

# Measuring the Impact of Strategic Litigation in Digital Rights

## Developing a Tool for the Field

November 2019

### Introduction

This document outlines a framework and approach developed by the Digital Freedom Fund (DFF) with an external consultant to assess the impact of strategic litigation in digital rights. It discusses why we developed a new framework, how it was developed, the framework itself, guidance on how to implement the framework, as well as highlighting risks and possible mitigation strategies.

Our definitions for key terms relevant to this framework are below.

*Outcome:* Medium to longer term results or effects of your activities and outputs. These should be easily traced back to your activities and outputs, with the awareness that other factors may have also contributed.

*Impact:* A long term, significant and sustained change to a target population or entity.

*Strategic Litigation:* Litigation that has an impact that extends beyond the parties directly involved in the case and can bring about legislative or policy change (or other changes).

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### Why develop a new framework?

In a human rights context, strategic litigation, often aimed at influencing and changing law, policy or practice, can have a wide range of social and legal impacts, as well as on civil society. It is a complex and often lengthy intervention which seeks, rather ambitiously, to bring about tangible change in a complex eco-system of international and domestic law, policy, advocacy and other human rights-based interventions. As a result, measuring (contribution to) impact and effectiveness has a number of challenges. For example:

- Due to the complexity of the environment, and number of actors involved, attribution is near impossible
- Due to the length of time it can take, it can be difficult to track changes in the external environment and understand the relationship between these changes and the litigation in question
- Often the results of the litigation fall outside of the project funding period, which means there is little onus on NGOs to require formal impact reporting to their donors
- Many human rights NGOs do not have the resources to engage specialist staff to evaluate and assess the impact of their litigation, and as a result, there are few evaluation

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professionals with practical experience of evaluating and assessing the impact of strategic litigation interventions

- Unlike other sectors, e.g. health or international development, there are few tried and tested tools and resources specifically designed for the evaluation of strategic litigation

In an attempt to overcome some of these challenges, we decided to develop a framework and approach which is specifically targeted to monitor outcomes and impact of strategic litigation (with a focus on digital rights).

Compared to a traditional indicator-based framework, which seeks to count the number of people affected or a degree of change, this impact framework seeks to identify and assess the contribution of strategic litigation to broader outcomes and impacts both during and after the litigation has concluded. We consider this an appropriate approach given the complexity and uncertain timelines of strategic litigation.

### **How was it developed?**

This framework was developed by an independent evaluation consultant, with expertise in monitoring and evaluation of human rights and strategic litigation projects and programmes. The consultant worked in close collaboration and consultation with DFF, as well as carrying out desk-based research into current practice in measuring the impact of strategic litigation. The development of the framework also follows a series of roundtables organised by DFF, which convened a number of human rights NGOs and academics to exchange ideas on current practice, challenges and barriers to evaluating strategic litigation initiatives.

We then shared a draft framework with a number of DFF's partners and donors, who were invited to comment and attend a virtual meeting to discuss the framework in more detail. Following this meeting, we further refined the framework before finalising.

DFF now plan to pilot and use the framework over the coming years.

### **What does the framework and approach consist of?**

The framework consists of three complimentary features, which work in tandem to provide a way to methodically and rigorously monitor and measure the impact of strategic litigation on digital rights.

Firstly, we have created a thematic framework which details types of impact and outcomes typical of strategic litigation, with examples and likely evidence sources.

Secondly, we have proposed a method for collecting and analysing outcome data, based on a methodology called outcomes harvesting, which can be paired with the framework.

Thirdly, we have suggested evidence principles designed to complement the framework and methodology to encourage and support the use of high quality evidence to support evaluation and assessment.

1. A thematic impact and outcome framework

There are nine impact themes, which can be grouped in to three types of impact:

1. Impact on law and policy
2. Social impact
3. Impact on the digital rights field

The different impact themes are detailed in the table below. We have provided contextual examples to help illustrate what is mean by the impact theme, and likely evidence sources and methods (non-exhaustive). Please see [Annex B](#) for a summary of limitations of different data collection methods.

