

Strategic litigation and women's and girls' access to justice, particularly in the context of gender-based violence

-Discussion paper-

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I. Introduction

The goal of this discussion paper is to serve as a document to inform debate on the value and impact of strategic litigation in general and in the context of gender-based violence cases concerning women and girls. The paper analyzes several aspects central to discussions on strategic litigation, including its definition, the benefits, and the obstacles faced by those who use this advocacy tool to seek justice and redress for victims while trying to achieve a broader impact in society, as well as the methodology employed to assess different levels of impact. The paper also acknowledges strategic litigation as a “growing field” and underscores the collaborative efforts required to make a successful use of this advocacy tool. To provide a practical example of a successful collaborative effort, the paper describes the role played by the Latin-American Network of Strategic Litigation in Gender, or in Spanish the Red Latinamericana de Litigio Estratégico en Género (“ReLeG”), a regional network that brings together litigators, academics, legal practitioners, and activists committed to ending gender-based violence and promoting gender equality in Latin America.

The paper draws from the author's personal experience as one of the founders and coordinators of ReLeG, and relies extensively on the document published by the Office of the High Commissioner for Human Rights, in collaboration with ReLeG, entitled “*Strategic Litigation for Gender-Based Violence: Experiences in Latin America*” (2021).¹

II. Definition

There is no established definition of “strategic litigation,” but experienced litigators, practitioners, and advocates have articulated similar approaches to describe what it entails. Members of ReLeG have defined strategic litigation, within the context of gender-based violence litigation, as a process according to which cases are “brought before judicial and quasi-judicial bodies that aim to have a lasting impact beyond that of repairing the harm suffered by the victims.”² More specifically on “strategic human rights litigation,” the Open Society Justice Initiative (“OSJI”) has acknowledged that this “tool” can encompass different activities and be

¹ OHCHR, *Strategic Litigation for Gender-Based Violence: Experiences in Latin America* (2021), available at <https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WRGS/SL-LatinAmerica-EN.pdf> This publication is the result of a workshop held online with the collaboration of ReLeG and academic institutions.

² *Id.*, p. 4.

“used interchangeably with other terms, such as ‘impact litigation,’ and ‘human rights litigation’.”³ For purposes of its work, OSJI defines “strategic human rights litigation” as “a legal action in a court that is consciously aimed at achieving rights-related changes in law, policy, practice, and/or public awareness above and beyond relief for the named plaintiff/s.”⁴

In the same vein, Professor and human rights litigation expert, Helen Duffy, states that “the term is generally used to mean litigation that pursues goals, or which concerns interests, that are broader than only those of the immediate parties. [Strategic human rights litigation] uses the courts to advance human rights in a way that reaches beyond the victims or applicants at the centre of the particular case.”⁵

Strategic litigation is a multidimensional approach used to pursue complementary goals, including to redress individual and collective human rights violations, seek changes in domestic laws and/or policy, develop or change domestic and/international case-law, mobilize public opinion, and/or raise awareness on the specific plights of individuals and/or communities, around the world, among others.

The actors involved and the approaches followed to pursue strategic litigation vary depending on the specific context, available resources, and existing opportunities. As a result, there is no “unique” approach or methodology to follow when engaging in strategic litigation.

Consequently, Professor Duffy warns against drawing sharp distinctions between strategic litigation and what she calls “other forms of litigation.”⁶ In particular, she counsels against “dubious” distinctions between “victim or client focused litigation” and “strategic litigation” because “it would be misleading to characterise victims’ goals as necessarily distinct or somehow inherently less strategic.”⁷ Ultimately, it may be the determination of individual victims to seek redress for their own situation that leads to changes in laws or policies through measures of non-repetition, benefiting a broader group of affected or potentially affected members of a community.⁸ However, this conclusion should not conceal the fact that sometimes the goals of the victims and those involved in strategic litigation representing the interests of broader groups may not coincide squarely.

Additionally, Professor Duffy warns against drawing distinctions between strategic or “public interest litigation” and the provision of “legal aid” or “legal services.”⁹ Legal aid or services can enable and sustain the representation of large numbers of victims, which ultimately “may

³ Open Society Justice Initiative, *Strategic Litigation Impacts: Insights from Global Experience* (October 2018), available at <https://www.justiceinitiative.org/publications/strategic-litigation-impacts-insights-global-experience>, p. 25.

⁴ *Id.*

⁵ Helen Duffy, *Strategic Human Rights Litigation, Understanding and Maximizing Impact*, Hart Publishing (2018), p. 3.

⁶ *Id.*, p. 48.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*, p. 49.

indeed further strategic goals, and generate impact more effectively than any single case.”¹⁰ Moreover, access to inexpensive legal advice in general complements other goals of strategic litigation, such as “supporting democratizing access to justice and strengthening the judiciary or the legal system,”¹¹ thereby benefiting all those seeking justice for individual causes.

Assuming these conclusions are valid in general human rights practice, they are even more pressing regarding gender-based violence cases due to ongoing backlash against gender issues and the scarcity of funds to support civil society organizations which challenge their ability to engage in strategic litigation. Presently, it appears that sustaining litigation on behalf of women and girls requires the cooperation, support, and concerted efforts of all actors and institutions with resources and commitment to representing their rights in very hostile political and legal environments.

III. Strategic litigation as a “growing field”

Experts acknowledged that strategic litigation was a “creature” of the common law system and initially was primarily practiced in countries with that legal tradition. However, in recent years it “has gone global, flowering even in countries where the common law principle of *stare decisis* does not hold sway, and which are not traditionally known for the use of court-based advocacy to protect rights.”¹² The following interconnected reasons have been identified to explain this trend.

