, families, and communities. Despite this disregard, women leaders in the community still share their stories of violence against women. They argued that the most significant barrier to achieving change is the indifference they face from state institutions, fundamentalist groups, and private corporations. WINS highlighted that women often carry the sole responsibility for domestic care while engaged in public activities, and communities lack effective and reciprocal understanding of gender and related issues.

A GAATW member in Peru, Capital Humano y Social (CHS) Alternativo, shared two examples of working with communities. The first involved raising awareness about cases of trafficking for labour exploitation, while the second focussed on a state training programme in technical education that enables individuals to pursue a teaching career. In the first case, the community committed to implementing measures to prevent trafficking cases from occurring in the future. In the second instance, aspiring teachers pledged to undergo training and develop prevention initiatives to promote safer environments. While they have successfully raised awareness about human trafficking within the communities, this effort has highlighted the importance of also addressing other issues related to gender-based violence.

Overall, as demonstrated by GAATW members, the methods that facilitate social change in the broader contexts of women's rights, anti-trafficking, and labour migration call for a comprehensive and intersectional approach that challenges both systemic injustices and amplifies the voices of those directly affected. Responses highlighted the importance of community organising initiatives, women's leadership and representation, survivor-led advocacy, and transformative justice frameworks to address structural inequalities and promote human rights. These strategies remind us that change happens as part of a long process of prioritising human rights, accountability, and advocating for social justice.

Based on the survey results and discussions at the IMCC, we observed that many members and allies are using alternative justice mechanisms as avenues for public participation and awareness-raising to push for systemic change, offering hope to those seeking justice outside conventional courts. In the end, rethinking our legal structures can not only help address trafficking and exploitative labour migration but also create a fair and rights-centred social environment. These contexts have inspired us to pursue this inaugural issue, which focusses on in/formal pathways to justice. It explores mechanisms and practices that extend beyond traditional legal systems to provide accessible, community-centred pathways to social justice.

# People's Tribunals:<sup>2</sup> An alternative pathway to Justice

Nivedita Prasad

## Summary

Many of the principles or procedures associated with formal legal systems can serve as barriers to participation for those whose rights have been violated. People's Tribunals offer an opportunity to re-shape narratives, and re-centre power with those whose rights have been violated. They provide an alternative means of conflict resolution and recognition of rights violations, where formal legal systems may not serve this purpose and where simple narratives of right and wrong, guilty and innocent may not work. This piece provides an overview of what People's Tribunals are and how they have been used in a range of global contexts to achieve justice.

People's Tribunals, established by social movements, are:

- *Non-legal settings where charges and witness statements are presented publicly and investigated and assessed by experts*

Their purpose is two-fold:

- *As an alternative when a formal legal investigation is impossible, undesired, inadmissible or unjust*
- *As an alternative space created by people whose rights were violated, or their allies to present charges.*

If successful, their outcomes can include:

- *Making human rights violations visible*
- *Enabling broad and deep participation of the people affected by wrongdoing enabling them to claim space.*
- *Raising widespread awareness of the issues*
- *Contributing to the empowerment of those whose rights were violated*

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<sup>2</sup> This text is based on the following publication: N Prasad, "Gesellschaftstribunale als Empowerment und Thematisierung von Unrecht", in N Prasad (ed.), *Methoden Struktureller Veränderung in der Sozialen Arbeit*, Barbara Budrich Publishing house, 2023, p. 114-130.

Critiques of People's Tribunals include:

- *Bias or one sidedness, furthering one particular agenda*
- *Lack of formal enforcement capacity*
- *Western centrism of some People's Tribunals*

There is a long history of using People's Tribunals globally, including an early documented example dating back to 1966 (the International Vietnam War Crimes Tribunal) which contributed to the Permanent People's Tribunal, founded in the 1970s and continuing today. The Women's International War Crimes Tribunal (Tokyo, 2000) is a high-profile example of a successful People's Tribunal involving women who had been systematically sexually abused by the Japanese military during the Second World War but justice continues to be denied by the Japanese Government. The United Nations (UN) Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985) and UN General Assembly Resolution on the Right to the Truth (2014) establish a basis in international soft law for informal and non-judicial justice systems.

The article advises NGOs seeking to establish People's Tribunals to work in partnership with legal experts, academics, and politicians. The World Women's Courts have developed standards for People's Tribunals which can serve as a guide, and a foundation for evolving practice in this area.

Trusting and relying on legal systems to seek justice can be considered a privilege that is not accessible for many for various reasons. Wrongdoings that have not been legally acknowledged (such as marital rape) or crimes that are being denied (e.g. in the case of the so-called ‘comfort women’ during the Second World War in Asia) cannot be taken to regular courts. Marginalised groups, such as migrants and sex workers, who have had their rights violated by state authorities, often have valid reasons to distrust the fairness of a trial. Similarly, others, like women who have experienced rape or trafficking, may feel unable to endure a trial process. In some instances, formal legal principles can render a conviction unattainable, while in other situations, the person responsible for the crime may be untraceable or deceased, as in the case of Slobodan Milošević. The need for informal judicial settings can also arise if a conviction seems unrealistic, for example, if the evidence is poor or the crime was committed so far in the past that the testimony would probably no longer be sufficient for a conviction, or the number of victims or perpetrators is too large for a usual court case (cf. Rogo 2020: 53). The required presence of the accused in a court case can also be challenging for victims whose rights have been violated. This is especially true in cases of sexual violence or trafficking, where the accused often question the victim’s character and integrity. Non-judicial tribunals may be an alternative if court hearings yield unsatisfactory results or if there are many victims and perpetrators involved in what are known as ‘collective crimes’. Tromp also emphasises the necessity of People’s Tribunals in situations where individuals transition from being victims to becoming perpetrators, or vice versa (cf. Tromp 2020: 77). Additionally, there are cases where people who engaged with formal legal systems were dissatisfied with the outcomes of the proceedings. This dissatisfaction often arises because such cases rarely gain public attention, leading to limited recognition of the injustices that occurred.

Social movements have responded to these situations with People’s Tribunals, which are also called Russell Tribunals, Commissions of Inquiry, Civil Society Courts Tribunals, or Mock Tribunals.<sup>3</sup> When and where<sup>4</sup> the first People’s Tribunals took place cannot be clearly determined. Although it is possible to determine when the first such tribunal took place in Europe or the USA, it is not possible to take a global view, if only because the material to be examined is likely to be difficult to access in terms of language. Some GAATW members have been involved in such courts in the past: Solidaritas Perempuan with the ‘People’s Water Forum’<sup>5</sup> in Indonesia and CDH with the ‘People’s Tribunal for

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<sup>3</sup> Mock Tribunals are not be confused with Mock trials, which are often used in the context of political education or to train lawyers or social workers. Mock trials are based on a fictitious event; participants take up the roles of all required positions. People affected by the wrongdoing do not get to speak, they remain invisible, which stands in total contradiction to the idea of People’s Tribunals.

<sup>4</sup> A Eurocentric narrative is often used here, for example, in Paulose, 2020 and Byrnes/Simm, 2018.

<sup>5</sup> See contribution by Solidaritas Perempuan.

Justice in Prisons<sup>6</sup> in Ecuador. Siriporn Skrobanek, a founding member of GAATW, has participated in three such tribunals.<sup>7</sup> LEFÖ is planning a women's tribunal on Femicides in Austria.<sup>8</sup>

The need for such tribunals is also highlighted by the United Nations 1985 'Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power', which proposes the use of 'formal or informal procedures that are expeditious, fair, inexpensive and accessible' (UN 1985: para 5, emphasis N.P.). These 'include mediation, arbitration and customary justice or indigenous practices' (ibid.: para 7). In a more recent 2013 resolution regarding the right to truth, the UN encourages states 'to disseminate, implement and monitor the implementation of the recommendations of **non-judicial mechanisms**, such as truth and reconciliation commissions' (UN 2013: para 3, emphasis N.P.). Peoples's Tribunals can be considered a form of such informal procedures.

Quite well known are the so-called Russell's Tribunals organised by Bertrand Russell and others. The first one, the 'International Vietnam War Crimes Tribunal', was initiated in 1966 and took place in London. The aim of that tribunal was to document and investigate US war crimes in the Vietnam War after 1954. Prominent figures from the peace and civil rights movements participated. The US government refused to cooperate, but individuals from the US military and representatives of the National Front for the Liberation of South Vietnam and the government of Vietnam participated and provided valuable information. The tribunal concluded that the USA had committed serious war crimes in Vietnam and Laos; complicity was established for many other states (such as Australia, South Korea, Thailand, and the Philippines).

After Russell's death in 1970, his legacy was continued, and many other national and international tribunals were initiated. Russell and others subsequently founded the Committee for Fundamental Rights and Democracy in 1980, which still exists today. Lelio Basso, an Italian lawyer, publicist, and left-wing socialist politician who was also involved in the first Russell Tribunals, founded the Permanent People's Tribunal<sup>9</sup> in the 1970s, which continues to enable groups that have suffered serious rights violations to apply for an investigation. By November 2024, the Permanent People's Tribunal had apparently held more than 50 sessions worldwide.

(World) Women's Courts can be considered a feminist version of Peoples's Tribunals. Siriporn Skrobanek finds that the (World) Women's Courts are of

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<sup>6</sup> See contribution by CDH.

<sup>7</sup> See interview with Siriporn Skrobanek.

<sup>8</sup> See contribution by LEFÖ.

<sup>9</sup> See <http://permanentpeopletribunal.org/?lang=en> [Accessed 22 February 2025].

significant relevance for raising awareness on violation of women's human rights for more than three decades.<sup>10</sup> The NGO Vimochana in Bangalore has documented many of these courts.<sup>11</sup> The first Women's Court convened in Brussels in 1976 and used an intersectional lens to address sexual and reproductive rights and sexualised violence in many countries around the world.<sup>12</sup> The first World Women's Court took place in Lahore in 1992. Since 1996, there has been a permanent women's court for the Arab world (Mahkamate El Nissa El Arabiya) in Beirut.

### ***Defining People's Tribunals***

All non-judicial tribunals are primarily concerned with drawing public attention to injustice and allowing people to give testimonies of their experiences. Russell/Van de Ven make it clear that the belief in 'the power of personal testimony to educate, politicize, and motivate' (1990: 152) was fundamental to Women's Courts from the beginning. They point out that this belief in testimony is central to many women's movements and has been tried and tested many times, both in small 'consciousness-raising groups' and in larger 'speak-outs' (cf. *ibid.*). 'The telling of these stories is not about *breaking the silence*, for these stories have already been told many times before, but about the thickness and *multiplicity of the layers of silence that envelop them* and about the trickiness of finding ears that can hear them' (Marguerite Waller in Kumar 2007: 209). 'The individual women who present their testimonies, come therefore not so much as victims seeking justice for their individual problems, but as survivors who are empowered enough to seek a collective accountability' (*ibid.*: 211).

The Women's Courts seek to weave together the *objective* reality (through analyses of the issues) with the *subjective* testimonies of the women; the personal with the political; the *logical* with the *lyrical* (through video testimonies, artistic images, and poetry); the rational with the intuitive (Darwish n.d.: 6). These courts 'invite us to seek a *new paradigm of knowledge* challenging the one, rational, scientific, neutral, objective *universal way to knowing* as the only way to know' (Kumar 2007: 187). Kumar also sees the courts as an inspiration in a 'search for *alternative ways to justice* outside the adversarial legal system in the terrain of *alternative modes of conflict resolution* that are based on norms of reformative justice that are to be found in the communities we work with' (*ibid.*: 205). They have also been described as '*public hearings* as a forum for human rights education' (Nelia Sancho in Kumar 2007: 206) that have proved to be an 'extremely sensitive and powerful media to reveal

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<sup>10</sup> See interview with Siriporn Skrobaneck.

<sup>11</sup> See 'World Courts of Women', Vimochana, <https://www.vimochana.co.in/courts-of-women/> [Accessed 19 February 2025].

<sup>12</sup> A detailed report can be found in Russell/Van de Ven, 1984.

the interconnections between the various forms of *personal* and *public* violence against women' (ibid.).

Paulose defines People's Tribunals as 'movements that are created for the purpose of examining rights violations whereby civil society believes the violation has not been formally recognised or addressed by the state, community, or a legal system' (Paulose 2020: 2). This definition overlooks those affected by the wrongdoing. An ethical approach in social work or in NGOs requires understanding the needs and wishes of those whose rights were violated. It is crucial to determine what they hope to achieve from a tribunal, assess the realism of their expectations, and evaluate whether they can testify for themselves or need assistance.

People's Tribunals in the context of social work or social movements could thus be characterised as:

Non-legal settings in which charges and witness statements are presented publicly, investigated and assessed by experts in cases where a legal investigation is not possible, desired, or inadmissible or perceived as unjust. The charges can be presented by the people whose rights were violated, or their allies. The aim of such investigations is to make human rights violations visible with the broadest possible participation of the people affected by the wrongdoing, to give them a public voice and thus to raise awareness of the issue as widely as possible. Ideally, such tribunals contribute to the empowerment of those whose rights were violated.

People's Tribunals must be differentiated from truth and reconciliation commissions; both are initiated by states<sup>13</sup> following serious human rights violations often under pressure from civil society actors. They pursue the goal of making injustice visible, coming as close as possible to the truth, and giving those whose rights were violated a voice. Truth commissions are often used to mark a regime change and are set up to accompany states in their transition to democracy (cf. Rogo 2020: 54). The aim of these commissions is to bring perpetrators and victims into a public conversation to facilitate social reconciliation, so the participation of the alleged perpetrators is essential, which is not central in People's Tribunals.

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<sup>13</sup> Occasionally, also by the United Nations.



Examples of such state-initiated courts of people include the Gacaca tribunals in Rwanda, which were set up after the Rwandan genocide in 1994 in order to deal with the large number of victims. As a result of the genocide, the country lost almost all its judges, and many institutions were destroyed. At the same time, there were many crimes that needed to be investigated. The government, therefore, categorised the crimes according to their severity and distributed them between the International Criminal Tribunal for Rwanda in Arusha (Tanzania), the national courts in Rwanda, and the local Gacaca tribunals. An estimated 11,000 (cf. Clark 2010: 3) Gacaca tribunals were held between 2001 and 2012, which, although they were led by judges who did not necessarily have classical law training, were also able to impose sentences. These courts built on a tradition that had already been practised in the pre-colonial history of Rwanda and Burundi to settle minor disputes over property, inheritance, marriages, and more.<sup>14</sup> In 1962, these tribunals were integrated into the official legal system of Rwanda and thus retained their relevance in an adapted form.

Some states or state institutions hold public meetings, known as the People's Tribunal, which can be considered as public hearings of citizens and/or residents who get the opportunity to raise specific issues towards state authorities, who will ideally support them. This is, for example, the case with the Gono Shunani hearings of the Bureau of Manpower, Employment and Training (BMET) in Bangladesh.<sup>15</sup>

### *Aims of People's Tribunals*

People's Tribunals focus on what happened and its effect on people rather than determining the guilt or innocence of perpetrators. This contrasts with ordinary court proceedings, where the question of guilt is central and procedural rules and evidence restrict what victims are allowed to say and ask. In People's Tribunals, victims can tell in detail what happened to them without legal restrictions on the rules of evidence. Jean-Paul Sartre, a member of the first Russell Tribunal, thought of People's Tribunals as 'critical spaces for reflection, gathering of testimony, and documentation that then require additional political processes to determine what actions out [sic!] to follow from their findings' (Sartre in Paulose 2020: 2). In addition, 'People's tribunals may also accuse a broader range of actors than do official institutions, sometimes even intangible defendants such as "the world economic system", "Europe" and "ourselves"' (Dehm in Byrnes/Simm 2018b: 263f.).

As the aim of People's Tribunals is to investigate and document human rights violations that were either insufficiently addressed or went unpunished by the

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<sup>14</sup> For a detailed description of the procedure of such tribunals, see Clark, 2010, 52ff.

<sup>15</sup> See contribution by BNSK.

nation-state or international law, they can be regarded as a ‘reminder of the violence in the social conscience’ (Rogo 2020: 54), assume a ‘shaming function’ (Kaufmann 2020: 169), or be seen as a ‘contribution to the reduction of lawlessness’ (cf. Böhlo 2010: 76), whose significance lies in the fact that they can reveal the actual causes of injustices and articulate the morally correct, true right (cf. Rigaux 1995: 161, fn. 41 in Böhlo 2010: 76). (World) Women’s Courts follow a similar logic: they ‘explore on testimonies of pain and resilience, aiming to reimagine justice through the narratives of those affected and the insights of experts and practitioners in the field’<sup>16</sup> and enable marginalised women to narrate their stories, reclaim their memories and find new visions.

The Asian Women’s Human Rights Council (AWHRC), which was one of the many key actors in the Asian Tribunal on Women’s Human Rights in Tokyo in 1994,<sup>17</sup> describes the intentions of their tribunal as:

a public hearing on testimonies of women concerning violence against women {...} that aimed to challenge both mainstream definitions and perceptions of women and violence against women, and to seriously question the existing solutions or remedy offered within established socio-legal discourses and institutions. {...} The tribunal provided the opportunity for women to be heard by creating new spaces for them to speak, to challenge and to be heard. {...} It not only hoped to publicize the enormity of crimes against women across cultures and nationalities. It wanted to show how the law, social policy, cultural norms, economic and spatial arrangements and the media perpetuate the subordinate, exploitative and oppressive conditions of women (AWHRC 1994:1).

People’s Tribunals also ‘go beyond conventional discourse by combining objective analyses, personal testimonials, artistic elements, and poetry, constructing a new knowledge paradigm that challenges globalization and addresses various forms of violence against women.’<sup>18</sup> Witnesses have also reported feeling relieved because the audience was interested in their story. Rogo confirms this experience and speaks of People’s Tribunals as a ‘source of relief’ (Rogo 2020:42) for those whose rights have been violated. He also assumes that the impact on the healing process of those affected has so far been underestimated, and reminds us that most of the decisions of People’s Tribunals have recognised the trauma suffered (cf. *ibid*). In this way, People’s Tribunals can also serve to empower those affected by (human) rights violations.

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<sup>16</sup> See Vimochana, <http://vimochana.co.in/courts-of-women/>.

<sup>17</sup> See Interview with Siriporn Skrobaneck.

<sup>18</sup> See Vimochana.

## *Criticism of People's Tribunals*

Ever since the first People's Tribunals were held, they have also been criticised—sometimes vehemently. The fact that they have still taken place and been recognised for several decades speaks about their success. The fact that so many different actors invest resources to organise such tribunals also shows that they are considered necessary and useful.

Kaufmann (2020) and Byrnes/Simm (2018) provide a critique of People's Tribunals, including the fact that defendants are not part of the hearing and that judgements are based solely on the statements of those whose rights have been violated (cf. Kaufmann 2020: 170). Byrnes/Simm point out that 'while most people's tribunals make a point of inviting the states, international organisations or corporations that are the subject of the tribunal's proceedings to participate, such "defendants" rarely respond and almost never appear' (2018a: 20). So in those individual cases, the defence was taken over by *amicus curiae* interventions (cf. *ibid.*: 21)—an approach that takes this criticism into account. Byrnes/Simm view states who respond to requests from People's Tribunals, even when they do not have to, as an indication that states fear having their reputations damaged (cf. *ibid.*: 22), which, in turn, speaks in favour of their success. On the other hand, many Women's Courts deliberately dispense with the perspective of the accused, not least because they assume that they already have the power of definition and are able to articulate their perspectives widely. Their absence also ensures that women whose rights have been violated can make their statements in as safe an environment as possible.

Another critical aspect arises from the financing of tribunals by NGOs or private individuals, who follow their own political agenda, which is why some experts suggest crowdsourcing as another type of funding (cf. Byrnes/Simm 2018a: 37).

The fact that 'many Peoples' Tribunals in the 1970s and 1980s [...] were organised by bodies in the Global North and concerned violations in the Global South' (Byrnes/Simm 2018a: 38.) led to these tribunals occasionally being devalued as Eurocentric. This raises the question of whether this criticism is rooted in Eurocentric ignorance as it fails to consider that such courts have been established in many parts of the world, in some cases as 'traditional' courts, without this knowledge being recognised in the Global North. This criticism is contradicted by the fact that feminist organisations are now holding (World) Women's Courts in many parts of the world. However, the concern that many decisions in tribunals in the non-Western world are often influenced by representatives from other regions—usually from Western parts of the world—seems more justified.

The most significant criticism concerns the fact that People's Tribunals do not have enforcement mechanisms for their decisions. Byrnes/Simm point out that the lack of state enforcement mechanisms applies equally to individual complaints to UN committees (cf. Byrnes/ Simm 2018b: 265). Böhlo, a lawyer, sees this lack of state power not as a disadvantage, but as a 'virtue'. In this way, the real 'why' and the actual interests that led to the conflict can be investigated. The jury would not dispense justice by virtue of state power, but by virtue of their 'civil and moral contribution' (cf. Böhlo 2010: 70f.). Russell himself pointed out that these tribunals had no means of enforcing their decisions, but at the same time saw the advantage of remaining free from state interference. Although People's Tribunals admittedly do not have formal legal power, civil society organisations have used their outcomes in formal legal settings, by, for example, submitting the results of such tribunals to UN committees (see Kumar: 2007: 202). The jury of the Women's International War Crimes Tribunal on Japan's Military Sexual Slavery in Tokyo in 2000 even officially handed over its 'verdict' to the International Criminal Court in The Hague, which uses it for argumentative purposes to this day, demonstrating that the results of People's Tribunals can also influence legal judgments. Regardless of their results being used in classical legal settings, such tribunals have social power and can be very effective in raising public awareness on issues that are often invisible in public discourse.

Kaufmann argues that some of these critiques have to be carefully considered while initiating such a tribunal. He recommends a 'fair and balanced group of panellists that, if possible, includes individuals from across the political spectrum and from several different countries' (Kaufmann 2020: 172) and urges panellists to take 'defence and all other evidence into consideration before arriving at their conclusion' (ibid.).

### *Initiating a People's Tribunal*

Some tribunals are held at local levels, others are national, international, or global. International tribunals tend to attract more global attention, as they have world-renowned judges and prosecutors with international credentials. This was specially the case with the 'Women's International War Crimes Tribunal'<sup>19</sup> held in Tokyo in 2000 on the initiative of feminist organisations from ten Asian countries. Byrnes/Simm distinguish between 'one-off' tribunals and the 'repeat players' (2018b: 261), i.e. actors who organise just one tribunal and those who are skilled in the practice and repeatedly participate in tribunals on various topics.

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<sup>19</sup> For an insight into this tribunal, see Dolgopol, 2018.

