

PRACTICE NOTE 9

**EVALUATING  
THE IMPACT  
OF STRATEGIC  
LITIGATION  
AGAINST TORTURE**

December 2022

**REDRESS**

Ending torture, seeking justice for survivors

This guide is part of a series of Practice Notes designed to support holistic strategic litigation on behalf of torture survivors. It is aimed at lawyers and NGOs who assist torture survivors in litigation and advocacy processes. Beyond changing the law, strategic litigation has the potential to yield multiple forms of impact, ranging from material changes in the life of the survivor, to changes in societal attitudes. The importance of understanding these impacts is twofold. Firstly, understanding various types of impact allows advocates to plan for and enhance impact. Survivors, lawyers, and activists involved in the campaign can select the impacts that are most relevant to their needs before designing strategies which amplify these impacts. Secondly, using a framework for evaluating the impact of strategic litigation against torture will help organisations report to donors on the impact of their work, as well as the importance of strategic litigation as an effective tool.

REDRESS has developed an impact framework for strategic litigation against torture to assist partners to address these issues. This Practice Note proposes 10 impacts of such litigation: justice, truth, material, community, movement, attitudes, policy, law, governance, and society. REDRESS notes that organisations might have other valuable tools to measure the impact of their work, and that not every impact identified in this Practice Note will apply in every case or context, but we hope that the framework will advance the discussion of evaluating impact with some ideas on what can be achieved through litigation.

REDRESS recognises that individuals who have been subjected to torture may choose to identify with the term victim, whereas others feel more represented by the term survivor. Whilst we respect everyone's choice to identify as they wish, throughout this Practice Note we will be referring to people with lived experience of torture as survivors to highlight their resilience.

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# CONTENTS

<b>INTRODUCTION</b>	<b>4</b>
<b>10 IMPACTS OF STRATEGIC LITIGATION AGAINST TORTURE</b>	<b>7</b>
1. JUSTICE	8
2. TRUTH	11
3. MATERIAL	14
4. COMMUNITY	17
5. THE MOVEMENT	19
6. ATTITUDES	22
7. POLICY	24
8. LEGAL	27
9. GOVERNANCE	30
10. SOCIAL	33
<b>EVALUATING THE IMPACT OF STRATEGIC LITIGATION AGAINST TORTURE</b>	<b>37</b>
INTERIM AND FINAL EVALUATION	37
PARTICIPATORY EVALUATION OF IMPACT	38
CONDUCTING AN IMPACT EVALUATION	39
THE REDRESS IMPACT FRAMEWORK	42

# INTRODUCTION

Civil society has, for many years, brought cases on behalf of survivors to draw attention to their torture and obtain justice on their behalf. In some regions, NGOs were heavily involved in encouraging national courts, the United Nations, and regional human rights bodies to improve the prohibition of torture using *amicus curiae* briefs and interventions in active cases with the goal of clarifying the law. While this remains a desired outcome, civil society has demonstrated the many ways in which strategic litigation against torture and ill-treatment can have an impact beyond legal reform, some of which may not be immediately obvious.

## What is Impact?

Many organisations use the definition of impact provided by the Organisation for Economic Cooperation and Development, Development Assistance Committee, that: “Impacts are the positive and negative, primary and secondary long-term effects produced by ... [an intervention], directly or indirectly, intended or unintended.” Applying this definition to strategic litigation against torture, there are several types of broad impacts that can be briefly summarised as:

	Intended	Positive Unintended	Negative Unintended
Foreseen	Planned strategic litigation goals  <i>e.g., constitutional interpretation of the bill of rights</i>	Predicted additional effects  <i>e.g., reparations for survivors, institutional reforms etc</i>	Predicted risks  <i>e.g., harm to the client and affected community especially minority groups; negative legal outcome that sets bad precedent</i>

<b>Unforeseen</b>	<p>Emergent strategic litigation goals</p> <p><i>e.g., highlight lack of judicial independence on police torture cases</i></p>	<p>Pleasant surprises</p> <p><i>e.g., negative outcome of the case catalyses movements and encourages public discourse on the issue</i></p>	<p>Backlash – political and social</p> <p><i>e.g., more stringent NGOs laws and shrinking of civil society spaces</i></p>
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This broad definition of impact allows us to evaluate the impacts of strategic litigation against torture through a more nuanced lens that shifts the question from whether the strategic litigation resulted in a win, i.e., a positive judgment, to whether, and how, strategic litigation contributed – directly or indirectly – to positive change for survivors of torture, for other survivors in the same situation, the broader anti-torture movement as whole, and society more generally. To this end, the evaluation of impact means understanding how litigation affects these positive changes and to determine whether the changes were intended or unintended.

### The REDRESS Framework

REDRESS has developed a framework for evaluating the impact of strategic litigation against torture and ill-treatment which identifies the most common impacts that result from litigation and defines the outcomes that are frequently associated with each impact. It also includes the activities that can be planned to enhance the prospects of the strategic litigation to achieve impact, and the indicators that can be used to measure impact. While the REDRESS framework will not apply in every situation, it may assist partners to develop their own framework.

### The UN Basic Principles

The REDRESS Framework is closely related to the *Basic principles and guidelines on the right to a remedy and reparations for victims of gross violations of international human rights law and serious violations of international humanitarian law*, which set out international law on remedies and reparation. The *Basic Principles* include five types of reparation.

**Restitution.** This means that the process should restore the victim to the situation they were in before the torture took place. This might include restoring their liberty, their property, or their job.

**Compensation.** This means providing economically assessable damages, including for physical or mental harm, lost opportunities, material damages and loss of earnings, moral damage, and the costs required for legal and medical support.

**Rehabilitation.** This is the specific medical and psychological care required to rebuild the life of the survivor.

**Satisfaction.** This includes verification of the facts, a judicial decision that restores the dignity and reputation of the victim, a public apology, judicial sanctions against those responsible, and commemorations and tributes to the survivors.

**Guarantees of Non-Repitition.** For many survivors, it is very important that what happened to them does not happen to anyone else. This requires that the authorities put in place safeguards against torture and ensure non-recurrence.

This Practice Note considers 10 possible impacts of strategic litigation and provides examples on how to strengthen these impacts. It discusses in detail the process of impact evaluation, answering the question of when an impact evaluation should be conducted and by whom. The Practice Note also considers common challenges in evaluation of impact for strategic litigation of torture.

# 10 IMPACTS OF STRATEGIC LITIGATION AGAINST TORTURE

Strategic litigation does not take place in a vacuum. Often, it is a resource-intensive undertaking and can entail significant risks for survivors depending on the specific legal, political, and social context in which a case is being brought. Indeed, there is a risk of creating a negative impact which should be considered before engaging in strategic litigation. This includes the potential risk to the survivor and broader community, the possible negative legal outcome, and broader political and social backlash against the movement. While these risks can be mitigated, survivors and affected communities should be made aware of the potential risks so that they can make an informed decision as to whether to continue with the case or not, and to take necessary precautionary measures to minimise risks.

The REDRESS Impact Framework highlights ten possible impacts for consideration when conducting strategic litigation against torture, grouped into two broad themes – impacts on survivors and victims’ families, and impacts on societal governance and the rule of law.

## Impact on Survivors and the Families of Victims

Justice	Truth	Material	Community	Movement
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## Impact on Societal Governance and the Rule of Law

Attitudes	Policy	Law	Governance	Society
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**Selecting Impact.** Not all ten impacts will be relevant to every situation. In designing the litigation strategy, those involved can identify the impacts that are most relevant, and then develop activities which will most effectively contribute to achieving those impacts.

**Phased Approach.** Strategic litigation often takes places in phases, not least because funding for human rights NGOs often comes in three-year blocks. Litigation

can result in different impacts at the various stages of proceedings, before, during and after a decision has been issued in a specific case. Therefore, the evaluation of impact should happen periodically, and the strategy and activities should be reassessed throughout the litigation process. For example, in a project involving strategic litigation against torture in Central Asia (see case example in section on Attitudes), there were three distinct phases:

- Phase 1 involved preparing national cases to a high standard, which had an impact on the attitudes of the judiciary. In the initial cases, the judges argued that torture was not being committed in their country, and that the police were trained to the highest international standards. But, after seeing several cases presented with detailed statements and medical reports, they accepted that there was a problem with torture.
- Phase 2 involved bringing several cases before the UN Treaty Bodies, identifying the flaws in the national legal and policy framework that allowed torture to take place, and getting clear statements on the reforms that were needed. This phase also involved building a coalition of NGOs working on torture cases.
- Phase 3 involved implementing the decisions of the UN Treaty Bodies and working with the NGO coalition to push for national reforms to law, policy, and practice.