First, increasing litigation at the national level, the diversification of issues brought to courts, and the incorporation of international human rights law into domestic law have been central to the growing interest in strategic litigation. Domestic lawyers have resorted to national courts with different subject matter jurisdiction -e.g., civil, criminal, labor, or even administrative proceedings to challenge practices or policies affecting individuals or groups, thereby expanding the scope of influence that the judicial system may have in ensuring justice and access for underrepresented or vulnerable groups.¹³ Hence, lawyers and civil society organizations have expanded the scope of rights claimed, including access to economic, social, and cultural rights, the protection of the rights of persons in detention, the human rights of persons with disabilities, and the rights of indigenous or tribal communities, among others.¹⁴ Lastly, the adoption of new constitutions that incorporate human rights treaties as part of their framework and provide these international instruments with constitutional legal status has dramatically strengthened the protections of individuals and groups within the jurisdiction of States.

Second, a “proliferation” of international and regional courts and mechanisms, both focusing on States, but increasingly on other non-state actors, has provided additional venues for

¹⁰ *Id.*

¹¹ *Id.*

¹² Open Society Justice Initiative, *Strategic Litigation Impacts: Insights from Global Experience*, *supra*, p. 39.

¹³ Helen Duffy, *Strategic Human Rights Litigation, Understanding and Maximising Impact*, *supra*, p. 10.

¹⁴ *Id.*

litigation.¹⁵ Among these institutions, the ten human rights bodies created at the universal level within the framework of the United Nations to oversee nine human rights instruments, remain central. Additionally, the three regional human rights tribunals —namely, the European, Inter-American, and African courts —and the two regional commissions, including the Inter-American and African ones, complement and diversify the available international fora.¹⁶ The relevance of these international institutions is based mainly on the existence of individual complaint proceedings allowing victims, their next of kin, or their representatives to access the international jurisdiction to denounce States for human rights violations and seek redress when this has not been obtained at the domestic jurisdiction. Furthermore, there are other non-human rights-focused courts that have increasingly decided on the scope and applicability of human rights, including the European Court of Justice and the International Court of Justice.¹⁷ In recent years, beyond these legal institutions that focus on attributing responsibility to States for the breach of international obligations, other venues have slowly become available to raise human rights concerns regarding the conduct of non-state actors such as multinational corporations. These new mechanisms include, *inter alia*, arbitration proceedings between private investors and states, as well as investigative bodies set up within international development banks to monitor compliance with the institutions’ policies when lending to private investors, which individual claimants can instigate.¹⁸

The third important reason is the availability of funding and increased collaboration from international organizations. As a natural consequence of the two reasons mentioned above, international funders have engaged in supporting domestic and international litigation and advocacy by providing necessary material resources to sustain and amplify the impact of the efforts made at these two levels. Additionally, international civil society organizations with extensive experience and expertise in litigation have provided technical advice to domestic lawyers and NGOs on legal issues, as well as on devising a successful strategic approach to litigation.¹⁹ At the international level, international civil society organizations have either partnered with domestic actors to bring complaints to the available international jurisdictions, participated as third-party’ interveners to boost legal arguments on their behalf, or contributed to increasing the visibility of the issue raised in the case or the plights of the victims involved in the litigation.

Finally, the development of a “transnational dialogue” has been crucial for increasing the relevance of strategic litigation. Transnational dialogue is understood as a process of cross-fertilization among and across national and international jurisdictions that share case law and new interpretations, as well as involve new actors such as third-party interventions or *amici curiae*. Experts agree that strategic human rights litigation has extensively contributed to the

¹⁵ *Id.*, pp. 13-15.

¹⁶ *Id.*

¹⁷ *Id.*, pp. 15-16.

¹⁸ *Id.*, p. 16.

¹⁹ *Id.*, pp. 18-19.

development of substantive international human rights law.²⁰ Concurrently, these standards have prompted new litigation at the domestic and international level, thereby expanding the reach, influence, and impact of law as an instrument of change.²¹ Successful strategic litigation stories have also crossed borders between states and regions, inspiring new actors to challenge entrenched practices or massive human rights violations by resorting to the courts. This phenomenon, compounded by the national constitutional amendments and the trend to grant constitutional status to human rights treaties in many states in the last 50 years, has triggered what Professor Duffy calls an “outward-looking approach to other systems and practices, and a more fluid relationship between national and international law and practice.”²² One of the most relevant consequences of this process has been the development of a well-established transnational dialogue in which national, regional, and international courts “borrow” from similar institutions in other places of the world to enrich the interpretation of the laws or instruments that they are applying.²³ This organically developed phenomenon, has been nurtured by the involvement of experts, academics, or civil society representatives participating as third-party interveners, or *amici curiae*, in national or international proceedings.²⁴ Their role is to bring standards or interpretations developed in other jurisdictions on similar subjects and consistent with international human rights law, to the attention of domestic and international courts.

In addition to the reasons analyzed above, which apply to strategic human rights litigation in general, women’s rights advocates have identified specific and complementary motives for resorting to this type of litigation to advance the rights of women and girls. Women’s rights advocates have stressed that strategic litigation in their field was triggered to respond to ongoing high levels of gender-based violence against women and girls and the stark reality that serious human rights violations against them have gone unnoticed for decades.²⁵ They credit the feminist movements, which, in the 1990s, emulating other human rights movements, began documenting the extensive human rights violations experienced by women and girls and utilized law as a tool to highlight and redress those violations.²⁶ By placing the rights of women and girls within the protections afforded by the international human rights frameworks, they succeeded in overcoming the view that gender-based violence and women’s rights belonged to the private sphere and were regulated exclusively by national legal frameworks.²⁷ Ultimately, they acknowledged that “[l]aw, traditionally used as a tool to repress and control women, has....begun to serve as a catalyst for the realization of women’s [and girls] rights.”²⁸

²⁰ *Id.*, p. 19.

²¹ *Id.*

²² *Id.*, p. 20.

²³ *Id.*, p. 21.