Initiating a People's Tribunal is labour and resource-intensive and can only be planned and managed to a certain extent. The approval and support of colleagues or organisations and external networking are therefore essential, not least to distribute the work, responsibility and resources. Networking also opens more possibilities when selecting witnesses and the jury. As with all forms of public relations work, the impact increases when prominent people are involved. However, it is not always easy to find such support. It can be helpful to ask resourceful stakeholders for support, for example, universities, political representatives, and associations which can provide people to serve as a jury and as experts. A jury with credentials seems to be crucial for the success of such tribunals.<sup>20</sup> These institutions may also have access to premises with a signalling effect where the tribunal could take place.

Very few NGOs are likely to have their own resources for such tribunals if they are considered as something totally exceptional or unusual. Instead, if they are seen as forms of public awareness or awareness raising and empowerment strategies, existing human and financial resources of NGOs can be utilised without alienating their purpose. The evidence presented in People's Tribunals and their results can be used not only in other court proceedings, but also in public awareness campaigns and lobbying (cf. Byrnes/Simm 2018b: 267).

Consideration should also be given to financing parts of a tribunal through donations or crowdfunding. If more NGOs were to use this methodology in the future, it would be beneficial to develop standards for its implementation that beginners could use as a guide. The World Women's Courts, for example, have already developed such standards<sup>21</sup> that can be helpful. As elaborated there, they consider it useful to invite expert witnesses to

explain the political, gender, social-economic, ethnical-racial and cultural context of violence, analysing its causes and consequences and formulating the context for individual testimonies, which clearly shows the significance of personal testimony intertwined with political analysis (Zenski sud feministicki pristup n.y.).

The Women's Courts aim for gender parity in juries and seek to include individuals with strong reputations, such as activists, academics, and legal experts. It is also important to consider including those with lived experiences, like former trafficked women, while ensuring non-paternalistic interactions. As with many methods of structural change, 'there is an element of objectification

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<sup>20</sup> Like the jury Siriporn Skrobanek mentions at the Vienna Women's Court in 1993 and the jury recruited by CDH.

<sup>21</sup> The 'Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power' (UN 1985) also provides valuable guidance for Peoples' Tribunals.

of witnesses' (Dolgopol 2018: 103), i.e. reducing witnesses to objects, which shows the necessity of risk assessment in advance. Disappointment can also occur if a testimony does not (immediately) lead to the desired result. It is therefore important to conduct a realistic assessment of the outcome, ensure that the witness is genuinely willing and able to testify, and that their testimony does not put them at additional risk or instrumentalise them for a political goal. Incorporating various forms of artistic expression has been a core element of Women's Courts; a collection of such material can also be seen as a step in preparing a tribunal.

There are many issues that arise in the context of GAATW member organisations and could be addressed with publicity, such as the effects of restrictive migration and sex work regulations, or any form of gender-specific violence. It would be worth considering that GAATW members who already have experience in People's Tribunals could assist or train others to initiate such tribunals. Alternatively, some people from the network and/or the International Secretariat could be identified as those who could regularly assist other member organisations who are thinking of initiating a People's Tribunal.

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# A Feminist Approach to Justice: A conversation with Siriporn Skrobanek about Women's Courts

Interview by Nivedita Prasad

Siriporn Skrobanek, a women's rights activist from Thailand and a participant in three women's courts, recalls her experience in women's courts as an alternative space for justice, advocacy, and healing, particularly for those who have been marginalised by traditional judicial systems.

In this conversation, Siriporn shares her insights on what drew her to women's courts, the impact they have on the lives of women seeking justice, and the lessons learnt from engaging in this movement.

Siriporn Skrobanek is a founding member of GAATW and served as the Alliance's first International Coordinator. Siriporn is also a founding member and President of the Foundation for Women (FFW), a feminist collective which worked in Thailand for four decades. FFW's feminist participatory action research with women in Thailand was instrumental in launching GAATW in 1994. Siriporn's deep commitment to women's rights, along with her networking skills and sharp strategic thinking, has built a strong foundation for GAATW. Siriporn has also participated in three women's courts, and we are very grateful for her willingness to share her experiences and analysis of women's courts with us.

**Nivedita:** When did you first hear of women's courts? And what was the impact?

**Siriporn:** The first one I participated in was in Vienna on 15 June 1993. It was called 'The Global Tribunal on Violation of Women's Human Rights' and was held during the UN World Conference on Human Rights. There was a group of women from various women's organisations around the world. I remember Charlotte Bunch from the US, Nelia Sancho from the Philippines, and Alda Facio from Costa Rica. Within the women's tribunal in Vienna, the issue of violence against women was raised in its various manifestations (trafficking, sexual exploitation, domestic violence, etc.). This tribunal was inspired by many other tribunals that had taken place before in different regions. The preparation was very good, so was the jury and the impact of that court was significant. One can learn a lot from the experience.



I do not remember the names of the jurors, but one very famous judge from India Prafullachandra Natwarlal Bhagwati was one of them. I met him again in New Delhi when we were on a panel for the UN satellite conference on violence against women. He was an excellent jury member and gave a very good account. It was very powerful. The way the judges organised the hearings was very respectful towards the women who gave testimonies. Some of the women spoke for themselves, while others requested that someone else read their testimony. I believe that court in Vienna pushed the UN to accept the UN Declaration on the Elimination of Violence against Women [A/RES/48/104 of 19 December 1993]. After the Vienna conference, the UN Division for the Advancement of Women (DAW) and the Center for Women's Global Leadership at Rutgers University in New Jersey organised an expert meeting on violence against women. I was also invited to take part together with Indai Sajor and Hina Jilani from Pakistan to deliberate on the draft Declaration on Violence against Women. In all, the content was comprehensive, with clear definitions and incorporated all forms of violence against women in private and public spaces. So, we had only very minor changes, suggestions and recommendations.

**Nivedita:** I remember that at the end of the Vienna conference, there was this understanding that women's rights are human rights and that violence against women in the private sphere is a human rights violation because there is state responsibility. But I didn't know that the tribunal had also taken place and contributed to this very important development. How did you get involved in the tribunal?

**Siriporn:** In 1984 Charlotte Bunch and Kathleen Barry organised a conference workshop in Holland on trafficking and prostitution, in which I participated. Later, Charlotte became director of the Center for Women's Global Leadership at Rutgers University in New Jersey. They organised an institute for women where women with different backgrounds from around the world including activists, judges, academics, etc., participated. I was in the first batch in 1991. During this time, we discussed strategies to address violence against women within the human rights framework. And I think this is where the idea for the women's court originated. I remember meeting very smart women there, including Hina Jilani from Pakistan.

**Nivedita:** So, in the training, you learnt how people do tribunals?

**Siriporn:** The participants made plans. Someone suggested a women's tribunal and the campaign on 16 days of activism and they started working on these ideas.

**Nivedita:** When this idea of the tribunal in Vienna came up, you were at Foundation for Women, right?

**Siriporn:** We had not yet started GAATW. At Foundation for Women, we had organised a small workshop on human trafficking, where Nelia Sancho was also present.

**Nivedita:** How do you normally identify women who would give testimony in such a tribunal?

**Siriporn:** This is done by the women in the planning working groups.

**Nivedita:** Who were the organisers?

**Siriporn:** I think Charlotte and some other key international human rights activists. At that time, the Dutch government seriously took up the issue of violence against women and funded women to go to Vienna. Charlotte and others had organised a conference in The Hague prior to the Vienna conference with support from the government.

**Nivedita:** Did you talk to any women who gave testimony? People who write on women's courts always say it's very important for women to speak out and give testimony. But I have the impression that nobody asks them how they felt. So, do you have an idea of how the women who testified felt about it?

**Siriporn:** Yes, I think it is essential that the women agree to testify. The support provided by the organisations with whom the women travelled was also very important. They were already acquainted with the women, and it was guaranteed that those who gave testimony would not be 'just dumped', as that would have been very disrespectful. It is essential to show respect and to be attentive. Overall, it was very well organised. The women who gave testimony were treated with a lot of respect. So, for example, while they spoke, the doors were closed, nobody could just walk in or out. The trafficking case presented in Vienna was from a woman from Latin America. I think Indai Sajor and Nelia Sancho had also brought in women who had agreed to give testimonies. Nelia was also one of the speakers at the event on trafficking and I think that they might have started planning the Tokyo Court of women there. So, Vienna became kind of an example. You can see many courts; some call them courts, some tribunals.

**Nivedita:** How was the Tokyo event of 1994 financed?

**Siriporn:** It was supported by various donors.

**Nivedita:** The organiser was the Asian Women's Human Rights Council (AWHRC). Were they also supported by these donors?

**Siriporn:** AWHRC collaborated with Japanese groups to organise the court and it is possible that the Japanese government also supported the event, though, I did not ask about that. There was this famous Japanese journalist Yayori Matsui,

she had very good connections with some members of Parliament and some Japanese organisations.

**Nivedita:** You know, I'm a bit confused because there was another women's tribunal in Tokyo in the year 2000.

**Siriporn:** Yes, that was later. The first one, which I attended, was on trafficking, in 1994. Indai Sajor played a very important role in the tribunal in the year 2000.

**Nivedita:** The 2000 one was 'The Women's International War Crimes Tribunal on Japan's Military Sexual Slavery'. It is very prominent online and in other publications. Do you recall why there was a second tribunal on comfort women, which also took place in Tokyo? Because in the one you visited, the issue of comfort women was also raised. And I think two or three of them also went and gave testimony. But what was the reason to have a second tribunal on comfort women then?

**Siriporn:** I think that many felt that justice hadn't been served, so they wanted to do more. And I think that this one was initiated by Indai Sajor. The prominence of this tribunal might be connected to the fact that many Western organisations had supported the tribunal.

**Nivedita:** Maybe that's also because they had very prominent judges. I think like the highest judge from Argentina, one from The Hague and so on. However, I remember you once mentioned that you went with a woman to Tokyo in 1994, who gave testimony. What was that about?

**Siriporn:** A woman from Thailand was looking for her daughter she suspected of having been trafficked to Japan and had lost contact with her family. The mother was very happy because she testified and the newspaper wrote about the case. The daughter was found, but she was not very happy being found, as she still had a huge debt. She had reached the stage where she could work more freely and make money. She did return to Thailand, but was not very happy because it was difficult to find work in the village.

Aside from that case, we came to know of the Shimodate case in Japan, which involved three trafficked Thai women who killed their Madame in order to escape. When we returned from Japan, we launched a campaign to save these women, which ultimately led to a reduction in their sentences.

**Nivedita:** What other impact do you think or do you remember that this Tokyo Tribunal had?

**Siriporn:** In terms of raising public awareness on the issue of comfort women, it was important that the responsibility of the Japanese government was made explicit. Additionally, the issue of compensation was raised, leading to the

establishment of the Asian Women's Fund. However, there was also a lot of conflict on that issue, as some of the supporters did not want to accept it.

**Nivedita:** I think there was some controversy including the absence of a public apology from the Japanese government. So, some Filipino *Lolas*<sup>22</sup> didn't accept, right?

**Siriporn:** I am not sure but I think that some of the *Lolas* would also have liked to get something,<sup>23</sup> because they were old, right? It seems there was a conflict between the activists and the affected women, the principle and the mode of survival.

**Nivedita:** I was wondering because, in their readings, Corinne Kumar and others consider women's tribunals as a Southern perspective on violence against women. What are your thoughts on this? Do you see women's courts as a global feminist platform, or is it a platform that is more helpful in the South? Do you see a divide between the North and South?

**Siriporn:** I think that at the Vienna tribunal, there was no separation; one could feel a kind of solidarity between women around the globe because we used these campaign slogans: 'Women's rights are human rights' and 'Violence against women is a violation of human rights'. So, I think that we had a unified global issue on which to advocate and clear demands, and everybody felt content, but you don't know about the internal struggles. Apparently, there were some conflicts afterwards, and maybe like you said, it might have been a North/West and South issue.

**Nivedita:** From your perspective, are these courts an effective platform?

**Siriporn:** The first one in Vienna, certainly you see the results from that one. For the first time, it was accepted that violence against women is a human rights violation. The first UN Special Rapporteur on Violence Against Women and Girls was appointed, and we wrote recommendations, including the Vienna Plan of Action, which addressed women's issues. These contributions provided input to the Beijing conference in 1995. That was the era of these global conferences.

**Nivedita:** When I asked you about success, you said Vienna was successful. You didn't talk about Tokyo, so was Tokyo less successful or was it different? What would you say?

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<sup>22</sup> Lola is a Filipino word that means grandmother; here, *Lolas* refer to the ageing Filipino "comfort women" as a group.

Comfort women in the Philippines were referred to as *Lolas*.

<sup>23</sup> In the Philippines, organisations such as AWHRC-Manila have supported the documentation process for *Lolas*, who wanted to access the Asian Women's Fund (AWF). Even after receiving the funds, the *Lolas* have continued to advocate for a public apology and just compensation from the Japanese government.

**Siriporn:** Incomparable, because the Vienna one was global, right? Women from all around the world participated. The Tokyo tribunal was mostly Asian.

**Nivedita:** What would you say was the outcome of the Tokyo Women's Tribunal for Asian feminists or for women in Asia?

**Siriporn:** I think that you have to ask Corinne Kumar [from the NGO Vimochana]. That's why later on I did not join further courts, because I feel that they cost quite a lot of money to organise. Then you talk, but often there is very little follow up, the outcome is not strong enough. I visited another one in New Zealand on the issue of the Māori Rights. This was organised just by one woman, and it was frustrating because the outcomes were not very clear. But other courts, like the one in Bangladesh, were good and had a good impact. However, I did not go to them.

**Nivedita:** Two GAATW member and partner organisations, one in Nepal and the other in Austria, are planning women's tribunals. The one in Austria is on femicide, and the one in Nepal is on Nepalese migrants in other countries. From your experience, what advice would you give them? What should they do? What should they not do?

**Siriporn:** It is important to focus on one issue. Like, in Vienna, femicide was one theme. In our Vienna court, it was the whole issue of violence against women which manifests in various forms. You also need to focus on finding good judges for the jury, who will provide a very good analysis and recommendations and have some credentials in society. And then you need to have a plan for after the court. It is not enough to simply hold an event; it is essential to also have a follow-up plan.

**Nivedita:** And for the women who are giving testimony—what should we keep in mind if you're looking for women to give testimony? Who is an ideal person to give testimony in such a woman's court?

**Siriporn:** First, we need to have consent: a woman who is willing to share her experience and clarify what her expectations from sharing her story are and her demands, or what she wants to get out of it. And I think the woman should also participate in the follow-up, if possible.

**Nivedita:** Looking back now, would you say that women's tribunals are an effective tool for social change, or not?

**Siriporn:** Yes, of course, now everybody at least talks about violence against women, even though the problem remains. But now it's in the limelight. In Bangladesh for example, some things changed after the tribunal. I think there should be an effort to document the changes that occurred as a result of the tribunals.

**Nivedita:** Can 'collateral damage'<sup>24</sup> occur through women's courts? Or is there something we need to keep in mind and say there is a risk?

**Siriporn:** I think, if you organise a safe venue, things should be okay. I cannot imagine any collateral damage because so far, I haven't experienced anything like that. Women who want to remain anonymous can give their testimonies to somebody else who testifies for them. They can hide their identity.

**Nivedita:** Is there something important I haven't asked you?

**Siriporn:** You can think about it and we can meet again.

**Nivedita:** Thank you so much. I learnt a lot. Really.

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<sup>24</sup> Referring to GAATW 2007, Collateral Damage: The Impact of Anti-Trafficking Measures on Human Rights around the World; <https://gaatw.org/resources/publications/908-collateral-damage-the-impact-of-anti-trafficking-measures-on-human-rights-around-the-world> [Accessed 22.02.2025].

# Strategic Litigation:<sup>25</sup> A formal pathway that can lead to Justice

Nivedita Prasad

## Summary

Strategic litigation in the context of social movements uses the courts to bring about social change based on international human rights. This piece provides an introduction to strategic litigation as a tool for change for anti-trafficking practitioners. It describes situations when strategic litigation has been used for social change, and sets out the process involved in using strategic litigation.

Strategic litigation is:

A form of legal proceedings that attempts to bring about wide and structural change by establishing a new standard in court.

Its purposes are to:

- Clarify legal questions in the courtroom
- Contribute to the development of law
- Document and publicise injustice

If successful, its outcomes can include:

- Contributing to the empowerment of the complainant and other people affected by the same problem
- Facilitating the assurance of a right, compensation, and public recognition for the complainant

Steps include:

- Identifying structural gaps: the poor or discriminatory implementation of a law or misalignment of national law with international law or lack of legal protections
- Identifying a complainant or compiling wider findings on an issue
- Forming a “litigation collective” which could include the complainant, lawyers, NGOs, social workers, etc.

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<sup>25</sup> This text is based on the following publication: Prasad. N., ‘Strategische Prozessführung: eine sehr geeignete Methode für strukturelle Veränderungen’, in N Prasad (ed.), *Methoden Struktureller Veränderung in der Sozialen Arbeit*, Barbara Budrich Publishing house, 2023, pp. 71 – 86.

- Filing a case in national, regional courts or via United Nations committees highlighting a human rights violation to set an example
- Supporting complainants emotionally and materially throughout

Critiques of strategic litigation include:

- The individual is only a vehicle for change, therefore their interests may be secondary
- High risks involved if a case is not successful, including fees and impact on the complainant and cause

The piece concludes by underlining that whilst strategic litigation can be immensely challenging, it can bring about structural change for people suffering rights violations.



NGOs, social workers, and advocates for social justice that work with vulnerable communities regularly operate at the intersection of the micro and macro levels. The frequency of micro-level problems often indicates that the root cause is a problem at the macro level that needs to be challenged structurally. Strategic litigation is particularly important in such situations, as it operates at both levels simultaneously, i.e., supporting individuals but, in ideal cases, also contributing to a desired structural change. In addition to clarification in the courtroom, strategic litigation helps to further develop the law, as it documents and publicises injustices. It can also contribute to empowering the complainant, as well as other members of the same vulnerable group (cf. European Roma Rights Center/INTERRIGHTS/Migration Policy Group 2004: 37).

Florence Kelley, a pioneer of social work, introduced the use of courts for social change as early as 1905. She sought precedent-setting decisions from the supreme court and actively used courts to develop the law and legitimise her claims (cf. Winkler 2022: 290). The reference to strategic litigation in the context of social work/social movements also appears later under different names, for example, Baxi (1985) speaks of ‘social action litigation’, Figueira-McDonough (1993) refers to it as ‘reform through litigation’ (cited in Burzlaff 2022: 68). Netting et al. use the term ‘class action lawsuits’ (Netting et al. 2017: 320). Other terms that are used are public interest litigation or impact litigation.

### ***What is Strategic Litigation?***

Strategic litigation involves filing a case to set as an example in court to highlight a significant human rights violation. This approach aims to achieve structural clarity at the macro level, benefiting all similar cases, while also addressing the individual case on a micro level. Such complaints can, but do not have to, include the involvement of a higher court like the African Court on Human and Peoples' Rights, European Court of Human Rights,<sup>26</sup> the Inter-American Commission on Human Rights,<sup>27</sup> a UN committee, or a supreme or constitutional court. However, decisions by lower courts can also be used as arguments in similar cases. There are now thematic case law databases from NGOs and courts that make it much easier to use precedents in this way.<sup>28</sup>

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<sup>26</sup> See contributions by LEFÖ (Austria) and ESWA (Europe), who took their cases to this court.

<sup>27</sup> See contribution by CDH (Ecuador) who took their case to this commission.

<sup>28</sup> For example, KOK, the German nationwide coordination group against human trafficking, offers a database with relevant case law from various authorities in the field of human trafficking and exploitation at <https://www.kok-gegen-menschenhandel.de/rechtsprechungsdatenbank/datenbank> [accessed: 18 November 2024]. The European Court of Human Rights, for example, summarises relevant decisions thematically under ‘Fact Sheets’, at [https://www.echr.coe.int/d/fs\\_violence\\_woman\\_eng](https://www.echr.coe.int/d/fs_violence_woman_eng) [accessed: 25.10.24]. Decisions and decision summaries of the African court on Human and Peoples' Rights can be accessed at <https://www.african-court.org/cpmt/latest-judgment-summary> [accessed: 28 October 2024].

Hahn, a legal expert on strategic litigation, characterises strategic litigation as:

people uniting in a litigation collective to achieve overarching goals with an individual legal case. The *strategic* aspect is that the litigation serves overarching legal, political, social, economic or cultural goals. *Tactically*, this is implemented through the systematic selection of legal means, cases and accompanying measures. In doing so, various actors with different perspectives and complementary expertise work together in a *litigation collective*. According to this understanding, strategic litigation is a form of collective legal mobilisation (cf. Hahn 2024: 133; translation N.P.).

This definition shows an interdisciplinary understanding of strategic litigation, which is not always the case. Many specialised NGOs' primary goal is to bring about social change beyond the individual case (cf. Koch 2015: 454); the individual person is only seen as a vehicle for change, as can be seen in the following definition:

'Strategic' or 'impact' litigation uses the court system to attempt to create broad social change. Impact lawsuits aim to use the law to create lasting effects beyond the individual case. The chief focus is law or public policy reform, *rather than the individual client's interests* (as is the case in ordinary litigation), although they may both be an objective. (European Roma Rights Center/INTERRIGHTS/Migration Policy Group 2004: 35, emphasis N.P.)

However, this understanding of strategic litigation is difficult to reconcile with the fundamental values of social work, NGO engagement, and advocacy for social justice.

### ***Strategic Litigation in the Context of Social Work/Social Movements***

Unfortunately—and this applies to all methods of structural change—it is not only social movements and NGOs that stand up for democratic values that use strategic litigation. Hahn reminds us that also profit-oriented companies systematically pursue goals that go beyond the individual case, particularly economic goals (cf. Hahn 2019: 9), and cites the lawsuits filed by the beverage industry against the introduction of the deposit on cans in Germany, and those filed by the AfD, a German right-wing party, on migration-related issues.

It is therefore essential to conceptualise strategic litigation in the context of social work or within social movements in a way where human rights standards and the consideration of the interests of the complainant are central. The interest can include financial compensation, the assurance of a right, public

recognition of an injustice, or a public apology. In some cases, the complainant may want to simply highlight their injustice. Taking this into account, strategic litigation in the context of social work/social movements could be defined as:

Strategic litigation is a method that attempts to promote structural change through exemplary court proceedings; the interests and safety of the complainants are central. In addition to clarification in the courtroom, it contributes to the further development of law, it documents and publicises injustice and ideally contributes to the empowerment of the complainant and other people affected by the same problem. The objectives of strategic litigation in the context of social work/social movements are based on international human rights.