## 1. JUSTICE

For many survivors of torture and ill-treatment, obtaining a declaration that their rights have been violated is a key reason for bringing a case, and the simple finding of a violation, without other forms of redress, may be sufficient. This form of impact is an element of *satisfaction* under the *UN Basic Principles*, which call for “an official declaration or judicial decision restoring the dignity, the reputation, and the rights of the victim and of persons closely connected with the victim”. While justice is a form of impact for the individuals directly involved in a case, it can also be relevant



for other members of the community in the same situation who could also feel vindicated by a decision.

One example of justice as an impact is where the perpetrator of torture is held criminally accountable and sentenced to a punishment by a court for the offence they have committed. This can be the primary objective where strategic litigation is used to instigate prosecutions before domestic, regional, or international tribunals, including through universal jurisdiction.

Justice can be delivered in the form of a public apology. Whether the apology is delivered by the direct perpetrators or by State authorities responsible for the violations, apologies often result in the acknowledgement of the events and recognition of the suffering and harm caused to survivors.

Justice can also empower survivors through their participation and engagement in the legal process. For example, in *Hadijatou Mani Koraou v. Niger*, Ms. Hadijatou brought proceedings to challenge her slavery before the ECOWAS Court. Those present in the Court described watching her give evidence to the judges, and how she began her testimony with her eyes down, as required of a slave in Mali. Yet, by the end of the process, observers noted that she grew in confidence and began to directly engage with the judges, who later delivered a strong judgment finding that her rights had been violated. See Helen Duffy, *Strategic Human Rights Litigation: Understanding and Maximising Impact* (Hart Publishing 2018) p. 83.

### **Activities to Strengthen Impact**

In itself, strategic litigation of torture often results in a positive decision that offers justice to survivors, without the need to conduct other activities. However, justice-related impact can be enhanced in some situations by raising the profile of the case. This could take the form of encouraging other NGOs or official bodies to draw attention to the case through the submission of *amicus curiae* briefs, by making legal arguments to encourage the court to order a public apology, or by ensuring that the case is widely reported in the media.

To do this, lawyers and activists may want to develop materials for journalists and brief them on the importance of the case. They can also persuade activists to mobilise community groups and survivor associations to attend the hearings to demonstrate the importance of the case to the wider community and to emphasise what justice will mean for them. Once a decision is delivered, advocacy can be an important tool to persuade the authorities to acknowledge the violations and to issue public apologies to survivors and victims' families.

Where feasible, civil society organisations can ensure that there are capacity strengthening sessions for judicial actors, such as judges and prosecutors, on international human rights standards, survivors' participation, and international and regional jurisprudence. There are, notably, NGOs who specialise in the training of judges and prosecutors. To this end, the capacity strengthening sessions will have to be implemented before the strategic litigation case is filed and should be conducted by an NGO not linked to the case. Materials such as manuals can also be developed and disseminated to the relevant government departments. These capacity strengthening sessions can contribute to more just decisions and better justice outcomes for survivors.

### **Belhaj and Boudchar v. Straw & Others**

Abdel Hakim Belhaj and his pregnant wife alleged that, in 2004, the UK security services cooperated with US intelligence agencies and Libyan authorities in their unlawful rendition and their subsequent detention and torture. The UK Supreme Court resoundingly rejected the argument made by the UK government that state immunity barred courts from hearing claims of UK complicity in abduction and torture. At the time, Mr Belhaj stated that he wanted an apology, an admission of liability, and token compensation. Following negotiations, the case was settled, and while there was no admission of liability, the UK government issued a public apology on behalf of the Prime Minister, which was delivered in the British Parliament in May 2018 by the Attorney General.

### **Barrios Altos v. Peru**

A death squad called the Colina Group made up of members of the Peruvian Army indiscriminately fired at a crowd, killing fifteen people, and seriously injured four. Two amnesty laws were passed which exonerated members of the army, the police force, and civilians who had violated human rights or taken part in such violations. The Inter-American Court of Human Rights found that the State had violated the American Convention on Human Rights and rejected the amnesty laws, setting a precedent against the practice of impunity in the Americas. The case also contributed to the formulation of charges against the former president of Peru, Alberto Fujimori, for his involvement in several instances of human rights violations during his regime. His eventual conviction demonstrates how international justice led to the first trial by national courts of a former President for the commission of international crimes.

## **2. TRUTH**

Courts, tribunals, and non-judicial commissions such as truth commissions, can make definitive factual findings which are of crucial importance to any campaign for accountability and recognition of the harm done to the survivor. Strategic litigation is a powerful tool because it has the potential to construct historical truth. Through the hearing of oral testimony and judicial recognition of the evidence, litigation converts the stories of torture survivors and affected communities into fact which, correspondingly, are captured on the public record. For marginalised groups, such as LGBTIQ+, indigenous peoples, and others, this is a valuable means to influence the historical narrative.

While courts can rarely provide a full historical register, they can set the record straight where it has otherwise been manipulated, and the facts established by courts can feed into broader advocacy initiatives which seek to expose patterns of

abuse. Truth is a form of impact for not only the claimants in a specific case, but also for others whose rights were also violated, and more broadly for society.

The case could also result in the official disclosure of information such as documents and evidence relating to torture that authorities would not have otherwise made public but for a court order directing them to do so.

The right to truth, as it relates to torture, has been recognised by national and international courts (e.g., in *Araguaia v. Brazil*) and includes the right to know the identity of the perpetrators, the factual circumstances, the causes that led to the abuse, and the fate and whereabouts of victims in the event of enforced disappearances. In addition to the individual's right to know the circumstances in which the violations took place, communities and society at large also have the right to know the truth about human rights violations.

### **Activities to Strengthen Impact**

Where truth forms part of the intended impact of strategic litigation, lawyers and activists can take steps to ensure that a judicial determination contributes to the recovery of truth and documentation of the violations that took place, thereby creating a public record of the torture that occurred. In these cases, the facts surrounding the commission of violations will be very important.

In practical terms lawyers and activists can:

- Prepare strong evidence to be submitted to the court. This may include expert evidence on the historic, political, or human rights context, medical and factual witnesses, policy experts, and eyewitnesses, and official government documents that cannot be refuted;
- Instigate legal actions at the national or international level to force the disclosure of official records and secret or confidential archives kept by State authorities and relevant to the establishment of the facts surrounding a case; and
- Partner with investigative journalists, CSOs, grassroots activists and others with an interest in uncovering the truth.

Additionally, the impact of truth could be enhanced through the development and implementation of a holistic media engagement plan, including the use of traditional media, digital media, and social media, to ensure extensive coverage of the case and its factual findings at national, regional, and international levels. This helps to make it more difficult for the government to deny that torture and other violations took place.

### **Sergei Magnitsky v. Russia**

Sergei Magnitsky was a tax advisor in Russia. When he exposed a massive tax fraud committed against his employer, he was arrested by the Russian authorities on trumped up charges and detained in Moscow's Butyrka prison for 358 days. When he developed gall stones, pancreatitis, and calculous cholecystitis, the prison officials denied him medical care, and instead moved him to a prison without medical facilities. When his medical situation became critical, rather than treat him, the authorities sent in a riot squad who used batons against him, leading to a fractured skull and, ultimately, his death. The Russian government sought to cover up what happened to Sergei, but, upon review and examination of the evidence, the ECtHR produced a detailed judgment exposing the ill-treatment he was subjected to in custody which resulted in his death.

### **Gomes Lund et al. ("Guerrilha do Araguaia") v. Brazil**

Nearly 70 members of a guerrilla movement that sought to provoke a popular uprising to overthrow the military dictatorship were arbitrarily detained, tortured, and forcibly disappeared. For almost 30 years, their families tried to uncover the truth about what happened to them but were prevented by the lack of access to military records and amnesty laws enacted by the military government in 1979 which precluded any criminal investigations into 'political offences' carried out during military rule. In 2010, the IACtHR ruled that the

amnesty law's provisions were incompatible with the American Convention on Human Rights, and recognised, for the first time, that the right to truth is inherently linked to the right to seek and receive information enshrined in Article 13 of the American Convention, particularly when it deals with gross human rights violations such as enforced disappearances and extrajudicial executions. The Court ordered Brazil to disclose all information and archives on the Guerrilha do Araguaia and to strengthen its normative framework of access to information.

### 3. MATERIAL

Strategic litigation can have material impact on survivors and victims' families. Invariably, this is achieved through the award of reparations which often include compensation, damages and, upon the completion of judicial proceedings, rehabilitation, and satisfaction.