²⁴ *Id.*, pp. 21-22.

²⁵ OHCHR, *Strategic Litigation for Gender-Based Violence: Experiences in Latin America*, *supra*, p. 7.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

IV. Benefits and Obstacles of Strategic Litigation

Experts agree that strategic litigation, although not a unique tool to change reality on the ground, is a distinctive form of advocacy that brings concrete benefits to victims and advances the cause of human rights overall.²⁹ First, judgments and other legal decisions are “imbued with the full authority of the state.”³⁰ The involvement of courts in deciding disputes and interpreting the law through a contentious process, where facts are established, arguments are assessed, evidence is weighed, and decisions are reasoned, provides a legitimacy to the outcome that political debate and preferences cannot.³¹ Additionally, although advocacy to shape policy and generate public debate are essential for creating a space where aspirations can crystalize in specific pieces of legislation or other normative instruments such as treaties or declarations, it is through litigation and resulting judgments that “give meaning to...[these] norms and instruments” that the scope of rights are defined and become binding upon the parties.³²

Second, it is agreed that the legal process affords the claimants, especially human rights victims, “a degree of visibility that could scarcely be achieved through alternative means.”³³ It is well-documented that victims or their next of kin acknowledge that having their day in court, confronting the alleged perpetrator or the responsible State, provides them with a unique and empowering setting where, if the process is fair and transparent, they can enjoy equality of arms to present their claims and seek redress. Moreover, in general, victims or their next of kin have stressed that public hearings and the litigation itself contribute to initiating the healing process to overcome the trauma resulting from the harm suffered.

Similarly, women’s rights advocates recognize that strategic litigation can benefit women and girls who have been victims of gender-based violence and other forms of discrimination, triggering structural reforms of laws and practices that go beyond individual reparations.³⁴ In particular, they emphasize that strategic litigation aimed at addressing violence and discrimination has not only pioneered but also highlighted the need to integrate an intersectional perspective into the debate.³⁵ They claim that in most of the cases in which gender-based violence situations are ventilated, several grounds for discrimination surfaced among the underlying factors that triggered the violence in the first place.³⁶

In addition, women’s rights advocates underscore that gender-based violence litigation has contributed to developing a victim-centered approach as “one of the fundamental guiding

²⁹ Open Society Justice Initiative, *Strategic Litigation Impacts: Insights from Global Experience*, *supra*, p. 34.

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.*, p. 35.

³⁴ OHCHR, *Strategic Litigation for Gender-Based Violence: Experiences in Latin America*, *supra*, p. 5.

³⁵ *Id.*

³⁶ *Id.*

principles” of the legal process, thereby forcing other actors and institutions to accept the ownership and agency of women and girls to lead and define the scope of the cases in which they are the right-holders.³⁷ Accordingly, women’s organizations have developed and refined a specific methodology to support women and girls who choose to engage in a legal process to seek justice. Some of the actions involved in the victim-centered methodology include, *inter alia*, respecting victims’ personal processes and their choice to become involved in the litigation; informing them of the relevant legal and procedural matters of their case and subsequently allowing them to guide and set the agenda for the litigation process; informing victims of the potential risks of the legal process as well as the benefits, managing their expectations of the outcome of the process; communicating with victims in their own language; and supporting victims or their next of kin through what is called “their process of emotional resilience and empowerment.”³⁸ To ensure success, the victim-centered approach needs to build trust between the victim and the justice institutions so they can become full actors in the process.³⁹ Additionally, it is essential for lawyers and civil society organizations involved in strategic litigation to address the holistic needs of victims throughout the entire litigation process.⁴⁰

Despite the benefits of strategic litigation, experts and practitioners are aware of the extensive obstacles faced by victims and those representing them to obtain justice and full redress. Among the obstacles identified, some are considered barriers that prevent access at the national level, while others constitute impediments at the international level. However, in some cases, the distinction between these two levels is artificial. Regarding obstacles at the national level, Professor Duffy notes the legal or jurisdictional impediments that constrain litigation before domestic courts, including the existence of amnesty laws, secret laws preventing access to crucial information, or the lack of incorporation of international human rights obligations into the internal sphere and the resulting limitations for judges to use those standards or case law to enrich their interpretative work.⁴¹ Another legal impediment involves a lack of access to crucial evidence that is only in the hands of the defendant State.⁴² Additionally, there are obstacles stemming from the deterioration of the rule of law. Namely, in such a context, advocates, human rights defenders, and lawyers are subject to persecution and intimidation, and the judiciary experiences political pressure, a lack of independence, and impartiality.⁴³ Professor Duffy also takes into account the lack of sufficient legal aid to represent victims and

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*, p. 6.

⁴⁰ *Id.*

⁴¹ Helen Duffy, *Strategic Human Rights Litigation, Understanding and Maximising Impact*, *supra*, p. 23.

⁴² *Id.*

⁴³ *Id.*, pp. 24-26.

the resources needed to sustain prolonged litigation, which is compounded by prohibitive court filing fees.⁴⁴

As to impediments at the international level, Professor Duffy identifies the following as barriers: the lack of binding treaties and courts in every region of the world, and the ongoing backlog and delays in the processing of individual petitions in regions where these norms and institutions exist.⁴⁵ Similar to the domestic level, the politicization and lack of transparency in the selection processes may affect the independence and impartiality of international judges.⁴⁶ Likewise, ongoing challenges by disgruntled States to weaken or restrain the powers of international courts and mechanisms undermine and distract these institutions from focusing on the missions for which they were created.⁴⁷ Additionally, the delay in resolving disputes, coupled with a slow judgment compliance process and the implementation of reparations by States, contributes to the fatigue and exhaustion of victims and their representatives, as well as a growing perception of the ineffectiveness of these international institutions in delivering effective and timely justice.⁴⁸ Finally, the costs of international litigation may also be prohibitive for marginalized communities to bring their complaints forward.⁴⁹