If prioritising the interest of the complainant cannot be guaranteed, the outcome of the case can be very negative for the complainant and even contribute to deteriorating their situation. Therefore, in such cases, consideration should be given to a complaint's procedure that does not require an individual case, such as the inquiry procedure offered by most UN committees. Sometimes cases that were not conceptualised as strategic cases can gain strategic relevance, if the outcome has an impact on wider systems of influence.

The aims of strategic litigation are: to establish effective legal foundations, to ensure their consistent implementation, and to identify an existing gap. Cases are therefore suitable for strategic litigation if, for example:

- existing laws are not implemented or are implemented in a discriminatory manner; this is the case, for example, if people suspect that they are being checked solely based on specific characteristics like skin colour, specific occupations like sex work, etc.;
- there are gaps in implementation, for example, if a country has very good laws on paper, but is not implementing them in practice, which is common in cases of gender-based violence;
- legal regulations are suspected of not complying with international law, for example, the suspension of family reunification for child refugees in some European countries;
- acts against which there is (so far) no legal protection; this is the case, for example, with marital rape, which continues to be exempt from punishment in many countries.

### ***Working in Litigation Collectives (Hahn 2019: 19)***

Initiating strategic litigation poses major challenges for everyone involved, so clarifying roles at an early stage can make the work easier. This applies above all to cooperation with lawyers, whose involvement is mandatory. According to Adam Weiss, a lawyer specialising in strategic litigation, a 'strategic litigator needs to shut off the "lawyer function" in their brain if they are going to bring game-changing cases, since that function is geared towards prediction, not change' (Weiss 2019: 28). He also strongly advocates for cooperation with 'social movements to formulate goals that are not themselves bound by the law' (ibid.: 29).

When it comes to initiating a strategic case, the function of social workers, NGOs, or advocates in social justice is to first identify structural gaps and identify an 'ideal' complainant. This is particularly important when working with NGOs specialising in strategic litigation, as these organisations are characterised by the fact that they have a great deal of legal expertise and experience in (international) strategic litigation. What they often lack, however, is contact with people whose human rights have been violated. Social workers/NGOs, on the other hand, are regularly in touch with people whose rights have been violated. In addition to identifying structural gaps, they could therefore play an essential role in identifying potential complainants who might be interested in, and able to solve their case through strategic litigation. Social workers could also consider recruiting people, who are not clients of social work, but affected by the same structural problem and have access to more resources (see also Busch n.d.), who Weiss calls 'activist litigants' (Weiss 2019: 29).

Once a complainant has been identified, the right team must be put together and strategic partnerships formed; Hahn refers to this as a 'litigation collective' (Hahn 2019: 19). In rare cases, like the case shared by WINS in India here, even state authorities support strategic cases. The effectiveness of strategic litigation can be significantly increased if the court proceedings are accompanied by public relations and lobbying work, or if the proceedings are accompanied by a campaign. In some cases, like one case shared by Brigada Callejera from Mexico, no public relation work could be done in order to ensure the safety of the complainants. Further education and training for relevant stakeholders and research can also help to ensure that the topic receives greater recognition in society. Duffy also recommends the parallel use of other complaint mechanisms at the UN (see Duffy 2018: 244-247). All this can be very time-consuming, so social workers, NGOs and advocates for social justice should consider developing strategic partnerships with resourceful actors who can promote cases in their networks to improve the effectiveness of strategic litigation. Useful partners may include media representatives, religious institutions, universities, anti-discrimination agencies, other NGOs and/or national human rights bodies.

If the strategic case is initiated by social workers, NGOs or social justice advocates, it is important to also keep an eye on the coordination of the procedure, not least to ensure that their role is not reduced to ‘keeping the complainant happy’. The challenge for public relations work—ideally also done with the complainant and involved social workers—is to discuss the case not as an ‘individual case’, but to expose the underlying structural problem to the public.

If a complainant wishes to end the proceedings prematurely, it is the task of the social worker to communicate this decision to the other parties and ensure it is achieved. The advice and support provided after the proceedings naturally depends heavily on the outcome of the proceedings and the needs and wishes of the complainant.

### ***Proving Evidence in a Case***

Supporting the complainant—if necessary—and ensuring that they are up to date with the latest legal developments and genuinely understand them with all their implications is an important task for social workers. Consideration should be given to how the process can be further supported by social workers. CDH in Ecuador and ASTRA in Serbia, for example, collected testimonies for their strategic cases. Social workers can make their consultation notes<sup>29</sup> available as evidence, or they could carry out ‘testings’ to collect evidence of suspected discrimination. The aim of such testings is to obtain evidence of wrongdoings as part of a series of tests. This has regularly been done in cases of racial profiling where racialised people are denied access to restaurants, clubs, etc. During these testings, various people who have a very similar appearance except for one characteristic (skin colour or other features) would try to gain access to a place. If only racialised people are denied access, a strong indication of discrimination is produced that can be used in court proceedings. This was demonstrated, for example, in the case of *Dragan Durmic v. Serbia and Montenegro* (CERD/C/68/D/29/2003). Besides courts, such results can also be used as a powerful resource to convince the responsible to change a practice. If they do not agree to change their practice, the results can be made public by naming and shaming those who are responsible for such behaviour.

### ***Supporting or Starting a Case with Critical Monitoring***

Following Jacobsen, Niendorf (2023: 88) defines human rights monitoring as ‘the systematic collection, verification, and use of information to address human rights problems or compliances. The compiled data will have to be analysed against agreed standards’ (Jacobsen 2008: 1). She notes further that a

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<sup>29</sup> Of course, this requires the consent of the client making the complaint.

fundamental distinction is crucial between ‘situation monitoring’ and ‘case monitoring’. While case monitoring typically focusses on an individual case, situation monitoring has a broader focus and deals with macro issues. Following this logic, critical monitoring by GAATW members can be carried out by comparing human rights standards with the reality of a person or group and submitting this information with the case to highlight the structural nature of the alleged act.

A key strength of situation monitoring is that the findings can be used without revealing the identity of those affected (see Niendorf 2023) and are therefore helpful when strategic litigation is not based on a single case but on a complaint mechanism that allows the submission of a structural problem, such as NGO reporting to UN committees or using inquiry procedures of UN conventions. In addition, situation monitoring enables social workers to identify structural problems and then find an ideal complainant to challenge the problem through strategic litigation.

### ***Supporting a Case with an Amicus Curiae***

An important task of social workers can be to submit so-called *amicus curiae* briefs.<sup>30</sup> The term *amicus curiae* means ‘friend of the court’ and can be seen as a third-party intervention in a case where an expert (individual or an organisation) brings in their expertise on the issue. Kelley reminds us that such interventions were already known in 1905 (Kelley 1914: 72, cited in Winkler 2022: 290). Such interventions can be done as part of the proceedings, either by NGOs themselves or through other experts, but as these need to be neutral, NGOs need to decide if they want to bring in their perspective via a neutral *amicus* or rather partially support a person whose rights have been violated.

### ***The ‘Ideal’ Case***

Unfortunately, not every case is suitable for strategic litigation. Busch assumes that the most obvious injustices are usually successfully attacked, so that winning a case helps the individual, but has little strategic significance because it does not advance the law (cf. Busch. n.d.: 2). He advocates for choosing cases for strategic litigation where the problem affects many people in the same or a similar way, or where the solution to the problem can be generalised (ibid.: 3) and therefore serves not only that one case but is also transferable to all cases that are subject to the same structural problem. According to Busch, cases that have the potential to be presented to the public are also ideal. He further suggests selecting cases in which the complainant is not existentially affected by

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<sup>30</sup> See contribution by FIDA-Kenya.

the problem (cf. *ibid*); this would, for example, exclude people who are threatened with deportation.

In addition to the ‘ideal’ case, an ‘ideal’ complainant, like Mariance Kabu, a complainant of a strategic case introduced by Solidaritas Perempuan (Indonesia), is necessary. Criteria for their selection include:

- They have sufficient social and psychological resources to get through a lengthy and unplannable process.
- They can make informed decisions and understand the legal implications of the case. In other words, they understand what it means to be involved in a legal dispute, probably for years, possibly be in the media spotlight, and have no guarantee of winning the case.
- The potential complainant has realistic hopes for the legal dispute and the potential damage from the worst-case scenario they could suffer is assessed. Legal advice from the supervising lawyer is essential at this stage.
- The motives for the lawsuit are legitimate and comprehensible, such as compensation, restitution, a sense of justice or the desire to protect others from the same injustice.

In the case of social work clients, it is also necessary to check whether the multidimensional problems that often exist make it difficult to clarify the structural gap or even obstruct it. For example, it would make little sense to attempt a strategic case of trafficking with a complainant who was also involved in selling and/or consuming drugs. However, proceedings on behalf of drug users and/or drug sellers can be initiated with the hope of individual resolution.

A particular ethical challenge arises when clients experience (human) rights violations but have no interest in prosecution, largely because of previous experience with and/or little knowledge of law enforcement authorities. In such cases, social workers can promote prosecution without making unrealistic promises while also attracting potential complainants for strategic cases. They can also consider more creative uses of the legal framework, such as **People’s Tribunals**.<sup>31</sup>

It is also worth considering whether those who are only indirectly affected by a problem should also be recruited for strategic litigation. In the context of discrimination, for example, this would also mean focussing on **associative discrimination**. Associative or Associational discrimination is a legal term that

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<sup>31</sup> See interview with Siriporn Skrobaneek, article on People’s Tribunals by Nivedita Prasad, and contributions by CDH (Ecuador), Solidaritas Perempuan (Indonesia), and LEFÖ (Austria).

applies to unequal treatment of a person who does not belong to a group with protected characteristics such as race, class, gender, or disability, but has a close relationship with a person who belongs to such a group. Some examples would be: an able-bodied parent of a disabled child,<sup>32</sup> a white partner of a racialised person,<sup>33</sup> a child of a sex worker, etc. Such procedures can relieve the directly affected person while making it clear that discrimination affects more people than 'only' the directly discriminated persons.

### ***Financing***

In addition to time and emotional stress, a case of strategic litigation can also be financially expensive. Besides legal representation, court costs and expert opinions, translation of documents may also be required. Some of this work can take place within the framework of social work services, especially if legal advice and/or translation are part of the service or can be financed. But as interest in this topic is growing, there are now organisations that deal with strategic cases on a full-time basis, such as the European Centre for Constitutional and Human Rights in Berlin, the AIRE Centre in London,<sup>34</sup> the European Roma Rights Centre in Budapest, Client Earth in the UK, and the Open Society Justice Initiative in New York. Even though located in specific countries, all these NGOs take up cases from other countries too. Their selection of cases, however, remains geared towards their respective interests. Such organisations have resources that allow them to assist with cases in which they are interested, free of charge. For example, Rosalind Lecraft, who successfully complained to the UN Human Rights Committee against Spain for racial profiling, was supported by the Open Society Justice Initiative, Women's Link Worldwide, and SOS Racismo-Madrid. Many cases involving Roma individuals in Eastern Europe affected by racism are supported by the European Roma Rights Centre. Cases that are decided in national courts are also often supported by NGOs in terms of content and/or funding, such as Christian Mammah, who successfully sued a racist gym in Aachen, Germany, with the help of the legal aid foundation *Leben ohne Rassismus* (Life without Racism). It is therefore helpful to clarify whether an appropriate NGO has the capacity to take on a case. If it is not possible to take on the entire case, they may be willing to contribute an independent legal opinion, an *amicus curiae* brief, during the proceedings.

It is also possible to clarify with lawyers whether they or their law firm can take on cases pro bono, i.e., whether they can take on mandates at either a very reduced price or free of charge. Although lawyers are not allowed to work for

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<sup>32</sup> Like in the case of *Coleman vs. UK* at the European Court of Justice C-303/06 (2008).

<sup>33</sup> Like in the case of *Škorjanec vs. Croatia*, European Court of Human Rights Application nr. 25536/14, decision 28.06.2017.

<sup>34</sup> The case described in the contribution by LEFÖ was also supported by AIRE.



free in some countries, it is permissible to take social factors into account when determining the fee (Busch n.d.: 5), which can be nominal. It is also necessary to clarify whether the case can be supported by legal aid, at least in domestic legal proceedings. However, this only applies to the costs of your own legal representation. In the event of failure in court, the costs of the other party's legal representation in many countries need to be covered.

There are legal aid funds that provide financial support for specific legal disputes, for example, covering the costs of legal advice, travel expenses for lawyers, etc. Such associations for strategic cases collect donations to relieve the financial burden on the person bringing the case. If all these options are out of the question, a single appeal for donations (e.g. via crowdfunding) can make it possible to finance the case; however, as with all fundraising procedures, the involvement of public relations work is essential.

### *Evaluating Success*

Of course, a case that is won at court and that satisfies all expectations of the complainant and contributes to the desired structural or legal changes can be considered successful, almost without reservation, like the case described by Brigada Callejera (Mexico), which contributed to trans women in sex work being recognised as women. However, declaring all other strategic procedures that do not fulfil these criteria as unsuccessful does not do justice to the matter and the results of these complaints. Duffy for example states:

what happens out of court, or in the proverbial “court of public opinion” maybe be more important than what happens in the courtroom, or what is written in the judgement. {...} a case may be successful for example, if {...} it forced open political space and debate, and exposed injustice, as a number of the case studies highlight, even if ultimately the claim failed in court (Duffy 2018: 44).

With this understanding, even cases that legally seem hopeless can be suitable for strategic litigation if the aim is to make an issue public and legal and/or to offer clients an opportunity to defend themselves. Even cases that were lost or only partially successful can stand as a positive example of political mobilisation.<sup>35</sup> In some cases, the ongoing publicity awareness work shows impact beyond the individual case, like in Serbia, where ASTRA achieved strong responses from the international community, including the European Parliament and UN experts.

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<sup>35</sup> See contribution by ESWA (Europe).

Challenging a decision at a higher level ensures that the issue gains international attention and remains accessible in relevant databases in the long term—even if the proceedings are initially unsuccessful. These proceedings also contribute to the further development of the law. In 1999, for example, *J. J. et al.* tried in vain to bring a case against New Zealand<sup>36</sup> before the UN Human Rights Committee for the right to marriage for lesbians. Subsequent successful decisions on the same issue relate to this complaint. Therefore, the aim of strategic litigation can also be to ‘only’ raise the issue, knowing full well that the case is unlikely to be won at this stage. Proceedings that are brought before a higher court or body can set a lot in motion at the national level. It is also possible that a settlement will be reached in court, not least to prevent a higher court from taking a landmark decision. Similarly, even if Canadian sex workers faced setbacks in their constitutional challenge, as described in the contribution by Peers Victoria, it is documented now that a group of sex workers did try to challenge a law discriminating against sex workers.

### **Risks**

Opting for strategic litigation in the context of social work also incurs risks, as supporting such a case requires significant amount of time, personnel and financial and emotional resources that have to be used for just one client. This can lead to conflicts among clients and within the team, especially if the team’s resources are limited. To make matters worse, the outcome of the proceedings cannot be planned, and therefore provides no guarantee that the resources will be used for the ‘right’ cause. This is the case, for example, when out-of-court settlements bring the proceedings to an early end. In such a case, the individual may be satisfied, but the structural problem has barely been affected. Even when proceedings result in a court decision, the outcome is not always easy to understand or communicate to the public.

The greatest risks are that decisions will be made to the disadvantage of the complainant and/or the group of people affected by the structural problem. This is the case, for example, when decisions have served as an opportunity to tighten laws<sup>37</sup> and, as a result, made life harder for those who tried to improve their living conditions. Furthermore, if the case is unsuccessful in court, the other party’s legal fees and court costs can be a major burden. Additionally, the complainant bears the emotional strain of a dispute that could last for years and may not result in approval. It is known, for example, that Stephen Hagan, who successfully lodged a complaint against Australia for the use of racist

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<sup>36</sup> Communication No. 902/1999; CCPR/C/75/D/902/1999, decision of 30.07.2002.

<sup>37</sup> See GAATW, 2007. Collateral damage that has occurred by state which instrumentalised the issue of trafficking as a legitimisation to tighten laws that severely restrict the rights of migrants and/or sex workers.

terminology, was subjected to great hostility in his hometown and almost went bankrupt. Nevertheless, he endured the public dispute that lasted over eight years (see Remedy Australia 2014: 8). Therefore, a realistic, interdisciplinary risk analysis with the complainant—who understands the possible implications of the case—is very important before initiating a strategic process.

### *Outlook*

Looking into major strategic litigation cases one gets the impression that the complainants were well-connected and well-equipped with resources to meet the challenges of the proceedings. They were also able to present the problem to the public. This is often not the case with trafficked people or exploited migrant workers. It is also very unlikely that they will approach social workers or NGOs to initiate strategic litigation with their case. It is up to the social workers or other advocates for social justice to decide which case could be suitable for strategic litigation and suggest this to the potential complainant. In other cases, people do not intend to start a strategic case, but it becomes apparent during the proceedings that the case could be of strategic importance. Here again, the expertise of social workers or other advocates for social justice is needed to recognise this and follow up accordingly. Another possibility of initiating a strategic case is reacting to an allegation that somebody else has raised in a strategic manner. This is, for example, the case with Kristina Hänel, a gynaecologist in Germany, who was accused by an anti-feminist person of advertising abortions, which was against the law. She argued that she was not advertising but simply sharing information on safe and legal abortion on her website. In the end, she not only won the case, but the law was adjusted accordingly, as the stakeholders understood that information on safe and legal abortions is essential for an informed decision on the issue. Another way to initiate a strategic case is to file a voluntary self-disclosure. For example, social workers who support undocumented migrants in countries that have declared this to be a crime, could file a case against themselves to provoke judicial clarification. The effectiveness of such coordinated actions would be increased if several people did this at the same time in different regions with as much publicity as possible. Different law enforcement authorities would then have to assess at the same time whether their actions are criminally relevant or not.

While engaging in strategic litigation can be immensely challenging, it can also be very promising as it contributes to structural change rather than aiming for changes in individual cases. In the short term, strategic litigation can seem very time consuming, but in the long run, it can actually be highly effective as it focusses on the cause of the problem and thus provides long-term solutions for more than just the person concerned. This, in turn, can also help to relieve the burden on social workers or other advocates for social justice.

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# Case Studies

BY GAATW MEMBERS

# People's Tribunal for Justice in Prisons

Comité Permanente por la Defensa de los Derechos Humanos (CDH)

## *Introduction*

Comité Permanente por la Defensa de los Derechos Humanos (The Permanent Committee for the Defense of Human Rights, CDH) is a human rights organisation based in the city of Guayaquil, Ecuador. It was established in 1982 and it is dedicated to promoting, researching, and defending human rights. CDH has had a significant impact at the national level, particularly in the southern coastal region. The organisation's strategic intervention consists of: a community strengthening programme that implements popular education in vulnerable neighbourhoods; a programme on responses to complaints of human rights violations; and a programme dedicated to advocacy, communications, and research.

CDH's coordination with territorial leaders of vulnerable sectors and direct support to different organisational processes in provinces of the South Coast allows for constant and real-time monitoring of incidents related to rights violations in hard-to-reach sectors.

## *The People's Tribunal and the Role of CDH*

Since 2018, CDH has identified a series of mass deaths in violent contexts in Ecuadorian prisons. By 2023, more than 680 deaths had been recorded inside prisons. These deaths are the result of a long-standing crisis in prisons whose management has passed into the hands of governments that have not taken any steps to mitigate it.

The lack of participation of imprisoned persons' families in the development of prison policy, the security measures inside prisons, the lack of oversight, and the reduction of the institutional capacity of the state have undoubtedly contributed to the precariousness and violence experienced by prisoners.

For CDH, policies to reduce the role of the state compromise its capacity to respond to structural problems and to guarantee human rights. However, prison executives have positioned the massacres as isolated incidents related only to the presence of criminal gangs in prisons; therefore, they imply that what happened is not the responsibility of the state.

Faced with this situation, CDH, together with the Committee of Relatives for Justice in Prisons, decided to form a People's Tribunal to judge the actions and omissions of the state that led to the prison massacres to determine the responsible parties, the human rights violated, and the possible reparation measures.



This People's Tribunal was inspired by the Instruction Session of the Permanent Peoples' Tribunal on Crimes Against Humanity in Latin America, which took place in Ecuador on 3-4 August 1990. It was coordinated by the CDH and the Comisión Ecuémica De Derechos Humanos (Ecumenical Commission for Human Rights, CEDHU). Therefore, for the 40<sup>th</sup> anniversary of CDH, and in the context of the current prison crisis, they proposed the formation of the People's Tribunal to judge the actions and omissions of the state regarding prison massacres.

The People's Tribunal is a type of Court of Opinion, which does not receive its authority from any state power, but from the ethical conscience of the people in the face of serious violations of human rights and crimes against humanity.



### ***What happened in this case***

The main objective of the Tribunal was to promote the demand for justice and reparation for the families of people deprived of liberty in Ecuadorian prisons. To achieve this, it aimed to identify the critical issues that created the prison crisis from a human rights perspective and establish the responsibility of the state in the violation of the human rights of the families of the victims of prison massacres.

The Committee of Relatives for Justice in Prisons seeks truth, justice, and reparation.

***Truth:*** *in relation to the clarification of the facts. The prison massacres were carried out by the state; therefore, the level of responsibility and the real situation of the prison system must be clarified.*

***Justice:*** *it must be recognised that there are human rights violations of the families; that is, they must be recognised as direct victims of the prison crisis.*

***Reparation:*** *every rights violation generates an obligation of reparation.*

The three judges of the People's Tribunal, as annexed below, have significant backgrounds in human rights and are experts in public policies and constitutional proceedings. Additionally, the Tribunal included a prosecutor and a group of experts on prison crises, on the psychological impacts of incarceration on families, on the differentiated impacts on priority attention groups, on the violations of families' rights to personal integrity, and the determination of state responsibility.

In 2021 and early 2022, CDH collected testimonies from relatives of persons deprived of liberty who reported the death of their relative in prison in the context of the massacres. The organisation immediately became aware of the existence of state violations of constitutional rights.

As part of the strategic litigation process initiated by the CDH, the Committee of Relatives for Justice in Prisons was formed as a victims' organisation to articulate the struggles of families and to act as spokespeople to make visible the demand for truth, justice, and reparation.

The creation of a People's Tribunal for Justice in Prisons enabled us to channel the critical positions of civil society in relation to the prison crisis in a single space, to subsequently file a formal constitutional lawsuit.

On 21 April 2023, CDH, the Committee of Relatives for Justice in Prisons, and the International Network of Women Relatives of Persons Deprived of Liberty filed a lawsuit at the Judicial Complex of Guayaquil for a protective action with

precautionary measures to declare the violation of their constitutional rights as a result of the prison crisis in the country and to demand truth, justice, and comprehensive reparation from the state.

