

STRATEGIC LITIGATION MANUAL:

FROM THEORY TO PRACTICE, LESSONS FROM COLOMBIA AND LEBANON

Gabriela Eslava, Lama Karamé,
Maryluz Barragán y Mauricio Albarracín

Dejusticia



المفكرة القانونية
THE LEGAL AGENDA

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Ford Foundation

320 E 43rd St

New York, NY 10017

USA

Telephone: (+1) 212-573-5000

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Dejusticia

Calle 35 No. 24-31, Bogotá D.C.

Telephone: (+57 1) 608 3605

info@dejusticia.org

<https://www.dejusticia.org>

Legal Agenda

Beni Kanaan Street, Joseph Mouawaad Bldg - 1st Floor - Badaro, Beirut.

Telephone: ✕ +961 1 383 606

info@legal-agenda.com

<https://english.legal-agenda.com/>

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*“Injustice anywhere is a threat
to justice everywhere”*

Martin Luther King



FOREWORD

The Center for Law, Justice and Society (Dejusticia) and The Legal Agenda jointly developed this strategic litigation manual as a contribution to the practice on public interest litigation. It is meant to complement available manuals through promulgating lessons which two Global South organizations have learned through their extensive experience pursuing strategic litigation in Colombia and the Latin American region (Dejusticia), as well as in Lebanon and the Middle Eastern and North African regions (The Legal Agenda).

This handbook is meant for civil society organizations, law clinics, and individuals who have pursued their own public interest lawsuits or are interested in doing so and who would appreciate insights from the experiences of other Global South organizations. Each step is explained through actual cases that Dejusticia and The Legal Agenda have pursued and supported, with reflections on what worked and what did not.

The design of this strategic litigation manual was only possible thanks to the work of every single litigant, researcher, allied organization, community, and people with whom we, Dejusticia and The Legal Agenda, have been working with every day on this path of defending human rights and social justice.

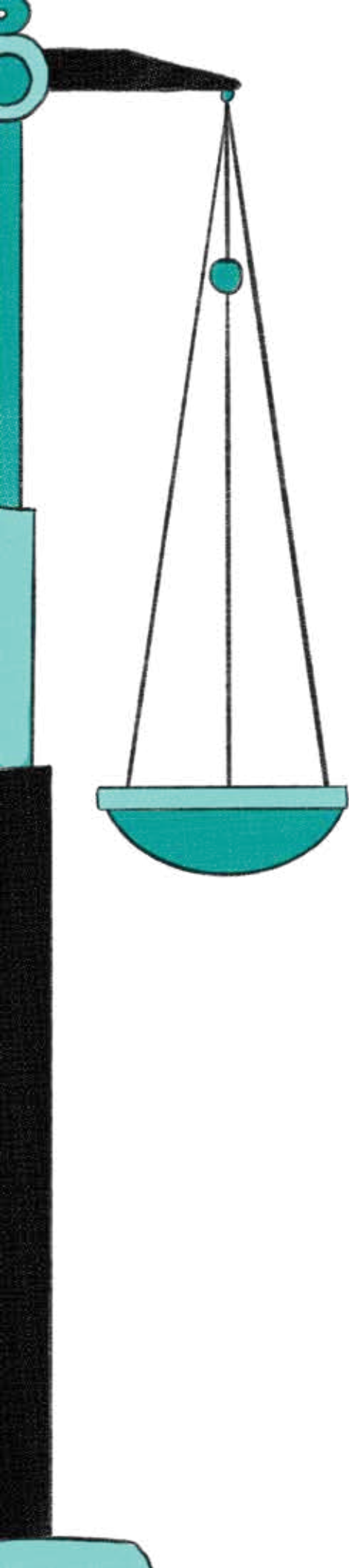
This manual is not meant to be prescriptive and it is based in our practice on litigation. It is intended to be used as a toolkit to be improved upon with lessons learned from every case. As learning is a key pillar of this manual, we encourage readers to retool the manual and keep improving it with each new case you pursue.

INTRODUCTION

The use of strategic litigation as an advocacy tool has gained visibility in over the past twenty years, particularly among NGOs and activists around the globe. It has sparked a remarkable transnational movement, and the development of tools and guidelines shared among practitioners, academics, and researchers. This legal tool's emergence and success has undoubtedly been impacted by the emancipatory power of human rights tools. Strategic litigation involves developing and implementing a strategy to solve a dispute in a specific stakeholder's interest and to develop principles that others may use to produce a broader impact (Ramsden & Gledhill, 2019). In this sense, it aims to advance various causes that transcend private and individual interest instead focusing on furthering public interest causes, mainly human rights issues. The goal of this specific trend of litigation is thus not limited to obtaining a favorable legal ruling from the court. Instead, it aims to instigate broader social effects, such as empowering certain marginalized groups,

changing attitudes, and pushing towards political reform. Thus, it is a special type of litigation that aims to remedy structural injustice and prevent further human rights violations (American University, 2016). Strategic litigation thus combines legal, political, and advocacy strategies to advance a cause beyond the actual case and parties to the matter.

These strategic litigation goals make it suitable not only to different legal systems but also to various interest groups and causes. Strategic litigation differs from the conventional type of litigation, and thus requires other methods and tools. Rather than focusing on one case at hand as in traditional legal services, strategic litigation uses the case as one of many tools to solve a complex social problem (Child Rights Information Network, 2018). The case can be the starting point or endpoint of a sustained campaign to improve the protection of human rights overall, or it can be one tool pursued at some point throughout a campaign. In contrast to ordinary cases, strategic litigation



invites judges to make judicial pronouncements that spur large-scale social changes and advance and strengthen human rights, particularly those of groups that would otherwise not have their voices heard. Furthermore, strategic litigation requires lawyers to adopt different strategies, and also to play a role that goes beyond strict legal representations. In this sense, the boundaries between lawyers and activists are blurred, creating a hybrid category of “Cause Lawyers” (Sarat & Scheingold, 1998; Sarat & Scheingold, 2001; Sarat & Scheingold, 2004).

This publication aims to address important steps of the process of strategic litigation. Part 1 discusses how to select a strategic case and its components, Part 2 provides practical insights on the litigation itself, and Part 3 explores the post-decision phase. This manual contains ten key steps that should be developed in a human rights litigation strategy. These steps include 1) identifying the injustice to be remedied, 2) envisioning the goal, 3) developing a legal strategy, 4) identifying the parties, 5) assessing risks and resources, 6) collecting evidence, 7) developing legal arguments, 8) building an outreach strategy, 9) ensuring that a win is effective or investing in a loss, and 10) learning and retooling. The manual presents a theoretical conception of each of these steps, followed by an illustration of real case examples gathered from the litigation experiences of Dejusticia and The Legal Agenda, thus explaining strategic litigation in both theory and practice.