For **compensation**, the UN Basic Principles identify five types of harm that need to be compensated: (a) physical or mental harm; (b) lost opportunities, including employment, education and social benefits; (c) material damages and loss of earnings, including loss of earning potential; (d) moral damages (when damages cannot be assessed economically, sometimes called 'general damages'); and (e) costs required for legal or expert assistance, medicine and medical services, and psychological and social services.

For **rehabilitation**, the Court might order measures for the rehabilitation of the survivor(s) to improve their medical and psychological situation and may factor in the funds necessary to support their rehabilitation.

**Restitution** may include specific measures relating to the status of the survivor prior to the violations taking place, including property, employment, or their legal rights. For example, decisions not to apply the death penalty or release from custody are forms of restitution.

Material awards ordered by courts often bring about a specific form of redress for survivors and victims' families to help them rebuild their lives. Understandably, this is often very important to the individual survivor and their families. Sometimes there is a risk that material redress may get overlooked during the litigation process, particularly where policy matters are at the forefront of the strategy of lawyers and activists. To ensure that anti-torture strategic litigation meets the needs and addresses the concerns of the survivor(s) and their families, lawyers and activists must pursue a survivor-centred approach to strategic litigation which reflects survivors' expectations relating to reparation (See *Practice Note on Holistic Strategic Litigation against Torture*).

### **Activities to Strengthen Impact**

Where compensation is important for survivors, lawyers may want to obtain specific support from experts who can assist in the calculation of damages associated with torture, or from *pro bono* lawyers who have experience with similar claims. For a court to order proper rehabilitation, it is crucial to file sufficient evidence before the court, such as detailed medical and expert reports containing substantive information on the harm caused to the survivor and a plan for their treatment and rehabilitation.

To ensure that restitution is ordered, when possible, there should be detailed evidence submitted that sets out how the survivor has been impacted by the torture, and how that harm can be addressed through, for example, the return of specific property or their reinstatement into an employment position.

Lawyers should consider using expert witnesses to convince the court on questions related to reparations.

### **Mutua & Others v. The Foreign and Commonwealth Office**

In 2009, five Mau Mau veterans who had been detained and tortured by the British colonial administration in Kenya during the ‘Kenya Emergency’ in the 1950s brought proceedings against the British government. These cases were successful, and further investigations conducted by the law firm Leigh Day, the Mau Mau War Veterans Association, and the Kenyan Human Rights Commission found over 5,000 further victims. In October 2012, the High Court in London held that a fair trial against the British government was possible, even 50 years after the alleged torture and ill-treatment of the claimants during the Mau Mau insurgency in Kenya. The claimants were awarded £19.9 million in damages, and the British government entered into an agreement to finance the construction of a memorial to the victims of the Kenya Emergency.

### **U.S. v. Burge**

From 1972 to 1991, former Chicago Police Commander Jon Burge and officers under his command, known as the “Midnight Crew”, tortured more than 100 African Americans, largely from impoverished sections of Chicago’s South Side, in a systematic regime of violence and intimidation. Burge was fired in 1993 but was never charged with crimes directly stemming from the violence before the statute of limitations ran out. He was convicted in 2010 of obstruction of justice and perjury in relation to a civil lawsuit alleging that he tortured citizens. Evidence presented at trial proved that Burge had personally abused multiple detainees during his 23-year career, including by suffocating suspects with plastic bags, mock executions, shocking detainees with electrical devices, and placing loaded guns to their heads to extract confessions. He served four and a half years in prison before being released in 2014 and continued to draw a police pension. After years of investigation, public debate and litigation, the City of Chicago voted to pay \$5.5 million in reparations to survivors of torture and abuse.



## 4. COMMUNITY

While a strategic litigation case is usually brought on behalf of one individual or an identified group of survivors, the case often reflects a wider group of survivors who have been affected by violations resulting from the same context, similar practices, or forms of violence. When strategic litigation connects a case to the wider community, the case can take on a political dimension and become catalyst for systemic changes beyond the individual applicants.

Strategic litigation can also enable marginalised groups to overcome popular and internalised perceptions that they are undeserving of protection. This is often the case where a person or group of persons from a marginalised group file a strategic litigation case which then results in a judicial declaration affirming their rights.

### Activities to Strengthen Impact

Where there is a broader community behind the individual survivor, then their situation can also become part of the legal case. For example, lawyers and activists can make clear in their legal arguments that there were many others directly and indirectly affected by a specific pattern or context of torture and submit evidence in support of this argument.

Practically this means that the strategy adopted by the lawyers will:

- Present the violations against an individual survivor as part of a broader context or one that follows a similar pattern that affects a broader group of people; and
- Request measures of non-repetition (or other reparations) that will benefit or change the situation of the broader community that has been affected.

Lawyers and activists can also identify and call expert witnesses to help set out the broader context, such as communicating the statistics and the profile of those affected, to best reflect the ripple effect of harm or injury caused as a result of torture that has taken place. Further, lawyers can prepare arguments outlining why other survivors are not directly part of the case, and why the judges should still take their situation into account.

Lawyers and activists may also consider partnering with NGOs that have expertise in deploying community organising as an approach to enhance this impact and to ensure that the broader community and their views are not only understood but considered. Educational materials about the case can also be produced to adequately explain the case to the wider community on foot of this.

### **Plan de Sánchez Massacre v. Guatemala**

On 18 July 1982, 268 indigenous Mayan people were massacred by members of the Guatemalan Army and civil collaborators in the village of Plan de Sánchez (Guatemala). In 2004, the IACtHR issued two judgments in which it established Guatemala's liability and ordered an extensive package of monetary, non-monetary, and symbolic forms of compensation for the survivors and the next-of-kin of the deceased. During the hearing, as the State of Guatemala continued to withhold information, consultations with survivors and affected communities helped to construct the facts that were necessary for the case to be concluded. To fulfil this purpose, the community organised itself for the purposes of representation and support. The Justice and Reconciliation Association ("AJR") was formed for the purpose of pursuing justice in domestic courts, which would later be supplemented by the Coordinación de Acompañamiento Internacional en Guatemala. The AJR served to give a voice, visibility and profile to survivors and affected communities, and to facilitate their participation in discussions relevant to justice, with benefits that go beyond the case themselves, and was described by one lawyer involved in the cases as arguably the most important impact of the litigation on genocide in Guatemala. See Helen Duffy, *Strategic Human Rights Litigation: Understanding and Maximising Impact* (Hart Publishing 2018) p.122.

### **Mapiripán Massacre v. Colombia**

In July 1997, members of the illegal paramilitary group, Autodefensas Unidas de Colombia (“AUC”), with the collaboration and tolerance of members of the Colombian army and other Colombian agents, took control of the town of Mapiripán. The paramilitary forces kidnapped, tortured, and killed members of the community, including children, and intimidated others, causing widespread displacement among the people of the area. The IACtHR found that the State violated the survivors’, and victims’ families’, rights to life, humane treatment, personal liberty, freedom of movement and residence, and judicial protection under the American Convention. While 49 survivors had been identified in the case, of whom the IACtHR ordered specific reparations in their favour, the Court also ordered the establishment of a register of victims beyond those included in the case who were eligible to receive reparations as a result of the violations that took place in Mapiripán.

## **5. THE MOVEMENT**

Strategic litigation can impact the anti-torture movement by energising or incentivising mobilisation efforts against torture and ill-treatment, consequently serving as a catalyst for change, empowering networks, and encouraging new champions to emerge. An energised movement can then be part of the broader litigation campaign to implement a judgment.

### **Activities to Strengthen Impact**

For strategic litigation to spur the anti-torture or other related movements (e.g., those against conflict-related sexual violence), lawyers and activists may wish to form partnerships with other NGOs, networks, and grassroots activists. This will require conducting a mapping exercise of potential partners, assessing their strengths, and determining who will take on different aspects of the case strategy, i.e., advocacy,

mobilisation, communication, media engagement, outreach, and litigation. Where a partnership approach is used, there should be regular communication which includes coordination meetings and inclusive decision-making to reduce the risk of duplication of efforts or in the event of any conflicts of interest.

Community organising is a civil society technique that can be deployed to allow affected communities to feel part of the process. It also allows affected communities and survivors to take ownership of the outcomes of the process, encouraging them to become invested stakeholders in the implementation of a decision. Testimony from these communities is a powerful and persuasive tool for policy advocacy as directly affected communities provide a human story, giving a new impetus for policy change that goes beyond technical or legal arguments. A key component for energising communities is ensuring their involvement in the design and delivery of the campaign itself.

