

MODULE 1

Elements And Definitions

Strategic litigation can be defined as bringing a legal action on behalf of a survivor of torture, with a broader aim of achieving a social, political, legal, or institutional change beyond the individual case. This strategic objective is achieved by deploying a variety of civil society techniques in addition to the casework. Practitioners should adopt a holistic approach that supports the survivor throughout the process.

Elements of Strategic Litigation

Strategic Objective. To be strategic, litigation must have a clear objective, which will go beyond the immediate aims of the individual case, to bring redress both to the individual claimants and to other survivors in a similar situation. The strategy looks behind the specific remedies in the case to touch upon wider interests that may be legislative, economic, social, or political.

Forum Choice. The forum for bringing the legal claim will have to be carefully selected. The regional and international legal or quasi-legal fora all have admissibility criteria which the lawyer needs to be aware of. The forum can be selected based on issues such as:

- *Context of the case.* Consider the legal and factual context in the country and the region, the treaties ratified, whether there is a pattern of similar violations within the country, and the strength and independence of the national justice system.
- *Chances of success.* The commitment of the survivor, the outcome of similar cases before the same forum, the availability of evidence supporting the case, security considerations, the status of implementation of previous decisions.
- *Accessibility.* Whether the State is a party to the relevant treaty, and has accepted the jurisdiction of the body to hear complaints. The physical location of the body, and whether it is regional or international.
- *Admissibility.* Whether the State has accepted the jurisdiction of the forum, the rules for exhaustion of domestic remedies (or disapplying them), time limits, rules on applications to other bodies.
- *Duration.* How long the proceedings are likely to take and how long they have taken in similar cases, to be considered alongside the age and state of health of the survivor.
- *Political Will.* The status of implementation of similar decisions, whether there is any political will to implement changes and provide redress, and the ability of the case to have an impact despite such potential limitations.
- *Implementation Campaign.* Consider whether you will be able to deliver policy advocacy to eventually implement the decision.

Domestic courts and contexts vary from country to country. It is critical to identify and analyse the key opportunities and challenges at the domestic level before turning towards regional and international forums (see *Module 8: Forum Choice*).

Documentation. The lawyer will have to ensure they adequately document the factual allegations brought forward on behalf of the client so that the legal claim is supported by strong evidence. This evidence should also document the broader problem that the litigation seeks to address (see *Module 15: Evidence*).

Civil Society Techniques. To be effective, strategic litigation should involve a collaborative campaign that includes other civil society techniques as appropriate. These include advocacy at national, regional, and international levels (see *Module 7: Advocacy*), community organising, capacity building, engaging the press, social media, and public education.

Implementation. Strategic litigation does not stop once a favourable decision is obtained in the case. Pursuing implementation of the decision is key both for the client and for the wider goals of strategic litigation.

REDRESS and its partners represented a woman sentenced to death and lashing in Sudan because of her religion in bringing a case against Sudan before the African Commission on Human and Peoples' Rights. REDRESS and its partners simultaneously accompanied the case with advocacy around anti-torture standards in Sudan. In 2020, Sudan reformed its laws on apostasy, bringing its legal standards closer to the Convention against Torture. REDRESS and its partners continue to represent Meriam's interests, and to support and advocate for legal and institutional changes in Sudan.

Potential challenges. A divergence between the cause and the interest of the client can arise. For instance, lengthy proceedings and media attention can adversely impact the mental health of a client, or trigger retaliation against the client. It is key for the lawyer to keep in mind the primary duty to the client and balance it against the goal to further the cause. The well-being of the client should be the priority.

The Holistic Approach

A holistic approach to strategic litigation puts the client's needs at the core of the legal claim, and the advocacy strategy:

- Ensure psychological, medical and material welfare of the client through support. Survivors often suffer severe trauma as a result of torture and need support (this can be done through referral pathways, of which the lawyer must be fully aware). It should be done throughout any form of engagement with the case and the survivor.
- Ensure the safety of survivors, which might require protection measures, including relocation, where possible.
- Inclusion of survivors or affected communities throughout the process. This means involving them in the decision-making and strategy in every phase of litigation, so their needs and expectations are taken into account, informing them regularly of the evolution

of the proceedings and advocacy routes, as well as involving them in other activities during the process.

- Claiming reparation for survivors that corresponds to their needs (in its five forms – compensation, restitution, satisfaction, rehabilitation, and guarantees of non-repetition) (see *Module 9: Reparation*, and *Module 10: Compensation*).

Further Reading

See the REDRESS *Practice Note on Holistic Strategic Litigation against Torture*.