Ultimately, in both national and international strategic litigation, another factor that cannot be overlooked is the drying of funding to support sustained long-term and complex litigation, which is sometimes without a clear prospect of success.⁵⁰

In addition to the identified obstacles, gender-based strategic litigation faces specific barriers related to the nature of the cases and issues it addresses such as the existence of a patriarchal culture entrenched in the judicial institutions and the lack of gender parity in the composition of courts and decision-making bodies.⁵¹ Additionally, the lack of political will to provide redress to victims or address the root causes of gender-based violence and the increasing impact on courts of conservative groups denouncing the existence of a “gender ideology.”⁵² Furthermore, there is the presence of gender stereotyping and gender discrimination against victims and/or complainants during legal proceedings.⁵³ Finally, insufficient technical knowledge and expertise of the justice actors result in a failure to integrate a gender perspective in the assessment of the evidence or in the application of the law, causing the “re-traumatization” of the victims who participate in the process and contributing to their stigmatization.⁵⁴

⁴⁴ *Id.*, p. 27.

⁴⁵ *Id.*, pp. 27-29.

⁴⁶ *Id.*, pp. 29-31.

⁴⁷ *Id.*, pp. 31-32.

⁴⁸ *Id.*, pp. 33-34.

⁴⁹ *Id.*, pp. 34-35.

⁵⁰ *Id.*, p. 35.

⁵¹ OHCHR, *Strategic Litigation for Gender-Based Violence: Experiences in Latin America*, *supra*, p. 10.

⁵² *Id.*, pp. 10-11.

⁵³ *Id.*, pp. 11.

⁵⁴ *Id.*, pp. 13-14.

These factors are compounded by other legal challenges that representatives of victims of gender-based violence encounter when seeking justice and redress for their clients. First, there are evidence-related challenges. Victims' advocates underscore that existing evidence laws, rules, and evidence-gathering practices by police, prosecutors, and other judicial authorities involved in their collection, "perpetuate the use of evidentiary methods that do not respect a gender-sensitive and victim-centred approach."⁵⁵ One of the most cited examples relates to cases of sexual violence, in which to prove the existence of the crime, some jurisdictions still require physical evidence, disregarding other forms of proof that include the declaration of the victim, the context where the facts denounced transpired, and psychological evaluations, among others.⁵⁶ Second, there is a trend to characterize sexual violence as criminal charges under domestic law rather than international law, which may afford stronger protections to victims, e.g., using the crime of rape instead of characterizing the crimes as torture.⁵⁷ Likewise, women's rights advocates faced barriers to convince domestic courts to expand the modes of liability to encompass not only the direct perpetrators but also co-perpetrators and indirect perpetrators of gender-based violence, as is the case for systematic human rights violations that constitute crimes against humanity.⁵⁸ Lastly, they struggle to obtain reparations that address the structural causes that led to violence and discrimination because courts lack an understanding of the notion of "transformative reparations" and the need to avoid returning the victims of gender-based violence to the same context in which the violations initially transpired.⁵⁹

V. Impacts of Strategic Litigation

Assessing the impact of strategic litigation has been the subject of much debate and sometimes has resulted in a "tendency to look at litigation through an unduly narrow frame."⁶⁰ Ultimately, experts and practitioners have concluded that "no one frame can capture the complexities of the impact that strategic litigation can have."⁶¹ In other words, the assessment on whether a case is "successful" and/or "impactful" will depend on the eye of the beholder. A binary approach, understood as considering winning as success and losing as a defeat, must be rejected.⁶² Instead, it is proposed to consider strategic litigation as a "multidimensional, multi-disciplinary, multi-stakeholder, iterative, and longitudinally segmented" approach with multiple levels of impact: direct, indirect, positive, and detrimental, as well as predictable and unforeseen.⁶³ As stated by Professor Duffy, "[a] winning judgment that remains (as many do) unimplemented may change little. A judgment, whether won or lost, that creates legal or

⁵⁵ *Id.*, p. 15.

⁵⁶ *Id.*, pp. 15-16.

⁵⁷ *Id.*, pp. 19-23.

⁵⁸ *Id.*, pp. 24-26.

⁵⁹ *Id.*, p. 27.

⁶⁰ Helen Duffy, *Strategic Human Rights Litigation, Understanding and Maximizing Impact*, *supra*, p. 37.

⁶¹ *Id.*

⁶² Open Society Justice Initiative, *Strategic Litigation Impacts: Insights from Global Experience*, *supra*, p. 42.

⁶³ *Id.*, pp. 42-43.

political backlash, may aggravate the situation on the ground. Conversely, a losing case that exposes injustice and catalyses' further action may ultimately be transformative."⁶⁴

Experts and practitioners have approached the issue of levels of impact by categorizing them differently. In like manner, a report by the OSJI has proposed a "tri-partite taxonomy of impacts: material, instrumental, and non-material."⁶⁵ Material impacts involve changes resulting directly from the litigation, including monetary compensation or measures of restitution restoring the status quo ante.⁶⁶ Instrumental impacts encompass measures that are "indirect but quantifiable," such as a change in law or policy, or case law.⁶⁷ Lastly, non-material impacts, which are "indirect and impossible to quantify," include the empowerment of victims, a change in public opinion, and increased awareness of the claims of invisibilized groups, among others.⁶⁸

On the other hand, Professor Duffy breaks down levels of impact into eight categories, including:⁶⁹

- 1) **Victim Impact** (judicial recognition and vindication; agency and empowerment, reparations; transformation of victims into advocates).
- 2) **Legal Impact** (changes in law, enforcement of laws, development of standards through national and international case law).
- 3) **Impact on Policy and Practice** (ceasing or delaying their applications, achieving changes through litigation).
- 4) **Institutional impact, including Judicial Strengthening** (improving appointment and tenure of judges; forcing compliance with domestic judgments, capacity building initiatives).
- 5) **Information, Truth and the Historical Record** (release of information, "truth-telling" nature of legal proceedings; documentation of gross violations of human rights).
- 6) **Social or Cultural Impact** (change in historical narratives; recognition, reconciliation, and restoration).
- 7) **Mobilization and Empowerment** (victims, groups, and communities); and
- 8) **Democracy and the Rule of Law Impact.**

Regardless of the methodologies used and the levels explored to assess impact, it is essential to acknowledge that each of these categories may be sufficient to justify using strategic litigation

⁶⁴ Helen Duffy, *Strategic Human Rights Litigation, Understanding and Maximising Impact*, supra, p. 37.