On 8 March 2024, a constitutional judge accepted the lawsuit for protective action for the violation of the human rights of mothers, wives and daughters, and victims of prison massacres, with the support of more than 30 *amici curiae* from national and international organisations.



The Committee of Relatives and the CDH participated in the 184<sup>th</sup> session of the Inter-American Commission on Human Rights (IACHR) where, for the first time in history, the human rights of persons deprived of liberty and their families were discussed. The session exposed the serious human rights violations experienced by families and the undignified detention conditions to which persons deprived of liberty are subjected in Ecuador. It should be noted that this was the first and only space where the state met directly with the families of victims of prison massacres. At that hearing, on 21 June 2022, the state committed to implementing a process of comprehensive reparation for the families of the victims.

On 28 September 2022, CDH held a meeting with the United Nations Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT). The SPT mission to Ecuador took place between 25 September and 1 October 2022, in light of acts of violence in the prison system that had led to the deaths of approximately 600 inmates in the

past five years. The delegation visited nine prisons in three cities, including joint visits with the National Prevention Mechanism (NPM), which has the mandate to prevent torture and ill-treatment in the country. At this meeting, we exposed the human rights violations described as torture by human rights organisations and the families themselves.



### *Considerations and Concerns*

CDH collected testimonies from the relatives of persons deprived of liberty; expert opinions; official and unofficial information from authorities; and reports from international human rights mechanisms and other bodies. The organisation has a protocol for handling cases that includes documentary video and photo records of testimonies from victims of human rights violations. This documentary support is added to other evidence provided by the complainants. The reporting person always provides consent to use their testimony in public advocacy and strategic litigation. The People's Tribunal for Justice in Prisons had access to CDH's documentary record of testimonies to identify patterns in the human rights violations and state conduct.

The database of testimonies from relatives of people who died in prison massacres includes anonymous records to avoid reprisals and human rights violations. The editing of the testimony is subject to review by a legal team to focus the documentary piece on the description of the facts.

A comprehensive risk assessment in the context of strategic litigation and support for families of persons deprived of liberty must address psychological, social, legal, and security aspects. This involves ensuring informed consent and preventing re-traumatisation of families through psychosocial support, assessing possible reprisals or criminalisation, designing protection protocols, mitigating risks of stigmatisation in their communities, and working with civil society organisations to garner collective support. In addition, it must include continuous monitoring to identify emerging risks and adjust strategies, ensuring that the actions undertaken do not create new harm and remain responsible and sustainable.

### *Outcomes of the Intervention*

A crucial discussion was initiated regarding the state's responsibility for its actions and omissions related to prison massacres.

The People's Tribunal condemned the Ecuadorian state and held it responsible for the violations of the rights to personal integrity, a dignified life, equality and non-discrimination, due process, legal security, non-revictimisation, access to justice, effective judicial protection, comprehensive reparation, rights of vulnerable groups, and peace of the families of the persons deprived of liberty.

They also recommended comprehensive reparation measures for rehabilitation, non-repetition, and compensation.

### *Learning from this Experience*

- Strategic litigation: It is critical to provide comprehensive support to family members of persons deprived of liberty who are victims of human rights violations.
- By drawing on victim testimonies, we were able to overcome stigmatisation and highlight harm.
- Creation of a safe space for families of victims of the prison crisis, promotion of mutual support and grassroots organisation processes.
- Cooperation with national civil society organisations is key.

The recent events in Ecuador's prisons constitute the clearest evidence of the state's responsibility in the violation of human rights. The unprecedented number of victims of prison violence in a short period is directly linked to the expansion of criminal activity in coastal communities controlled by criminal gangs, and severe neglect by the state.

The People's Tribunal for Justice in Prisons enabled the effective and ongoing development of a CDH advocacy strategy that calls for a genuine comprehensive

security policy—one that moves beyond the repeated use of securitisation measures, militarisation, and necropolitics, which disproportionately affect the poor and historically marginalised populations in Ecuador.

### *Annexe:*

#### **The judges of the People’s Tribunal included:**

##### **a. Popular Judge Ramiro Avila Santamaria**

Doctor in Legal Sociology from the University of the Basque Country and Master of Law from Columbia Law School, Doctor and Bachelor of Law from the Pontifical Catholic University of Ecuador. Member of the Working Group to monitor compliance with the Additional Protocol to the American Convention on Human Rights on Economic, Social and Cultural Rights (the Protocol of San Salvador). Former judge of the Constitutional Court of Ecuador.

##### **b. Popular Judge Gina Benavides Llerena**

Doctor of Jurisprudence, Pontifical Catholic University of Ecuador; Senior Specialist in Human Rights and Master in Human Rights and Democracy in Latin America, with a mention in Public Policies, Universidad Andina Simón Bolívar, Ecuador Campus. Former Ombudsman.

##### **c. Popular Judge Evelyn Solari Dávila**

Master in Constitutional Law, specialising in human rights. Expert in public administration and procurement and professor in the area of Constitutional Law. Promoter of human rights education projects in educational contexts.

#### **Prosecutor:**

##### **a) Attorney Juan Vizueta Ronquillo**

Doctor of Jurisprudence. Master in Criminal and Criminological Sciences.

#### **Experts:**

##### **GROUP 1: General situation of the prison crisis**

1. **María Amelia Espinoza Cordero (Initiatives for Rehabilitation Foundation):** Obstacles that the social rehabilitation system has to overcome to effectively achieve social reintegration as well as the critical areas of the prison system that affect families.
2. **Jorge Nuñez Kaleidos:** General assessment of the prison crisis in Ecuador.

##### **GROUP 2: Psychological impact on family members**

1. **Nabila Bellio (psychologist):** Psychological impacts of prison massacres on families.
2. **Giselle Amador:** Impact of massacres on the mental health and personal integrity of families.

3. **Andrea Casamento (United Nations Subcommittee Against Torture):** Families are victims of human rights violations in the prison crisis.

#### **GROUP 3: Differentiated impact on priority care groups**

1. **Pedro Guiterrez Guevara (Kuska Law Firm):** Impact of the prison crisis on LGBTQI+ people.
2. **Sylvana Tapia (Corredores Migratorios):** Impact of the prison crisis on women.
3. **Cristina Burneo:** Impact of the prison crisis on people on the move.
4. **Sara Oviedo (Cocasen):** Impact of prison massacres on children and adolescents.

#### **GROUP 4: Violation of the right to personal integrity of families**

1. **Eduardo Argudo:** Dimensions of the right to personal integrity, specifically psychological integrity, and its possible violation towards families in the context of the prison crisis and massacres.

#### **GROUP 5: Determination of state responsibility**

1. **(INREDH):** State responsibility for prison massacres and its obligation to provide full reparation.
2. **Camila Cedeño (PUCE Legal Office):** State responsibility for prison massacres and its obligation to provide full reparation.
3. **Vivian Idrovo (Alliance of Human Rights Organisations of Ecuador):** State responsibility for prison massacres and its obligation to provide full reparations.

*Translation from Spanish to English by Vivian Cartagena. To download the Spanish version, click [here](#).*

# ***M.A. and Others v. France: A strategic litigation case in which sex workers, mainly from a migrant background, challenged France***

European Sex Workers Alliance (ESWA)

## ***Introduction***

The case of *M.A. and Others v. France* was filed at the European Court of Human Rights (ECtHR) by members of the European Sex Workers Alliance (ESWA) in France, with support from Médecins du Monde (MdM). ESWA played a crucial role in supporting the case at various levels, demonstrating how a regional membership organisation can effectively back its national members.

The applicants in the case were 261 men, women, and gender-diverse individuals of different nationalities, including Albanian, Algerian, Argentinian, Belgian, Brazilian, British, Bulgarian, Cameroonian, Canadian, Chinese, Colombian, Dominican, Ecuadorian, Equatorial Guinean, French, Nigerian, Peruvian, Romanian, Spanish, and Venezuelan.

The case concerned the criminalisation of sex workers' clients under France's 2016 *Prostitution Act*. Following the decision of the French Constitutional Council on 1 February 2019 not to invalidate the Act, sex workers decided to bring their case to the ECtHR.

The European Court of Human Rights (ECtHR) is an international court established by the *European Convention on Human Rights*. It hears applications alleging that a state party to the Convention has breached one or more of the Convention provisions. The ECtHR's judgments are binding on the countries concerned.

The *European Convention on Human Rights* is an international treaty of the Council of Europe member states. The Convention, which established the Court and outlines its functioning, contains a list of rights and guarantees, which member states have undertaken to respect.

The 261 sex workers were supported by 19 community, health, and feminist organisations that defend the health and rights of sex workers. The case filed by the sex workers and their lawyers argued that the criminalisation of clients in France's *Prostitution Act* violated sex workers' rights under the Convention, in particular, in relation to:

1. The right to life and physical integrity (Articles 2 and 3).
2. The right to privacy (Article 8), which includes freedom of self-determination.

Faced with a government and institutions that denied their rights and ignored the violence created by the national policies, the sex workers decided to challenge the state. In this context, community mobilisation and sex workers' leadership were essential. French sex workers' unions and many other collectives gathered signatures to support the complaint against France. Throughout this process, the sex workers' union and partners organised sessions to explain the complex legal process to sex workers from various migrant communities.

In April 2021, the ECtHR decided to communicate the case to the French government, officially setting the procedure in motion. Only about 5-10 per cent of requests submitted to the Court pass this stage. The ECtHR considered that the arguments developed by the applicants were sufficiently serious to merit an adversarial debate with the government.

### ***Outcomes of the Intervention***

On 31 August 2023, more than three years after receiving the application, and after repeated attempts by the French government to raise issues of admissibility, denying that the applicants were victims and that domestic remedies had been exhausted, the Court ruled once again that the application was admissible. The Court emphasised the harmful consequences of the Act for sex workers.

On 25 July 2024, the Court delivered its judgment. While the Court did not find that the French law explicitly violated Article 8 of the Convention, it acknowledged the undeniable difficulties and risks that sex workers face in the exercise of their profession. The Court also took into account the ongoing, deeply divisive, debate at both European and international levels regarding the criminalisation of the purchase of sexual services as a means of combating human trafficking.



### *Learning from this Experience*

Despite the Court not recognising violation of Article 8, the case is a powerful example of mobilisation. It demonstrates the ability of the most marginalised communities to unite and challenge state power, highlighting the importance of collective action in advocating for rights and justice.

This case has been a significant learning experience for ESWA and our partners. We are collectively analysing it, discussing it with human rights lawyers, and brainstorming how to better approach future strategic litigation cases in Europe. This collaborative effort will help us refine our strategies and strengthen our advocacy for the rights of sex working communities.

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The **European Sex Workers Rights Alliance** (ESWA; previously, International Committee on the Rights of Sex Workers in Europe, ICRSE) is a sex worker-led network representing more than 100 organisations led by or working with sex workers in 35 countries in Europe and Central Asia. The core aim of ESWA is to ensure that the voices of sex workers in the region are heard, listened to and respected. ESWA opposes all forms of criminalisation of sex work and firmly rejects the conflation of sex work with human trafficking. ESWA raises awareness of the harmful impact of this conflation on sex workers' lives and seeks to put forward a labour rights perspective of sex work, whereby the labour, health and human rights of all sex workers are recognised, protected and fulfilled by national, regional and international laws, policies and programmes.

# Protecting and Advancing Human Rights through *Amicus Curiae* Intervention

Federation of Women Lawyers in Kenya (FIDA-Kenya)

## ***Introduction***

The Federation of Women Lawyers in Kenya (FIDA-Kenya) was established in 1985 and registered as a non-profit, non-partisan membership organisation in 1993. The organisation adopts a human rights-based approach and envisions a society that respects and upholds women and girls' rights. FIDA-Kenya works towards championing women's individual and collective power to claim their rights in all spheres of life. This will guarantee that women are free from all forms of injustice based on their gender, sex, class, ethnic origin, physical disability, and cultural and religious beliefs.

FIDA-Kenya offers pro bono legal representation to individual cases on behalf of women who are unable to litigate on their own. Other services include strategic interest litigation, raising awareness of gender and legal rights, conducting community-based human rights monitoring, documenting trends on rights violations, advocating for policy reforms that protect women's rights, and monitoring the government's compliance with regional and international human rights obligations. FIDA-Kenya has been a member of GAATW since 2009.



*Image 1: FIDA-Kenya Executive Director makes a presentation at the Employment and Labour Relations Annual Exhibition and Symposium titled 'Manifestation, Experiences and Mainstreaming of ILO Convention 190 and Recommendation 206'.*

## *Description of the Case*

The Initiative for Strategic Litigation in Africa (ISLA) and the Federation of Women Lawyers in Kenya (FIDA-Kenya) applied to be admitted as joint *amici*<sup>38</sup> in an ongoing case, ***ELRC Petition No E038 of 2023***, filed at the Milimani Employment and Labour Rights Division. This petition seeks to hold the Kenyan government accountable for the alleged human rights violations experienced by 12 petitioners, one of whom is now deceased, while working as domestic worker in Saudi Arabia. The petitioners claim that the *kafala* system, under which they were recruited and working in Saudi Arabia, constitutes an act of human trafficking for labour exploitation. They argue that this system facilitates forced labour, contract substitution, slavery and servitude conditions, including passport confiscation, excessive working hours, denial of rest and leave days, as well as food and sleep deprivation. Petitioners claimed that they were subjected to physical, psychological, and sexual exploitation. Thus, they demand that the Kenyan government take responsibility for these violations due to its failure to prevent the petitioners from being trafficked and to respond to the situation through its diplomatic mission in Saudi Arabia.

ISLA and FIDA-Kenya developed the application and submissions for admission as joint *amici* with the intention of supporting the court in establishing jurisprudence on the state's due diligence obligations in the context of human rights.

The joint *amici* intervention seeks to support the court in understanding the gendered nature of trafficking for labour exploitation, highlighting that women are disproportionately affected by it. It aims to demonstrate how trafficking constitutes a form of indirect discrimination against women. The intervention provides information to the court on the nature and extent of state obligations to prevent, protect against, and respond to acts of human trafficking.

This approach seeks to expand the traditional limits of state responsibility to encompass rights violations perpetrated by private individuals or non-state actors, where the state has failed to exercise due diligence and adequate remedies for such violations.

Strategic partnerships are key in *amicus* interventions; both FIDA-Kenya and ISLA's mandate and strategy involve protecting and advancing human rights, in particular, women's and girls' rights in the region. Both partners are committed to the development of jurisprudence and the incorporation of comparative

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<sup>38</sup> 'Amicus curiae' (plural: amici curiae, meaning 'friend of the court') is when a person or organisation participates in a legal case by providing expert opinions and insights on a matter related to the case (in this case, to women's rights) even though they are not directly involved as a party to the case, but are offering their legal expertise to help the court reach a well-informed decision on the issue.

international law standards on emerging best practices in advancing women's and girls' rights.

Both organisations conducted extensive desk research to understand how trafficked women are disproportionately affected and how trafficking is a form of indirect discrimination against women. This initiative helps gather sufficient evidence to strengthen the case as a clear violation of human rights, and to ensure the state's obligation for just remedy.

However, the two organisations did not directly collect testimonies from the petitioners due to their neutral role as joint *amici*.

### ***What Worked? What Went Wrong?***

The joint application for *amici* worked well as the two organisations bring on board diverse expertise. ISLA has gained extensive experience in women's economic justice and the application of gender equality principles, leading to their admission as *amicus curiae* in various cases before the superior courts in Kenya and at the African Court on Human and People's Rights, where they conducted comparative law analysis on women's socio-economic rights. FIDA-Kenya has litigated cases of discrimination against women and girls to advocate for the expansion and realisation of women's rights and social justice as a basis for addressing prevailing systemic gendered inequalities, oppression, exploitation and discrimination.

Applicants must request permission to join the proceedings as *amici*, and this decision is entirely at the court's discretion, meaning it is not usually guaranteed. Some parties, especially the Respondents, opposed the application to be *amici*, which further delayed the hearing of the case.

### ***Lessons Learnt and Recommendations***

It is crucial to support courts and tribunals in the development of jurisprudence through the application of comparative and international law standards, particularly on the emerging best practices. Mapping allies and collaborators is crucial in sharing information during case development. Inasmuch as joint applications is the best strategy, caution should be taken not to have too many parties in a case, which can further delay hearings and ultimately, justice to the justice seekers.



*Image 2: The Deputy Executive Director of FIDA-Kenya makes a presentation on engaging with the legal systems during the GAATW International Members Congress and Conference (IMCC) and 30<sup>th</sup> Anniversary Celebrations.*

### ***Risk Assessment***

*Amicus* applications are allowed at the courts' discretion. In the event that our application for joinder is not allowed, we have an ally in the petitioners and will therefore support them to highlight the indirect discrimination caused by the violations as well as the state's due diligence obligation. If the court holds the government accountable for the alleged human rights violations, enforcement of state obligations may be a challenge as, more often than not, delays are caused by a lack of sufficient state funding. This further violates the petitioner's rights to an effective remedy; hence, we hope to recommend psychosocial support for the petitioners.

In the context of strategic litigation, it is crucial to first understand the claim by the petitioners, whether or not it speaks to alleged violations, and whether there are available remedies, as this helps intended parties manage expectations from the onset. It is also crucial to obtain prior informed consent in cases where clients are involved. The state obligation, omission or commission, ought to be clear. In a case where there are several parties, it is best practice to sign a memorandum of understanding with clearly defined roles. There has to be recognition that justice extends beyond legal processes and encompasses social, economic, and cultural factors; hence, planning for shelters and victim support services is crucial.

# Mariance Kabu: A story of a woman migrant worker seeking justice in the legal systems of Malaysia and Indonesia

Solidaritas Perempuan

*The evidence is forever with me; it can be seen on my body, which has received a lot of violence, and I will never stop seeking justice.*

*Mariance Kabu, a migrant worker from East Nusa Tenggara, Indonesia.*

## ***Case Description: A letter to end the torture***

Mariance Kabu is a migrant worker from East Nusa Tenggara Province, Eastern Indonesia. Three recruiters promised her a well-paid job as a migrant domestic worker in Malaysia. To convince her, they also claimed that they are members of a prayer team and have received instructions from God for Mariance to become a migrant worker.

In April 2014, Mariance went to a recruitment shelter in East Nusa Tenggara province. She and more than 20 other women lived in the shelter for three days without doing any work or any job training.

Mariance and one of the recruiters left from Kupang, the capital of East Nusa Tenggara, to Surabaya, the capital of East Java, on 11 April. She travelled with only IDR 50,000 (USD 3). Her passport was given to her only when she reached the airport. During the Kupang-Surabaya trip and later to Batam—in the western part of Indonesia, which is close to Malaysia—Mariance was prohibited from carrying a mobile phone.

Arriving in Batam without a ticket, Mariance was picked up by two men on a ship. With only her passport, Mariance sailed to Malaysia. Upon arrival in Malaysia, she was picked up by a woman who took her to a recruitment shelter. Mariance stayed at the shelter for a week without any work. She was then taken to an office and hospital for X-rays, blood tests, and a full body examination. After that, she returned to the shelter and was met by her employer.

The employer took Mariance to their apartment, where she worked from 5 am to 10 pm or 17 hours a day. Her job was to care for an elderly woman, which

included bathing, feeding, putting her to sleep, and taking her for walks. Mariance was also asked to clean the house and cook.

During her eight months of work, Mariance experienced torture from her employer. She was beaten using a large frozen fish, which resulted in head injury and bleeding. At that time, her hair had to be cut so she could be given medicine. She was also told to do 3,000 push-ups every day. Her ears were punched until they tore and bled. She suffered severe physical injuries when her employer poked her eyes with his fingers, and her nose was hit until her nasal bone was broken. The employer also pulled out four of Mariance's teeth and clamped her tongue and breasts with pliers. These injuries caused severe wounds and bleeding in her body. She was also forced to eat hot porridge. If she refused, the employers would throw porridge in her face or press it against her chest.

The torture resulted in Mariance experiencing deep trauma and severe injuries all over her body. Because of the injuries, she had to lift her head while eating or drinking so that food and drink would not come out of her nose. The cruelty of her employers did not stop there. The employer also ordered Mariance to work at night without wearing any clothes. Meanwhile, during the day, she was not allowed to wear underwear or close the door while in the bathroom. Apart from being subjected to cruelty and torture, the employer forced Mariance to work for 23 hours a day, where she was only allowed to rest for 1 hour, between 4 and 5 am. The employer regularly monitored Mariance's movements via CCTV. She was prohibited from leaving the house and meeting other people, especially those from church who usually go to the employer's house to serve the grandmother for holy communion. The employer also forbade Mariance from going to church, saying it would be embarrassing. During eight months of work, the employer did not pay Mariance any salary.

In December 2014, when the employer was away at work, Mariance heard neighbours talking at the front door of the apartment. Immediately she wrote a note saying 'help me, I am being tortured, I am bathing in blood every day'. Then she inserted the note through the door.

An hour later the police came to the employer's house. At that time, the employer was already at home and tried to persuade Mariance not to say anything to the police. However, she refused and gave a statement detailing the torture she experienced and showed the wounds all over her body. Mariance also testified about what happened to her in the presence of a representative from the Embassy of the Republic of Indonesia in Kuala Lumpur.

After giving a statement to the police, Mariance was taken to a hospital for treatment. After nine days of treatment, she was taken to a safe house, where she remained for six months, to continue recovering and await the legal process.

The employer was arrested and detained by the police. In their statement, the employer denied all of Mariance's allegations. They also stated that Mariance did not have a passport, even though her passport was confiscated and not returned to her.

Mariance's salary was eventually paid in full for the entire contract period of 24 months, amounting to IDR 50,400,000 (USD 3,107). The Indonesian government then facilitated her return to Indonesia. Before Mariance returned home, the Indonesian Embassy in Kuala Lumpur promised Mariance that they would continue to monitor her case and provide updates on the progress of the legal process against her employer. However, until 2022, Mariance and her family had not received any information regarding the legal process. Later, she received information that her employer had been released.

### ***Support for Justice by Solidaritas Perempuan and the 'Mariance Kabu Solidarity Forum' Network***

In mid-2022, Solidaritas Perempuan received information regarding the Mariance Kabu case, which was still awaiting justice. Mariance hopes that the perpetrator of the brutal torture she endured would receive proper punishment. She wanted to ensure that no other migrant worker would have to experience similar torture and working conditions.

In response, Solidaritas Perempuan began meeting with Mama Mariance and local organisations and supporters in East Nusa Tenggara. Together, they formed a forum called 'Forum Solidaritas Mariance Kabu' (Mariance Kabu Solidarity Forum) to oversee the progress of her case.

