



## HUMAN RIGHTS AND PLURAL LEGAL ORDERS

Second Research Workshop, 31 October -1 November, Geneva

### FINAL DRAFT AGENDA

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#### Day One

##### 09.00 – 09.30 Introduction

There is a considerable wealth of experience and knowledge amongst practitioners engaged in the protection of human rights in the context of plural--parallel, overlapping and/or conflicting--legal orders, whether the plurality is of the 'formal-informal' variety or within the 'formal' system. The primary objective of this workshop is to consider the challenges of defending and promoting human rights in plural legal contexts. Several initiatives on the ground have aimed at deepening pluralism, others at reform of alternate dispute resolution mechanisms and non-state systems and still others at achieving coherence in the face of parallel legal systems. Larger international donor and national policy level initiatives have also spanned a wide arena of reforms including legal decentralization, legal empowerment, strengthening state and informal/non-state justice systems etc. This workshop seeks to bring together analysis of such experiences to enable the ongoing project to make an informed set of recommendations relevant to human rights practice in its final report. The focus of this workshop is how some of the key conceptual and enforcement/regulatory challenges have been resolved on the ground, and what the experiences of human rights actors in local contexts and operating at the international level tell us about possible positive ways forward.

##### Session I 09.30 - 12.00

##### **Human Rights and Legal Plurality**

*Chair: Robert Archer*

The human rights framework and certain provisions in international human rights instruments are frequently invoked particularly by indigenous people and other ethno-cultural groups, for recognition of 'traditional' justice systems, customary and personal law, the concurrent or even exclusive jurisdiction of communal authorities and dispute resolution mechanisms. At the same time, the human rights framework and standards have also provided a basis for customary and personal law and community based non-state justice systems to be critiqued and challenged both in substantive and procedural terms, not only by human rights organizations but also by actors within communities concerned. What is the basis in the international human rights framework for legal plurality? What are the key dilemmas and challenges for human rights actors? How have international standards moved towards addressing these dilemmas? This session will explore these and other related questions.

1. *International human rights, traditional authorities and customary law: Robert Husbands*
2. *Indigenous People and Minorities, rule of law and traditional justice systems: Some issues for consideration: Julian Burger*
3. *Human Rights and Legal Pluralism: The challenges to international human rights advocacy: Gita Sabgal*
4. *Customary Law/Traditional Authorities, Human Rights and Constitutionalism in Africa: Chidi Odinkalu*

**Session II** 13.30 – 15.00

**Session III** 15.30 – 17.00

### **Challenges of Engaging with Human Rights in a Plural Legal Context**

*Chair: Celestine Nyamu-Musembi*

Any initiative at effecting change to better protect and promote human rights through reforms of a legal system involves reformulation both at the institutional /structural and normative (content/principle or letter of the law) levels. Initiatives aimed at protecting human rights in the context of plural legal contexts and their reforms are complex political exercises and involve a number of issues and questions. These include: How does one adapt and translate human rights language to the local context? Given claims for greater juridical autonomy by ethno-cultural groups underlying demands for plurality, how does one protect the rights of individuals who are structurally disadvantaged within these groups? How are possibly conflicting legal norms, community/customary norms and human rights standards to be addressed? What can equality based critiques emerging from the women's movements offer as lessons in this respect? What are different perceptions about the role of the state and its institutions relevant to non-state orderings of law? How do dominant political ideologies and the ordering of state power influence readings of non-state law or traditional justice mechanisms? How can conflicts arise between different legal orders following recognition and how can they be addressed?

1. *The Salish and Conflicting community and legal norms to protect women's rights: Between the International, National, and Local human rights articulations in Bangladesh: Sara Hossain*
2. *Impact of continuity and change in ideological orientation of the State on customary law and traditional authorities in Mozambique: Helena Maria-Kyed*
3. *Imagining the state in rural Kyrgyzstan: How customary law is created in the Kyrgyz courts of elders (Aksakal courts)"Judith Beyer*
4. *Women's rights, customary law and traditional authorities in Southern Africa: Sylvia Chirawu*
5. *Conflicts in a plural legal context: The Judiciary and Indigenous Special Jurisdiction in Colombia: Mireya Maritza Peña Guzmán*
6. *Indigenous People, Human Rights in Canada: The Indian Act, The Canadian Constitution and The Canadian Human Rights Act-Challenges and Possibilities: Lois Leslie*

## Day Two

### Session IV 09.00 – 12.00

#### **Transnational Actors and Local Justice**      *Chair: Gita Sabgal*

There are a number of national and transnational actors who influence the direction and substance of legal reform and position themselves in different ways on the question of legal plurality. At the international level donors, international funding mechanisms and financial institutions play a key role in this respect. In addition, international human rights and intergovernmental organizations also have a key role to play in terms of shaping contemporary imaginations and debates about plural legal orders and their reform. Their influence however cannot be considered independently of wider ideological trends and the work of transnational networks of civil society networks not to mention the role of key state and non-state actors at the national level. This session will attempt to address the key issues and concerns in this respect.

1. *Justice reform and state and non-state legal orders: The Latin American Experience: Julio Faundez*
2. *Local realities, international priorities and global standards: International interest in traditional justice systems: Celestine N-Musembi*
3. *The role of international institutions in promotion of ADR and non-state justice mechanisms in Pakistan: Sobail A Warraich*

### Session V 13.30 – 15.30

#### **Reviewing and reflecting on key issues and questions**

This session will be devoted to a discussion of reviewing the key issues raised and also a discussion of some of the key issues and questions in working towards the Report. More information regarding the organization of this session will be shared on Day 1 of the workshop.

### Conclusion 16.00