<b>Impact type</b>	<b>Theme</b>	<b>Contextual examples</b>	<b>Likely evidence sources/methods/observable manifestations</b>
Law and Policy	Legislation and policy on digital rights are changed and/or new legislation is introduced.	An overly broad cybercrimes law is revised and more clearly defined, allowing less opportunity for the law to be used to restrict online speech.	Interviews Specific changes in policy or law following judgments Media reports Speeches and official statements by decision-makers Outcomes mapping or Process Tracing Judgments
Law and Policy	Regional and international standards on digital rights issues.	Case law is established at the European Court of Human Rights defining the extent to which algorithms can be used by public authorities to grant or deny benefits to an individual. The judgment is also cited and referenced in other cases at national, regional or international courts.	Interviews Judgments Use and reference to judgments obtained/case law Outcomes mapping or Process Tracing

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Law and Policy	Access to justice and available routes to justice and fora for digital rights litigation.	For the first time a court accepts a case concerning X digital rights issue as a basis of a breach to their ECHR rights, allowing future similar cases with similar injustice to be heard.	Interviews Previous case law Judgment Use of mechanism/route during and after litigation
Social	Public awareness and/or public opinion is changed.	The general public in X country have a more sophisticated understanding of their privacy rights relating to their travel data.	NatRep surveys Interviews, focus groups Media coverage Content analysis Online analytics data
Social	The broader conditions or environment for the wider affected community are changed.	Following strategic litigation, internet access and digital literacy of economically disadvantaged groups is announced as a priority by the government.	Interviews Focus groups Surveys Observations
Social	Representation and visibility of minority or previously unheard voices in court.	An independent online media outlet reporting on LGBT+ issues, which was shut down by local authorities, is allowed to continue operations acknowledging breaches of their rights to freedom of expression and freedom from discrimination, the first	Interviews Focus groups Surveys Observations Court judgments Media coverage/content analysis

		domestic case of its kind.	
Digital Rights Field	The coordination and connection of the digital rights field.	Through joint litigation and advocacy, a national network of digital defenders has been established/expanded which has gone to do X, Y & Z.	Surveys Joint actions and submissions Reported communication Interviews Network analysis
Digital Rights Field	The digital rights field's efforts to address human rights violations in the digital sphere.	NGOs that have never engaged in digital rights issues begin to monitor the number of data protection incidents by government bodies which breach the GDPR.	Changes in the amount of litigation or other actions relating to issue e.g. more cases filed on X.
Digital Rights Field	Dialogue and engagement on digital rights between CSOs, regulatory bodies and private entities.	The government establishes a multi-stakeholder board consisting of NGOs and government ministries to oversee the implementation of an online privacy reform action plan.	Interviews Meetings and consultations between these actors (and minutes) Relationship assessments between CSOs, regulatory bodies and private entities Joint actions and collaborations Stakeholder analysis

## 2. A method to collect, analyse and map evidence back to the framework

We have developed one way of implementing this framework (which we are piloting), taking inspiration from the method called outcomes harvesting.

Outcome harvesting requires various stakeholders to develop specific 'outcomes statements' which detail a significant and sustained change that is believed to have been generated through a known intervention. The goal here is not to attribute the outcome to one intervention alone, but

to identify the specific contributions made by the intervention in creating that change, whilst acknowledging other known or unknown contributors and citing specific evidence to support the claim. See [Annex C](#) for a diagram summarising the outcomes harvesting process.

The generation of these outcome statements can be done in a number of ways, normally in the form of specially created data sheets or workshops. An important feature of the outcomes harvesting method is the review and refinement of the outcomes by other stakeholders as part of the verification process.

For use of this approach with the thematic framework, each outcome statement developed will be mapped back to one of the nine impact themes (as the outcomes contribute to one of the themes of impact). In addition, the outcome statement should be qualified in two ways:

- 1) The direction of change, i.e. does the change advance digital rights, constrict digital rights or is it an outcome which neither restricts nor advances digital rights;
- 2) The scope of the outcome, i.e. local, national, regional or international.

The outcome statements developed can be stored or logged in a central database or document to create an outcome bank to be used for monitoring and evaluation purposes. We recommend planning for a formal periodic review and evaluation point to review the data as a whole as part of a broader impact assessment and/or to coincide with external reporting requirements. Organisations looking to use and implement this framework and approach should also carefully consider how frequently to collect, review and analyse outcome statement data – this should be informed by their organisations learning and development priorities, opportunities for engagement with their key stakeholders, project and programme cycles/timelines and internal and external reporting requirements. See [Annex A](#) for some of the advantages and risks of this method.

### **Developing outcome statements**

Outcome statements should consist of 3 key components:

- A description of the change
- Details of when and where the change happened
- An explanation of who or what caused the change and how

With this framework, we encourage short, precise and specific outcome statements, consisting of 1-3 sentences.

Supplementary to the statement, include the evidence you have to support your outcome statement, referring to the impact framework for likely sources of evidence. Collecting evidence can be challenging, and data collection does not always go as planned, so you should also consider any known limitations to your evidence or supporting data. The data collection sheet or workshop should also explore other contributing factors.