We made various efforts to ensure that the legal case against Mariance's employer continued. For example, we held hearings to obtain information about it at Pelayanan dan Pelindungan Warga Negara Indonesia-Badan Hukum Indonesia-Kementerian Luar Negeri Republik Indonesia (the Service and Protection of Indonesians Abroad, Indonesian Legal Entities, Ministry of Foreign Affairs, Republic of Indonesia), Embassy of the Republic of Indonesia in Kuala Lumpur, Komnas HAM (National Human Rights Commission), and Komnas Perempuan (National Commission against Violence against Women). Unfortunately, we learnt that the Malaysian court that heard the case ruled that the evidence was insufficient for a lawsuit. Consequently, the trial could not proceed and Mariance's case was declared a mistrial with a Discharge Not



Amounting to Acquittal (DNAA), meaning her employer was released but could be charged again if new evidence arose.

The Forum continues to advocate for the continuation of the case. Mariance said, 'The evidence is forever with me, visible on my body, which has suffered a lot of violence, and I will never stop seeking justice.'

Mama Mariance's enthusiasm attracted the media's attention, including BBC Indonesia, which covered her case to attract public attention and encourage the government to reopen her case. These efforts bore fruit and in March 2024, the court again tried the torture case against Mama Mariance. On 30 July 2024, a trial hearing was held again and the Indonesian government also facilitated Mama Mariance's travel, accompanied by Pastor Emi, to attend the trial in Malaysia.

At the Sesyen Ampang Court, Kuala Lumpur, the panel of judges ruled that Mariance's former employers, namely Ong Su Ping Serene and Sang Yoke Leng, were proven to have committed the criminal acts of human trafficking and immigration violations. However, charges for acts of torture or causing grievous bodily harm and attempted murder could not be proven.

The challenge in handling the Mariance Kabu case is that the state is not serious about protecting and fighting for justice for its citizens, especially for women migrant workers, as evidenced by the refusal to try the case for 10 years.

### ***Mariance Kabu's Call***

Mariance calls for the perpetrators of human trafficking and brutal torture to be held accountable and punished appropriately so that there are no more victims. She calls for action against corporations that are involved in human trafficking and insists that state officials who participate in these crimes should face severe consequences.

### ***NGOs and Advocates' Call***

NGOs and supporters call for this case to receive special attention from the state, because women migrant workers are caught in the criminal act of human trafficking due to the structural impoverishment caused by the state. The state must introduce victim-centred human trafficking policies, especially regarding restitution. In practice, restitution is very difficult to obtain, even when the court has awarded it, because of the lack of mechanisms to enforce the implementation of the restitution order. The state must also develop policies that protect migrant workers based on their experiences and needs. Especially

for those who work in the domestic sector, namely domestic workers, who are very vulnerable to trafficking and to being trapped in poor working conditions.

### *Considerations in Handling a Case*

In handling cases of women migrant workers and their family members, all support provided by Solidaritas Perempuan is based on the consent of the women and/or her family members by following these principles:

- **Involvement of the women in the case handling process:** the hope is that in the future, migrant workers will be able to advocate for themselves and others. This principle is also intended to raise awareness of an unfair state system and generate resistance at the individual and collective levels.
- **Equal relationship:** the advocacy process and strategic decisions are carried out jointly and equally between Solidaritas Perempuan and the women. Solidaritas Perempuan cannot intervene in their decisions, while still considering the challenges and opportunities for each strategy chosen by the woman and/or her family.
- **Security and safety principles:** when handling cases, security and safety must be ensured by keeping data relating to the identity of the victim and the person providing the information confidential. The use of data for advocacy and campaign purposes must first receive their approval.
- Finally, it is important to approach cases involving women migrant workers and their families with care. It is crucial to **avoid judgment**, or to pressure them for any actions, both physically and verbally, which can cause the women and their families to feel unsafe and threatened.

### *Lesson Learnt for the Public*

The struggle to obtain justice for women migrant workers and their family members must be carried out collectively using a perspective that supports the victims.

### *Recommendations*

It is important to form a paralegal group for women migrant workers and their family members so that in the future, they can advocate for their cases and those of other migrant workers. In addition, with collective resistance and awareness of the injustices experienced, women can collectively push for effective policies.

*Translation and editing from Bahasa to English by Dewi Nova Wahyuni*

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**Solidaritas Perempuan (SP) - Women's Solidarity for Human Rights** is a feminist organisation that was established on December 10, 1990. SP has worked with grassroots women to achieve a democratic social order grounded in the principles of justice and ecological awareness, respect for pluralism and non-violence by promoting equal relationships between women and men, as well as the ability to share and control natural, social, cultural, political and economic resources justly.

# From Homicide to Femicide: Incorporating a Gender Perspective into Viridiana's Case

Brigada Callejera

## *Brief Information about the Case*

Viridiana Villegas Ramírez was a trans woman and a sex worker who was brutally murdered in her home in March 2022. Her family, and specifically her sister, Aranza Villegas Ramírez, also trans, asked Brigada Callejera to help them find justice.

Arlen Palestina Pandal, a feminist lawyer at Brigada Callejera, reviewed the case and other documentation from the hearings. There were many wrongful actions by the public prosecutors and judges, as well as by the lawyers who were supposed to defend the case of Viridiana. The lawyers frequently mis-gendered Viridiana, and this discrepancy prompted a thorough examination aimed at incorporating a gender perspective into the case.

The safety of Viridiana's family was important, as the perpetrator's family was very violent on several occasions, creating an environment of constant stress and fear for Aranza and her family.

In Latin America, there is a collective feminist struggle for femicide to be recognised as not just the sole act of murdering a woman, but as an attack on their families and community. For this reason, we refer to the loved ones of the murdered woman as "offended parties".

## *In Search of Hope*

Aranza and Viridiana had been training as health promoters, administering HIV and syphilis tests and accompanying other fellow sex workers and transgender women to use health services. After Viridiana's trans femicide, her sister Aranza thought that the lawyers would do their job and that it was just a matter of knowing the laws.



Image 1: Aranza Villegas Ramírez in an interview.



Image 2: (L-R) Kevin Villegas Ramírez, Aranza's brother, Attorney Arlen Palestina, Head of the Femicide Prosecutor's Office in the State of Mexico, Lic. Juan Carlos Molina, and Aranza Villegas Ramírez.

She felt that there was nothing else she could do but wait; all the evidence pointed to the detainee being guilty.

When Aranza saw that there was no progress in the case and that the perpetrator was going to be released, she requested Brigada Callejera's advice so that her sister's murder would not go unpunished.

Lawyer Arlen Palestina requested the documents and videos of the trial and identified the absence of a gender perspective and respect by Aranza's lawyers for her sister. She decided to influence the judges and other authorities to include a gender perspective in the case.

Viridiana's case in the State of Mexico recognised transfemicide as a crime. In August 2024, Colima recognised transfemicide as a criminal offence, setting a historic precedent through a femicide ruling. Throughout the process, the judge identified both women as transgender women.

### ***Outcomes of the intervention***

We used a comprehensive strategy that comprised:

**Family safety:** restraining orders were issued in favour of Aranza's family in response to the acts of violence committed against them; this included the attempted murder of Aranza when associates of the murderer of her sister tried to force her car off the road.

**Psychological support** to the family to cope with the death of Viridiana and the harassment and violence to which they were subjected, and the impact of the long and arduous criminal justice process.

**Application of a gender perspective** to the case, explaining it to the authorities, the judge, the lawyer, and the family. This was essential for Viridiana's femicide to be recognised and addressed as such by the Attorney

General's Office of the State of Mexico, as well as the Specialised Femicide Prosecutor's Office

**Social communication:** raising the public profile of the case through all possible means, particularly through independent media, to generate public support. This forced society and public officials to educate themselves in human rights and the gender perspective.

**Peer support:** this allowed us to form a network of solidarity and community. In this process, we were supported by the REALITRANS collective, made up of trans women and sex workers, which also emerged from the process of seeking justice for the murder of one of their colleagues. It was important to share legal information with anyone who was listening, to be able to ask questions, share answers, and foster actions in the process.

For example, Aranza's family participated in cultural and recreational activities, including outings to theatres, museums, etc. They also joined the coordination of the community kitchen named La Sazón del Talón, where fellow sex workers organised to provide food to those in need.

With regard to REALITRANS fellows, we invited them to court hearings to support each other against death threats and intimidation by the family and hired individuals outside the courts. They were also involved in meetings with the Chief of the State of Mexico Police to ensure permanent security at Aranza's residence.

Finally, as Brigada Callejera, we coordinated and developed monthly meetings with sex workers from various areas to share information about Aranza's case while strengthening communication, security, and trust for her and her family.

### ***Considerations and Caution***

As Brigada, we were unable to provide comprehensive safety for the family or for those who supported them during the process. The restraining orders and police presence during the hearings were not sufficient to stop or prevent attacks by the perpetrator's associates.

### ***Learning from this Experience***

#### **Unity among peers fosters significant changes.**

A good legal strategy is one that considers the family and those close to the victims who are also negatively impacted in the process. Our legal aid included addressing safety issues, emotional support, follow-up with authorities, training for public servants, and a broad coalition of allies. This creates precedents that

will allow for more accessible paths for more women who face (in)justice systems that question their experiences, and can lead to changes at the national level.

This case is the first in which two trans women have been recognised as women and treated as women in courtrooms.

The legal strategy of lawyer Arlen Palestina was based on closeness and empathy with the offended parties and an understanding of the importance of moving on from the pain and suffering. This relationship, based on mutual respect, allows them to feel empowered to express their views, make informed decisions, and find the strength to rebuild their life once the process is over.

The offended parties change their perception; they no longer see themselves as just victims, but begin to show confidence. They argue in front of the judge and begin to lose their fear of the aggressors.

**Take charge of the process from beginning to end and maintain a friendly and ethical relationship with the victim and her family.**

We must always ensure the safety of those we are supporting, since the police are not perceived as guarantors of the safety of sex workers.

Do not provide information that could put other sex workers in risky situations during the process.

Provide support that is monitored by other fellow sex workers so that they can also access support in times of need.

Support the victims during the hearings, so that they can freely express what is happening and how they feel treated by the judge or others.

*Translation from Spanish to English by Vivian Cartagena. To download the Spanish version, click [here](#).*

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**Brigada Callejera (Brigada Callejera de Apoyo a la Mujer “Elisa Martínez”)** has been working with sex workers in Mexico since 1995. They offer education and many other services to help sex workers find dignity in their work and develop the skills to find other work. Brigada Callejera specialises in the defence of human rights and labour rights of sex workers.

# In Search of Justice: The Tlalpan Rape Case

Brigada Callejera

## *Brief Information about the Case*

The Tlalpan Avenue area of Mexico City is a historic area for sex work and since the 1970s, has had cisgender and transgender women doing sex work along the roads, in hotels, or in clients' cars. Violence in the area increases every year, as well as threats and extortion of sex workers, and men charging them money for 'protection', without the police or any other authority doing anything to protect their basic rights. That's why sex workers organise themselves for their safety and find ways to inform each other and share information about violent clients and how to identify them.

In 2019, a group of sex workers identified a client who hit, threatened, and raped them in hotel rooms. They started a WhatsApp group and shared an image of his white van, as well as photographs of his face.

## *Why Brigada engaged in this case*

On 23 March 2021, the man in question was identified by a group of sex workers. Several of them went to rescue a colleague who was in a public space with him. She was sharing her real-time location with the group, which allowed them to arrive at the location after requesting help from the police. He was arrested and transferred to the Benito Juárez Mayor's Office as a detainee. The sex workers immediately called the feminist lawyer Arlen Palestina Pandal from Brigada Callejera, explaining the situation and telling her that they had seen him in the Public Ministry giving 5,000 pesos and a firearm, with which he threatened them, for his release.

When the lawyer arrived at the Public Ministry, there were more than 20 sex workers outside, 15 of them ready to testify against him.

Lawyer Arlen Palestina provided support to the woman who identified the perpetrator. Her name was Azul and she had suffered sexual abuse, but she was able to warn her colleagues.

When the lawyer was at the Public Ministry, she witnessed how officials asked Azul repeatedly, 'Did he rape you or not? No way! So why are you wasting our time, go back to work and let us return to important problems. He already said



that he didn't do anything to you and that you wanted to rob him, do you want problems?'

Arlen smiled, greeted everyone in the room loudly, and introduced herself: 'I am her legal advisor, here is a copy of my professional licence. I'm going to find the prosecutor and I hope he will order the detainee to be transferred to the Specialised Prosecutor's Office for sexual crimes.'

The legal process has not ended to this day. The violence with which the sex workers were treated that evening before Arlen's arrival instilled fear in them and, as a result, only six of the 15 women went on to testify. Of the six, only two have been asked to testify. Arlen has been appointed as the legal advisor to all six.

The man, named Edgar Javier Mares Gutiérrez, was imprisoned on two charges: one for sexual harassment and another for aggravated rape. The six victims still live in fear. One fled to the USA for fear of reprisals and the other five remain in Mexico.

### ***Outcomes of the intervention***

In this case, the challenges were multiple, as the authorities were not clear about the rights of sex workers to file a complaint. In most cases, the prosecutors questioned what occurred inside the hotel room, assuming that the sex worker was willing to accept all kinds of abuse from clients.

For example, their reflections included: 'That's what they're hired for', 'They deserved it', 'They like being hit', 'Lawyer, you better go and rest now and we'll get money from your client', 'They live like this because they like it'.

It is crucial to train and raise awareness of prosecutors, investigators, psychologists, and other experts about how to listen to stories of violence, including sex workers' experience of filing complaints to the police. We had to constantly change the prosecutor because he was not respectful of sex workers, saw their claims as exaggerated, and made various omissions in the case.

All of this forced Arlen to ask for the suspension of the hearings, which made the procedure long and exhausting. However, what kept us going was the search for justice and we explained to our sex worker comrades that it was important to see the patriarchal way in which everyone approached the subject as soon as they knew it was about a sex worker. The challenge was to not let the women give up hope.

### *Considerations and caution*

Some women had to leave the country after witnessing the corruption and negligence of the authorities. There were no guarantees for their safety during the process.

### *Learning from this experience*

The challenges allowed Brigada to understand the overwhelmed capacity of the justice system in Mexico, the relationship between the justice system and its access to sex workers, the need for laws that enable identification of the violence that the sector experiences, the ways the police operates, and how these forms of violence can be sanctioned and/or resolved without punishing the sex worker.

Lawyer Arlen Palestina continues to advocate for the training of public officials to address issues of violence against sex workers from a gender perspective. The vast majority of officials do not know that sex work is recognised as work in three Mexican states and they continue to use the term ‘prostitute’ when making statements.

The way to strategically address the case is through constant training, making visible the workload of the judiciary that prevents the successful investigation of cases, and the lack of information about the lives of sex workers.

*Translation from Spanish to English by Vivian Cartagena. To download the Spanish version, click [here](#).*

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# In Search of Dignity and Justice: Engagement with the Supreme Court-mandated expert panel on the rights of sex workers

Women's Initiatives (WINS)

*'Our body is our right, and you have no right to rob us or tell us not to do our work.'*

## **Introduction**

Gender equality and sexual rights of people of diverse genders has been the focus of Women's Initiatives (WINS) since its founding in 1994. The organisation empowers women, girls, and men to fight the root causes of discrimination by offering an understanding of societal structures and systems and helping them to organise and fight against oppression and injustice. This support leads them on the path of self-development and a better future.

WINS works with select households of single women sex workers in drought-prone areas of Tirupati district in the state of Andhra Pradesh (AP). We network with state, national, and regional-level organisations like the National Network of Sex Workers (NNSW), as part of our policy advocacy initiatives. We believe that all people, regardless of gender and occupation, should be treated with respect, and their lived experiences validated. WINS and NNSW support workers in fighting against exploitative practices in sex work. We advocate for the right to sex work, full decriminalisation for better safety, and the ability to organise. Sex work provides a liveable income and the false dichotomy of good and bad in sex work should be rejected. We want to emphasise that attempts to abolish sex work will lead to unsafe and violent conditions for sex workers. As a feminist organisation, we have tried to give women sex workers a voice so that they can protect and organise themselves.

## **Sex Work in India**

There has been very little public discussion about sex work in India. Most people believe it is illegal and even more consider it immoral and intrinsically exploitative. Yet, sex work is not illegal in India. There are hundreds of thousands of women, men, and transgender people who sell sex, usually surreptitiously, to make a living. A great many do so voluntarily. Many enter sex work after leaving exploitative conditions in domestic, construction, or retail work. The lack of safe, remunerative livelihood options is the main push factor, along with many others.

Both the police and mainstream society hold the belief that Indian culture does not respect sex work, a notion that is simply untrue. Anti-trafficking groups continue to conflate voluntary sex work with trafficking and target sex workers, usually women, for remand and rehabilitation. We believe that laws, policies, and practices must be devised in ways that do not further disempower women. When sex workers are not troubling anyone, why should they be punished? There is nothing wrong or harmful with an individual choosing to share sexual services with another consenting adult. It is her body, and the transaction is a consensual exchange for monetary compensation. Despite this, the police continue to harass sex workers.

The existing laws fail to offer protection, but sex workers deserve to be safeguarded by the law. When they are taken into police custody, they often have to spend thousands of rupees on court cases, a burden many cannot afford.

### ***Engagement in the Expert Panel***

In the past, sex workers lived on the borders of villages with no freedom and subservient to the rich. Today, they work in different places, including highways and lodges, and are no longer treated as slaves. Although they are not always part of the mainstream, they are not as denigrated or isolated as they once were. However, stigma persists. Identifying openly as sex workers acknowledges their livelihood and grants them dignity. Some of them, as torchbearers, lead the members, following an all-encompassing rights-based ideology.

Police violence against sex workers is often justified by public complaints of nuisance. The police believe sex workers can create disturbance and so they subject them to beatings, arrests, and extortion. Sex workers navigate court cases and sometimes endure demands for free sex. Even without causing disturbances, police regularly harass them, seize their phones, money, and personal items. The police often ignore their voices, believing no one will advocate for them. Access to justice for sex workers is constrained by barriers ranging from lack of knowledge about their rights, dependence on assistance and resources, the threat of sanction, and the lack of capacities in the justice system to respond to their particular needs. The stigma and moral lens attached to sex work further exacerbate their suffering.

From 2011 to 2016, we were part of the Supreme Court-mandated expert panel for recommendations on the rights of sex workers. We supported legal and policy advocacy for delinking trafficking and sex work and worked towards decriminalising sex work. A few NNSW sex worker leaders from different Indian states were selected to present their views to the Supreme Court (SC) panel in

2014. They were trained to speak about the law and rights of sex workers. The AP state leaders visited four district community-based organisations and explained the legal stance, including the difference between legalisation and decriminalisation of sex work. Active community leaders and members from these four districts worked together and built the capacity for civil and political education by sharing updated information and knowledge in their local languages.

The National Network (SIAAP-NGO) member to the SC panel met with many activists, NGOs, lawyers, sex workers, and sex worker rights networks to understand the problems of sex workers and the challenges they face. NNSW members, including KSWU, VAMP, UKMO, Vadamar Federation, WINS, and SANGRAM, were part of these discussions on many occasions. NNSW members came together and made a detailed submission in November 2014 on the problems of the *Immoral Traffic Prevention Act* (ITPA) and their recommendations.

We organised a panel discussion on the Supreme Court Mandate Recommendations on the Rights of Sex Workers. It was attended by over 85 people from different communities who found it informative and useful. We had representation from NNSW, as well as women in sex work from the states of Karnataka, Maharashtra, Andhra Pradesh, and Tamil Nadu. We also had trans men and trans women representatives from Trichy and Kerala, and LGBTQI people from various parts of Tamil Nadu. The issues raised by female sex workers resonated with the LGBTQI community too. The discussions created a sense of unity and highlighted the need for mutual support.

The Supreme Court panel made [detailed recommendations](#) to the Supreme Court on how the rights of sex workers can be protected and upheld. On 2 November 2020, the Supreme Court asked states to give rations to sex workers without asking for identification. Few recommendations of the panel to the Supreme Court were accepted by the government. The Supreme Court gave directions to the state governments and union territories on some recommendations and instructed the state governments to implement them immediately.

On 19 May 2022, the Supreme Court of India issued an Interim Order on the rights of sex workers. The case, Budhadev Karmaskar vs. Union of India, had been going on for over 10 years. The Supreme Court set up a panel to give recommendations on how sex workers can live a life of dignity according to the rights given under the Constitution.

Violence issues are generally dealt with by the crisis management team within the collectives; they used the Supreme Court guidelines to defend themselves

against police violence. We strengthened and emphasised women's agency and their right to mobility, circulated the Supreme Court order in local languages to all police stations and to community members as well. We sensitised the District Police Chief and the team on gender discrimination.

### ***Resisting state violence against sex workers by building awareness and collective support***

Local groups of women have formed their own collectives, meeting regularly at their workplaces or homes. They gather once a month at the office where they voluntarily share their testimonies and discuss various issues affecting their lives such as criminalisation of sex work. Women who had not previously engaged in public work or services have now become active peer leaders. They receive structured training and counselling to protect themselves and others when their basic rights are violated. Despite facing ridicule, humiliation, and assault, they stand united against a common enemy: stigma. Their lives are marked by numerous survival struggles, including caring for children, dealing with health issues, managing finances, and navigating relationships. As they grow older and their business prospects diminish, they shift their focus to protecting and aiding younger women in sex work. They reach out to their sisters, recognising that the plight of others can be even more severe than their own; they also enjoy traditional camaraderie when they meet.

By providing knowledge-building sessions to sex workers at their workplaces, we can proudly say that we have empowered them to understand the legalities and stand their ground when confronted by the police. Previously, when the police or others attacked and seized their mobile phones, the women would be very scared. However, after getting trained in dealing with difficult situations, they gained the courage to speak to the police about the Supreme Court guidelines. They now understand their rights and can assert that no one has the right to stop them from working.

Sex workers from six Indian states—Tamil Nadu, Karnataka, Andhra Pradesh, Kerala, Maharashtra, and Jharkhand—were mobilised. WINS represented Andhra Pradesh. At the court, members of NNSW presented evidence on the impact of criminalisation on their lives, while community leaders gathered information on police brutality against sex workers.

Police harassment of sex workers continued despite the state-level legal advocacy with the Andhra Pradesh Director General of Police. Women who received training were aware of their rights and advocated for the rights of sex workers against forceful rehabilitation. However, they were reluctant to report instances of police violence. Women reported sexual abuse, money theft, and false charges

by police, including grudges, leading to further abuse. They were the most discriminated against compared to other groups causing 'public nuisance'. Community leaders and supporters [addressed high-level meetings](#) in the state against trafficking, advocating for non-arrest of clients to avoid targeting women.

