



**Strategic Legal Mechanisms for Delivering Social and Economic Justice in Africa  
Conference**

**October 2019**

**Venue: University of Nairobi, Nairobi-Kenya**

**CONCEPT NOTE**

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**Background and Context**

In perhaps the most resonant and beautiful words of any international agreement, “all human beings are born free and equal in dignity and rights,”<sup>1</sup> the United Nations General Assembly proclaimed and adopted the Universal Declaration of Human Rights on 10 December 1948, setting out the fundamental human rights to be universally protected for all peoples and nations. Today, there still exists a huge challenge to turn these fine words and aspirations into reality, especially for social and economic dimensions such as poverty, sexuality, gender, health, environment and development. Human rights advocates are, in many countries, fighting against oppression and impunity and demanding for social and economic justice.

Generally, the obligation to provide a platform for equal enjoyment of human rights rests with Governments. Governments do this by developing and passing laws aimed at guaranteeing people’s rights, reforming repressive laws to address the effects of oppressive legal and socio-political power structures in society, creating effective law enforcement agencies, and through creating awareness to their citizenry. When this does not happen, other actors work to prompt Governments to action.

It is to be noted that whereas human rights advocacy has traditionally focused on the policies, conduct and accountability of Governments, the role of non-state actors and their legal responsibility has increased in the international arena. Human rights advocates and agents of social justice across the world are using varying techniques to influence social change; including through grassroot advocacy campaigns aimed at advancing a particular right or at changing oppressive social norms, research papers exposing social ills, legislative advocacy, public interest litigation and strategic litigation.

Traditionally, strategic litigation has been employed in a variety of jurisdictions to advance public policy goals of organised interests as well as those of individuals. Consisting of selection of an individual and suitable test case which is tried in a court of law, strategic litigation usually has as its objective the inducement and advocacy of broader changes in society that may help advance the rights of marginalised groups. Perfectly suited for areas of law that have evaded the attention of policymakers and legislators, it seeks to identify gaps in law, clarify the law, fill in legislative gaps, initiate law making and even set legal precedents in a particular area of law. Consequently, successful litigation may well jolt a Government into action for the welfare of the citizenry, guarantee the rights of a marginalised group or simply inspire law making in an otherwise neglected area.

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<sup>1</sup> Zeid Ra’ad Al Hussein, The Universal Declaration of Human Rights booklet, 2015 p.VII



Furthermore, recognising that the use of strategic litigation is growing in many parts of the continent, litigators in different countries often face similar challenges when seeking to use the law as a tool for social change. There is a paucity of cross-country conversations about how rules of procedure and substantive norms are being advanced or hindered in litigation; and there is a need to introduce conversations on what is working and what is not.

Drawing from the above and in view of the potential of strategic litigation to bring about societal changes, particularly in the African continent, **Oxfam International** which is an international NGO working with others to fight inequality and poverty has partnered with the **University of Nairobi's School of Law** and other partners to examine the use of strategic litigation in Africa as a tool to drive social, political and legal reform, empower communities to influence decisions that affect their lives, and drive access to justice.

## **Objectives**

The objectives of the colloquium are to:

- I. Engage jurists from around Africa in knowledge exchange, sharing of comparative experiences and best practices in utilising strategic litigation for positive social outcomes;
- II. Mobilise and galvanise support and create awareness on the potential and effectiveness of strategic litigation in advancing public policy and harnessing strategic litigation as a way to accessing justice;
- III. Strengthen the community of practice of persons involved in strategic litigation in Africa in respective countries to as to make use of this tool in advancing social change;
- IV. Foster collaborations between diverse actors including litigators, academics, donors, human rights organisations to promote social justice causes; and
- V. Reflect on those opportunities and constraints that either impede or enable social change through strategic litigation via domestic, regional and international courts.

## **Themes**

The conference will focus on four broad areas that go to the root of socio-economic rights afflicting the African continent: **Women's Rights; Health & Environment Rights; Oil, Gas & Minerals;** and **Human & Peoples' Rights.**

In exploring these areas, the Conference will consider:

- I. The factors to consider and strategies that make for successful strategic litigation;
- II. Learning opportunities from cases across Africa;
- III. Strategic litigation as a part of a broader strategy for influencing change;
- IV. Challenges and risks;
- V. Financing and programming for strategic litigation; and
- VI. Enforcement of judgements.



## **Conference Approach**

Increasingly, the discussion on how to bolster the utilisation of strategic litigation has occupied civil society advocacy, yet, as has been demonstrated from the foregoing, strategic litigation plays a critical role in advancing development through law.

In order to enhance opportunities for knowledge and information sharing, the organisers will draw on knowledge, skills and experiences from strategic litigation experts including academics, International Non-Governmental Organisations (INGOs), human rights bodies, minority rights groups, regional and national law societies, strategic litigation legal practitioners, community activists, quasi-governmental authorities (including human rights and equal opportunities commissions), regional and national judicial bodies, justice departments, and donors. The experts will be sourced from a multi-disciplinary perspective and will be invited to develop thematic papers which will form the technical backdrop of conference discussions. It is intended that the papers will be published in a peer-reviewed publication.

Plenary discussions facilitated by session chairs will draw concrete recommendations and action plans to be followed up.

## **Outcomes**

1. Development and presentation of expert conference papers on thematic areas of **Women's Rights; Health & Environment Rights; Oil, Gas & Minerals; and Human & Peoples' Rights.**
2. Publication of conference papers as a resource knowledge product in the form of a book.

## **Proposed Dates**

The conference is scheduled to take place from **2<sup>nd</sup> to 4<sup>th</sup> October 2019** at the **University of Nairobi.**