Strategic litigation is a lengthy process, with varying periods of (in)activity. Often, quiet periods can lead to survivors and affected communities losing hope and confidence in the judicial process. To ensure that all stakeholders in the case remain engaged, lawyers and activists are encouraged to develop and implement outreach interventions on a periodic basis for sharing information, providing updates, and receiving feedback from the community. During periods where the case is inactive, campaigns should remain seized by using other civil society techniques to ensure that the general public, media outlets, and regional and international actors remain involved in the issues raised through the strategic litigation. This requires careful planning.

### **Berta Cáceres v. Honduras**

In 2016, a well-known environment and indigenous rights defender was assassinated by armed men in her community, La Esperanza, in Honduras, after years of threats against her life. This occurred in a context of widespread violence against human rights defenders throughout the region. In 2018, the Honduran National Criminal Court convicted seven men, finding that they had

been hired by executives within Desa, a company constructing a dam in indigenous Lenca territory that Berta had campaigned against, to carry out her murder. After the killing of Berta, the NGO Center for Justice and International Law (CEJIL), together with international law experts and human rights defenders, drafted and adopted a global tool to develop standards on the effective investigation of threats against defenders as a way to protect them and enable them to continue their work without fear of retaliation. This initiative is called La Esperanza Protocol (The Protocol of Hope), as a reference to the place where Berta Cáceres was assassinated, and it is the first international tool to respond to threats against human rights defenders.

### **COVAW, IMLU and Others v. Attorney General of Kenya**

Between December 2007 and February 2008, at least 1,133 people were killed, thousands sexually assaulted and mutilated, and at least 600,000 displaced in Kenya as a result of the violence that took place in the post-election context. In February 2013, six women and two men who were survivors filed a constitutional petition at the High Court of Kenya, Constitutional and Human Rights Division. The eight survivor-petitioners were representative of different types of sexual violence that occurred and were drawn from different regions and communities across the country. The diversity of the petitioners reflected the scale of the violence perpetrated against all communities in Kenya that had been impacted as a result of the post-election violence, many of whom rallied behind them in support. Much of this was done through local campaigning, hosting vigils in memory of victims, and attending court hearings in t-shirts that read “I Stand for Truth, Justice & Dignity” to maintain the anonymity of the individual survivors. A judgment was issued in 2020 finding the Kenyan government responsible for its failure to protect, investigate and prosecute perpetrators of the crimes that occurred. This was the first time ever that post-election sexual violence had been legitimately recognised by the Kenyan

government in relation to all affected communities in Kenya. Post judgment, the survivors and wider community worked together to develop a road map for the implementation of the judgment.

## 6. ATTITUDES

Strategic litigation can contribute to changes in the attitudes and practices of key stakeholders such as judges, the media, politicians, and the police, which is a prerequisite for reform and subsequent implementation of policies and laws. Changes in attitudes and practices of relevant stakeholders are an essential first step before there can be any change to policy, law, and governance – each an important form of impact resulting from anti-torture strategic litigation. Such attitudes may be deeply ingrained, and it may take several cases before you can begin the process of creating lasting impacts.

### Activities to Strengthen Impact

Judges are persuaded by good lawyering and robust evidence, even when there are political pressures on them not to make a finding of torture. Strong cases with incontrovertible evidence of torture, therefore, will encourage judges and decision-makers to accept that torture has taken place. This means that lawyers must prepare detailed witness testimonies that clearly describe the torture that occurred, background evidence on the specific use of torture in a particular situation, and expert medical evidence in accordance with the *Istanbul Protocol*. Statements from national and international experts can also be persuasive, particularly when they support a judicial finding of torture which, in turn, provides the much-needed support for a judge who may be taking an unpopular stance.

Groups can also partner with NGOs that run programmes for peer-learning and the mutual exchange of experience for judges to help sensitise them on the prohibition of torture and the ways in which it can be prevented. Such events, which may take the form of workshops, colloquiums, or exchange visits, can be very effective to build judicial knowledge and influence changes in attitude and practice.

The media is a critical ally for the success of a strategic litigation campaign, and can influence other stakeholders, including government officials as well as the general public. Lawyers and activists can develop and implement a media strategy to garner interest on the issue, using both national and international media outlets and individual members of the press.

Where one of the aims of the strategic litigation case is policy reform, lawyers and activists are encouraged to prioritise activities and interventions which are aimed at changing attitudes of relevant government officials, including the prosecution, law enforcement officials, and prison authorities. This can include capacity building, peer-to-peer experience sharing, or mentoring on issues relevant to the campaign, e.g., safeguards against torture, effective interviewing techniques, or the accepted treatment of prisoners. These initiatives can be delivered by partner NGOs.

Changing attitudes is a long-term process. It requires the unlearning of institutionalised practices by individuals and officials alike and learning new approaches. Doing so effectively demands a long-term strategy which involves building strong relationships with officials within key institutions who can be champions for the proposed reforms.

### **Torture in Central Asia**

The Open Society Justice Initiative co-ordinated a campaign using strategic litigation to expose torture, particularly in Kazakhstan and Kyrgyzstan, by submitting a series of cases to the domestic courts and subsequently to the United Nations Treaty Bodies (e.g., the case of Alexander Gerasimov). The cases were prepared to a high standard with strong expert medical evidence that used the Istanbul Protocol. Before the campaign started, national judges would routinely reject torture complaints, concluding that the police do not use torture and are trained to the highest international standards. After a series of well-prepared cases were submitted, those judges started to accept that there was a pattern of torture that had become everyday practice.

### **González et al. (“Cotton Field”) v. Mexico**

In 2001, the bodies of eight women, who had been subjected to torture and sexual violence, were found buried in an abandoned cotton field. In 2009, the IACtHR found that Mexico had failed in its positive obligations to protect the women, with aggravated violations in the cases of two victims who were minors. The environment of violence against women had created a real risk that missing women would be sexually abused, tortured, and murdered. Therefore, although the violations were not found to have been committed by State actors, the State had violated the right to life, personal integrity, and personal liberty of the women by failing to prevent and adequately investigate their disappearances and subsequent murders. The Court found that Mexico had also violated the rights of the victims’ families by failing to guarantee access to justice and legal protection and violated their right to personal integrity by failing to protect them from the harassment and suffering that they endured. The Observatorio Ciudadano, alongside several other NGOs, referred to the murders as femicides through the submission of *amicus curiae* briefs. The Court decided that the events could be characterised as gender-based murders, also known as femicides, and ordered the State to implement important reparations, including education and training programs to tackle such gender-based discrimination. This had a crucial impact in setting standards across Latin America and beyond on femicide.

## **7. POLICY**

Strategic litigation can result in commitments to change policy on torture and ill-treatment by the government, including financial commitments. This is often the preliminary step before tangible changes to the law, i.e., obtaining an acceptance that something is wrong, and a policy commitment to bring about change.

Strategic litigation can also breathe new life into existing policies that have been



inadequately implemented as it obliges governments to respond to specific policies at issue in the case which are on the public record. This can be useful way to pressure governments to change the manner in which they implement policy going forward, even if the litigation itself is unsuccessful.

### **Activities to Strengthen Impact**

Advocacy campaigns can effectively set out the changes in policy that are needed to redress a violation or to avoid its repetition in the future. Advocacy should accompany the strategic litigation from its conceptualisation and until the desired policy outcome is achieved.

Advocacy campaigns can include:

- Policy papers that set out the changes that will be needed, e.g., the introduction of safeguards against torture. There is a great deal of material available in this area, produced by the Convention against Torture Initiative among others;
- Policy workshops that bring together experts and national policymakers to discuss the changes that may be needed; and
- Events at the national and international level, policy hearings before regional and international human rights bodies, academic events, reports, and other activities.

Lawyers and activists can establish partnerships with CSOs with specific expertise in conducting successful policy campaigns, and in identifying decision-makers within government institutions that have the power to change or develop encouraged policies.

A survivor-centred approach to policy advocacy means that lawyers and activists should work with community-based organisations, survivors, and survivor groups to ensure that it is their voice that informs policy recommendations, policy design, and implementation. In some situations, survivor groups can co-design or lead the advocacy campaign and participate in its implementation where they wish to do so; in almost all cases, survivors can be their own best advocates. Where survivors

are directly involved in policy advocacy, it is important that psychological support is available where needed.

Adopting a media strategy that is complementary to strategic litigation efforts may help draw attention – both nationally and across borders – to the issue of torture and the need for reform, as well as encouraging key stakeholders to support the demand for change. A media strategy can include:

- Sensitising and building relationships with key journalists who are covering the issue;
- Issuing press releases when key events occur and organising press conferences;
- Publishing opinion pieces in influential newspapers and blogs; and
- Using social media, including Facebook, Twitter, and LinkedIn, to keep the mainstream media and wider society informed throughout the litigation process.