⁶⁵ Open Society Justice Initiative, *Strategic Litigation Impacts: Insights from Global Experience*, supra, p. 42.

⁶⁶ *Id.*, p. 43.

⁶⁷ *Id.*

⁶⁸ *Id.*, pp. 43-44.

⁶⁹ Helen Duffy, *Strategic Human Rights Litigation, Understanding and Maximising Impact*, supra, pp. 50-77.

as a tool to challenge entrenched laws and practices, as well as individual, collective, or systematic human rights violations, and gender-based violence. In each situation, the impact of litigation will be determined by the specific facts of a case, the political environment and context in which it has transpired, and the historical moment in which it is brought to court. Sometimes, even what was perceived as an unsuccessful judgment when rendered may become a ground-breaking decision that influences subsequent litigation. What is clear, however, is that strategic litigation requires a long-term commitment, even after a decision is reached, because implementation is typically an extremely time-consuming process without guarantees of success.

VI. Strategic Litigation as a Collaborative Effort

There is agreement among practitioners that strategic litigation has a higher chance of success when implemented in conjunction with other similarly relevant advocacy and communication efforts, including the involvement of various stakeholders. First, although strategic litigation is a distinctive advocacy tool, it is not the only available or the most effective when used alone.⁷⁰ Additionally, it does not exist in a vacuum.⁷¹ Resorting to courts is one option to challenge human rights violations perpetrated against individuals and groups and seek redress for the harm they have experienced, but other essential complementary tools should not be underestimated. “Protests, advocacy, research, media campaigns, legislative and administrative lobbying, strategic alliances, even the arts, have all proven to be useful tools of social change.”⁷²

Second, the involvement of multiple actors, whether legally trained or not, is crucial to the success of strategic litigation as a tool for impacting individuals and society at large, beyond merely upholding the rights of victims. It is indisputable that victims play a fundamental role in leading the litigation process.⁷³ However, we cannot overlook the crucial role played by other actors, including judges, prosecutors, litigators, academic institutions, experts from other disciplines, the media, the international community, and donors who provide funding to sustain legal proceedings until a decision is reached.⁷⁴

Third, social movements are another relevant actor in ensuring that strategic litigation is impactful, as they support the legal process by amplifying the stories of claimants and contributing to the development of a narrative of solidarity with victims and other vulnerable groups. Advocates and lawyers underscore the contributions of the feminist movement and their influence on strategic litigation in the field of gender-based violence.⁷⁵ In particular, they claim that “when operating in spaces where there is a deeply rooted patriarchal ideology, such

⁷⁰ Open Society Justice Initiative, *Strategic Litigation Impacts: Insights from Global Experience*, *supra*, p. 33.

⁷¹ *Id.*

⁷² *Id.*

⁷³ OHCHR, *Strategic Litigation for Gender-Based Violence: Experiences in Latin America*, *supra*, p. 8.

⁷⁴ *Id.*

⁷⁵ *Id.*

as in the justice system, feminist movements play a crucial role as catalysts for structural change.”⁷⁶ Furthermore, when advocating for those structural changes, the feminist cause has played “a fundamental role in exposing the different forms of violence against women [and girls], especially in cases of mass repression and armed conflict,”⁷⁷ but also in contexts of entrenched gender-based crimes and sustained discrimination, where this violence is tolerated and impunity prevails.⁷⁸ Additionally, they acknowledge that feminist movements are intergenerational and operate through different forms, ways, and messages.⁷⁹ These movements have contributed to raising awareness on the different forms of gender-based violence that affect women and girls, increasing social condemnation for these practices, supporting and encouraging women in bringing their claims to court, and monitoring State action in the implementation of measures to prevent and investigate the perpetrators of that violence.⁸⁰

Other examples of collaboration in strategic litigation of gender-based violence cases include the cooperation between public prosecutors, litigators, and civil society.⁸¹ It is acknowledged that coordination by these actors allows for the articulation and development of case theories that have a better chance of success at trial.⁸² Understanding the scope and limitations of each actor should not prevent their cooperation when involved in seeking justice for the victims in the same case.⁸³ For example, when prosecutors have no expertise in a particular field of law, such as international crimes, civil society organizations and experts can provide training.⁸⁴ Additionally, civil society organizations can contribute to the work of public prosecutors’ offices by compiling standardized practices and developing guidelines and protocols to carry out investigations of very complex gender-based violence crimes.⁸⁵

Likewise, the utilization of independent experts has been growing as they can participate as expert witnesses in a trial and provide technical expertise that the legal actors in the process lack.⁸⁶ For example, opinions from medical doctors, psychologists, sociologists, historians, and anthropologists are crucial for producing evidence, providing context, and understanding the prevailing social practices and culture in which the case transpired.⁸⁷ Academics and other legal experts have also increased their role in strategic litigation, including in the area of gender-based violence, through their third-party interventions or amicus briefs to illustrate the

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*, p. 9.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

competent court on issues of relevance to the case, such as international human rights standards, comparative constitutional law, or international law and practice.⁸⁸ Academic institutions are also key to training the new generations of legal practitioners by introducing and/or strengthening gender training in academic curricula in law schools.⁸⁹

Finally, the existence of national or regional networks of activists, legal practitioners, academics, and public officials, such as prosecutors and judges, provides another space for collaboration in advancing women's and girls' rights through strategic litigation. These networks connect experts with different backgrounds and expertise to discuss, debate, and collaborate on specific cases or advocacy campaigns. Through regular meetings, specific events, strategic planning, and the submission of amicus briefs, members of these networks contribute to enriching the knowledge and impact of colleagues who represent cases in national and international jurisdictions or advocate for changes in law and policy within their respective spheres of work. One example of a successful network in Latin America is ReLeG.