On International Sex Workers' Day, they held a small street rally with sex workers and supporters. They also organised a press meeting where female sex workers presented their issues, including the violence faced, while they called for the recognition of sex work as work.

During Pride March, sex worker groups and sexual minority groups shared the same platform in their fight for dignity. They extended mutual support in order to bring changes in the law.

The AP state police commissioners and district police officers were supportive. This gave impetus for local women leaders to approach the police station fearlessly and hoping that police officers would maintain their supportive stance, especially for the upcoming establishment of anti-human trafficking units. Due to the conflation of trafficking with sex work, street workers are often picked up in Blue Colts (mobile police teams) and presented as victims of trafficking.

Sex workers collectives met with women working in other sectors that intersect with their work to build alliances and create opportunities for dialogue. They connected with migrant workers, domestic workers, undocumented and documented worker unions, and health and human rights groups. An attempt was made to connect with Dalit and tribal groups, as well as other marginalised groups such as denotified criminal tribes, on issues of gender discrimination, while acknowledging that their identity and struggle for survival are far more complex.

We identified all the new sex workers in the district and organised a leadership training programme by selecting leaders from each group and training them in governance, communication, team leadership, and active listening skills. These leaders then shared the training with other sex workers, which enhanced the visibility of community-led initiatives.

We focussed on enhancing self-esteem and recognition of sex work as a dignified livelihood option. Sex workers who rely solely on sex work as their profession view it as their right to work. They take pride in stating that it is through sex work that they support their children's education and cover their daily expenses.

Working together to strengthen sex workers' rights involves building partnerships and shaping policies against police violence, while emphasising

resilience. It includes understanding legal procedures and the importance of collecting evidence using phones for legal recourse. All women are encouraged to speak out against police misconduct to influential officials and during organised meetings.

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**Women's Initiatives (WINS)** works on gender equality and diverse sexuality issues, enabling poor and marginalised social groups, such as sex workers, HIV positive women, single women, and migrant women, to articulate gender discrimination in a rights-based structure. WINS creates an enabling environment where communities can live a life with dignity and build capacities and competencies using their own productive resources and through rightful access to government support and services.



# Engaging in a Constitutional Challenge to Canada's Sex Work Laws: A personal reflection

Sarah Smith, Peers Victoria Resources Society

*'I find the fight for sex workers' human rights fascinating. As I try to make sense of the law, its impacts and its loopholes, I feel very honoured to be a part of this struggle.'*

Sarah Smith is the Media and Advocacy Education Coordinator at Peers Victoria, Canada. This article is a personal reflection as a representative of one of 23 groups engaged in a constitutional challenge to Canada's sex work laws, *Canadian Alliance for Sex Work Law Reform (CASWLR) v. Canada (2021)*. Sarah represents a single group of many in the larger case, with her own subjective experience of being part of strategic litigation.

## ***Background and context on Historical Legal Proceedings***

Understanding past legal proceedings in Canada provides important context for the struggle for sex work law reform over the past 20 years. Between 2007 and 2013, three sections of the Criminal Code were successfully challenged by bad-ass sex worker heroines Terri-Jean Bedford, Valerie Scott, and Amy Lebovitch. They argued that these prostitution laws were unconstitutional and put sex workers' safety, security, and liberty at risk. At that time, while 'prostitution' itself was not illegal, activities such as soliciting, 'living on the avails' of sex work, and 'keeping a common bawdy house', were criminal offences. This landmark constitutional challenge, known as the *Bedford* case, marked the first time that sex workers in Canada sued the government for failing to protect their fundamental rights. When the Supreme Court of Canada unanimously ruled that these three provisions were unconstitutional, it was a huge triumph. However, it was short-lived. The then-conservative government, led by Stephen Harper, introduced Bill C-36 in June 2014, proposing a new set of laws that were equally damaging to sex workers.

The resulting *Protection of Communities and Exploited Persons Act (PCEPA)* came into effect in December 2014 and was inspired by the Swedish regime—it made sex work illegal for the first time in Canada by criminalising the buying of sexual services, the selling of sexual services in public spaces, advertising, and earning a

material benefit through the sale of sexual services. While sex workers who earn income from the sale or advertising of their own sexual services are immune from prosecution, the Act criminalises sex work as a whole. Sex workers were obviously devastated by this, knowing that the impacts of criminalisation detailed in *Bedford* would continue.

### ***The Constitutional Challenge to Improve Safety for Sex Workers***

After seven years of government inaction regarding their unfulfilled promise to review PCEPA and improve safety for sex workers, the CASWLR (“the Alliance”) initiated a constitutional challenge in 2021. This challenge targets most of the provisions in PCEPA, arguing that they are unconstitutional. The situation is understandably frustrating; however, we recognise that the struggle for respecting human rights is ongoing and takes place in many arenas. Within the Alliance, our decision to challenge the laws was not an easy one. Constitutional challenges require a lot of resources and time from our community—resources that are also essential for providing frontline services and creating solidarity and important community moments.

The 23 members of the Alliance spent a lot of time in discussion and consultation about the best course of action. We questioned: what would this mean for our community and the members directly or indirectly involved? What is the capacity of each community to take on the public and private work needed to see out a case such as this?

*I really commend all Alliance members for the attention to detail in those early days of this decision, as I myself was cutting my teeth on what it means to fight for sex workers’ human rights through the courts—making law reform happen is a steep learning curve! We all had to teach each other and be ready to learn.*

The different generations and experiences of sex worker activists within the Alliance were really helpful as we worked together to navigate complex conversations and demystify the legal processes and jargon, which has also been helpful for the work Peers does in our community.

Together, each Alliance representative works to brief our local communities so we can make informed decisions about what kind of law reform work we can and want to do together. This involved providing background on the history of the Alliance and weighing out the risks of both taking action and choosing not to act. We needed to explore this thoroughly. We examined the facts: what would happen if we did *not* take on the case? What would this mean for sex workers’ rights across the country if our voices were not at the forefront? And what might the

setbacks be to our ability to fight for sex workers' rights in other ways, especially if many of our resources became tied up in the constitutional challenge?

It was certainly a tough call, but in the end, we decided it was far too important to not move ahead with the constitutional challenge: every day that criminalisation of sex work continues is another day that sex workers are disempowered and experiencing violence, discrimination, and a host of other human rights violations. Sex workers needed to be at the forefront of any legal reform to sex work laws, and being a part of this constitutional challenge was one way to ensure that our voices were represented.

Fast forward through all the meetings, consultations, and considerations, the first level of the case was heard at the Ontario Superior Court in Toronto, Ontario, in early October 2022. I attended and documented a robust rally outside the courthouse in the name of asserting sex workers' human rights. The rally was spearheaded by Butterfly—Asian and Migrant Sex Worker Support Network, and attended by SPOC, Maggie's Indigenous Sex Work Project, SWAP Hamilton, Stella, Maggie's, me from PEERS, and individual sex workers and allies. Members and friends of Butterfly led the crowd in a chant "*Sex work IS work, decrim NOW!*" The sea of red umbrellas and the number of allies present were truly touching.

Knowing our movements are all interlinked meant that a crowd of workers, friends, and allies came out in full force. Most notable was the presence of those in support of im/migrant and labour rights, rallying alongside the red umbrellas and calling for human rights. Interveners in the case who also spoke out for sex workers' rights included Legal Education Action Fund (LEAF National), Black Legal Action Centre (BLAC), and Migrant Workers Action for Change, to name a few.

*I was privileged to be able to sit in the courtroom and witness our legal counsel present our arguments for sex workers' rights to safety, personal and sexual autonomy, security, expression, and equality. One of our lawyers made arguments about sexual autonomy that were the most compelling to me. The main point of the argument was about personal and sexual autonomy, and outlined Canada's sexual assault and consent laws.*

She explained their evolution and what they mean for sex workers—this was a personal highlight for me. A light went off when she argued that if sex workers do not have the right to consent (or withdraw consent) to sexual activity, then they do not share the same rights as others under sexual assault law. She elaborated that very few people in the audience might be so marginalised that they could

understand the gravity of having one option (sex work), in a limited field of options, taken away. This was another impactful observation.

Canadian law is a colonial and historically racist tool and PCEPA's provisions are no different. While sex workers might be immune from prosecution for earning money from the sale of their own sexual services under PCEPA, they are not immune from the consequences of criminalisation that go beyond arrest. Also, those who aid safer work practices, such as translators, drivers, security, reception etc., can be arrested for earning money from the sale of someone else's sexual services. Many communities of Black and Indigenous sex workers rely on these relationships in the context of earning their money.

One issue that our constitutional case is unable to challenge in court is the provision in the Immigration and Refugee Protection Regulations (IRPR) that makes it illegal for migrant women to work in any part of the sex industry. The IRPR is not part of the Criminal Law, so while this regulation is not part of this legal challenge, the impacts of criminalisation on migrant sex workers is one central piece of the case and the evidence we submitted. Criminal Law is used in conjunction with other policies and regulations, like the IRPR, and this increases the impacts of criminalisation on migrant sex workers, including heightening the risk of arrest, detention, and deportation. All of this means migrant sex workers are much less likely to report violence against them so that they can avoid detection. The need to repeal this IRPR provision is part of the [Alliance Recommendations for Law Reform](#) and because of this, migrant sex workers, and the wider migrant rights community, were there to support our constitutional challenge. At the courthouse rally, it was very clear who could and could not afford to be recognised; migrant sex workers took a huge risk just by being there, with masks, glasses, and gloves, so as to be unrecognisable.

*We waited a year for the judge's decision in our case. Much to our dismay, the judge ruled that the provisions of PCEPA are constitutional. At the time of writing, CASWLR is waiting to file our appeal, in the hopes of eventually reaching the Supreme Court of Canada where we hope that the laws that criminalise sex work will be repealed.*

More information about the Alliance's constitutional challenge can be found [here](#). An info sheet outlining the legal arguments can be accessed [here](#).

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Peers Victoria Resources Society is a member of the [Canadian Alliance for Sex Work Law Reform \(CASWLR\)](#), an alliance of sex worker rights groups across the

country that work together to change laws and policies that harm sex workers in Canada. CASWLR is focussed on creating a unified and cohesive response to law reform and strengthening the capacity of our communities to engage with the legislative processes that impact our lives. Together, we represent a diverse group of sex workers and allies. Peers Victoria and SACRED (Sex Workers Acknowledgment Create and Redefine Experiential Diversity), the Indigenous group of Peers, are among the 23 members of CASWLR.

# Using a State-Initiated People’s Tribunal to Achieve Migrant Justice

Bangladesh Nari Sramik Kendra (BNSK)

*The Gono-Shunani, or public hearing, became a potent tool in the fight for justice, as it fosters accountability and provides an accessible forum for migrant workers to seek redress for violations. It not only tackles immediate grievances, but also contributes to the long-term goal of eradicating exploitation and ensuring the fair treatment of migrant workers.*

## **Introduction**

From 2016 to 2020, Gono-Shunani was held once a month under the initiative of the Director General of the Bureau of Manpower, Employment and Training (BMET). After this initiative ended, arbitration activities began to take place weekly at BMET, with workers from BNSK participating in their cases. Even though the public hearing has ceased, a decentralised initiative has been launched allowing the District Employment and Manpower Office (DEMO) to conduct case resolution processes. The decisions taken during these Gono Shunanis were effective and binding, with the Director General of BMET acting as the final authority on decision-making.

The aim of Gono-Shunani is to ensure justice for migrants and work towards the eradication of any violations against migrant workers. Violations such as forced visa irregularity, human rights abuses, abduction, wage theft, and breaches of contract were thoroughly addressed through this initiative. This platform brought together four parties: workers, recruiting agencies, the Directorate General (DG), and Civil Society Organisations (CSOs) to collaboratively resolve these issues.

However, the challenge is that the majority of recruiting agencies are located in Dhaka, while the DEMO offices are in the districts. This situation complicates the resolution of cases coming from the DEMO offices. Nevertheless, from BNSK, we have been filing complaints with local DEMOs, which are based in Dhaka, and we submit these to BMET as well as to the Dhaka DEMO.

### ***Tania's Case***

Tania<sup>39</sup> went to Saudi Arabia in search of a better life only to find herself trapped in a nightmare. Arrested and jailed under false charges, she became one of the many migrant workers whose fate remained unknown to their families back home. Tania's mother and brother, in the midst of their helplessness, found hope when they attended one of BNSK's courtyard sessions in their village. There, they learnt about our hotline services, and with a mix of desperation and hope, reached out to us.

We immediately mobilised our team to trace Tania. But despite our best efforts, we hit a wall. We were unable to find out her whereabouts or gather any information about her situation. We collected information about Tania's documents and contacted the recruitment agency that had sent her to Saudi Arabia. However, the agency refused to provide any information or assistance in bringing Tania back.

As the days turned into weeks, her family's anxiety grew. They did not know whether Tania was alive or in danger. But at BNSK, we could not let her story be forgotten. We requested formal intervention in the case from the Directorate General (DG) of BMET. From previous experience where all other routes have been exhausted, BNSK has used the Gono-Shunani to hold recruitment agencies accountable by revoking their licence.

### ***Using a State-Organised People's Tribunal to bring Tania home***

When we first approached the recruitment agency, they denied involvement, claiming they could not help. BNSK proceeded to apply for arbitration through BMET, ultimately leading to a public hearing. Public hearings are designed to give voice to migrant workers who have suffered injustice, allowing both the affected workers and their advocates, like BNSK, to present evidence and demand accountability from agencies that are otherwise hard to reach.

The arbitration worked through the Gono-Shunani. BNSK highlighted to the DG the importance of the case and the severe human rights violations faced by Tania. The DG understood the gravity of the case and took prompt action, issuing a directive to revoke the licence of the recruitment agency as a penalty for their non-compliance. This action proved effective and finally, the agency could no longer ignore the case. They were compelled to attend the Gono-Shunani, where the case was examined.

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<sup>39</sup> Pseudonym developed with the consent of the worker

During the public hearing, BNSK presented evidence, including Tania's documents and testimonies from her family, making it clear that the agency was responsible for sending Tania into a dangerous situation. It was revealed that Tania had been falsely accused of a crime in Saudi Arabia.

The public hearing was a formal and transparent process that enabled evidence to be presented and for the agency to be held to account for its failure to assist the worker. The final decision was made by ordering the agency to bring Tania back to Bangladesh, where she would be safe and reunited with her family. This decision ultimately resulted in Tania's return to Bangladesh, providing her with much-needed relief and safety. Tania also received her salary and compensation from the recruitment agency.

The final decision by the BMET in this process is binding and effective because the recruitment agency has been fined and has had its licence revoked. Furthermore, there are additional penalties that require the agencies to comply with this decision.

Tania was relieved to receive her money and salary back. The recruitment agency also provided compensation to her. What had started as a desperate cry for help transformed into a victory for justice, a victory made possible by the tireless work of BNSK and the public hearing process.

### ***Wider Lessons [From the Micro to the Macro Level]***

The primary goal in this case was to ensure Tania's safe return to Bangladesh and protect her from further harm. The intervention aimed to clear her name, and address the wrongful accusations against her. After months of being falsely accused and imprisoned in Saudi Arabia, Tania returned to her family, where she could begin to heal from the trauma she had endured. For BNSK, the case was a clear example of the power of advocacy and the critical role that strategic litigation and public hearings can play in holding recruitment agencies accountable for their actions and ensuring that migrant workers' rights are respected. Additionally, the case highlighted the importance of collaboration between NGOs and relevant government authorities, such as BMET, and the need for comprehensive legal mechanisms to protect migrant workers in distress.

### ***Considerations and Caution***

BNSK adhered to strict ethical guidelines while collecting testimonies. This included respecting the privacy of the workers involved, and ensuring confidentiality so that no harm would come to the migrant worker or her family as a result of the documentation process. We made sure that Tania's family was



fully informed and consented to sharing their experience publicly; their wellbeing was our highest priority.



### ***Risk Assessment***

A comprehensive risk assessment involves identifying the potential dangers to the migrant worker, their family, and the organisation involved in advocacy. This includes considering legal risks, threats to the safety of workers, potential retaliation from the recruitment agency, financial and reputational risks to the organisation, and potential challenges in enforcement. It also involves evaluating the physical and emotional risks. Our risk management strategy involved ensuring that Tania and her family were protected, that their privacy was respected, and that every step of the process was communicated transparently.

Though we resolved this case through the arbitration process, for a very long time afterwards, this process stopped including CSOs due to the pressure from recruitment agencies. So, case management became lengthy. However, after the recent change of government in Bangladesh, BMET has begun including CSOs again in arbitration processes. We are hopeful that this would bring positive change in resolving cases of migrant workers.

### ***Outcome of the Intervention***

One facilitating factor included working closely with BMET, the Bangladeshi Embassy in Saudi Arabia, and legal partners such as the Bangladesh National Women Lawyers' Association, to address the situation. These relationships were vital in ensuring a swift and effective response. The cooperation with BMET, particularly the intervention of the DG, was vital in compelling the recruitment agency to comply with the Tribunal's orders.

The arbitration process and the subsequent public hearing played a crucial role in bringing the issue to light and holding the recruitment agency accountable. The Gono-Shunani proved to be a powerful platform for justice by addressing migrant workers' issues through a collaborative and transparent approach and directly taking action for grievances and rights violations related to migrant workers.



By providing a public platform where all parties could be present, the Tribunal ensured that the concerns of migrant workers were heard in a structured, open environment. This transparency empowered workers and ensured that private recruitment agencies could be held to account. Violations such as illegal recruitment practices (e.g., sending more workers than allowed on a visa), violence, wage theft, and breaches of contracts were brought to the forefront during these sessions.

The public nature of the hearings allowed for immediate action. Once a case is opened, the involved parties have no choice but to address it in front of the public, encouraging swift resolution. This setup worked as an efficient means to resolve disputes quickly, creating a sense of urgency for all parties to uphold their obligations.

Despite the successful outcome, the case was not without challenges. The recruitment agency's initial refusal to cooperate and the delays in the legal process caused significant emotional distress to Tania's family. The emotional toll on Tania's mother, who feared she had lost her daughter forever, was immense. Even after Tania's return, the trauma of her wrongful detention and the agency's

negligence left deep scars. Moreover, the agency's non-compliance with the notices highlighted the systemic issues within the migration industry that make it difficult for migrant workers to access justice.

### *Lessons Learnt and Recommendations*

- **Collaboration and persistence are key:** working with authorities like BMET and staying persistent in the face of resistance from recruitment agencies is crucial for success.
- **Timely intervention is essential:** early intervention through public hearings and legal channels can expedite the resolution process and prevent further harm to workers.
- **Strength in solidarity:** working together with other organisations and government bodies is crucial. This case could not have been won without the support of BMET and other key partners.
- **Better outreach to workers:** expanding outreach programmes, like the community courtyard sessions and hotline services, can help organisations like BNSK to stay connected with migrant workers and respond quickly to their needs.

This case is a testament to the power of persistence, solidarity, and justice. Tania's return is not just a victory for her, but for all migrant workers who face injustice. It is a reminder that no matter how difficult the fight, every life matters, and every voice has the power to bring about change. This case study also demonstrates how BNSK effectively used strategic litigation and public hearings to protect the rights of migrant workers and ensure accountability in the migration industry. The process not only facilitated the return of Tania but also highlighted the critical role that public hearings can play in achieving social change.

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**Bangladesh Nari Sramik Kendra (BNSK)** is a women-led non-governmental organisation established in 2009, which advocates for the rights and welfare of workers in Dhaka, particularly women migrant workers, domestic workers, and internal migrants. BNSK is dedicated to addressing issues related to migration, labour exploitation, legal protection of workers, and reintegration. The aim is to improve women's lives through awareness-raising sessions, campaigns for workers' rights, and women's forums for bringing out the leadership capacity of women workers. BNSK supports migrant workers through their engagement in strategic litigation and advocacy, which includes participating in public hearings such as the Gono-Shunani organised by the Bureau of Manpower, Employment and Training (BMET).

# Psychosocial, Physical and Digital Security Risk Management of People's Tribunal on Water Privatisation at the People's Water Forum in Bali

Solidaritas Perempuan

*I'm very scared, and what should I do? I travelled a long way from Cilongo to Bali to fight for the water conditions on the slopes of Mount Selamat, which were becoming more and more worrying by the day. I represent women in Mount Selamat who are very sad because the water has disappeared, the rice fields have dried up, so our income has decreased and we end up working odd jobs to survive. I just went to Bali to convey my problem, how come suddenly there was an attack before my eyes? I got scared.*

*Darmini, Woman on the slopes of Mount Selamat*

## **Introduction**

The fight for water justice has become a global movement. Rural communities, vulnerable groups, urban movements, labour movements, indigenous communities, farmers' movements, environmental organisations and movements together fight for the right to determine, make decisions, and control access to water. Their struggle is to establish the basis for the recognition and protection of water rights in different legal systems in the world. This movement has been very effective in fighting for local control over water systems and countering the propaganda of corporations, international financial institutions, and governments that promote a neoliberal agenda to resolve the water crisis in Indonesia. This movement also extends solidarity to similar struggles in other parts of the world.

Indonesia was selected to host the 10<sup>th</sup> World Water Forum (WWF) on 18-24 May 2024 in Bali. The government relies heavily on the WWF, as well as on events of the International Monetary Fund, World Bank, G20, and Organization for Economic Co-operation and Development (OECD) to legitimise its 'developmentalist' authoritarian regime. The Indonesian government is willing to submit to the demands of the market to strengthen its neoliberalist orientation. This has had a terrible impact on society. WWF is another way for extractive

industries to maintain control over water policy and decision-making, and discriminate against people.

For the World Water Council, the WWF's goal is ultimately to profit from the ongoing water 'crisis' by building new financial assets and making Indonesia an extension of the neoliberalist model. Indonesia is de facto a billionaire government if you look at the wealth obtained by its state officials and the way they legitimise the extractive economy. Extractivism is the name of their game. They destroy water ecosystems and take water decisions out of the hands of the people.

### ***Intervention through the People's Water Forum***

The People's Water Forum comprises a network of workers from various backgrounds. They come from water and environmental justice movements, women's movements, social movements, small farmers, labour unions, and human rights groups around the world. The People's Water Forum believes that water is sacred in life, not a market commodity; that it is part of the global commons and must be shared fairly with guaranteed protection of sufficient water for future generations. The Forum protests against water traders, profiteers, and their supporters gathered at the WWF. It seeks to present alternatives, learn together, plan together, and find new ways to live together.