### **A & Ors v. UK**

The British government detained non-nationals indefinitely in Belmarsh Prison based on intelligence information that the individuals posed a national security threat in the post 9/11 era. They were held without trial under Section 23 of the Anti-Terrorism, Crime and Security Act 2001. Section 4 of this Act enabled individuals to be held indefinitely, without trial or deportation. In a landmark decision, the House of Lords declared that the scheme of indefinite detention without charge of suspected international terrorists violated the right to liberty under Article 5 of the European Convention on Human Rights. This led to the government revoking its policy of security detention of non-nationals and was replaced by control orders under the Prevention of Terrorism Act 2005, which were again subsequently challenged in litigation. See Helen Duffy, *Strategic Human Rights Litigation: Understanding and Maximising Impact* (Hart Publishing 2018) p.63.

### **Torreggiani and Others v. Italy**

Seven applicants were detained in Busto Arsizio and Piacenza prisons in Italy, over periods ranging from 14 to 54 months. They had 3 square metres of personal space each in prison. They were part of the 415 inmates held in Piacenza prison which had been designed to hold 178 inmates with a maximum capacity of 376. In 2013, the ECtHR unanimously held that Italy was in breach of the prohibition of ill-treatment per Article 3 ECHR due to the shortage of space in their cells. Their treatment was exacerbated by the occasional lack of hot water for extended periods of time, inadequate lighting, and ventilation. In this case, the Court applied the pilot judgment due to the systematic dysfunction of the national prison system in Italy, which had resulted in hundreds of applications before the Court. The case led to the introduction of several decrees and laws to directly tackle the problem of prison overcrowding in Italy. Measures included the increased use of electronic bracelets, house arrests, and the reduction of sentences for individuals who had successfully participated in reintegration activities between 2010 and 2015. In the year following the ECtHR's decision, the prison population was reduced by 4,000 detainees.

## **8. LEGAL**

Litigation can bring about changes in legal standards, whether through caselaw or legislation, such as the criminalisation of torture and ill-treatment in national criminal codes. This can mean changes in national laws but can also lead to developments in international law.

Strategic litigation generally aims to change the law where it facilitates torture to introduce safeguards to ensure its prevention, or to encourage the use of existing laws which are equipped to tackle the commission of these crimes but are not implemented. This is critical in the context of torture where gaps in the domestic

legal framework enable torture and facilitate an environment of impunity. In these situations, decisions from courts can lead directly to changes in the anti-torture legal framework.

Decisions from domestic courts, as well as regional and international tribunals, are authoritative and binding in most countries. This means that States are obliged to implement legal reform to comply with a court order or with non-repetition measures ordered in the court's decision. Likewise, States must comply in good faith with decisions from quasi-judicial bodies, such as the UN Treaty Bodies and special procedures. As a result, strategic litigation conducted before courts and quasi-judicial bodies has significant potential to develop new legal standards against torture by ordering legal reform or nullifying sections of a piece of legislation that rendered incompatible with the human rights obligations of the State.

Strategic litigation can also lead to new laws being implemented where the judgment identifies clear gaps in national legislation and where recommendations are made to fill legislative lacunae. This is often the case when it comes to litigation that seeks to challenge a violation of the prohibition of torture, or that seeks to introduce effective safeguards against torture or by highlight that new laws are needed to ensure compliance with universal human rights obligations.

### **Activities to Strengthen Impact**

If lawyers want the judgment to change the law, they will need to spend time building strong legal arguments. Encouraging legal experts to intervene in the case as expert witnesses, through *amicus curiae* submissions, or through issuing public statements in support of the need for legal reform or the development of legal standards, can also help to strengthen this impact.

Where the main objective of the litigation is to instigate domestic law reform, legal arguments will need to contain a detailed analysis of the legal obstacles or gaps which permitted torture to occur in the first place. This should include emphasising the lack of safeguards in place against torture. Overall, the aim should be for the judgment to contain a clear explanation of the deficiencies of domestic law to

ensure that the necessary reforms being sought are ordered. In some jurisdictions, the courts will be much more direct, whereas others may only indicate in general terms what reforms are advised. This may mean recruiting legal experts, holding legal roundtables, and encouraging amicus briefs to see that effective legal impacts are being achieved.

### **Velásquez-Rodríguez v. Honduras**

The Velásquez-Rodríguez case (together with the Godínez Cruz case, the Fairén-Garbi, and Solís-Corrales case, all considered by the IACtHR around the same time) form a trio of landmark cases targeting enforced disappearance practices by the Honduran government during the early 1980s. Manfredo Velásquez Rodríguez was a university student disappeared by agents of the State in September 1982. This occurred at a time when disappearances constituted a systematic practice used by Honduras against persons considered dangerous for the security of the State. This was the first judgment issued by the IACtHR in this respect, and it established important standards regarding the legal nature and the elements of enforced disappearance as a multiple and continuing violation of numerous rights contained in the American Convention. It also contributed to developing the content of State obligations to protect against and prevent enforced disappearances at an international level.

### **Gäfgen v. Germany**

Gäfgen was arrested by the police in Germany for kidnapping a child. He alleged that he had been threatened with torture by the German police to force him to reveal where the child was. The police officers were prosecuted and convicted for making the threats. He argued that his subsequent conviction for kidnapping and killing the child was based on his confession obtained through the threat of torture, and other evidence obtained as a result of the confession. In 2008 the ECtHR held that Gäfgen had been granted redress by

way of the prosecution and conviction of the police officers responsible for threatening him, and so could no longer claim to be the victim of torture. The case was referred to the Grand Chamber, where numerous NGOs (including REDRESS) intervened to emphasise the importance of the absolute prohibition of torture in all circumstances. The Grand Chamber confirmed that the prohibition of both torture and ill-treatment are absolute and non-derogable, and that they cannot be inflicted or threatened even in situations where the life of an individual is at risk. The case became emblematic through reiterating the accepted standard that torture and ill-treatment are prohibited, even in the so called ticking bomb scenario.

## 9. GOVERNANCE

Once laws and policies have been changed, they need to be implemented in practice, and this is often the most difficult form of impact to achieve. This may mean efforts to change budgets, ministerial guidance, and training manuals or codes of conduct, and will require an informed understanding of what is needed to solve the problem. This level of implementation may run into strong opposition, or simply inertia, and can take time and commitment to overcome.

Strategic litigation has the potential to improve governance by creating the impetus for institutional change. A successful case could result in the creation or strengthening of institutions to increase compliance with human rights standards, avoiding the repetition of torture and other violations, setting professional standards for the police and prison services, and establishing oversight mechanisms. For example, a case might lead to the creation of a national mechanism for the prevention of torture, which in turn could result in better monitoring of the conditions of detention, or better reporting channels. Litigation can also be followed by a detailed reform campaign to advocate for specific changes that might be recommended in the judgment.

## Activities to Strengthen Impact

If lawyers and activists want to change the way things are done, they will need to know who has the power to make that change and must consider in which ways the process of strategic litigation can influence those stakeholders.

Lawyers, through their submissions, can identify how the absence or inefficiency of certain institutions or procedures can lead to the practice of torture, and the need to reform these structures, or create new ones, as a means to preventing the repetition of torture going forward. In their judgment, courts may then order remedies and measures that the authorities must undertake to change the accepted practice. For example, where lawyers argue that the lack of safeguards against torture facilitated its commission, and the judgment makes that finding, activists can then campaign for the introduction of corresponding safeguards and prevention measures.

A national campaign for governance reform can be bolstered through international advocacy. For example, NGO submissions to the UN Human Rights Committee or the Committee against Torture under their review cycle, or even through the Universal Periodic Review of the UN Human Rights Council, can assist recommendations for governance reform to be made. This will ensure that individual remedies ordered in a case are aligned with UN priorities, thereby creating additional pressure on the authorities to bring about the determined change.

There are also specialist organisations and individual experts who can provide expert opinions on the governance reform needed in a specific case.

Lawyers and activists might also consider a media and communications campaign to draw attention to the type of reform needed. This can be co-ordinated with activist or survivor groups to help formulate remedies that are relevant for a larger group, and to ensure that the voices of survivors are included in the campaign.

Where a judgment calls for the creation of reporting or monitoring mechanisms, lawyers, activists, and civil society need to engage with the relevant government institution to ensure that survivors and persons at risk of torture are consulted. These consultations should contribute to the creation of mechanisms that are directly responsive to the needs of torture survivors in a constructive and tangible way.

