**STRATEGIC LITIGATION OF TORTURE: A VICTIM-CENTRED APPROACH**

Rupert Skilbeck, Director, REDRESS

Access to justice is a fundamental right, particiularly for survivors of torture, now reflected as a UN Social Development Goal. There are many ways to approach the courts to obtain justice and the different forms of redress. Human rights litigation can be used on behalf of an individual survivor of torture to hold governments to account before national courts, the regional human rights systems, and the UN Treaty Bodies. Criminal law can be used to punish individual perpetrators for torture on a national or international basis, or through universal jurisdiction. Through civil cases people can sue individuals and companies to prove their responsibility for ill-treatment. With strategic litigation, civil society seeks to go beyond individual responsibility and individual representation, to ensure there is impact after the judgment, a community behind the client, and a cause beyond the case. But change can be slow, and in many cases this litigation seeks social advances that may take a generation or more to achieve.

Strategic litigation can be a powerful tool for civil society organisations fighting torture, particularly in an era when NGOs are under attack, and the courts remain an option. But without care there is a real risk that this approach can have limited impact and disempower the victim. This requires NGOs to be creative in order to enhance the effectiveness of strategic litigation.

**Litigating for Impact and Implementation**

Traditionally, strategic litigation is directed towards creating a legal precedent, but far more can be achieved with a broader understanding of what we mean by impact. Obtaining a judgment was also regard as the end of the campaign, but in reality the court’s decision marks the beginning of the process of implementation and change.

Litigation can provide satisfication through the declaratory impact of a finding that rights have been violated, as well as the truth-telling that is often part of a judgment through the finding of facts. Participation in a process where victims are finally believed can be individually empowering, and the sense that justice has been achieved is sometimes the most important outcome of the case.

Judgments have a material impact on the client and sometimes their community through orders for rehabilitation, restitution, compensation, and non-repetition. The legal process can galvanise the movement, create an impetus for change, and produce new allies. A judgment may also bring about a change in the attitudes of important stakeholders such as judges, journalists, diplomats, lawmakers, and administrators. Such changes in attitude will make it easier to to propose changes to government, including new laws, improved regulations, and supporting bureaucracies. While all this is taking place, effective communications and public education can mean that society will become more accepting of the ultimate change that you seek.

There are also negative impacts that come from strategic litigation. It is the ethical duty of the lawyer to discuss these with their client so that a truly informed decision can be made as to whether to file a case. Litigation can often take many years, which can be an immensely frustrating experience for all involved. Judgments can remain un-implemented, undermining the rule of law. There is a real risk of re-traumatization, where the client is required to re-live their experience or have their credibility challenged, even through cross-examination. There is also a danger that the cause becomes more important than the client, who might feel that their views are sidelined by the effort that must go into a campaign, or even that a conflict between the two might emerge.

These risks can be mitigated, but lawyers must avoid being distracted from the immediate social needs of their clients by the demands of the case.

**Strategic Litigation of Torture: What Strategies Work?**

For litigation to have a strategic impact beyond the case, the NGO will have to make choices as to where to focus their limited energies and resources. Sadly, torture is such a widespread problem that not every case can be taken up, and so civil society groups must decide their priorities and then select cases accordingly. Where they cannot take up a case, every effort must be made to find someone who can. For each case, or more likely group of cases, there needs to be a purpose to the litigation – what is it that you are trying to change? What behavior are you asking to be stopped, or what do you require the authorities to do? That means that lawyers should have identified the remedies they will ask for right at the beginning of the project.

Filing a case and issuing a press release doesn’t make a case strategic. Casework must be combined with other civil society techniques such as using the media, public education, advocacy at a national, regional, or international level, and activism. Where an NGO doesn’t have the capacity to do what is necessary, they can work in a coalition with others who can.

In many countries there is an official denial that torture takes place, and the authorities declare that their police act in accordance with the highest international standards. Preparing legal claims to a court-room standard creates a body of persuasive evidence that can quickly make it difficult for those denials to have any credibility. Once national judges start to see a pattern emerging, they will be more inclined to find against the authorities.

In the criminal justice system, torture often takes place because the victim has not seen a lawyer or a doctor, or where their detention has not been registered, or there is pressure to obtain a confession because judges are permitted to rely on them in trial. Litigation can identify that it is the lack of these safeguards that allowed the torture to take place, and that the remedial action is to put the necessary safeguards in place. Advocacy can then help persuade the authorities to make the necessary changes.

Lawyers should make full use of national and international anti-torture mechanisms to complement their cases. Expert reports from UN or regional experts can be immensely powerful when submitted as evidence in a legal procedure, or where their recommendations match the remedies that are asked for in a case.

When acting on behalf fo a particular group, there is a greater ability to connect the cases to a community and to enhance their impact. Activists will have to spend time getting to understand the needs of the community, possibly with additional staff, and must ensure genuine consultation with them. If this is done well, the victim group can become a powerful and persuasive advocate for the changes that are sought.

**Victim-Centred Strategic Litigation: an Inter-Disciplinary Approach**

Effective strategic litigation against torture requires a different approach, that fully supports the victim throughout the process. This means (a) providing sufficient information for torture survivors to know how to assert their rights and get access to justice, (b) supporting the clients throughout the case with social assistance, and expert psycho-social support where necessary, and (c) ensuring that the victims play a leading role in the litigation, where appropriate.

*Information Sharing.* Victims of torture are often in an extremely vulnerable position, and may be powerless to assert their rights. The criminal justice process is very confusing without a lawyer to protect your interests. Those detained in psychiatric institutions have the law against them. Refugees and migrants are far from home and their support networks, in a country where they may not speak the language and do not know who to go to. Those caught up in conflict can’t go to court. Minority groups may find few allies in power to stand up for them. Civil society must ensure that all of these groups are able to find out how they can get help. Redress and other NGOs have put together information that can help these groups. But can we share this information in a more practical and effective way.

*Client Support and Accompaniment.* Litigation can take many years and may have many disappointments, which can take its toll on the victim. If the litigation is to be a positive experience, then victims need to be able to build their lives, to have support in their communities, counselling, adequate medical assistance, and referral to expert help where necessary. This work may require skills of client support and community liaison that a lawyer may not possess. It will take time and money to organise, and so the NGO will need to manage their staff and their budget to provide this help.

*Victim Led.* There is an ethical duty on lawyers to engage fully with their clients, which in some legal systems is described as ‘taking instructions’ from the client. But in strategic litigation it is very easy for the lawyer to take the lead in the interest of progressing the broader strategy, and in international litigation, where the lawyer may be based in a different country, they can become distanced from their clients. There are good examples in some of the recent social movements where the community themselves take the decisions as to what will be done, and only consult their legal advisors when they need to. This model of community-led litigation may not always work in the context of torture, where there may not be a defined community, but provides good lessons. This may mean that the lawyers take a secondary role, but gives the litigation credibility and legitimacy.

Through a participatory and holistic approach to strategic litigation against toture, we can realise the ultimate objective of the case and the cause, which is to restore the dignity of the victim.