The People's Water Forum 2024 focussed on uniting local participation from social movements in Indonesia and across Asia with the strong presence of international movements, especially from countries in the Global South. It sought to pressure authorities and advocate for water justice and alternative solutions. It served as a platform to consolidate grassroots social movements and build initiatives across grassroots groups, all of which were made possible through ongoing advocacy and research. It held various activities, such as the peak event that brought together participants from all conferences; a plenary session to present findings and resolutions from previous conferences; strategy sessions to plan collective actions and campaigns; press conferences and media engagement to strengthen the message of water justice, and the People's Tribunal for Water Justice.

Solidaritas Perempuan played a crucial role in the People's Water Forum by being part of the steering committee. We were involved in events, logistics, accommodation, and campaigns, and in the coordination of parallel sessions on the theme *Demanding State Responsibility for the Loss of Women's Sovereignty for Water*. This activity was co-coordinated with Aksi! and the Bali Women's Crisis Center Legal Aid Institute, where testimonies were provided at the people's court regarding women's rights to water being violated.



*Image 1: Parallel discussion activities on Women's Solidarity which were carried out secretly and online on May 21 2024.*

### ***Considerations and Caution***

Preparations for the People's Water Forum began several months in advance through more than 15 regular committee and organising committee meetings. One week before the event, there were various acts of intimidation targeting local committees in Bali. The owner of the event venue suddenly cancelled unilaterally, so the local committee had to look for a new one.

Considering the security situation, Solidaritas Perempuan held discussions with community friends and grassroots women about who would be present in Bali. The result of the discussion was a decision that friends from the community and grassroots women would not attend, except for a few people who wanted to be present.

On 23 May 2024, Solidaritas Perempuan held a parallel session at a different hotel with around 40 participants. The discussions were held offline and online, to anticipate being thwarted by the PGN crowd. Solidaritas Perempuan presented three speakers from Jakarta, Central Kalimantan, and East Nusa Tenggara to share their views on the national strategic food estate project in Central Kalimantan, the Poco Leok geothermal project in East Nusa Tenggara, and water privatisation by the Jaya Drinking Water Company in Jakarta, which further worsens the quality of life for women. In this discussion, there was also sharing of advocacy experiences by women. This forum is a space for women to support each other to fight all kinds of threats and dangers of mega projects and privatisation.

Due to the deteriorating security situation in Bali, the Tribunal was conducted online. Solidaritas Perempuan, together with other NGOs, became prosecutors to convey the situation of violated water rights to the UN special rapporteur on the rights to water and sanitation. We specifically addressed water cases in Jakarta, Bogor, and Bekasi.



Image 2: Our campaign demands state responsibility for the loss of women's sovereignty over water.

The authority of the People’s Tribunal is to prosecute entities responsible for serious violations of the community’s right to water. The Tribunal is also authorised to hold legal entities accountable for committing or ordering serious violations of the right to water as stipulated by the International Covenant on Economic, Social and Cultural Rights in the General Comment number 15 of the Committee on Economic Social and Cultural Rights:

- a) forced eviction of people, both individually and collectively as a community related to water sources
- b) inhumane treatment, including biological experiments and/or experiments on water sources
- c) intentionally causing serious suffering or serious injury to body or health in connection with access to and use of water
- d) widespread destruction and confiscation of property, which is not justified by the principles of non-discrimination and is carried out unlawfully and carelessly against water sources
- e) taking civilians hostage in relation to water sources

- f) seizure, destruction or deliberate destruction of institutions dedicated to conserving water sources
- g) imposing measures intended to prevent access to public welfare related to water rights
- h) the use of toxic devices and substances which cause unnecessary suffering in relation to water sources.

Prior to the implementation of the People's Water Forum, Solidaritas Perempuan prepared safety guidelines that could be used by the participants. The guide contained an overview of the potential for disasters in Bali, security protocols against the risk of repression and criminalisation by authorities, articles related to Indonesian law, and preventive measures both related to the use of transportation and the use of communication tools. We also included safety protocols for Covid-19 and health risks.

When the PGN crowd surrounded the location of the People's Water Forum—one day before the activities—Solidaritas Perempuan immediately evacuated the participants from the community to look for a safer place. We moved participants from hotel to hotel more than three times, with strict supervision to anticipate any risks. We helped other participants and committees who were still surrounded by the crowds. We also ensured that all their needs are met, including food, drink, and women's vital needs such as medicine and sanitary napkins.

On different occasions, including at the People's Water Forum, the risk of criminalisation and wiretapping is very high. This has an impact on the psychological condition of the participants. Physical risk assessment can start with developing safe travel protocols. When carrying out activities, it is necessary to assess the meeting place, including the availability of evacuation routes in an emergency, and assessing whether the safety features in the hotel are functioning properly. Solidaritas Perempuan also established a buddy system by actively providing news, accompanying each other when travelling, and maintaining communication with the legal aid network. These good practices helped to reduce the risk of criminalisation and intimidation.

Regarding digital security, Solidaritas Perempuan staff always turns off the devices they carry, whether smartphones or laptops, and empty them of various documents, choosing safe communication tools. We use the application Signal, because its security is very high and it is not easy to hack.

### ***Outcomes of the Intervention***

Considering the deteriorating security situation, the People's Tribunal was finally conducted online. Solidaritas Perempuan, as one of the prosecutors, conveyed to



the UN special rapporteur regarding the impact on women. Residents of Rawa Badak and Cilincing face ongoing issues with smelly, cloudy water, low flow rates, and limited availability due to the privatisation of water services in Jakarta, managed by PT Aetra and Palyja. Despite high costs for these services, the problems persist, forcing women to stay up late to collect water that typically flows only at night. This water is often unfit for consumption, requiring additional spending on refills for drinking and cooking.

Women in these communities experience unique challenges, including double burdens managing domestic tasks amidst water issues, increased mental and financial stress, lack of knowledge to resolve water concerns due to insufficient information from PDAM, unhelpful responses to complaints, and high spending on water for household needs.

These challenges demonstrate the state's failure to uphold the right to water, especially for women, despite the constitutional mandate that water resources should serve the public good rather than purely economic interests.

### *Learning from this Experience*

Based on our experience, several lessons can be learnt:

- Consolidate and expand the movement, especially collaborate with legal aid networks and local organisations in Bali. Since people are very vulnerable to being criminalised, legal aid networks and local organisations have an important role.
- Create holistic security-related scenarios, carry out assessments, and measure risks related to activity locations and prepare for mitigation.
- Make efforts to inform the public about the situation at the People's Water Forum in order to get their support.
- Submit a letter of objection to the World Water Council to ensure that people in countries where the WWF takes place are free to express opinions, and can gather to voice their concerns without fear of intimidation, violence and dissolution of events as happened in Bali during the 10<sup>th</sup> World Water Forum.

### **Testimonials from women in the Bali People's Water Forum fighting for the environment and water rights**

*Angry and disappointed by the disbanding activities. Angry, because women's voices regarding injustice in water access and control have been silenced. We were very stressed while being held in the hotel. Moreover, food was also held back. We ate after 2 PM. How inhumane!*

**Suryani, Anging Mammiri Solidaritas Perempuan—South Sulawesi.**

*Feeling harassed, humiliated, angry, because not only is our struggle for democratic freedom silenced but also sexual violence is displayed in an inhumane way, people are pitted against each other, corporations are victorious, stakeholders are having fun enjoying the proceeds from the sale of people's land, women are being sexualised, intimidated, and impoverished, reform is corrupted, democracy is silenced by power and thuggery. **Linda Tagie, Flobamoratas Solidaritas Perempuan—East Nusa Tenggara.***

*I give the 'thumbs up' (in a negative sense) for the shrewdness and authoritarianism of the law enforcement officers repressing us. They can work quickly, huh! We, wherever we are, are immediately found. Tired, hopeless and very disappointed, We are treated like criminals. The authorities cannot contain our enthusiasm, we are confronted with paid mobs as if they don't need water! Arrogant people, what kind of country is this? **Listya, Terala Foundation.***

*This incident was very violent. Balinese people are known to be polite and friendly in our country and internationally, but some of them made me shocked, furious, and even shaking with anger. It's as if they only own Bali but don't own Indonesia (they don't stand in solidarity with the water crisis in other parts of Indonesia). I say that, because they don't want to understand what we are fighting for, even though my friends have explained to them many times what the people are feeling right now. **Halimah, Woman Fighting Against Water Privatisation in Jakarta.***

*Translation and editing from Bahasa to English by Dewi Nova Wahyuni*

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**Solidaritas Perempuan (SP) - Women's Solidarity for Human Rights** is a feminist organisation that was established on December 10, 1990. SP has worked with grassroots women to achieve a democratic social order grounded in the principles of justice and ecological awareness, respect for pluralism and non-violence by promoting equal relationships between women and men, as well as the ability to share and control natural, social, cultural, political and economic resources justly.

# LEFÖ's Strategic Litigation on Forced Labour in Austria

LEFÖ – Information, Education and Support for Migrant Women

## *Introduction*

In this contribution, LEFÖ reflects on its role and actions in the case of J. and others v. Austria (no. 58216/12), 17.01.2017, before the European Court of Human Rights (ECtHR) and its involvement in the current Feminist Tribunal Initiative.

In these actions, LEFÖ supports women's capacity to challenge the use of discriminatory laws—or the discriminatory use of laws, demand state accountability for human rights violations, and set a precedent in dealing with cases of gender-based violence. Firstly, from the constraints of the formal justice system and then—by seeking alternatives to these constraints.

## ECtHR Case Concerning Forced Labour and Inhuman or Degrading Treatment

### *Case Study*

Three clients from Asia endured severe exploitation in a wealthy family's household for varying lengths of time. When part of the family vacationed in Austria, they brought their domestic workers along, requiring them to care for the children and perform additional tasks in the hotel. The clients were restricted from leaving the hotel unaccompanied, had their passports confiscated, and were locked in hotel rooms with the children when the employers went out. They cared for the children during the night, often without proper payment or time off. They faced ongoing humiliation and mistreatment, including scolding and physical punishment, which continued during the holiday in Austria.

In the hotel where the family stayed, a woman from their home country noticed they were being mistreated by their employers. Despite the clients initially being forbidden to speak to anyone, the hotel worker found a way to communicate with them while bringing laundry. She learned about their hardships and encouraged them to flee. Initially the clients were concerned for the sake of the children, but then decided they had enough of the

maltreatment and exploitation. The hotel worker helped arrange their departure early in the morning, and a relative took them to her home. They stayed there for a while before finding LEFÖ-IBF.

Since 2012, LEFÖ has been supporting three women from an Asian country, who were exploited in the households of a wealthy family for months or years (different for each person) in the employers' country of origin. Austria was the place of exploitation during holiday periods. Locked up, mistreated, and exploited, the women were often scolded, humiliated, and sometimes hit. After managing to escape while in Austria, and after receiving counselling from LEFÖ,<sup>40</sup> the women decided to make a statement to the police and apply for a residence permit in Austria. Austria's residence scheme for victims of human trafficking is linked to an open criminal or civil procedure to determine their status as victims. However, the criminal procedure against the perpetrators, who had already left Austria to return to their country of origin, was dismissed since the case could not be treated as a domestic case, as neither the perpetrators nor the victims were Austrian. Even though part of the exploitation took place in Austria, this period was considered to be too brief compared to their entire period of exploitation.

LEFÖ informed the women about this decision, causing anger and disappointment. They felt the decision was unjust, considering their long suffering. In the second attempt, the public prosecutor's office dismissed the case again. There were no other appeal options and LEFÖ began discussing the route of filing a case at the ECtHR, both internally and with the UK-based organisation the AIRE Centre. LEFÖ was in constant contact with the women to discuss all considerations and to avoid any possible harm to their future prospects. The women based their decision to engage in the process on three factors: finding some kind of justice and having their experiences acknowledged by the justice system; receiving compensation for the material damages they suffered; and achieving a judgment that would prevent other possible cases of exploitation of women in the future.

LEFÖ wanted to improve Austrian jurisprudence in trafficking cases when the place of exploitation is outside national borders, highlighting the complexity of this type of international crime. Furthermore, LEFÖ wanted to advocate for residence permits on personal grounds by showing the limitations of the existing residence permit scheme—dependent on open criminal or civil proceedings—on the long-term protection of victims. The lack of real safety for many non-EU

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<sup>40</sup> LEFÖ – Intervention centre for trafficked women\* (LEFÖ-IBF) is a recognised victim protection organisation according to §25 Abs 3 SPG, that, with a mandate from the Ministry of the Interior and the Federal Chancellery of the Republic of Austria—section Women and Equality, offers its services in all of Austria.

nationals trafficked to Austria affects their life prospects and hinders the possibility of overcoming trauma and avoid revictimisation.

### ***Considerations and concern***

LEFÖ consistently takes ethical considerations into account when engaging clients about their experiences, understanding that this might lead to retraumatisation and cause harm. They ensure confidentiality and accountability regarding the use of women's testimonies. In the case of supporting the clients in bringing their case to the ECtHR, LEFÖ ensured that their names would not be included in any official court documents due to the clients' concerns about potential negative consequences such as stigma and discrimination.

### ***Outcomes of LEFO's intervention***

The legal process, which continued until 2017, did not end with the decision we had hoped for. Still, it had some positive side-effects. The ECtHR (Application No. 58216/12)<sup>41</sup> stated clearly that even if the criminal procedure of our clients had been dismissed, it was important that they still received support and protection to overcome their experiences and to build a new life. This statement by the Court supported LEFÖ's role and highlighted the assistance that victims require to recover from such a traumatising experience.

Even though the outcome of the process was unsatisfying, it showed the importance of informed decision-making by the affected women. It is necessary to first and foremost inform the women about the procedure, the time frame (to the extent possible), and the chances of a negative—or unexpected—decision. It is also necessary to consider possible negative health effects due to the stress of women having to retell their story of exploitation more than once.

Another consideration was the women's future life and whether they could be harmed by the procedure: are there any dangers related to the perpetrators or to state bodies which, as a result of the court case, may refuse to offer residence permit or other support? If this happens, can anything be done about it? Their safety and wellbeing were the most important considerations.

The women were able to stay in Austria until the end of the case, or even longer. At the time of the ECtHR case, LEFÖ supported them in bringing a case before the civil court, and later they were able to meet the requirements for changing their residence permit on the basis of their income, no longer depending on the criminal or civil proceedings.

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<sup>41</sup> <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-170388%22%5D%7D>

The case, as with any strategic litigation, was framed within a larger strategy to influence policy and legal reform, seeking to set a precedent. Although it did not live up to expectations, it was a great step by LEFÖ to challenge the Austrian justice system and to keep a critical eye on court rulings.

### *Discussions and lessons for a wider audience*

LEFÖ suggests that seeking legal clarification from international bodies such as the ECtHR should be considered in cases of human trafficking. However, this step must be based on a clear and informed decision made by clients who have faced exploitation. It is essential to ensure that these clients are not subjected to further exploitation due to our desire to engage in a legal battle. The well-being of the clients must always be prioritised and placed at the forefront of our considerations.

Consider the possibility of not prevailing in the case and evaluate the potential negative consequences that could arise for future legal proceedings and the impact it may have on the clients' lives moving forward.

### *Feminist Tribunal on Femi(ni)cides*

LEFÖ is also participating in a feminist tribunal to advocate for state accountability in cases of femicides. The concept of femi(ni)cide serves as a political term for naming and combating a broad continuum of patriarchal violence against women. Femicide is understood as the murder of a woman because of her gender or because of 'violations' of their traditional social and patriarchal roles. The definition goes back to the South African sociologist and author Diana Russell, who was one of the first to use the term in 1976, during the International Tribunal on Crimes against Women (Brussels, March 1976). The term feminicide, on the other hand, was coined in 1994 by the Mexican anthropologist, politician, and feminist activist Marcela Lagarde referring to murders committed in the Mexican city of Ciudad Juárez that did not receive an adequate response from the state. Feminicide therefore refers to the state's failure to condemn the murders of women.

According to media reports, in Austria there have been 27 femicides<sup>42</sup> and 41 cases of severe violence against women as of December 2024.<sup>43</sup> The majority of these femicides were perpetrated by someone in a family relationship with the victim—partner, ex-partner, or family member.

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<sup>42</sup> Austria topped the EU statistics on murders of women in 2018 with 41 femicides in that year.

<sup>43</sup> In 2023, at least 28 women were murdered in Austria.

In 2023, the police issued 15,115 restraining orders (14,643 in 2022, 13,690 in 2021, 11,495 in 2020, and 8,748 in 2019).<sup>44</sup>

Already in the early 2000s, two cases of femicides brought to light Austria's failure to protect women from violence and discrimination and the responsibility of the state in the realisation of women's human rights and fundamental freedoms. The CEDAW Committee analysed and considered the merits in the cases of Sahide Goekce<sup>45</sup> and Fatma Yildirim<sup>46</sup> against the State Party (Austria), both submitted by the Vienna Intervention Centre against Domestic Violence and the Association for Women's Access to Justice on behalf of the descendants of the deceased. Both organisations protect and support women victims of gender-based violence.

The allegation referred to the violation of articles 1, 2, 3, and 5 of the Convention on the Elimination of All Forms of Discrimination against Women,<sup>47</sup> with direct impact on the person of Sahide Goekce, in the first case, and on Fatima Yildirim in the second. CEDAW General Recommendation No. 19 (adapted in 2017 to General Recommendation No. 35) emphasises that violence against women, especially gender-based violence, is a form of discrimination that significantly limits women's ability to enjoy their rights and freedoms on an equal basis with men. It also outlines the responsibility of states for the conduct of non-state actors, if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence and for providing compensation.

Without going into the details of the specific cases, it is necessary to identify the relevant structural issues alongside the allegations about the barriers and structural violence that women often face in cases of violence or in reporting them. The complaints shed light on the fact that women are far more affected than men by the failure of prosecutors to take domestic violence seriously as a threat to life, especially due to the lack of awareness and knowledge of the Austrian authorities of the dynamics of violence and the system of dependency.

As a result of this failure, women are also disproportionately affected by the lack of prosecution of the alleged offenders and by the lack of coordination between law enforcement and judicial personnel. In both cases, the Austrian authorities knew or should have known about the extremely dangerous situation the victims

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<sup>44</sup> Sources: Police crime statistics and Vienna Intervention Centre against Violence in the Family/Vienna Violence Protection Centre activity reports 2014-2022. Data collected by the Autonomous Austrian women's shelters, <https://www.aof.at/index.php/zahlen-und-daten>.

<sup>45</sup> CEDAW/C/39/D/6/2006. Communication No. 5/2005.

<sup>46</sup> CEDAW/C/39/D/6/2005. Communication No. 6/2005.

<sup>47</sup> Austria signed the Convention in 1980 and ratified it in 1982, and ratified the Optional Protocol on 6 September 2000. It reports every four years on the progress made in implementing the Convention.

were experiencing.<sup>48</sup> The failure to offer effective protection thus resulted in inequality and denial of the women's human rights. The cases contributed to addressing discrimination in Austria's legal and social systems.

During its submissions, the state maintained the principle of proportionality for detentions, in the sense that it should not interfere in the basic rights and the right to freedom of movement and to a fair trial. However, the Committee was of the view that the perpetrator's rights cannot supersede women's human rights to life and to psychical and psychological integrity.

The legal framework was not sufficient for addressing the realities of gender-based violence and failed to provide effective protection to the victims and to offer them gender-sensitive procedures. Furthermore, both women faced barriers to accessing justice and to securing protective measures. The complaints included a request to the Committee to recommend that the state pays particular attention to providing effective protection to migrant women due to the structural violence they may face.

In its considerations, the Committee issued a recommendation to ensure that all levels of the criminal justice system (police, public prosecutors, judges) routinely cooperate with non-governmental organisations working to protect and support women victims of gender-based violence.

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**LEFÖ–Information, Education and Support for Migrant Women** is an Austrian organisation run by and for migrant women, which offers support in legal, psychosocial, and health matters and seeks to strengthen the voices of migrant women in the political discourse. In its work, LEFÖ highlights social injustices, structural violence, human rights violations and systemic inequalities that hinder the effective access to justice for certain social groups affected by intersectional discrimination. Women who belong to particularly vulnerable groups are affected more frequently and often in multiple ways, for example as people of colour, trans people, sex workers, migrants, homeless people or asylum seekers.

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<sup>48</sup> In the first case, the woman reported violent episodes, threats, and intimidation for three years and the perpetrator was issued a weapon prohibition, due to which it was determined that the Austrian authorities knew or should have known that the woman was in serious danger.



## The Feminist Tribunal on Femi(ni)cide Initiative

LEFÖ– Information, Education and Support for Migrant Women

In the past several decades, Austria has made important progress to prevent violence against women, including the establishment of a Coordination Centre, an increase in funding for counselling centres and a hotline for women. Nevertheless, the number of women affected by violence is still too high and a lot of work remains to be done. The NGO Shadow Report on the implementation of CEDAW pointed out the tendency of invoking the unscientific and anti-feminist concept of ‘gender ideology’ to question measures against violence against women.<sup>49</sup>

More efforts must be made to remove stigmatisation and the obstacles to prosecution. The experience of LEFÖ in providing psychosocial support in legal proceedings shows the persistence of barriers to accessing justice through the formal system, such as mistrust or disbelief when women testify about acts of gender-based violence, abuse, or exploitation. The placing of responsibility for the crime on the victim or the dismissal of cases reported to the police ignores the fact that the authorities must investigate every reported case, regardless of the wishes of the reporting person.<sup>50</sup> LEFÖ works directly with migrant cis and trans women whose effective access to justice is hindered by not only the barriers mentioned above, but also the fear of deportation, racism, and the difficulty in accessing support services due to lack of information in their native languages.

Feminists have been discussing for decades whether criminal proceedings are appropriate for victims of gender-based violence or whether women should be discouraged from filing criminal charges because of the many structural barriers they face. Violence against women is sustained by unequal power relations, unequal access to justice, and unequal economic conditions.

It is in this context, where traditional courts are difficult to reach for marginalised groups, and in the face of the alarming number of femicides, that the Feminist Tribunal on Femi(ni)cides emerged in Austria. It is a call for action and coming together of different collectives with the aim of strengthening the (queer)

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<sup>49</sup> NGO Coalitions Report to the Pre-Sessional Working Group as part of the 10<sup>th</sup> CEDAW review cycle of Austria, 2024: *Women’s rights put to the test. CEDAW Schattenbericht Report 2024, Austria*, [https://www.klagsverband.at/klav2024/wp-content/uploads/2024/12/CEDAW\\_Schattenbericht\\_2024\\_EN.pdf](https://www.klagsverband.at/klav2024/wp-content/uploads/2024/12/CEDAW_Schattenbericht_2024_EN.pdf).

