



Helen Duffy proposes a move away from the “win-loss” narrative. She suggests that the significance of human rights litigation should be viewed through three, more modern, sophisticated lenses:⁷⁰

High-definition lens:

Here you look at specific details and assess the multi-dimensional impact of human rights litigation.

Long lens:

This requires viewing impact over time. Here you look beyond the judgment to see how litigation may also influence change before cases are presented, throughout the process, and long after judgment has been handed down.

Wide-angle lens:

This lens allows you to see litigation in context. Through this lens, you can see the synergy between litigation and other agents for change, such as civil society advocacy, education, or legislative reform.

Guideline 34: The outcome of a judgment is often not a simple binary of winning or losing. It is important to reflect on the direct and indirect impacts that are both material and symbolic.

Effects of a judgment can be wide-ranging, and how we view these can determine what we do next. A judgment can be a potential political tool for individuals, communities, and organisations. It can prompt action. It can evoke positive feelings of empowerment, rights awareness, and self-advocacy. It may also inspire other communities to pursue similar strategies, generating more broad-based pressure on the courts to address systemic rights violations.⁷¹ Importantly, navigating the direct and indirect outcomes of a case, which is either a win or a loss, should feed into subsequent advocacy strategies. This could include:

⁷⁰ Duffy, ‘Strategic Human Rights Litigation: “Bursting the Bubble on the Champagne Moment”’ Inaugural Lecture Leiden University (2017) (accessible at <https://scholarlypublications.universiteitleiden.nl/access/item%3A2940282/view>).

⁷¹ Dailey above n 7.



1. Publicising the judgment and unpacking its impact as either a win or a loss.
2. Continuing with digital literacy campaigns.
3. Exploring new partnerships and networks while reinvigorating existing ones.
4. Reinforcing why digital rights matter.
5. Participating in the policy and law reform processes.
6. Hosting informative workshops.
7. Publicising if the court ordered an action or ordered a process to start or stop.
8. Actively monitoring the enforcement of the judgment.
9. Setting up a countdown to an anticipated direct outcome and build momentum around it.
10. Organise events, marches, and workshops in the build-up to an expected moment.

Knowing how to enforce and implement a judgment

Arguably, the most critical factor in ensuring that strategic litigation achieves maximum positive change is proper follow-up. This involves ensuring that a litigation victory is put into effect by the government or private sector actor. Implementation and enforcement, or a lack thereof, is another key post-judgment consideration that should form part of your litigation strategy from early on. Batros and Khan explain that “a plan for how to implement the decision is necessary if a legal victory is not to be a hollow one.”⁷² This is often a very contextual consideration.⁷³ It is therefore useful to understand both the relevant judicial processes as well as the current political climate within which you are operating. It is then necessary to know when to work with or against the factors. The foundations for implementation should be laid early on. You may want to prepare your advocacy strategies, engage the relative members of your ecosystem, and most importantly, define the remedies, including who will be responsible right at the start of the matter, all with a view to implementation.

⁷² Batros and Khan above n 3.

⁷³ See Skilbeck, From Judgment to Justice Implementing International and Regional Human Rights Decisions (2020) Open Society Justice Initiative (accessible at <https://www.justiceinitiative.org/uploads/62da1d98-699f-407e-86ac-75294725a539/from-judgment-to-justice-20101122.pdf>).