## Examples of Outcome Statements

A. Theme: The digital rights field's efforts to address human rights violations in the digital sphere

Direction: Advances digital rights

Level: National

Since August 2019, a network of 6 organisations working on democracy issues from Hungary have become active in the issue of disproportionate use of cybercrimes legislation to block websites. The network launched their first campaign on the issue 6 months following a press event concerning the constitutional challenge of the law and subsequent meetings between the litigators and the network. The network had not previously engaged on this or other digital issues.

B. Theme: Regional and international standards on digital rights issues

Direction: Advances digital rights

Level: Regional

Between 2018 and 2020, at least 4 judgments have been handed down from national courts in North Macedonia, Ukraine and Moldova which cite and refer to the judgment obtained through strategic litigation at the ECtHR in X v Ukraine.

### 3. Evidence principles to support the use of the framework and method

The final supporting component of the framework is a series of evidence principles. Each outcome statement developed above requires evidence in order for it to be included in the bank of outcomes. We have developed four evidence principles, adapted from Bond's international development evidence principles framework. There is a minimum standard for each principle.

The principles are:<sup>2</sup>

- Inclusion and voice
- Specificity of the contribution
- Triangulation
- Transparency

The level of rigour used for those implementing this approach will depend on the organisation's capacity, need and scope. For example, the way DFF will use the principles requires the minimum standard to be met in at least three of the four principles, one of which must be the specificity of the contribution. The presence of another two in combination with the specificity of the contribution principle may reduce the need for the fourth.

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<sup>2</sup> These principles have been adapted from Bonds Evidence Principles  
<https://www.bond.org.uk/resources/evidence-principles>.

Evidence Principle	Minimum Standard
Inclusion and voice	The opinion and voice of those that have been 'impacted' are included in the evidence or substantiated by them e.g. if you claim to impact the legal community, the voices and opinions of the legal community are included in the evidence itself, or they have reviewed and supported the claim.
Specificity of the contribution	The specific contribution made by the strategic litigation is detailed, including how it contributes towards the broader impact. The role of other actors is also considered.
Triangulation	There is data available <b>from at least two different methods or sources</b> that substantiate the claim e.g. a media report and a stakeholder interview, or a journal article and survey findings.
Transparency	It is clear how the evidence was collected and by whom, and the limitations of the evidence being used are detailed.

### How can my organisation use the framework?

This framework and method are designed to be a simple and adaptable tool that can be used by multiple organisations. You may want to use just one of the three components to help build your M&E systems. If you want to implement the framework and method at your organisations, you should follow these steps:

1. Review the types of impact and outcome themes, and make sure they are relevant to your organisation - depending on the mandate of the organisation and the type of strategic litigation carried out, you may want to adjust the types of impact or outcomes defined in this framework.
2. Take stock of the human and financial resources you have available to invest in using and implementing this framework, taking time to identify any potential resourcing issues.
3. Look at the suggested evidence sources for each outcome theme, and identify which are most relevant to your work, given the contexts and environments you are working in, and the resources available to you.
4. Identify which stakeholders are important to involve in the process (internal and external).
5. Design your 'outcomes harvest', i.e. how you will collect the outcomes statements to feed into the evidence bank (e.g. datasheets/forms, workshops), and to what degree the outcome statements will be reviewed and assessed, and by who. This part of the process



will need the most adaptation between organisations, to ensure the methods are right for your stakeholders, desired organisational use and resources available.

6. Pilot the collection of evidence, identifying key review points to analyse and evaluate the data collected so far, and refine and review the process as required based on initial lessons learned.
7. Review and assess your findings, share these with your stakeholders, and use the information to identify lessons learned, to make recommendations to improve your work and to demonstrate your impact.

Data collected through this method can also be used in traditional log-frames, as either qualitative evidence of outcomes and impact or, depending on the scale of your strategic litigation, quantifying the process. For example, “Our strategic litigation has made an evidenced contribution to X outcome theme”, or “X% of the cases supported on X issue have made an evidenced contribution to X impact theme”.

Impact	Indicator	Data sources	Baseline	Target	Frequency
There is increased dialogue between governments, regulatory bodies and civil society organisations on digital rights issues	% of supported litigation in which there is a specific and identified contribution to improved dialogue	OH workshops  Desk Research and supplementary data collection	60%	75%	Collection: ongoing  Analysis: annual

### Final Remarks

It can be daunting to implement a new evaluation system or process, but if you think this might be a tool that could be useful for your organisation, take the time to think about what you hope to achieve using this approach. Plan the introduction of the process carefully and encourage those around you to engage in the process with an open mind. Be kind to yourselves during the implementation of the process – there will be unexpected challenges, as no method or framework is perfect. The key is to view it as a learning/developmental process that you can refine and adapt over time to meet the needs of your organisation, and to be aware of its strengths and limitations.