1. The role of ReLeG in supporting strategic litigation in gender-based violence in Latin America (<https://www.releg.red/>)

ReLeG monitors, documents, and promotes strategic litigation initiatives in cases of gender-based violence before domestic, regional, and international jurisdictions, which seek social transformation, through the modification of public policies, patriarchal practices, and gender stereotypes embedded in today's institutions and societies.⁹⁰ ReLeG serves as a platform to exchange good practices, share developments in gender equality, and guarantee victims' rights.⁹¹ Additionally, ReLeG promotes legal education with a gender perspective and an intersectional approach, supports and participates in academic programs, and promotes forums to share lessons learned and applicable international standards.⁹²

ReLeG also implements initiatives, campaigns, and projects to eradicate gender-based violence, including violence and discrimination based on sexual orientation and gender identity. It promotes legal and public policy reforms in public and private realms.⁹³ Lastly, ReLeG collaborates in developing and sharing innovative technical and communication tools for the legal empowerment of women, as well as in sensitizing justice institutions, to promote equal access to justice for all and the application of non-discriminatory legal frameworks.⁹⁴

Since launching in 2020, ReLeG has demonstrated the potential and impact of collaboration in advancing strategic litigation in cases involving gender-based violence. The cooperation, exchange of experiences, and direct intervention through amicus briefs by members of ReLeG

⁸⁸ *Id.*

⁸⁹ *Id.*, p. 10.

⁹⁰ ReLeG, *What we do?*, at <https://www.releg.red/what-we-do>

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

have been essential to sustaining the litigation of cases in various countries in Latin America and before the Inter-American Human Rights System, as well as amplifying the impact of the work of civil society organizations and feminist groups supporting the legal process. Two examples of the extensive work done by members of ReLeG in recent years exemplify the relevance of collaboration and coordination among different actors in this network.

A. Peru: Forced Sterilization Case

In the 1990s, more than 300,000 women and almost 25,000 men were forcibly sterilized in a program led by the government of former president Alberto Fujimori to reduce the birth rate.⁹⁵ The program primarily targeted indigenous and impoverished rural communities throughout the country.⁹⁶ Many of the victims suffered serious injuries resulting in death, while others survived with severe physical and psychological consequences.⁹⁷ Most of the women were sterilized without ensuring their free, prior, and informed consent in their mother tongue, and through deception, threats, abduction, and humiliation.⁹⁸ The sterilizations were conducted in unsanitary conditions and without informing the women that they were irreversible.⁹⁹

On October 10, 2013, as a result of the friendly settlement in the *Case of Mestanza Chávez* before the Inter-American Commission on Human Rights, the Peruvian State acknowledged that the forced sterilizations violated human rights and undertook to conduct an exhaustive investigation into the events to punish any person, including public officials or civil servants, civilians, and military, who were found to have participated in these acts, either as indirect perpetrators or intellectual authors, as physical perpetrators, or in another capacity.¹⁰⁰

After several attempts by the plaintiffs to obtain the implementation of the State's pledges, domestic judicial proceedings gained new momentum on March 1, 2021, when the prosecutor opened an investigation into former president Alberto Fujimori, his former health ministers, and other high-ranking officials, who were accused as co-perpetrators of the crimes of forced sterilization against thousands of indigenous women.¹⁰¹ Subsequently, the Supreme Court of

⁹⁵ See, Congreso Peruano, *Comisión Especial sobre Actividades de Anticoncepción Quirúrgica Voluntaria (AQV), Informe Final*, Julio 2022, p. 30, at <https://1996pnsrpf2000.wordpress.com/wp-content/uploads/2011/07/informe-final-comision-especial-aqv.pdf>

⁹⁶ *Id.*, p. 6.

⁹⁷ See, in general, Defensoría del Pueblo de Perú. *Informe No. 27: La aplicación de la anticoncepción quirúrgica y los derechos reproductivos II: los casos investigados por la Defensoría del Pueblo*, Capítulo VII, at https://cdn.www.gob.pe/uploads/document/file/1191639/informe_2720200803-1197146-122tfyr.pdf

⁹⁸ CEDAW Committee, *Views adopted by the Committee under article 7 (3) of the Optional Protocol, concerning communication No. 170/2021*, CEDAW/C/89/D/170/2021, para. 2.2.

⁹⁹ CIDH, *Celia Edith Ramos Durand y sus Familiares v. Perú*, Informe No. 287/21, Caso 13.752, Informe de Fondo, OEA/Ser.L/V/II, Doc. 297, 5 octubre 2021, parr. 25.

¹⁰⁰ CIDH, *María Mamérita Mestanza Chávez v. Perú*, Report N° 71/03, Petition 12.191, Friendly Settlement, October 22, 2003, at <https://www.cidh.oas.org/annualrep/2003eng/peru.12191.htm>

¹⁰¹ Amnistía Internacional, *Perú: Proceso penal contra Alberto Fujimori y exfuncionarios por esterilizaciones forzadas es paso importante en búsqueda de verdad, justicia y reparación*, 15 December 2021, at <https://www.amnesty.org/es/documents/amr46/5113/2021/es/>

Peru declared the proceedings void and ordered the prosecutor to submit a new complaint.¹⁰² Despite ongoing efforts to obtain justice in this case, the victims have not had access to justice or reparations at the domestic level until now.

