



## Phase 1: Thinking strategically about why we litigate: the “big picture” questions

### Determining outcomes

At the outset of your considerations listening, learning, and engaging with clients or potential clients should be a priority. Whether your clients are individuals, communities, or organisations, it is important to locate them at the centre of your considerations as you determine outcomes. The strategic and real-life priorities of your clients and the wider community that they represent as well as the impact that a case can have on them are foundational considerations. The American Civil Liberties Union (ACLU) conducts “[Listening Tours](#)” and “[People Power Tours](#)” in which they meet with individuals and communities across the United States (US) and listen and learn from their realities. These community-centred tours allow members of the ACLU to listen to how communities identify problems and creates a space for collaborative problem-solving. These tours, which span across weeks, months or even years, create a unique opportunity for interested and affected persons to lead the strategic conversations and participate in determining the outcomes.

**Guideline 1:** Listen, learn, and engage with clients or potential clients to understand their realities, and work collectively to determine outcomes.

Before developing a litigation strategy, it is important to locate the role of litigation within its social and political context. Alongside education, advocacy, protest, law reform, research, and policy development, litigation is one of a plethora of strategies to drive positive change. It is often best achieved in combination with other strategies, or as a complement to other strategies – whether they are executed by your own organisation or by partners. It can be both reactive and proactive. Effective strategic litigators are acutely aware of the social, political, and legal contexts within which they operate. This allows them to develop and propose effective remedies.<sup>1</sup> These remedies, when appropriately crafted and reasoned, can enable positive change. Effective strategic litigators are also aware of the bounds of positive change that one case or a series of cases can achieve in the absence of other strategies.

<sup>1</sup> See Dailey, ‘Strategic Litigation Impacts: Insights from Global Experience’ (2018) Open Society Foundation at 17 and 11 (accessible at <https://www.justiceinitiative.org/uploads/fd7809e2-bd2b-4f5b-964f-522c7c70e747/strategic-litigation-impacts-insights-20181023.pdf>); and Budlender, Marcus and Ferreira ‘Public Interest Litigation and Social Change in South Africa’ (2014) Atlantic Philanthropies at 119 (accessible at <http://www.atlanticphilanthropies.org/app/uploads/2015/12/Public-interest-litigation-and-social-change-in-South-Africa.pdf>).