Casebook 1

LEADING STRATEGIC LITIGATION CASES AGAINST TORTURE

2024

REDRESS
Ending torture, seeking justice for survivors

PREFACE

REDRESS has a long track record of using strategic litigation against torture to deliver justice and reparation for survivors, adopting a holistic approach that supports and accompanies the torture survivor through the process. We also promote this concept and technique to partner NGOs through litigation workshops and publications.

The Torture Litigation Casebook series aims to showcase around 80 case studies of strategic litigation against torture to illustrate best practice and to help strengthen the capacity of human rights lawyers worldwide. Other Casebooks in the series cover UK Cases, Dissent Cases, and Discrimination Cases.

The Casebooks cover all regions, include cases brought before national, regional, and international jurisdictions, and seek to highlight different techniques of strategic litigation against torture, including national and international advocacy, collaborative partnerships, and effective media campaigns. The majority are cases brought by private parties or applicants, invoking human rights norms enshrined in national legislation or constitutions, or resorting to regional or international human rights bodies where national remedies prove ineffective. Some are criminal or inter-state actions. The Casebooks are published alongside our Practice Notes. They provide practical examples demonstrating strategies that lawyers have pursued to challenge torture.

The main criteria for deciding which cases to include was their strategic features. Rather than seeking to compile a legal casebook of the leading cases relating to the law of torture, the intention was to demonstrate the range of different ways in which strategic litigation can be deployed to challenge torture. In many instances, this has involved the use of multiple approaches and strategies on the part of civil society, including advocacy, activism, and use of the media. The Casebook presents a range of innovative legal claims or remedies, and efforts to bring about effective implementation.

The impetus for this series was a recognition that such a focus on strategic features of litigation is often not readily available to lawyers or activists preparing for litigation. Accordingly, we have chosen cases that may be well documented, and their legal outcomes widely known, but the approaches taken, and their strategic impact are less well known. In some cases, we have had conversations with those involved during the preparation of this Casebook.

The aims of the Casebook series are to serve as a reference for practitioners and for workshops that REDRESS delivers to other NGOs conducting strategic litigation relating to torture; to illustrate the main approaches or strategies that have proven most effective in the conduct of strategic litigation; and to create connections between the communities of lawyers engaged in this work.

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LIST OF ABBREVIATIONS

ACHPR	African Commission on Human and Peoples’ Rights
ACtHPR	African Court on Human and Peoples’ Rights
ECtHR	European Court of Human Rights
ECHR	European Convention on Human Rights
IACtHR	Inter-American Court of Human Rights
IACHR	Inter-American Commission of Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICJ	International Court of Justice
ICTY	International Criminal Tribunal for the Former Yugoslavia
ICTR	International Criminal Tribunal for Rwanda
UNCAT	UN Convention against Torture

INTRODUCTION

Through strategic litigation, human rights lawyers seek to challenge both individual acts of torture and other ill-treatment, and the policies and practices that enable it to take place. Using this approach, survivors can pursue accountability and be part of campaigning for policy and legal reform to prevent such treatment from reoccurring in the future. In addition to pursuing legal cases, a holistic approach to strategic litigation uses other civil society techniques to bring about change, such as advocacy for structural reforms (national, regional, international), activism, community organising, capacity building and engaging the media, academia and public in general (for further information, see *Practice Note on Holistic Strategic Litigation against Torture*).

In many cases, civil society seeks to go beyond establishing individual responsibility and obtaining remedies for individual victims in strategic litigation against torture and aspires to ensure wider impact both during and beyond the legal decision – that there is a community behind the client and a cause beyond the case. But change can be slow, and in many cases, litigation that seeks to encourage social advances may take a generation or more to achieve (for further information, see *Practice Note on Evaluating the Impact of Strategic Litigation against Torture*).