### **Azul Rojas Marín v. Peru**

In 2008, Azul Rojas Marín, a transgender woman, who at the time of the events self-identified as a gay man, was arrested, raped, and beaten by police officers in Peru. Azul brought legal proceedings for rape, abuse of authority and torture in Peru. REDRESS, the Coordinadora Nacional de Derechos Humanos (“CNDH”) and the Peruvian NGO Promsex, joined efforts and filed a complaint before the IACHR in April 2009, which eventually reached the IACtHR. In March 2020, the Court found Peru responsible for the arbitrary arrest, discriminatory torture, and breach of fair trial rights against Azul. The IACtHR ordered comprehensive reparation measures for both individual and societal harm to address the structural discrimination causing hate crimes against LGBTIQ+ persons. The Court also instructed the State to provide sexual orientation and gender identity awareness training to members of the justice system and the police on LGBTIQ+ rights and due diligence investigations. Further, it stipulated that Peru must implement a protocol for the effective investigation of violence against LGBTIQ+ persons, and a data collection system to officially register all cases of violence against members of the LGBTIQ+ community, including disaggregated information. Peru have planned changes in governance in response to the judgment which are yet to take effect, demonstrating the difficulty in securing their implementation.

### **The Treatment Action Campaign, South Africa**

Approximately 2.5 million people in South Africa died as a result of HIV between 1990 and 2008. During its first decade, the Treatment Action Campaign (“TAC”) challenged government health policies that were not evidence-based and were putting multinational profits above people. The TAC forged solidarity partnerships with activists in Brazil, India, Thailand, the US, and the UK, among others, to create a global movement to combat drug company



profiteering by challenging the “Trade-Related Aspects of Intellectual Property Rights” agreement, and its application in developing countries. The TAC fought to give meaning to the words in the South African Constitution that guarantee the rights to health and life, using litigation strategies to empower poor communities and hold the government accountable for policies that resulted in unnecessary deaths. In doing so, it forged strategic partnerships with key movements in South Africa, including faith-based organisations, Médecins Sans Frontières, and prominent legal organisations, including SECTION 27 and the Legal Resources Centre. Collectively, they were able to achieve significant policy changes in South Africa; in 2004, treatment of HIV using antiretroviral drugs in the public sector became official government policy. In 2007, TAC became an important partner in the drafting of a new comprehensive National Strategic Plan to Fight HIV/TB and Sexually Transmitted Infections from 2007-2011. This marked the beginning of a new chapter in South Africa, where civil society and government united in the fight against HIV/AIDS.

## 10. SOCIAL

Beyond the specific case, litigation can result in changes to the tolerance of torture and ill-treatment, and responses to it, in the country or region concerned. This is the most difficult form of impact to achieve, but also the most long-lasting.

As an example, emblematic cases of domestic violence against women as a form of torture have changed the perception in many countries of this type of violence, making the public and wider society more aware of it and willing to eradicate it. Another example is that where strategic litigation against torture relates to acts or omissions of corporations, when taken with other tools, litigation can often have the effect of changing investment patterns and attitudes against consumers. Indeed, cases that expose the hypocrisy of some western democracies who publicly condemn torture yet facilitate its commission, particularly during the 9/11 era, can have the

strategic effect of shaping perspectives. Where torture is condoned, particularly in cases against minority groups or critics of the State in certain regions, targeted campaigns which expose the injustices taking place, as espoused in different cases, can help diminish support and challenge the apathy within the society.

### **Activities to Strengthen Impact**

To build public support, the advocacy efforts should make use of considerable media campaigns, including the use of the press, broadcasting media, and the many social media platforms. This will take time and expertise, and not every NGO has the capacity to do it. This means that developing partnerships can be a crucial way to strengthen this form of impact to divide the work and make efforts more targeted.

A message that gains public support is very different from a legal argument, and lawyers are not necessarily the best people to deliver it. Often it may be journalists, faith leaders, celebrities, or other public figures who can help champion the cause. Alternative forms of media can also be used to connect with broader audiences such as documentaries, art exhibitions and podcasts to change attitudes. In some countries, street protests can have a significant impact and, where there are members of a coalition who know how to organise communities in this way, it can be an effective campaign tool.

NGOs can also use opinion polls and focus groups to identify the issues that are most important and the messages that are most persuasive. Further, legal cases can have an impact on public opinion where the cases illustrate pertinent issues and where there is a survivor who is prepared to share their story publicly. NGOs can support this through a social media campaign to garner attention. There are also specialist companies with expertise in delivering such focus groups who might be willing to include some questions relating to attitudes towards torture in a broader survey they are delivering to test existing biases and stances on the topic.

### **Maria da Penha Fernandes v. Brazil**

In 1983, Maria da Penha was shot in the back by her husband while she was sleeping. While she survived, she was paralysed from the waist down. Her husband received a sentence of two years in prison after 19 years of proceedings. In 2002, the Inter-American Court of Human Rights found that the delays and the lack of protections in Brazil for domestic violence survivors amounted to violations of da Penha's human rights to live free from violence and to access justice. This contributed to the creation of Law No. 11.340 (Lei Maria da Penha) which established criminal sanctions against perpetrators of domestic violence against women, promoting rehabilitation programs for offenders, and establishing special police bodies to address the issue. These changes fundamentally influenced the recognition of domestic violence as a violation of human rights and of the pattern of impunity in Brazil's legal system regarding violence against women. It also contributed to placing the issue of domestic violence in the centre of the Brazilian public agenda. As a result of the public policies implemented after the new law, the law has assisted millions of women in Brazil since its adoption.

### **Guantánamo Bay**

Following the attacks in New York on 9/11, the CIA ran a secret detention and torture program that led to hundreds of men being detained at Guantánamo Bay in Cuba without trial. Initially there was strong public support for this policy as a necessary response in the "war on terror". Since 2002, detainees have been engaged in the painstaking process of claiming their right to habeas corpus, challenging the 'legal black hole' in which they were held without judicial review of the lawfulness of their detention. All litigation in the US, before the IACHR, and the ECtHR, has contributed to the perception of society in the US and beyond that torture cannot be justified in any circumstances.

Public awareness campaigns by various NGOs, including those led by Witness Against Torture and Torture Abolition and Survivors Support Coalition, have been conducted over the years to advocate for the declassification of government documents surrounding the indefinite detention of detainees in Guantánamo, including calls for the enactment of laws and policy to prevent any government institution from engaging in torture practices. This has been aided by film campaigns, including the release of the movie, *The Mauritanian*, which was based on the memoir of Mohamedou Ould Slahi, a Mauritanian man who was held for fourteen years without charge in the Guantánamo, which has contributed to a greater public understanding of the impact of the CIA program on individuals.

# EVALUATING THE IMPACT OF STRATEGIC LITIGATION AGAINST TORTURE

There are many reasons for evaluating the impact of strategic litigation. Firstly, having a clear idea of what you can achieve means that the litigation can be designed to be more effective. Secondly, it can help an NGO to choose which activities to focus on. Finally, donors will often require an evaluation at the end of a project.

Evaluations can be conducted in-house or through contracting a specialist consultant. Some evaluators use very specific structures, and often highly technical language, and the process takes time and effort for it to be useful. However, with some preparation and commitment, the evaluation can be extremely helpful for all involved.

Another challenge is measuring the impact itself, particularly when adopting a qualitative (how good) rather than quantitative (how much) approach. Impact is often not visible during the lifespan of the case, and its impacts are likely to be affected by other initiatives and factors. In practice, a particular litigation campaign will rarely produce the intended impacts alone, and often a combination of similar interventions and projects are required to achieve an impact which makes it difficult to evaluate what was most effective.

## INTERIM AND FINAL EVALUATION

While the most obvious time to do an evaluation is at the end of a project (a “final evaluation”), there are good reasons to do an evaluation during the course of the project, particularly where there is a clear benefit to doing so and where the evaluation will produce useful findings.

**Relevant Factors.** In general, an interim evaluation can be useful where it is expected to produce findings that can inform decisions about the next steps in current

litigation or in relation to future cases. Where a decision has already been made to move forward, the evaluation may have less value. An evaluation can help focus the purpose of the litigation, the impact that is desired, and how best to achieve that impact. An interim evaluation will only be effective where the necessary data is available, or where funds are available to gather that data.

**Phased Approach.** As set out above, strategic litigation is a long-term commitment and may best be approached in phases. The same applies to the evaluation of that litigation as each phase may require specific evaluation. Breaking strategic litigation down into these phases makes the evaluation process more manageable and will, in the long run, contribute to the creation of optimal conditions for the success of the litigation and more effective organisational processes. A phased approach has the added benefit of aligning implementation of litigation with donor funding cycles which are often shorter than the time needed for the litigation to achieve its full and final impact.

