

MODULE 17

The Effective Building Blocks of Effective Case Management

Many anti-torture NGOs have large numbers of cases and so must operate a case management system to organise their documents and keep track of deadlines and next steps in litigation. Some NGOs use paper-based files, which carry particular risks of damage or seizure. Poor case management creates real risks for NGOs engaged in anti-torture work and can jeopardize the safety of survivors, witnesses and others involved in litigation.

Slack systems make it easier for documents to be seized or interfered with, either physically or digitally. Robust and secure case management systems need to be in place to enable organisations – particularly those with a large case load – to organize and keep track of cases, while ensuring that the needs of survivors are provided for and that the strategic goals of the case are managed and met. Using checklists and developing streamlined processes for managing a strategic litigation case can have a direct positive impact on the outcome of a case and can help ensure that cases are dealt with fairly and effectively.

1. Competent and Ethical Representation

Advocates and representatives must offer competent and ethical representation throughout the life cycle of a case; non-lawyers are often involved in the representation of survivors, and, in these cases, there is often no specific external regulatory framework governing their actions.

Confidentiality: Lawyers representing survivors must keep their survivor's information confidential. Ability to disclose information is often limited to situations in which the survivor consents to information being shared, or where disclosure is required by law or implicitly allowed to carry out the representation. The duty of confidentiality applies to *everyone* working on a case, legal and non-legal staff. Communications between a lawyer and a survivor are legally privileged which protects communications (either written or oral) from being produced to a third party or a court. A potential breach of confidentiality must be dealt with immediately and it is prudent to put in place a standard procedure to be followed in case of a breach.

Consent: Consent must be obtained for legal representation and media, or advocacy campaigns associated with strategic litigation. E.G., a survivor should consent to their identity being made public, to information about their case being shared with the media for advocacy purposes, and to information being disclosed to funders. A common problem in strategic litigation cases is that they take many years to complete. This demands active, ongoing consent from survivors throughout the process of litigation, and may involve renewing and obtaining renewed consent at regular intervals.

Do No Harm: Lawyers and representatives should ensure that survivors are not harmed or retraumatised during the legal proceedings or the search for justice. If the survivor decides not to proceed with the case, or expresses a desire to withdraw the case, their wishes must be respected.

Holistic Approach to Strategic Litigation: The survivor's support needs should be at the core of the legal claim and advocacy strategy. Their support needs should be repeatedly assessed, *i.e.*, having access to ongoing support to cover their psychological, medical, or social needs. Where necessary referrals to specialist organisations should be made.

2. Case Enquiries

Handling new enquiries is a crucial stage in the process of strategic litigation and pivotal for survivors as it may be the first time that they are seeking assistance. Developing a standard process through which potential new cases can be reviewed and assessed can help ensure that organisations conduct this process sensitively.

It can also help organisations determine whether the case fits within their mandate and expertise, resource capabilities and most importantly with the objectives of the survivor. Keeping a central register/log where details of enquiries can be tracked is a useful way to stay organised and monitor trends in the types of enquiries over time.

3. A Survivor-Centred Intake Process

Once a decision is made to take on a case, the process of onboarding a survivor begins. Important aspects to consider include:

Conducting a holistic assessment of the survivor's needs: A holistic assessment of the client's needs should be conducted as soon as you are introduced to the survivor. Any medical, social, and psychological support needs that a victim may have should be considered and referrals should be made to specialised support where necessary.

Assigning a single staff member to a case early on: Assigning an individual to a case early on ensures that one person is responsible for overseeing the case and tracking relevant deadlines.

Ensuring legal procedures and obligations, as well as what is expected of the survivor, are explained: This information can be provided in a client care letter. The letter should also provide detailed information about the services you offer, costs, and insurance related to casework, confidentiality, and data protection.

Obtaining Relevant Consent for Representation and Related Advocacy: Where a victim representative is working on a case it is important to obtain the survivor's consent to act on their behalf. Survivors should sign an "Authority to Act Form" to authorize lawyers, or other representatives within the organisation, to act on their behalf, describing the scope of the legal representation. This can also provide consent to share case information to funders and others, but work undertaken beyond litigation may also require separate consent forms, *e.g.*, media campaigns. As strategic litigation spans jurisdictions, organisations may rely on a national lawyer to exhaust domestic remedies in their jurisdiction. In such cases, it is advisable

that the organisation and local lawyer representing the client in the national jurisdiction sign a “Partnership Agreement”, stating the responsibilities and scope of representation of the third party, as well as any issues related to legal fees and costs, deliverables, and other points relevant to representation.

Collecting and logging all relevant documents: All documents on a case should be carefully filed at the outset, recording a summary of a document, where it is located, and its significance which will help indicate where there may be gaps in evidence and serves to avoid any doubt as to the provenance and relevance of a document at a later stage.

4. Building a Case Strategy

When starting a new case, the staff member in charge should plan, discuss, and agree the strategy of the case together with the survivor and any co-litigant organisations. A checklist can be used to consider the overall strategy of the case, the applicable law and preferred forum to litigate the case, the advocacy required to strengthen the impact of litigation, funding needs, risks and safety concerns involved, and other considerations. The strategy must be discussed and agreed with the survivor, any co-litigating partners and/or lawyers.