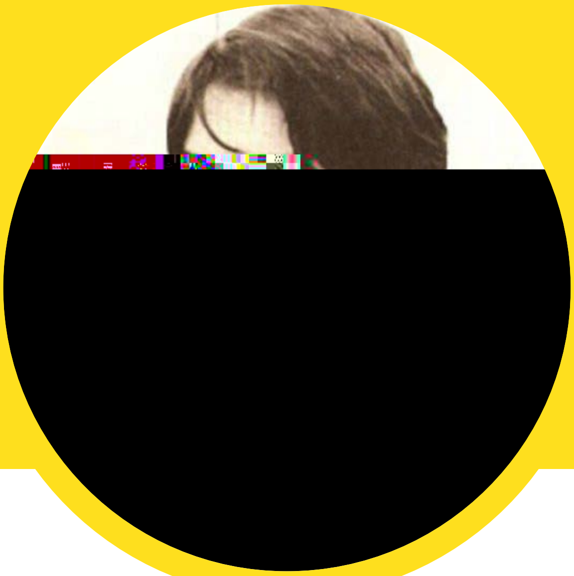
This Casebook catalogues leading cases against torture across the globe that used strategic litigation and that serve as good examples of the potential of creative litigation to transform the law. It documents 23 cases brought before different jurisdictions: regional courts (the IACtHR, the ACHPR, and the ECtHR), the ICJ, communications to the UN Human Rights Committee, and national courts in North America, Africa and Europe. It should be noted that not all the cases included are primarily concerned with torture as distinct from other forms of ill-treatment, but all are significant in some way for the law on torture as a body of jurisprudence. While not an exhaustive list of leading cases, those included were chosen due to their strategic features which we hope are a good reflection of best practice, dealing with both the practice of torture itself and remedies for its commission.

Again, in compiling this Casebook we have not aimed to present a comprehensive overview of all strategic anti-torture cases, but to showcase those that we find ourselves referring to time and time again in our own work. Our aim was to produce a digest that will be useful for practitioners and activists alike, to help them quickly identify key cases and their relevance for their work. The Casebook, therefore, presents a distilled overview of each case, offering a breakdown of its individual impact as well as various strategic features.

This document has been produced with the financial assistance of the European Union. This publication was prepared by a team at **REDRESS**, including **Rupert Skilbeck**, Director, **Alejandra Vicente**, Head of Law, **Natalie Lucas**, Legal Officer, **Blánaid Ní Chearnaigh**, Legal Assistant, **Eva Sanchis**, Head of Communications, **Joss Gillespie**, Communications Assistant, and **Jodie Chun**, Communications Assistant. We would like to also thank **Fiona McKay**, Consultant Legal Adviser, and **Amina Fahmy**, former Legal Fellow, for their contribution to preparing this Casebook. Finally, we are also grateful for the input offered by other NGOs conducting strategic litigation, particularly the Open Society Justice Initiative, and to the **UCL Public International Law Pro Bono Project**. REDRESS bears sole responsibility for the content and any errors in this Casebook and can under no circumstances be regarded as reflecting the position of the European Union.

FILÁRTIGA V. PEÑA-IRALA (1980)

Link to the judgment



United States Court of Appeals, Second Circuit

EXTRATERRITORIALITY
PEREMPTORY NORMS
CIVIL LIABILITY

CASE SUMMARY

In 1979, Joel Filártiga and Dolly Filártiga, two citizens of Paraguay resident in the US, filed a civil claim under the Alien Tort Statute ('ATS') against former Paraguayan official Americo Peña-Irala for the torture and wrongful death of Joelito Filártiga which occurred in Paraguay. The ATS gives US Courts jurisdiction over civil actions brought by foreign nationals for torts in violation of US treaties or international law. The US Court of Appeals held that a violation of peremptory norms, such as the universal prohibition on torture, constituted an infringement of "the law of nations."

Until this case, US courts had been highly reluctant to exercise extraterritorial jurisdiction over violations committed abroad. The US Court of Appeals justified its acceptance of jurisdiction, under the otherwise underutilised ATS, on the basis that torture is clearly a violation of the law of nations and previous cases "did not involve such well-established, universally recognized norms of international law." The decision paved the way for subsequent tort claims focused on extraterritorial human rights violations, allowing victims to recover damages against perpetrators in US courts. *Filártiga* remained the established position until *Kiobel v. Royal Dutch Petroleum Co.* (2013) in which the Supreme Court held that the presumption against extraterritorial jurisdiction applies to claims under the ATS, thus restricting its application.

THE FACTS AND PROCEDURAL HISTORY

In March 1976, Joelito Filártiga (the 17-year-old son of Joel Filártiga) was kidnapped and tortured to death by the respondent, who was at that time the Inspector General of Police in Asuncion, the capital city of Paraguay. Dolly Filártiga was later brought to the respondent's home, where she was shown the mutilated body of her brother. It was alleged that the violations were motivated by Joel Filártiga's political activities criticising dictator General