On May 22, 2025, the Inter-American Court of Human Rights held a public hearing in the case *Celia Ramos v. Peru*, concerning a Peruvian woman who died in 1997 after being forcibly sterilized.¹⁰³ This is the first time the Court will address Peru's forced sterilization policy during the Fujimori regime. A judgment in favor of the claimants will constitute an essential precedent to force the State to address the prevailing impunity and, most importantly, award reparations to the victims and their next of kin.

Several members of ReLeG have been involved in the litigation against the policy at the domestic level and before the Inter-American Human Rights System. Their interaction and cooperation have contributed to raising awareness on the victims' claims at the national and international level, supporting the legal claim that the forced sterilization policy involved the perpetration of crimes against humanity, and that Peru has an obligation to punish all those who designed and implemented it. First, victims are represented by DEMUS ("Estudio para la Defensa de los Derechos de la Mujer"), a civil society organization based in Peru under the leadership of Maria Ysabel Cedano, a member of ReLeG. In addition, one of the organizations that supports the international litigation of the case, CEJIL ("Center for Justice and International Law"), also participates in ReLeG through its Executive Director, Viviana Krsticevic, and Deputy Executive Director, Maria Leoni.

Furthermore, Professors Claudia Martin and Susana SaCouto, both members of the faculty at the Law School of American University and coordinators of ReLeG, have remained involved in the case through third-party interventions at three crucial moments of the litigation. In 2017, Prof. Susana SaCouto submitted an amicus brief to the Prosecutor's Office, sustaining that the policy of forced sterilizations rose to the level of crimes against humanity as it involved a generalized and systematic attack against indigenous women.¹⁰⁴

In 2020, Professor Claudia Martin submitted an amicus brief to the Constitutional Tribunal of Peru alleging that the ongoing criminal investigations against one of the policy's alleged perpetrators were not in violation of his right to have a decision on a reasonable time, given

¹⁰² Salud con Lupa, *La Corte Suprema de Justicia anula el proceso judicial por las esterilizaciones forzadas*, 7 diciembre 2023, at <https://saludconlupa.com/noticias/la-corte-suprema-de-justicia-anula-el-proceso-judicial-por-las-esterilizaciones-forzadas/>

¹⁰³ The case was submitted by the Inter-American Commission on Human Rights for consideration of the Court on June 3, 2023. For access to the public hearing in Spanish, see <https://vimeo.com/1093857626>

¹⁰⁴ The text of the amicus is available at <https://www.wcl.american.edu/impact/initiatives-programs/hracademy/documents/upload/amicus-on-forced-sterilizations.pdf>

that the case showed an unusual complexity, and the investigation had been interrupted and dismissed several times for political reasons.¹⁰⁵

Lastly, in May 2025, Professors Susana SaCouto and Claudia Martin, and Helena Rodriguez-Bronchu Carceller, also a member of ReLeG, with the support of UN Women, submitted an amicus brief to the Inter-American Court of Human Rights in the case of Celia Ramos.¹⁰⁶ They asserted again that the policy of forced sterilizations involved crimes against humanity and that the Court should reach that conclusion when characterizing the gross violations of human rights perpetrated in this case.¹⁰⁷ Affirming the argument by the Court is essential to ensure access to justice and reparations to Celia's next of kin and the other victims of the forced sterilization policy; otherwise, the investigation of the crimes perpetrated in the case would be barred due to the expiration of the applicable statute of limitations according to domestic Peruvian Law.¹⁰⁸

In addition, to support the work of the litigants representing the victims and to maintain momentum on the relevance of the case, ReLeG and DEMUS, with the support of two academic programs at American University Washington College of Law, the Academy on Human Rights and Humanitarian Law and the War Crimes Research Office under the direction of Professors Claudia Martin and Susana SaCouto respectively, have organized academic events and policy discussions both online and in person.¹⁰⁹

B. Sexual Violence in Protest and Public Demonstrations

Social protests have been fertile ground for the expression of citizens' demands worldwide, but they have also revealed profound flaws in state responses, leading to serious human rights violations, including on the right to life and the right not to be subjected to torture or other cruel, inhuman, and degrading treatment, particularly concerning vulnerable and marginalized groups. As reported, in Latin America, "the repression of demonstrations is not gender neutral, and gender bias is prevalent in the use of violence against demonstrators. Civil society organizations and class action lawsuits have played a particularly important role in raising awareness of the problem of sexual and gender-based violence [against women and girls] ...in the context of protest. However, these forms of violence continue to be significantly underreported. This problem is aggravated by the widespread impunity surrounding [sexual and gender-based violence], which intensifies victims' silence."¹¹⁰

¹⁰⁵ For more information, see here <https://www.facebook.com/photo/?fbid=3006732239387917&set=en-honor-al-d%C3%ADa-internacional-de-la-mujer-la-academia-de-derechos-humanos-y-dere>

¹⁰⁶ The amicus is on file with the author.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ See, for example, <https://www.facebook.com/acadhumanrights/posts/la-academy-on-human-rights-and-humanitarian-law-y-el-war-crimes-research-office-/5303003159760802/>

¹¹⁰ ReLeG, Redress, and Academy on Human Rights and Humanitarian Law, *Sexual and Gender-Based Violence in the Context of Social Protest in Latin America* (2025), available at <https://redress.org/publication/sexual-and-gender-based-violence-in-the-context-of-social-protest-in-latin-america/>

The issues of sexual and gender-based violence perpetrated against women and girls is a current concern in the work of ReLeG and some of its members. Collaboration and cooperation among interested parties have enabled strategizing about potential avenues to address this issue and implement various actions to prevent and redress its occurrence. The collaboration has included support in strategic litigation at both national and international levels, as well as the production of seminal documents that can assist in future actions in domestic or international courts.

