

Lawyering for Change 2022 conference

SUMMARY

The lawyer as an actor of change

Plenary - Wednesday October 12 11.30 AM - 1.00 PM

Speakers:

- **Nicolas Ferran** - Strategic litigation manager, International Prison Monitoring Centre (France)
- **Sihem Bensedrine** - Journalist, Human rights defender, President of the Truth and Dignity Commission (Tunisia)
- **François Godbout** - Programme Officer, Pan African Lawyers Union (Tanzania)
- **Sandra Cossart** - Executive Director, Sherpa (France)

Moderation by **Jennifer Troncoso** - Country Director in Democratic Republic of the Congo, Avocats Sans Frontières (Democratic Republic of Congo)

Lawyers are traditionally defined as jurists whose role is to advise, represent, assist and defend their clients, natural person or body corporate, in Court, by pleading for their rights. Regarding this definition, we should question the activist potential and the impact of lawyers' activities in favor of change. Indeed, law can be mobilized and can become a powerful tool in favor of change.

Several questions were at the heart of the plenary session: What role can lawyers and law practitioners play in their professional activities to raise awareness, to execute judicial decisions in order to bring effective changes in the social sphere? What conditions must be met for lawyers to be an actor of change? What types of practices, strategies and synergies between judicial and non judicial actors can be mobilized to open the profession to collaboration towards change? How can strategic litigation lead to social change?

Based on their experiences in mobilization, campaigning and strategic litigation conducted at the national and international levels, the four speakers highlighted lessons learned, limits and challenges that they have met as lawyers and law practitioners seeking to act for change.

François Godbout described lessons learned from the Pan African Lawyers Union's (PALU) campaign for the decriminalization of petty offences before the African Court for People and Human's rights. This campaign aims at highlighted the colonial legacy behind laws criminalizing petty crimes, that those disproportionately affect women and minors and that their provisions are vague.

Sandra Cossart, executive director of Sherpa, spoke about the advocacy and strategic litigation actions of the organisation against economical and multinational actors committing crimes and also the insufficiency of law in the face of the globalization.

Nicolas Ferran, working within the Observatoire International des Prisons (OIP), shared his experience in strategic litigation actions led by the organisation before the European Court of Human Rights (ECHR) against the French State for not respecting detention conditions. Then,

Sihem Ben Sedrine talked about her experience as the Truth and Dignity Commission's (TDC) president. This Commission works on human rights crimes and violations committed during the dictatorial period. She also shared difficulties they are facing in providing evidences of these crimes and violations.

1. Good practices: collaboration and strategic litigation

Collaboration between judicial actors and civil society organisations is a first good practice identified. A concrete example is the close collaboration between PALU and the African Court to reinforce the extent of the Court's actions and the protection of rights. This collaboration is embodied by agreements between the Court and the Union. Networking, partnerships and coalitions of actors seem fundamental to reinforce the Court's actions.

A second good practice is **strategic litigation** for several reasons. First, it is a **tool to fight against impunity of economical and multinational actors** in the case of human rights violations. It can contribute to the public debate, seek a systemic change and an evolution of the normative framework, and, if possible, even contribute to obtain reparations. Sherpa, an association of lawyers and law practitioners, uses strategic litigation to bring to justice economic actors.

Secondly, it is **a tool for lobbying and advocating** before States to reinforce the normative framework in order to protect human rights and condemn violations of those rights by a State or under its responsibility. The OIP have used strategic litigation in that perspective to prove the French State's responsibility in human rights violations in French prisons (catastrophic conditions of detention).

However, strategic litigation is not enough to change a legal decision. Law must be used with other tools and actions such as advocacy. It still remains an important starting point.

At last, strategic litigation is also **a tool to provoke or to support legal reform** in cases of large scale human rights violation (by ex. during a dictatorship).

2. Challenges

There are many challenges that lawyers can face in their desire of change. We can mention regime changes that may affect democratic tools of mobilization and social change. Regarding these authoritarian shifts, innovation and mobilization within lawyers' associations are essentials.

Appealing before regional and international legal institution can be a way to overcome challenges at the national level. The condemnation of Tunisia, characterized by an authoritarian shift since July 2021, by the African Court for non-compliance with one of the article of the African Charter, is a good example.