If you have questions about this framework or its application, you can reach out to DFF directly at [info\[at\]digitalfreedomfund\[dot\]org](mailto:info@digitalfreedomfund.org) or Independent Evaluation Consultant, [Patrick Regan](#). If you decide to implement this approach at your organisation or use elements of it to develop your own system for impact assessment, we would love to hear about it.

## **Annex A: Advantages and Risks**

What are some of the advantages and risks of this approach and how can they be mitigated?

Some of the advantages of the method include:

- It is a flexible, open approach where the successes and achievements are defined by the stakeholders themselves as opposed to a top down approach of predetermined definitions of success and impact
- Unintended and negative outcomes are encouraged to identify key learnings
- By nature, it is a participatory method, and various stakeholders could be engaged in the process in different capacities
- It provides a way for there to be standards of evidence, which will give findings more weight, without becoming overly prescriptive or difficult to maintain
- It is systematic and rigorous
- If carried out by others, it could be used to monitor and measure impact on an issue or theme across organisations or coalitions
- The outcomes harvesting methodology is understood and accepted by many large institutional donors

Some of the key risks and mitigation strategies are summarised in the table below:

<b>Risk</b>	<b>Mitigation</b>
Skill and time required to identify and formulate high-quality outcome statements.	Clear guidance provided to those developing and reviewing outcome statements, with support and training provided if needed. Having a number of people involved in the process, or someone external to the organisation may also help to mitigate this.
Only those outcomes that informants are aware of are captured.	Collect statements from a range of stakeholders and carry out supplementary desk research if possible.
Some outcome themes will be easier to collect and collate evidence for, making it more likely that these types of outcomes will be reported and substantiated.	Supplementary desk research could be carried out where there are gaps; at period review points, the evaluators should consider if there are patterns which suggest this is happening. If so, consider providing additional guidance or support on how to collect data and monitor other relevant outcome themes or consider building in additional research components into periodic assessments.

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<p>If the key stakeholders do not buy into or engage in the process the method may not yield much data.</p>	<p>Consider carefully your stakeholders' capacity and willingness to engage in this process and design your process accordingly. Where possible, you could embed parts of the process into existing points of engagement.</p>
<p>If evidence standards are too rigorous you could end up with not enough evidence to support any findings or claims of impact.</p>	<p>The verification and review process should help to mitigate this. This should also be carefully monitored and adapted accordingly e.g. if a number of outcomes are reported which do not pass the evidence principle tests then additional support or guidance could be provided on data collection.</p>
<p>Missing out on outcomes and impacts if the external situation is not closely monitored by relevant stakeholders.</p>	<p>Encourage contributors to think about their monitoring frameworks at the beginning of their litigation. Supplementary research could also help to fill gaps.</p>

## **Annex B: Common limitations to different evidence sources**

When considering the evidence you are using to support your outcome statements, it is important to be transparent and honest about the limitations of the evidence being used, so that a more careful and qualified assessment of impact can be made, and to take a critical eye to the data being used. No research method or dataset is flawless. Some common things to consider which may limit the data are included below (this is a non-exhaustive list). Acknowledging the limitations of the data would not automatically invalidate its use but provides an important point of consideration when using and interpreting the data. Many of these limitations can be mitigated through careful research/evaluation design and planning.

### Common data limitations:

- Inconsistencies/abnormalities in data collection
- Representation/representativeness (who isn't included)
- Limited sample size

### Data limitations for focus groups, surveys and interviews:

- Only tells you about those that participate/respond
- Self-assessment of skills, knowledge or awareness, or self-selection/identification may differ from actual skills, knowledge, awareness of identities
- Question wording and order is important and can influence data if not carefully considered e.g. leading questions
- Security issues, or fears of reprisals could limit people's engagement or honesty
- The person interviewing and/or interpreting the data can impact or influence the results (consciously or unconsciously) or due to their positioning or perceived characteristics
- If involving decision makers, data may be biased, misleading or of limited substance

### Data limitations for media reports and analysis:

- Many media reports often cite the same source data or source article as the basis of their reporting
- In restricted environments or countries where freedom of expression is limited it can be difficult to use media coverage as reliable, balanced evidence, or as a proxy for awareness