## PARTICIPATORY EVALUATION OF IMPACT

There are a number of people who may need to be involved in an evaluation of impact, including survivors of torture. Not only does this encourage a diversity of views but it ensures a much broader assessment of what has been achieved. The process of deciding who to include, how, and when, is part of the process of planning the evaluation.

A broad approach to participation can ensure that the voices of those whose lives you are trying to improve through the strategic litigation process are included and that their desired outcomes are central to the findings. It can also ensure that the evaluation is focused on the right questions. Such an approach can be adopted to hear a survivor's own version of the change they felt took place as a result of their case, rather than just that of an external evaluator, and can build ownership of the outcomes of the litigation.

Participation can occur at any stage from planning to implementation. Stakeholders can be engaged in deciding whether to do an impact evaluation, in the design of the impact evaluation framework, in data collection, in analysis of impact evaluation findings, in reporting, and also in managing the evaluation process.

## CONDUCTING AN IMPACT EVALUATION

There are several stages to planning and implementing an evaluation of the impact of strategic litigation. The process can be quite time and resource intensive, and so NGOs should be ready to commit those resources for the process to be effective.

### Plan the Evaluation

An NGO will need to decide how to conduct the evaluation and plan accordingly. To do this, the NGO will need to:

- Identify who broadly has an interest in the evaluation as well as the main users (usually the NGO and the donor), so that any additional stakeholders can be engaged;
- Specify how decisions will be made about the evaluation, such as who will provide advice, who will make recommendations, and who will make the actual decisions;
- Clarify who will do the evaluation. This could be those involved in the strategic litigation, an internal or external evaluator, or some combination of these;
- Identify what resources will be needed for the evaluation. This includes staff time and the time of other stakeholders to be interviewed and to provide feedback;
- Develop any formal documents that will be needed, including a briefing on the project, and terms of reference for the evaluator;

- Develop a plan which sets out how the evaluation will be undertaken, and when; and
- Decide processes to review the evaluation process, findings, and the conclusions that are drawn.

### **Define what is to be evaluated**

The NGO will need to work with the evaluator to develop a description of what is to be evaluated during the process. This will require the NGO to prepare a written summary of the projects, e.g., a strategic litigation case strategy, or a project description, to make clear the boundaries of the evaluation. The NGO should also identify how to capture and assess the potential unintended results which might be through interviews with key stakeholders, or the risk assessment prepared during the project design. The evaluation should also consider negative impacts.

### **Setting the Scope**

The NGO and the evaluator should agree the parameters for the evaluation, including its purpose, key evaluation questions, and the criteria to be used. This will include:

- Clarifying who the evaluation is for, i.e., internal (staff or board), or external (donors);
- Agreeing on the purpose and use of the evaluation – is it to improve the effectiveness of the project, to decide whether it should continue, or to provide insights for future projects or cases; and
- Specifying the key evaluation questions by articulating the broad issues that the evaluation is intended to answer.

### **Data Collection**

Gathering the information needed for the evaluation will include (a) descriptive data that answers questions such as what has happened, the results, and the context; and (b) causal data that answers questions about what produced each outcome and



impact as observed during the evaluation. This will generally be gathered through a mix of reviewing documents and interviewing key stakeholders. The NGO and evaluator will need to:

- Decide how to select the sample units (e.g., survivors, survivor groups or other partner organisations) from those with a vested interest, so that inferences can be drawn about the group as a whole;
- Decide how to collect or retrieve data about activities, results, context, and other factors, to answer the key evaluation questions;
- Establish processes for managing data (storing, organising, and cleaning data) during the evaluation to ensure quality.
- Combine qualitative and quantitative data to improve the quality of findings;
- Decide how to analyse the data that has been collected or retrieved in order to answer the key evaluation questions;
- Decide how to visualise the data to bring clarity during analysis or to communicate findings;
- Check that the data is consistent with what would be expected if the intervention were contributing to producing the observed changes; and
- Identify other factors that might have caused the impacts and see if it is possible to rule them out.

### **Presenting findings**

The findings of the evaluation will need to be developed and presented in ways that are useful for the intended users. The information that supports those findings will need to be presented in a way that supports further use of both the findings and the information. In practical terms, the NGO and the evaluator will need to:

- Be clear as to the needs of the organisation receiving the evaluation;
- Produce appropriate written and visual products that communicate the findings;

- Ensure that there are clear recommendations on how to improve the specific projects or litigation, and how to reduce the risk of failure; and
- Plan a process to assist the main recipient of the evaluation to make decisions and to take forward recommendations.

## THE REDRESS IMPACT FRAMEWORK

Many NGOs adopt a “Theory of Change” which sets out what they do, and how those activities will have the impact that they are expecting. There is a standard framework that NGOs often follow to set out this concept.

- **Activities.** What the NGO will do.
- **Outputs.** What the activities will produce.
- **Outcomes.** What is intended as a result of those outputs.
- **Indicators.** How to measure progress towards outcomes.
- **Impact.** How this will affect survivors.

This Impact Framework sets out a structure for designing and evaluating projects for the holistic strategic litigation of torture, using the 10 types of impact identified in this Practice Note. The Framework sets out the most common activities that might be deployed to best enhance the type of impact that you are trying to achieve, and the frequent products (or “outputs”) that those activities generate. It also sets out the outcomes intended as a result of those outputs and suggests some indicators to measure progress towards those outcomes. The Matrix is not exhaustive and does not have all the answers, but it is intended to help practitioners in the process of designing strategic litigation against torture that adopts a holistic and survivor-centred approach.

Not every type of impact will apply in every project or case. It is for the lawyers or activists involved in the project to decide which impacts are the most relevant, and to then design the proposal accordingly.

The Framework is primarily aimed at those who have been tortured and who are seeking accountability, but it can be modified for other situations, e.g., those who are at risk of torture.

	<b>IMPACT</b> <i>How this will affect survivors</i>	<b>ACTIVITIES</b> <i>What you will do</i>	<b>OUTPUTS</b> <i>What the activities produce</i>	<b>OUTCOMES</b> <i>What is intended as a result of those outputs</i>	<b>INDICATORS</b> <i>How to measure progress towards outcomes</i>
<b>1. Justice</b>	<p>Survivors are vindicated and empowered by a strong judgment, a public apology, or convictions</p>	<p>Strategic litigation, with a strong claim for remedies and survivor involvement</p> <p>Engagement with other CSOs and experts to file third party interventions or expert reports in the case.</p> <p>Policy advocacy for a public apology</p> <p>Working with the police or other investigators to instigate prosecutions</p>	<p>Legal arguments, expert interventions, explanatory materials and briefing documents, media information</p> <p>Briefing papers, social media campaigns, meetings with stakeholders, survivor events, advocacy campaign delivered</p> <p>Briefings and meetings with police and investigators</p>	<p>Court judgment recognising torture</p> <p>Authorities accept responsibility</p> <p>Perpetrators are investigated and prosecuted</p>	<p>Number and nature of judgments</p> <p>Number and nature of official public statements acknowledging survivors</p> <p>Media coverage of the judgment</p> <p>Number and nature of perpetrators investigated and prosecuted</p>

<p>2. Truth</p>	<p>The torture is recognised by a judgment with strong findings of fact as to how and why it occurred, or leads to other truth-telling forms of reparation</p>	<p>Documentation of the torture, context, and circumstances.</p> <p>Instigation of legal claims requesting access to official information</p> <p>Partnership with investigative journalists, CSOs, and others with an interest in uncovering the truth</p> <p>Engagement with other CSOs and experts to file interventions on the facts or context</p>	<p>Legal claims with strong factual arguments</p> <p>Expert witness statements, factual reports, evidence databases</p> <p>Briefing papers, press work, digital communications</p> <p>Media and CSO reports</p>	<p>Judgments with strong findings of fact</p> <p>Publicly accessible court documents and official records related to the violations</p> <p>Significant press coverage</p> <p>Authorities and public are more aware of the scale and severity of the torture</p>	<p>Number of survivors acknowledged in findings</p> <p>Analysis of the quality of the factual findings</p> <p>Number of articles covering the judgment and reporting the facts</p> <p>Number of users accessing court documents and databases, quantity of materials produced and records disclosed</p>
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### 3. Material