One of the examples of collaboration included involvement in the *Women Victims of Sexual Torture in Atenco v. Mexico Case*.¹¹¹ In May 2006, a police operation in Texcoco and San Salvador Atenco resulted in the excessive use of force, leaving two young men dead and 217 people detained, including 47 women, many of whom were subjected to sexual torture during their transfer. Despite complaints from 26 women and documentation from the National Human Rights Commission, Mexican authorities failed to investigate and punish those responsible, perpetuating impunity. The case was brought before the Inter-American Court of Human Rights, which rendered a landmark victory in 2018, holding Mexico responsible for arbitrary detentions, torture, and lack of justice, ordering the State to investigate the facts, punish those responsible, strengthen mechanisms against sexual torture, and provide comprehensive care to the victims. However, progress has been limited.¹¹²

The claimants in the Women Victims of Sexual Torture in Atenco were represented by the PRODH Center, a Mexican civil society organization whose then Legal Director, Maria Luisa Aguilar, and current Executive Director, is a member of ReLeG. The international litigation of the case was supported by CEJIL, whose Executive and Deputy Executive Directors, as indicated earlier, are also members of ReLeG. As part of the strategy to strengthen arguments on superior responsibility in cases of sexual violence as torture, Professors Susana SaCouto and Claudia Martin participated in the case as expert witnesses (“peritas”). The outcome of the case showed that collaboration among the members of ReLeG resulted in a ground-breaking decision and set a seminal precedent for combating sexual violence against women and girls in the context of protests and demonstrations.¹¹³

Additionally, Professors Claudia Martin and Teresa Fernandez Paredes, a human rights consultant with extensive experience in gender-based violence and member of ReLeG, drafted and submitted an expert document to the National Human Rights Commission in Chile to support the argument that sexual violence perpetrated against women and girls in the context of the social protests in Chile in 2019-2020 (also known as “estallido social”) should be

¹¹¹ See, in general, Centro Prodh, *Mujeres de Atenco Denunciante por tortura sexual en Atenco, Estado de México*, at <https://centroprodh.org.mx/casos-3/mujeres-de-atenco/>

¹¹² See, I/A Court H.R., *Case of Women Victims of Sexual Torture in Atenco v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 28, 2018. Series C No. 371.

¹¹³ The expert witness report is on file with the author.

characterized as torture and prosecuted as such by domestic criminal courts.¹¹⁴ Collaboration on these cases in Chile has continued through cooperation with Karinna Fernández, a well-established human rights lawyer in Chile, and a member of ReLeG as well.

Most recently, through cooperation between ReLeG and Redress, an NGO in the UK and the Netherlands, Professor Claudia Martin and Alejandra Vicente, Head of Law at Redress, and a member of ReLeG, have engaged in additional advocacy activities to raise awareness and counter the prevailing impunity of sexual and gender-based violence against women and girls in the context of social protest in Latin America. In September 2025, the two institutions, along with the Academy on Human Rights and Humanitarian Law, released the report “*Sexual and Gender-Based Violence in the Context of Social Protest in Latin America*,” authored by Teresa Fernández Paredes, which documents the practice in the region.¹¹⁵ The report concludes with a set of recommendations for further action on this issue.

As with the forced sterilizations case in Peru, the initiatives on strategic litigation and documentation have been complemented by academic and policy events and discussions at the international and national levels, bringing on board academic institutions and other local and international civil society organizations.¹¹⁶

VII. Consolidating progress and conclusions

As stated above, strategic litigation is a distinctive tool for advocacy that can benefit individual victims while also pursuing a broader impact on the community. Despite the legal and institutional obstacles identified in this paper, strategic litigation continues to grow globally, favored by national and international factors that promote cross-fertilization of legal standards and comparative practices across borders. Strategic litigation has also been used increasingly by women’s rights advocates, with the support of the feminist movements, to challenge and address gender-based violence and entrenched discrimination. Although the impact of strategic litigation cannot be scientifically measured, there is a consensus that a binary approach, where winning is equated with success and losing represents failure, must be rejected. Ultimately, strategic litigation has multiple levels of impact that can be assessed through different lenses, depending on the specific facts of a case, the political environment and context in which those facts transpired, and the historical moment in which the case is brought to court.

Women’s advocates and civil society organizations acknowledged that, despite the remaining obstacles and challenges stemming from entrenched patriarchal societies, gender-based violence is becoming more visible, and there is a growing social rejection of the different expressions of this violence. As a result, increasingly, women and girls see themselves as rights holders and are more inclined to engage in legal proceedings to denounce the violence they

¹¹⁴ The report is on file with the author.

¹¹⁵ ReLeG, Redress, and Academy on Human Rights and Humanitarian Law, *Sexual and Gender-Based Violence in the Context of Social Protest in Latin America*, *supra*.

¹¹⁶ For more information on a recent event on the subject, see <https://gwat.omct.org/events/25>

suffer. In most of these cases, women victims become leaders and advocates who pursue not only individual redress but also seek measures of non-repetition to ensure that the human rights violations they experienced never happen again.

Ultimately, there is a consensus in the women's movement on the need to consolidate the gains achieved through legal and strategic litigation. Indeed, "[g]iven past successes, and the advanced technical and legal expertise of civil society organizations and legal practitioners...strategic litigation is expected to continue playing a fundamental role in advancing [the human rights of women's and girls'] and in the fight against impunity for gender-based violence."¹¹⁷ However, to ensure success, it is necessary to be aware of the ongoing backlash against women's rights, coupled with the drying up of funding to support litigation, in order to strategize more effectively on how to remain relevant and impactful in the existing hostile political environment.

¹¹⁷ OHCHR, *Strategic Litigation for Gender-Based Violence: Experiences in Latin America*, *supra*, p. 33.