### Data limitations for third party data:

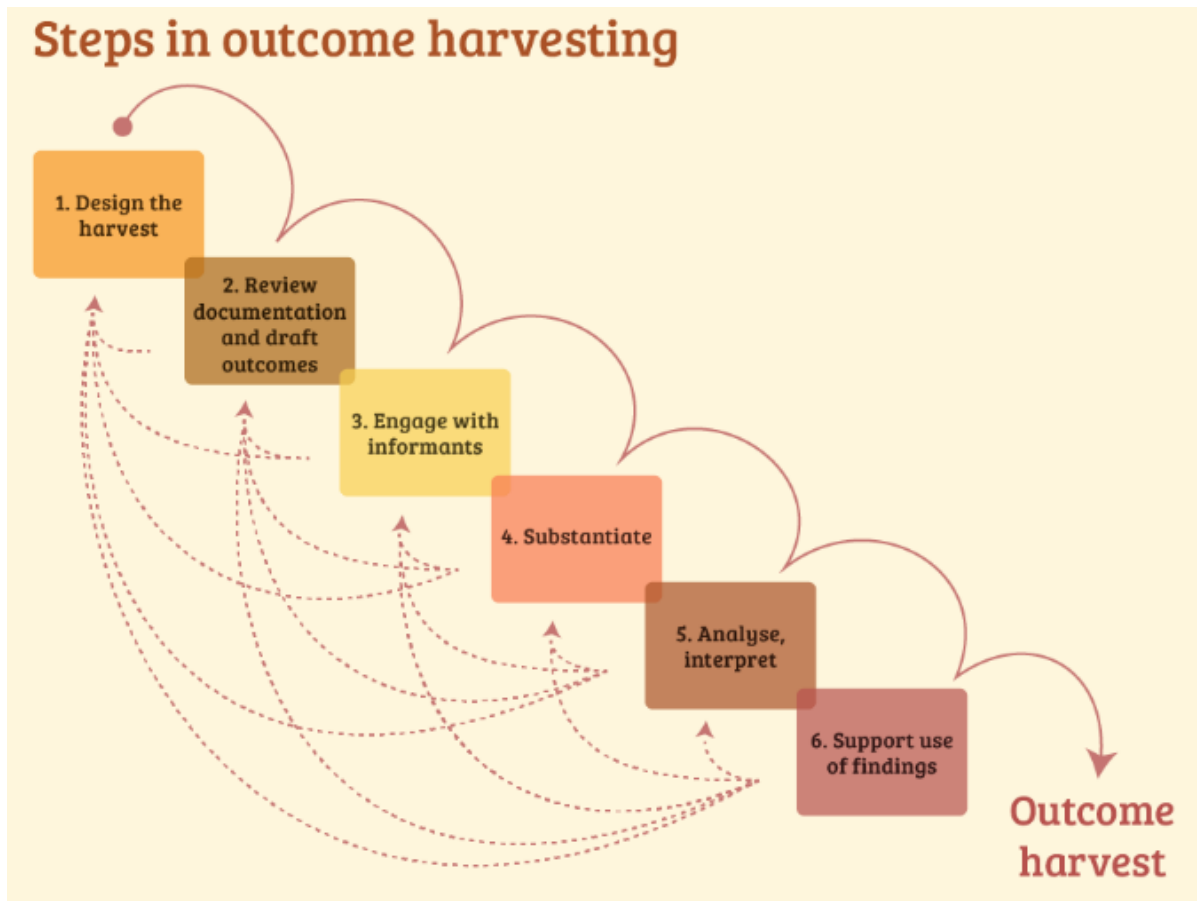
- It may not be possible to have access to full data or know exactly the quality of the data collection
- Harder to link to your activities (but not impossible)

For more details or further information about different research methods for evaluation, please see: [https://www.betterevaluation.org/en/rainbow\\_framework/describe/collect\\_retrieve\\_data](https://www.betterevaluation.org/en/rainbow_framework/describe/collect_retrieve_data).

## **Annex C: What is Outcome Harvesting?**

Outcome Harvesting collects (“harvests”) evidence of what has changed (“outcomes”) and, then, working backwards, determines whether and how an intervention has contributed to these changes.

Outcome Harvesting has proven to be especially useful in complex situations when it is not possible to define concretely what an intervention aims to achieve, or even, what specific actions will be taken over a multi-year period.<sup>3</sup>



<sup>3</sup> Definition obtained from Better Evaluation  
[https://www.betterevaluation.org/en/plan/approach/outcome\\_harvesting](https://www.betterevaluation.org/en/plan/approach/outcome_harvesting)