<sup>50</sup> C Clemm, *Akteneinsicht. Geschichte von Frauen und Gewalt*, Kunstman, 2020.

feminist resistance and struggle against patriarchal violence, make feminist demands and collect testimonies from survivors as well as kin, friends, and families of murdered women.

It is an ongoing collective process, planned until 2027, in which the first steps are dedicated to discussing, sharing, and reflecting on the goals, possibilities, and struggles around such a feminist tribunal. While the search for formal justice could mean the recognition of the injustice done by a state institution and perhaps also as clarification of the circumstances of the offence (especially in the case of femicide), this kind of tribunal may rather serve as an opportunity to give the victims or their families a voice and make the injustice visible.<sup>51</sup>

The discussions during the first meeting revolved around accountability and scope of action, the inclusion of art and creative mediums in the tribunal, and ideas for further cooperation among the organisations and collectives taking part in the initiative.

We at LEFÖ see our contribution mainly as experience-sharing in victim and witness support. LEFÖ works to ensure the right to psychosocial support from a feminist and intersectional perspective, setting up comprehensive assistance during proceedings and prevention of secondary traumatisation. As was shown in the case before the ECtHR, LEFÖ documents stories and testimonies through our direct support of migrant women, with a clear policy on confidentiality and transparency. We also play an important role in analysing the situation, its risks and possibilities.

LEFÖ sees the tribunal as a crucial step in amplifying our advocacy efforts and in creating another narrative, framing the human right violations against women both as concrete experiences, as well as in the broader socio-political context.

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**LEFÖ–Information, Education and Support for Migrant Women** is an Austrian organisation run by and for migrant women, which offers support in legal, psychosocial, and health matters and seeks to strengthen the voices of migrant women in the political discourse. In its work, LEFÖ highlights social injustices, structural violence, human rights violations and systemic inequalities that hinder the effective access to justice for certain social groups affected by intersectional discrimination. Women who belong to particularly vulnerable groups are affected more frequently and often in multiple ways, for example as people of colour, trans people, sex workers, migrants, homeless people or asylum seekers.

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<sup>51</sup> N Prasad, *Methoden struktureller Veränderung in der sozialen Arbeit*, Verlag Barbara Budrich, 2023.

## Strategic Action in the Fight against Human Trafficking and Forced Labour

Fundación Libera contra la Trata de Personas (LIBERA)

### *Introduction*

LIBERA is a Chilean non-profit organisation dedicated to combating human trafficking and forced labour. It was founded in 2017 by former public officials who worked on the design and implementation of public policy against human trafficking. After identifying gaps in state actions, these women decided to create LIBERA in order to engage in research, training, and influencing of the legal and administrative framework, to contribute to the prevention and detection of trafficking and forced labour. In addition, the organisation strives to guarantee access to justice for victims through filing complaints and strategic litigation. This allows LIBERA not only to provide free legal assistance, but also to influence public policies to prevent and eradicate these crimes with the aim of repairing and remedying the violated rights of affected people.



Networking is a fundamental pillar for LIBERA's work, because collaboration and mutual support between civil society organisations enhance effectiveness in the fight against human trafficking and forced labour. Collaboration allows the

sharing of resources, strategies and knowledge, amplifying the collective impact in the defence of human rights. LIBERA actively participates in global networks such as the Global Alliance Against Traffic in Women (GAATW), OECDWatch, Global Network against Forced Labor (NForce) and the Coalition against Forced Labor in Trade (CAFLT). Its commitment is also reflected in regional alliances such as OUTRAV, RedLactra, the Latin American Observatory on Human Trafficking (Chilean Chapter), and the Chilean Platform of Civil Society on Human Rights and Business. These connections strengthen their work to address transnational challenges and promote a unified front in the protection and restitution of victims' rights.

### ***Forced Labour in Chilean Agriculture: The search for a fair harvest***

In 2019, LIBERA received a complaint about serious human rights violations against a group of workers between 2016 and 2019. They began an investigation, which was followed by filing a complaint and a lawsuit with the Chilean Public Prosecutor's Office for human trafficking for forced labour and related crimes.

The case concerned at least 25 Venezuelan and Haitian migrants who described illegal working conditions to which they were subjected on at least five farms in the north, centre, and south of Chile, where they were responsible for harvesting and packaging mandarins, clementines, and blueberries. The reported fields were part of global supply chains, through which Chilean fruit is exported.

The workers were recruited with promises of good wages and working conditions. It is worth noting that under the immigration legislation at the time, migrants who arrive as tourists needed an employment contract to work legally. This dependency forced them to work for two years with the same employer to obtain permanent residence—a situation that exposed the workers to abusive practices and exploitative working conditions since they feared losing their migration status. In addition, the lack of knowledge about their rights or immigration procedures, and the lack of accessible legal help or guidance, worsened this situation. For Haitian immigrants, the language barrier made it even more difficult to exercise their rights.

In 2019, the workers ran away and reported their situation to the Labour Inspectorate. Inspectors visited the fields and camps and documented multiple violations, including lack of personal protective equipment, non-payment of wages, incomplete contributions to the pension system, lack of time records, and degrading living conditions in container camps, with inadequate facilities in bathrooms, dormitories, and dining rooms. The responsible contractors and the

camps were sanctioned for these violations, which also revealed the extreme dependence of workers on their employers.

The inspections revealed the fraudulent nature of the actions of the employers, who concealed the conditions of exploitation by using networks of related companies and constant changes in the corporate names of employment contracts. They also confirmed the unfair dismissal or threats of dismissal of workers who reported non-payment of wages, confirming a pattern of retaliation and manipulation to cover up irregular labour practices.

The workers filed labour lawsuits with the help of state lawyers. The labour court rulings confirmed unjustified dismissals, failure to pay overtime, failure to pay social security contributions, and retaliation for labour complaints. The trials were conducted *in absentia*, since the employers, organised in networks of contractors, remain at large and have not complied with the compensation ordered by the courts. This case not only reaffirms the fraudulent nature of their actions, but also highlights the need to strengthen oversight and enforcement mechanisms to guarantee labour justice and remediation for workers.



***The Prosecution in Chile: Criminal complaint for the crimes of human trafficking, money laundering, bribery, and liability of the legal entity***

Initially, LIBERA Foundation filed a complaint with the Public Prosecutor's Office, but the investigation carried out by the prosecutor was weak. To push the process, LIBERA publicised the case in the media and filed a criminal lawsuit on behalf of the workers for the crimes of human trafficking for forced labour, money

laundering, bribery, and for the criminal liability of legal entities, against employers, managers, supervisors of contracting companies, employees of the fields, and public officials involved in the recruitment, and against the contracting companies and the principal companies themselves.

Libera provided all information regarding the case to the National Institute of Human Rights, which is assigned by law as the institutional plaintiff in cases of trafficking. The Institute joined the criminal lawsuit and has been a direct witness to the difficulties with carrying out a proactive and impartial investigation.

However, the prosecution authorities attempted multiple times to close the case without a proper investigation, which forced LIBERA to file appeals with the national prosecutor and bring a constitutional remedy for the protection of fundamental rights, similar in function to an injunction or a writ of habeas corpus to the Supreme Court, demanding a change of prosecutor.

### ***Global Value Chains and the Tree of Justice: The responsibility of companies to respect human rights***

Faced with this situation, LIBERA adopted a multifaceted strategy, symbolically represented by the ‘Tree of Justice’, where each ‘branch’ symbolises a path to justice. Although the investigation by the criminal justice system has not yet been closed, there is a feeling of hopelessness from the actions of the Public Prosecutor’s Office in the case.

Thus, LIBERA also decided to invest in strategic litigation, activating reporting and remediation mechanisms within the framework of global supply chains.

LIBERA mapped and identified all actors in the supply chain, from local subcontractors to final buyers, including supermarkets in the United Kingdom, the European Union, the United States, and Canada. This effort sought to demonstrate the lack of due diligence of these companies and pressure them to assume their responsibility in guaranteeing fair working conditions.

- **Ban on imports of products made with forced labour through the *Tariff Act (United States)*:** In March 2021, a petition was filed requesting the confiscation of the import of Chilean mandarins and blueberries to the United States because their production was demonstrated to be utilising forced labour. Despite having received the petition, and confirmed the forced labour nature of the case, the agency delayed their decision and requested new information that could not be provided due to movement restrictions during the pandemic and the risks for the team and workers.

- **Extrajudicial remediation mechanism (United Kingdom):** In 2022, LIBERA, with the support of an international NGO, activated a mediation mechanism in the United Kingdom, which presents itself as an alliance of unions, civil society organisations, and companies seeking to promote human rights in supply chains. However, despite initial meetings with key actors, the lack of commitment on the part of the companies resulted in no significant progress in remediating victims and in harm to their legal action by leaking information to the Chilean producers involved.
- **Presentation to the United Nations Special Mechanisms and the Inter-American Human Rights System (Global/Regional):** In 2022, the background information was presented to the United Nations Special Rapporteurs on contemporary forms of slavery, on trafficking in persons, and on the human rights of migrants, as well as to the United Nations Working Group on Business and Human Rights, and the Inter-American Commission on Human Rights.

The aim of these actions was to seek justice and reparation for the victims, set legal precedents, and raise awareness among both the state and companies about their responsibility in preventing these abuses. In developing the case, LIBERA Foundation collected testimonies and documented the human rights violations, following strict ethical considerations to protect the safety of the victims and ensure their informed consent.

In 2023 and 2024, LIBERA launched a new legal campaign accompanied by a powerful communication strategy. It coincides with a concurrent non-judicial litigation strategy (National Contact Points or other mechanisms) together with a legal defence effort to advance regulation connected to a communications plan implemented by a group of NGOs, covering the entire supply chain: from subcontracting fields to final buyers in different countries. LIBERA mapped the entire supply chain, which includes companies from the US, Canada, the UK, Spain, France, the Netherlands, and Chile. Each actor has a different responsibility: some have caused harm, others contributed to causing harm, and others are directly related to the impact.

The objective will be to act jointly and connect the demands in a way that covers all actors and their specific responsibilities, complying with the highest international standards and the commitments of the companies themselves. The goal of this project is to obtain redress for the workers (wages and social benefits owed) and initiate a transformative change in Chilean fields.

Despite the support and enthusiasm of the donor that finances the action strategy, finding an allied organisation turned out to be a greater challenge than expected.



In a sector that requires networking and collaboration, mistrust and other challenges persist for NGOs to unite for collaboration and mutual support. This obstacle highlights the need to strengthen trust and collective commitment in building strong alliances to face common challenges.

After months of searching for allied organisations, Libera has found local allies that, together with them, will take action against companies in the supply chains to make them assume their responsibilities for the lack of due diligence in ensuring workers' rights and honour the human rights commitments they have undertaken.

### *Learning from this experience*

Although the case is not over yet, it provides important lessons.

**First, persistence is key:** when one path to justice closes, it is essential to explore alternatives.

**Second, collaboration** with other organisations strengthens advocacy and litigation actions.

**Finally, comprehensive risk assessments** are critical, especially in international litigation.

LIBERA's experience shows that the path to justice for migrant workers, vulnerable communities, and victims of trafficking and forced labour is complex, but not impossible. The organisation remains committed to its mission of exploring all possible routes to ensuring that justice is not only pursued, but achieved, and setting precedents that transform business practices and reinforce respect for human rights.



# Labour Exploitation in Serbian Infrastructure Projects

ASTRA—Anti-Trafficking Action

## *Introduction*

### *Trafficking by companies engaging in public investment projects*

In 2019, 2021, and 2024, ASTRA supported migrant workers who were exploited through so-called **capital (public) investment projects**. These projects are key components of the Serbian government's economic policy and are financed through subsidies from the country's budget. This includes projects such as the construction of Beograd–Novi Sad railway and the Chinese tyre factory in the city of Zrenjanin.

The recruitment, transportation, control, and exploitation of workers were similar in all cases: workers were recruited by agencies or individuals in their home countries (mostly from Vietnam, India, Turkey) offering high salaries and hired by subcontractor companies in Serbia. Their passports were confiscated upon arrival. The employers either did not offer the workers contracts or did not provide them with residence and work permits. Additionally, the contracts were vague and unclear, and the employer failed to meet contractual obligations, such as timely payments, providing adequate meals, or ensuring workplace safety measures. Some contracts also included illegal terms, such as excessive working hours of 16 hours per day with no day off, prohibiting trade union associations, and imposing penalties for early termination.

Workers performed tasks without adequate safety measures, resulting in severe injuries. They lived in overcrowded housing (16 workers per room) without adequate food, heating, safe water, or proper bedding, and lacked appropriate clothes for cold weather. They were threatened after seeking help from the media and NGOs. Company representatives attempted to force them to leave the country through intimidation and pressure. Whenever civil society organisations, the media or the public found out about one of these cases, the companies would quickly force the workers to sign a document stating that the company did not owe them anything, and then return them to their home country.

In most cases, the institutions did not take any proactive actions. One factor that facilitated our work in all three cases was the international element. Specifically, at least one of the actors was either a registered branch or subcontractor of

companies headquartered in countries with well-developed due diligence legal framework, such as Germany, France, or the USA.

ASTRA was approached by the workers from Vietnam seeking help. We collaborated with local activists, legal professionals, media outlets, and international organisations to support the workers. We first evaluated the situation to identify immediate needs and risks. We then provided the necessary support services to the workers, including legal representation and safe accommodation. Finally, we engaged in public advocacy to bring attention to the case and apply pressure for systemic changes.

In order to collect evidence, ASTRA gathered information and documentation from workers and investigated other sources as well. We gathered evidence of exploitation, including contracts, testimonies, and photographic evidence of living and working conditions. From the very beginning, ASTRA lawyers prepared documentation to support any future legal actions against the employer or the companies.

ASTRA collected testimonies from the workers to document their experiences. This was done by experienced case managers who were sensitive to the workers' psychological state. They followed the ASTRA Code of Conduct and ethical principles of work. They ensured that workers were fully informed about the use of their testimonies and that their private data and identities were fully protected in order to prevent retaliation or any other consequences.

The biggest challenge was the language barrier, which made the trust building process longer than usual. There is a lack of interpreters for Tamil and Vietnamese in Serbia, so on several occasions, they used online interpreters from other countries.

### ***Outcome of the Intervention***

Our response focussed on securing the safety and rights of exploited workers, raising public awareness about labour exploitation and human trafficking in Serbia, and contributing to discussions on improving labour laws and protections for foreign workers.

Our direct engagement with and support<sup>52</sup> for (potential) victims forms the basis for a dynamic cycle of actions that enhances our understanding of the challenges and needs for services of migrant workers. This process also helps us identify the weaknesses in current public policies and support structures.

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<sup>52</sup> See types of support here: <https://astra.rs/en/types-of-support/>

ASTRA used its frontline and policy change model to achieve the following outcomes:

**Direct assistance, information about legal rights, psychological and practical support:** This brought immediate relief by securing safe accommodation, return of confiscated passports, and payment of back wages to the workers.

**Research and documentation:** This meant drawing on direct support work and foregrounding victims' experiences.

**Advocacy and awareness:** We focussed both on raising public awareness and advocating for stronger enforcement of labour laws and better protection mechanisms for foreign workers in Serbia to prevent future cases of labour exploitation and human trafficking.

**Coordination with authorities:** ASTRA coordinated with law enforcement and other relevant institutions to ensure the protection of workers' rights and to initiate legal proceedings against the perpetrators.



ASTRA played a crucial role in ensuring that exploited workers had access to legal protection and justice. As soon as the workers reached out for help, ASTRA immediately mobilised its legal team to assess their rights and determine the best course of action. The team worked closely with the workers to prepare legal claims and initiate proceedings where possible, making sure they could navigate the legal system without unnecessary barriers.

ASTRA's lawyers provided free legal aid, enabling the workers to file complaints in Serbian courts and seek justice despite the complex administrative and procedural hurdles. In parallel, ASTRA actively gathered evidence of exploitation and submitted it to law enforcement, consistently pushing for investigations into potential trafficking-related offences. However, securing justice was not only about legal battles—it was also about financial redress. The legal team engaged in negotiations with employers, advocating for the payment of unpaid wages and compensation for the harm suffered.

Even as some of the workers were repatriated, ASTRA remained committed to monitoring ongoing legal proceedings, ensuring that cases did not stagnate or disappear due to bureaucratic inertia. Determined to see these cases through to their conclusion and hold those responsible accountable, ASTRA has pursued all

available legal remedies, achieving significant progress despite systemic challenges.

With ASTRA's legal assistance, several court cases and compensation claims were initiated, and progress has been made despite systemic obstacles. The following legal actions are currently ongoing:

- ASTRA represents Indian workers in two labour courts, in Belgrade and Kraljevo. The trials are ongoing, with claims related to unpaid wages, contract violations, and labour exploitation.
- In a successful settlement, ASTRA secured compensation from the Chinese company that employed Indian workers, ensuring they received unpaid wages and travel costs. Additionally, their confiscated passports were returned.
- Separate labour court trials in Belgrade and Niš are still in progress, addressing further violations of workers' rights.
- The prosecution in Zrenjanin has not closed its investigation into possible human trafficking, despite the fact that the victims are no longer in Serbia. ASTRA continues to provide evidence and legal support to ensure accountability.
- In cooperation with US-based legal partners, ASTRA is exploring the possibility of filing a trafficking case in the United States, where the parent company of one of the subcontractors is based.



Following ASTRA's reports and media coverage, the police intervened and relocated the workers to safer accommodation. The government-run Center for Identification of Victims of Trafficking initially responded by conducting a field visit, informally acknowledging the severity of the situation and indicating that they would begin the identification process. However, within days, their stance shifted, aligning with other state institutions and halting further action. Meanwhile, the embassies of Vietnam and India visited the workers but failed to provide any meaningful assistance or support.

Contrary to Serbian institutions, there was a strong response from the international community regarding these cases. Relevant international bodies have been monitoring Serbia's implementation of its international obligations, and urging the country to respect and fully adhere to them. The international response to cases of labour exploitation and potential trafficking in Serbia has been significant, influencing both institutional reactions and corporate decisions:

- At the political level, the European Parliament adopted a resolution condemning forced labour in the Linglong factory, while UN experts issued a joint statement expressing grave concerns about the alleged trafficking of Vietnamese workers. The UN Committee on Economic, Social and Cultural Rights also highlighted the case in its Concluding Observations, urging Serbia to improve its victim protection framework.
- On the policy front, Serbia's downgrade to the Tier 2 Watch List in the US Trafficking in Persons Report for two consecutive years placed additional pressure on authorities to take stronger action. The International Labour Organization (ILO) also accepted a formal complaint from trade unions regarding violations of labour rights, underscoring systemic issues.
- In the corporate sector, ASTRA's engagement with international partners resulted in tangible changes. The German federal agency BAFA responded to ASTRA's findings, while the German company MAN Truck & Bus suspended the supply of Linglong tyres due to ongoing allegations of forced labour.<sup>53</sup> Similarly, Volkswagen is currently reviewing ASTRA's report as part of its due diligence process.

Change did not happen overnight, but through sustained pressure and a strategic approach that linked individual cases of exploitation to broader systemic failings. By continuously documenting and publicly presenting these cases, ASTRA ensured that relevant institutions, civil society networks, and corporate actors were aware of the situation. The involvement of actors such as BAFA and MAN Truck & Bus followed this sustained visibility, showing that economic considerations sometimes drive action where institutional responses fall short. This multi-level approach, combining legal action, diplomatic engagement, and public exposure, helped maintain momentum and create new opportunities for accountability, even when initial reactions of the authorities were slow or dismissive. However, much work remains to be done to ensure that all ongoing processes reach a just and meaningful conclusion, leading to lasting improvements in the protection of workers' rights.

### ***Considerations and Caution***

ASTRA undertook a thorough risk assessment by identifying potential risks to workers, staff, and the organisation, including physical harm, legal challenges, and reputational damage. Mitigation strategies included implementing safety

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<sup>53</sup> S Dragoljo and S Stahl, 'Kompanija u vlasništvu Volkswagena više ne uvozi gume iz Linglonga zbog kršenja ljudskih prava', *Birn*, 17 December 2024, <https://birn.rs/volkswagen-prekida-uvoz-guma-linglong-ljudska-prava/>.

measures, ensuring legal preparedness, and engaging with stakeholders. However, in the absence of institutional support, our options were very limited. During the most challenging moments, we relied on our partners, such as other NGOs and independent investigative journalists, as well as the broader domestic and international public, to navigate these difficulties and ensure the best possible outcomes.

Lack of time, language barriers, and cultural differences created significant challenges in managing these cases. We encountered bureaucratic hurdles and a lack of prompt response from the authorities. However, the most concerning issues were the strong political influence and the absence of empathy and professionalism within Serbian institutions. Their silence and inaction appeared to be driven by lucrative economic interests. In this way, the institutions accept the risk of causing damage and danger to the people who were already at risk. For example, police failings placed the workers at risk by delaying action on passport confiscation and leaving them under the control of their exploiters even at departure.

### *Learning from this Experience*

**Holistic support:** provide comprehensive support to victims, including legal, psychological, and logistical assistance. We base our work on data and observations from our victim support team to prepare policy reports and research papers that make a clear and compelling case for change. This approach ensures that our advocacy is based not only on anecdotal evidence, but on a strong foundation of actual experience, data, and expert analyses. This strengthens our credibility and makes a better impact on our demands for change.

**Collaborative approach:** engage with a network of allies, including other NGOs, legal professionals, and media, to amplify impact. Communication and experiences with source countries but also other destination countries with experience in similar cases are extremely helpful.

**Advocacy for policy change:** use individual cases to highlight systemic issues and advocate for broader policy reforms. When there is no legal framework on due diligence or business and human rights, when institutions are captured by private interests, and the judiciary is not independent, the only way to apply pressure is by working together with media, civil society organisations, and trade unions, and bringing international attention to the case.

**The role of funders:** large-scale cases like those can exhaust funds and burn out NGO staff in a short period of time. It is essential to work with the donor community to ensure the availability of flexible emergency funds that can be

rapidly redirected to cover urgent needs, such as supervision, additional support, and resources for the entire team.

**Long-term change:** achieving meaningful change in addressing labour exploitation requires sustained efforts over time. Both raising public awareness and ensuring institutional accountability must remain central to building a just and ethical society. This involves continuously informing the public about the realities of labour exploitation to foster a more informed and proactive society, encouraging governmental and corporate entities to consistently uphold ethical labour practices and human rights standards, and persistently ensuring legal action against employers for violations of labour laws and human rights to foster long-term accountability and justice.

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**ASTRA—Anti-Trafficking Action** is a Serbian organisation dedicated to the eradication of all forms of exploitation and trafficking in human beings. ASTRA provides direct assistance to victims, works on prevention and education, and advocates for policies that protect the human rights of victims See more at <https://astra.rs/en/>.



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