



Phase 6: Post-judgment considerations

Strategic litigation can be tough. It can take a toll emotionally. It can be a painfully slow process, at times alienating, unaccountable, and risky.⁶⁷ It can drain capacity and resources. But it can also be a powerful tool for positive change. It can be crucial in correcting major policy missteps, unblocking bureaucratic barriers, combating corruption, injecting urgency, and forcing governments and the private sector to prioritise human rights.⁶⁸ As we have emphasised throughout this toolkit, litigation is but one of the tools in the toolbox. As such, the judgment is seldom the end of the road – in fact, many strategic litigators refer to the judgment as “half-time”. Sustaining the drumbeat of strategic litigation means persisting with the fight after the judgment has been handed down. It means retaining the attention of clients, partners, and the media from inception to the point where outcomes become tangible and realisable. It means sustained resistance against attempts to derail or diminish the work that has been done.

You may often need a judgment to continue a struggle. That continuation may involve promoting public education or awareness or engaging in appeal and review processes. It may also involve further litigation to enforce the judgment. A judgment is not just a homogeneous piece of paper, it can be used in different ways. The order can have great value and is a key tool in pushing for implementation. But the content of a judgment can also be extremely helpful in shaping advocacy strategies and reinforcing arguments about the role of rights. Often the authority and legitimacy of a judgment can support further research, advocacy and litigation, and can be an important stepping stone to the next phase of advancing the protection of human rights. There are, however, times in which we do not get the order we want, or the judgment is not in our favour. Knowing how to respond to this is an important consideration that should be incorporated into your strategy.

Guideline 32: Strategic litigation does not always end with a judgment. The struggle may continue in the form of monitoring, implementation, appeals, reviews, and public education. It may also involve further litigation to enforce the judgment.

⁶⁷ Dailey, ‘Using the Courts to Change the World: Insights from Experience’ (2018) (accessible at <https://www.justiceinitiative.org/voices/using-courts-change-world-insights-experience>).

⁶⁸ Brickhill, ‘Strategic litigation in a perfect storm—South Africa’ Open Global Rights (2019) (accessible at <https://www.openglobalrights.org/strategic-litigation-in-a-perfect-storm-south-africa/>).