<p>The lives of survivors are materially improved by the initiation of restitution measures, the provision of rehabilitation, or the award and payment of compensation</p>	<p>Litigation, with strong arguments that set out what the survivor expects as redress and what is needed, backed by expert and other strong evidence Survivor consultations on material remedies Survivor-led advocacy to push for the delivery of material reparations awarded</p>	<p>Legal strategies for material reparation, briefings on calculation of damages, and payment mechanisms for class actions Reports of survivor consultations on material remedies Advocacy campaign to engage key stakeholders to implement reparations</p>	<p>Judgments with strong reparation orders Survivor centred reparations delivery mechanisms established Survivors receive the reparations ordered</p>	<p>Material reparations implemented Number of survivors awarded material remedies Amount in compensation received by survivors Number and nature of government commitments made and fulfilled Qualitative evaluation of what survivors actually received, and how it improved (or not) their situation</p>
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<p><b>4. Community</b></p> <p>The broader community affected by torture, beyond the individual survivors, benefits from the strategic litigation</p>	<p>Research on the context, pattern of violations, and other survivors in the same situation, and their needs</p> <p>Litigation submissions with persuasive arguments for community reparations</p> <p>Information sharing and consultations with communities</p> <p>Community organizing or network building, including holistic support</p> <p>Community-led policy advocacy to implement reforms</p>	<p>Evidence submissions and expert reports for the court.</p> <p>Specific requests for community-based reparation</p> <p>Information materials on the issues</p> <p>Community recommendations on reparations mechanisms</p> <p>Policy briefings for key stakeholders</p> <p>Coordination networks and campaigns delivered by community groups</p>	<p>Remedies benefit the community as well as the individual survivor</p> <p>Communities help drive the implementation of the remedies, and feel ownership of the issue</p> <p>Holistic support that is informed by survivors' concerns and needs</p> <p>Key stakeholders have a greater understanding of the issues and of the affected communities</p>	<p>The quality of remedies ordered that benefit the broader community, or which offer opportunities to do so</p> <p>Number of survivors reached, and number of and responses to campaign initiatives</p> <p>A survey on knowledge and perceptions (baseline and endline) for survivors and groups in the community</p> <p>Number of key stakeholders engaged</p>
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<p><b>5. Movement</b></p>	<p>The anti-torture movement and individual activists and survivors are galvanised to take action</p>	<p>Coalition building to take forward the implementation of the judgment Community organising to engage activists in the implementation campaign Outreach and information sharing to activists to engage them in the issues Press and social media to draw attention to the litigation</p>	<p>A coalition is formed and takes action Campaign materials, policy recommendations, and briefings on the case A press and social media campaign Movement-led advocacy actions</p>	<p>Survivors and CSOs are actively engaged on the issue of the litigation Anti-torture champions emerge, or are strengthened CSOs and champions know about the case and the issues through press and social media</p>	<p>Number of other NGOs and individuals who take on the issue. Number of public statements by other groups Number of collective actions implemented</p>
<p><b>6. Attitudes</b></p>	<p>The attitudes towards torture of key stakeholders such as politicians, judges, diplomats, prosecutors, and the police are changed.</p>	<p>Judicial capacity strengthening on relevant issues such as anti-torture standards Media engagement to build specialist and professional interest in the subject matter of the litigation Regional and international advocacy to diplomats and human rights bodies</p>	<p>Judicial capacity strengthening programmes Media engagement campaign, media briefings, social media Policy Briefings, meeting reports, and capacity strengthening reports</p>	<p>There are changes in the public statements of key stakeholders, and their responses to torture Judicial pronouncements and official responses to torture cases are progressive and survivor centred</p>	<p>Review and analysis of judicial and official statements on torture Analysis of anti-torture jurisprudence in target country over a defined period Baseline and endline attitudes and perceptions surveys on torture</p>

<p>7. Legal</p>	<p>The judgment produces caselaw that restricts torture, or new anti-torture laws.</p>	<p>Strong legal claims aimed at developing standards or implementing law reform</p> <p>Research on gaps and in the existing legal framework to inform claims for law reform</p> <p>Amicus briefs on the reforms needed to conform with international standards</p> <p>Expert legal analysis or comparative studies with legal reform proposals</p> <p>Survivor-led advocacy for legal reform to national authorities</p> <p>International advocacy to support reform</p>	<p>Legal arguments</p> <p>Academic commentary on the case</p> <p>Briefing papers and proposals for law reform</p> <p>Survivor consultations on proposed legal reforms</p> <p>Law reform dialogues and roundtables with national authorities</p> <p>Legal advocacy campaign</p>	<p>A 'landmark' judgment and other judicial statements with clear recommendations for anti-torture legal reform</p> <p>The judgment becomes a precedent and is referred to in other cases at national, regional, or international level</p> <p>Laws are reformed or new anti-torture laws passed</p>	<p>Analysis of changes in caselaw that can be attributed to the litigation</p> <p>The number of academic references to the judgment</p> <p>Frequency with which the judgment is followed by other courts</p> <p>Number of survivor consultations on anti-torture legal reform</p> <p>Analysis of laws reformed or introduced as a result of the strategic litigation</p>
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8. Policy

<p>The political authorities make commitments to legal and policy reform</p> <p>Anti-torture policies and frameworks are introduced</p>	<p>Strong legal arguments for measures of non-repetition</p> <p>Survivor-driven national advocacy, supported by regional or international advocacy</p> <p>Engage policy experts to propose policy reforms</p> <p>Use press and social media to promote reforms</p> <p>Survivor consultations on policy proposals</p>	<p>Policy strategies for non-repetition, informed by experts and survivor communities</p> <p>Briefing papers and policy proposals published</p> <p>Expert analyses</p> <p>Policy roundtables</p> <p>Survivor policy consultations</p>	<p>Judgments that include suggestions for policy reforms as remedies</p> <p>The political authorities make commitments to legal and policy reform,</p> <p>There are positive changes to policies and regulations, introducing safeguards against torture and enhancing accountability</p>	<p>Analysis of judicial remedies ordered</p> <p>Number and nature of political statements for policy reform from both government and opposition</p> <p>Number of proposals for policy reform published</p> <p>Number of policy amendments or new policies introduced</p>
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<p><b>9. Governance</b></p>	<p>There are changes to procedures, codes of conduct, training curriculums, budgets, and the actions of officials</p> <p>Public institutions and structures are strengthened to prevent torture and to respond effectively to survivors</p>	<p>Research and expert advice on anti-torture institutional shortcomings and gaps</p> <p>Amicus briefs on institutional reforms needed</p> <p>Expert review of current procedures with proposals for reform</p> <p>Community organizing and survivor engagement to get input on proposed reforms</p> <p>Press and social media to draw attention to the reforms needed</p> <p>Briefings and roundtables on reforms</p>	<p>Strategy documents to propose reforms</p> <p>Proposals for changes to budgets</p> <p>Training curriculums</p> <p>Community organizing campaign and recommendations for reform</p> <p>Media campaign</p> <p>Advocacy campaign, with briefing papers and expert analysis on reforms</p>	<p>Changes to procedures, budgets, mechanisms, and institutions</p> <p>Changes to police practices during interrogation</p> <p>Strengthening of key institutions, including budget allocations</p>	<p>Analysis of governance changes introduced, such as procedures, practices, and budget allocations</p> <p>Number of public anti-torture institutions and structures put in place</p> <p>Number of publications, research papers, and briefings</p> <p>Analysis of the performance of any changes, including on the overall number of survivors using the procedures, practices and institutions.</p>
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10. Society

<p>Torture becomes more unacceptable to the general public, survivors are recognised, and perpetrators are held to account</p>	<p>Engaging the press and social media</p> <p>Public education campaigns using community organising and public debates</p> <p>Engaging high profile individuals or survivors as spokespersons.</p> <p>Surveys on public attitudes and perceptions towards torture</p>	<p>Briefing papers and media information</p> <p>Media and public education campaigns</p> <p>Communications strategy</p> <p>Survey results</p>	<p>Public figures demand a response to torture</p> <p>More torture cases are reported, investigated and prosecuted</p> <p>More survivors speak out about their experience</p> <p>There is a reduction in torture</p> <p>Public opinion turns against torture</p>	<p>Number and nature of public figures calling for action against torture</p> <p>An increase in media coverage of torture issue</p> <p>A reduction in the incidents of torture, reported through official oversight mechanisms and NGO monitoring</p> <p>An increase in the number of investigations and prosecutions for torture</p> <p>Results of public opinion surveys</p>
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**REDRESS** is an international human rights organisation that delivers justice and reparation for survivors of torture, challenges impunity for perpetrators, and advocates for legal and policy reforms to combat torture. Our cases respond to torture as an individual crime in domestic and international law, as a civil wrong with individual responsibility, and as a human rights violation with state responsibility.

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Ending torture, seeking justice for survivors