

HOW CAN WE USE THE COURTS? A CONVERSATION STARTER

SYSTEMIC JUSTICE





A NOTE FROM SYSTEMIC JUSTICE

This is a simple document with questions that you can bring into community spaces and meetings with the intention of starting a collective conversation about how taking cases to court can play a role in your fight for racial, social, and economic justice.

We recommend using this document alongside our [“Strategic litigation: A guide for legal action”](#) and to work through the questions together without lawyers or other organisations present. It is not designed to replace legal advice, but rather act as a conversation starter for your community to think through key aspects of a legal strategy prior to engaging lawyers and other potential partners about taking cases to court.

If you would like to explore any of these questions further, you can always email Systemic Justice’s legal team at knowledgeandpower@systemicjustice.ngo to explore how to make your community-driven case a reality.

SYSTEMIC JUSTICE,
THE MOVEMENTS’ LAW FIRM

01

WHAT IS YOUR DREAM FOR THE WORK YOU ARE DOING?

Lawyers will often start from the position of what the law can do, but this is narrow and restrictive. As a community, you will want to ensure that cases contribute towards an ultimate vision of the world that you want to live in and not lose sight of that aim. Getting this clear at the outset means that, when exploring potential legal cases, you can assess the role it plays in getting you towards your dream.

EXAMPLE:

“Our vision is to abolish the death penalty.”

02

WHAT ARE THE SMALLER STEPS THAT CAN GET YOU TOWARDS THIS DREAM?

Can you break down your vision into smaller, attainable, and more realistic goals for getting there? The crucial question here being what goals can help address the root causes that stand in the way of achieving the dream, and what goals should be avoided because they would maintain the status-quo and fine-tune systems of oppression at the heart of the problem. In other words, the focus should be on [non-reformist reforms](#).

Example: For the abolition of the death penalty, smaller steps might be:

- ending the application of the death penalty in cases involving children, young people, and people with psychosocial disabilities;
- overturning laws that make the imposition of the death penalty mandatory for certain crimes;
- ending the practice of holding people on death row for long periods and under harsh conditions, which gives rise to the psychological impact known as the “death row phenomenon”;
- banning the production, importation, distribution, and use of inhumane and cruel methods of execution;
- overturning death penalty laws for breaching human rights and being applied in an arbitrary and discriminatory manner.




To read more about how these small steps translate into a litigation strategy, check out section 3 of the [“Strategic litigation: A guide for legal action”](#).

03

HOW CAN THESE SMALLER STEPS BE TRANSLATED INTO DEMANDS YOU MAKE OF THE COURTS?

Not all of these steps will be ones that you pursue before the courts, some of them might be fought through campaigning, lobbying, advocacy, or direct action. The next step is to identify how some of these smaller steps might translate into demands from the courts. Do not feel constrained by what is legally possible to ask of the courts, you can always work that out with the help of a lawyer. This question is meant to surface what you might want or expect the courts to do on the issues you work on. They could include:

- **losing the case:** maybe you expect the courts to maintain the status quo, and the case is an opportunity to demonstrate how the law and justice system is broken;
- **addressing what has happened:** in an ideal world, what would you want the courts to do to address, restore, and repair what has happened? This might be in the form of compensation, acknowledgment, or orders for certain actions to be taken;
- **making sure it does not happen again:** would you ask the courts to put measures in place to ensure a certain practice, action, or behaviour does not happen again? This might be in the form of orders for a law to be changed, for actors to be educated on an issue, or to fine certain actors so they do not repeat their actions;
- **healing, care, and restorative justice:** ideally, is there anything you would ask from the court that can help the community to heal? This could be in the form of orders for financial or other support for the community, commemoration or memorialisation, or for awareness raising in society on a particular issue;
- **making the court system work for you:** is there anything you would ask of the court in terms of how it handles your case that can help you attain justice? For instance, this might be measures from the court to ensure that its decisions and hearings are accessible, or permission for community members to present arguments and share their experiences in court.

 To read more about how these small steps translate into a litigation strategy, check out sections 2 and 3 of the [“Strategic litigation: A guide for legal action”](#).

04

WHO WOULD THESE COURT MEASURES BE DIRECTED OR TARGETED AT?

This question is about thinking through or mapping out who holds the power and influence to bring about the change needed to further your goals. Court cases involve one person or entity taking a legal claim against another person or entity who is not doing what the law expects of them. In an ideal world, who would this other person or entity be for your community?

05

WHO WOULD YOU WANT TO WORK WITH IN TAKING STRATEGIC LEGAL ACTION?

This can be a question that you answer with reference to your own community, as well as looking at partners beyond the community. Who within the community would be engaged in this kind of work, and what would they want their role to be? Outside of the community, who would you want to work with and what would you hope they could bring?

06

WHAT ARE YOU MOST CONCERNED ABOUT WHEN IT COMES TO ENGAGING WITH THE COURTS, AND HOW MIGHT YOU OVERCOME THESE CONCERNS?

Taking cases to court is not something to be taken on lightly, as it can involve significant risks and costs. It is crucial that those who take on cases feel confident that the opportunities presented by the legal action outweigh the risks and costs involved. It is worth reflecting on the risks and costs the community are most concerned about when it comes to legal action, what they would like to know more about in relation to them, and how they would hope for risks and costs to be mitigated and managed. Some questions that might help you work through these concerns are:

- What are the main risks the community is concerned about when it comes to engaging with the courts in order of priority?
- What would the community need in order to feel like these risks are manageable?
- Who might the community turn to in order to support you in mitigating these risks?

EXAMPLE:

High priority risk:

“We do not have enough funds. Litigation is expensive and could have a cost penalty attached if we lose.”

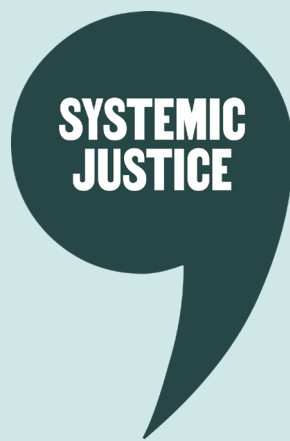
What would the community need:

Run a crowdfunding campaign, source pro-bono support for the work, fundraise with certain donors, find support with financial management.

Who might the community turn to:

Fundraisers, other organisations who have fundraised for similar cases, interested donors, platforms for crowdfunding litigation.

Looking to find out more about the risks and obstacles that can arise with litigation? Check out section 4 of [“Strategic litigation: A guide for legal action”](#).



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