

# STRATEGIC LITIGATION LAB IN ASIA

03-06 July 2023  
Kathmandu, Nepal



 **URAK ASIA**

# STRATEGIC LITIGATION LAB IN ASIA OUTCOME REPORT

03 – 06 July 2023  
Kathmandu, Nepal



---

## **Strategic Litigation Lab in Asia Outcome Report**

This is an outcome report of the Strategic Litigation Lab (SL LAB) in Asia organized by Purak Asia from July 03-06, 2023 in Kathmandu, Nepal. The findings and outcomes of the report are based on the conversation and discussion shared by the participants and the resource persons of the workshop.

### **Report prepared by:**

-Neetu Pokharel  
-Som Prasad Niroula.

**Copyright ©2024 Purak Asia**

[www.purakasia.org](http://www.purakasia.org)

**Print and Design:** Sarvada Printing Solution Pvt. Ltd.  
Jwagal, Lalitpur

# Contents

<b>I. Introduction</b> .....	5
<b>II. Key Takeaways</b> .....	6
<b>A. Understanding strategic litigation</b> .....	6
1. Definition .....	6
2. Planning and implementation.....	6
3. Tools, tactics, and impact .....	7
<b>B. Thematic modules</b> .....	11
1. Climate and environmental justice.....	11
2. Economic, social, and cultural rights .....	11
<b>C. Experiences across the region</b> .....	11
1. Case studies and experiences.....	11
2. Challenges in advancing human rights in Asia .....	13
<b>D. Participants’ Feedback</b> .....	13
<b>E. Ways forward</b> .....	14
1. Knowledge and resource exchange .....	14
2. Capacity-building.....	15
<b>F. Conclusion</b> .....	15
<b>III. Annexes</b> .....	16



## I. Introduction

The Strategic Litigation Lab in Asia (SL Lab) was organized by Purak Asia from 3 to 6 July 2023 in Kathmandu, Nepal. The four day workshop brought together legal professionals, activists, and human rights defenders with diverse backgrounds and experiences from across the Asia region.

The objectives of the event were three-fold: to build the capacity of actors involved in strategic litigation, to foster the exchange of knowledge and resources, and to establish communities of strategic litigation practice in Asia. The programme (*see Annex A*) was divided into different sessions which focused on learning through collaboration, brainstorming, and facilitated discussions.

The 35 participants comprised representatives from 13 countries from South Asia, East Asia and South-East Asia. Years of professional experience ranged from one to ten years or more, with a majority having more than five years of work experience.

Participants reported to be engaged in various areas of human rights work, including climate justice, socio-economic rights, labor rights, children's rights, women's rights, torture cases, housing rights, disability rights, and citizenship in the different countries of Asia.

## II. Key Takeaways

### A. Understanding strategic litigation

#### 1. Definition

Participants commonly defined strategic litigation as referring to the planned and intended use of legal action to achieve a broader set of issues beyond those named in the case, i.e. to achieve broader social, political, or policy objectives. In the context of human rights, strategic litigation entails careful and deliberate selection and pursuit of legal cases to establish positive precedents, influence public opinion, or bring about a systematic change. Strategic litigation goes beyond individual disputes and aims to address fundamental issues and challenge unjust policies, laws, and practices. This method often requires a comprehensive understanding of legal systems, social dynamics, and the potential impact of legal actions on a larger scale. Public interest litigation was often used by participants as an alternative term.

#### 2. Planning and implementation

The process of planning litigation involves identifying which laws or policies to challenge, selecting cases to establish favorable legal precedents or impact broader societal concerns and public welfare, developing strategic alliances by collaborating with concerned institutions, advocacy groups, non-governmental organizations (NGOs), and legal experts.

Preliminary issues and challenges identified during discussions include judicial independence, the enforcement and implementation of judgments, especially in climate cases, and the need for persistence in mobilizing support to achieve strategic goals.

### 3. Tools, tactics, and impact

#### a) Evidence collection

The convening discussed the different types of evidence necessary to build strategic litigation cases, including witness / victim testimonies, documents, object and digital materials.

The participants agreed that testimonial evidence are crucial pieces of evidence but it is also of the types that are more challenging to collect. The authenticity and reliability of the witness testimony or victim's testimony are of great value and therefore this particular evidence must be collected firsthand. Some challenges in using testimonial evidence include: (i) potential re-traumatization of victims due to numerous and often repetitious interviews; (ii) the need for informed consent, (iii) the hostile or intimidating space that victims typically find themselves in, including the lack of privacy and security where interviews are conducted; (iv) the lack of time to verify authenticity and reliability of statements in extradition proceedings; and (v) the absence of eyewitnesses in torture cases. Careful planning and preparation using established protocols is key to mitigate these risks.

Digital evidence includes photographs, videos, and audio-recordings, which may be particularly useful in proceedings where quick relief or interim orders are urgently needed in any type of litigation. The participants shared their experience in using this type of evidence. Photographs play a huge role in cases relating to deforestation issues (e.g. Google Maps), mass violence, communal violence, racial violence, and mob attacks on racial minorities. In these cases, videos may even have

greater evidentiary value. Challenges identified include: (i) verification of the authenticity and credibility of the evidence produced by the concerned stakeholders themselves; (iii) the instrumentalization or manipulation of photos and videos; and (iv) judicial skepticism toward digital materials collected by non-governmental organization. Specialised training on dealing with such evidence could help manage these challenges.

Shared experiences amongst participants revealed the usefulness of right to information (RTI) actions as an effective tool alongside litigation, as it provides additional assistance in uncovering crucial details involving matters of public interest.

#### b) Community engagement and mobilisation

Participants shared the same general approach when engaging with communities. The foremost concern raised was ensuring the security of the community members, such as by not exposing them to greater risks or danger. To manage risks, it is recommended to obtain informed consent while focusing on empowerment. Attention should be paid to further marginalized parties within the community itself.

Participants likewise emphasized that the goals and strategy behind legal actions should be led by the community itself rather than driven by NGOs or lawyers. Lawyers can help bridging the gap between the formal law and the communities affected by it, as well as the community and the outside world, without taking away agency from their members. The following could be achieved by forming collaborative sessions with such communities rather than approaching them simply with a ‘savior mentality’, simplifying the legal concepts

and languages for them, approaching each individual differently to not assume what is best for them and provide support wherever and however necessary.

The primary challenges encountered by participants were cases of ultra-marginalization (further segregation in the concerned communities due patriarchal structures), language barriers, and lack of unity. Further marginalization within such communities can exclude women from formal participation, expressing their own concerns, participating in litigation, and so on. Other challenges include choosing representatives of communities, balancing individual and collective interests, and establishing legal standing. The solutions proffered included being more inclusive and democratic in choosing representatives of the community, recognizing and properly addressing the biases/prejudices, and building better rapport to better understand their situation and provide support.

c) Advocacy, public awareness campaigns

Participants recognized the importance of maximizing public exposure and engagement alongside litigation. The potential of social media was underscored for its ability to achieve public awareness, garner popular support, and raise funds.

Some tools identified included: (i) using manga / cartoon and other creative ways to inform the public regarding specific cases; (ii) establishing a simulation “Asian Human Rights Court” to hold mock hearings on contemporary issues; (iii) and forming strategic alliances with key government agencies.

d) The role of international and transnational fora

The session introduced the different fora that may be relevant to strategic litigation outside domestic systems, namely international,<sup>1</sup> transnational,<sup>2</sup> comparative,<sup>3</sup> and multi-jurisdictional fora,<sup>4</sup> each with a distinct role in achieving desired objectives. *Annex B* sets out some examples of avenues under each category.

International and transnational fora can serve as essential platforms for strategic litigation, offering avenues for redress, norm-setting, and advocacy on a global scale. These fora contribute to the development of international legal standards and the promotion of human rights and justice.

Other methods mentioned were resorting to accountability or grievance mechanisms within a company or institution (e.g. Asian Development Bank, European Investment Bank), and urgent procedures before international bodies, and the UN special procedures.

Participants found comparative fora the most useful in their practice, with multi-jurisdictional as the least useful. Meanwhile, international and transnational fora were equally ranked.

### c) Funding litigation

In East Asia, a unique approach to the pressing issue of fundraising was shared; an online “crowd-funding”

---

1 Understood as courts / bodies mandated by various states.

2 Understood as litigation in jurisdictions other than where the harm occurred or the violations was committed.

3 Understood as courts / bodies whose arguments/ precedents can be used in another jurisdiction.

4 Understood as litigating the same issue in several jurisdictions at the same time.

platform was created solely to finance public interest litigation, which enabled the general public to directly support selected cases by donating money through the platform.

## **B. Thematic modules**

### 1. Climate and environmental justice

Discussions followed cases studies to identify possible angles and approaches for advancing climate and environmental justice through strategic litigation. Among the approaches suggested include: arguing for indigenous property rights to ancestral land, working with youth activists as plaintiffs (whose standing can derive from being a taxpayer), filing a case through the internal grievance mechanism of the Asian Development Bank in connection with Environmental Impact Assessments (EIA), and targeting companies in favorable jurisdictions.

### 2. Economic, social, and cultural rights

The peer-led session on economic, social, and cultural rights (ESCR) focused on case studies in the Asia region to illustrate the myriad rights constituting ESCR. Among the rights discussed were the right to food for marginalized groups, rights to housing and livelihood, prisoner rights, migrant workers' rights, rights related to reproductive health, right to same-sex marriage, and the freedom of religion.

## **C. Experiences across the region**

### 1. Case studies and experiences

Through peer exchange, the session grouped participants according to region to facilitate sharing of case studies on

impactful litigation. The exercise sought to have participants exchange ideas and tactics when developing and pursuing litigation domestically and transnationally.

a) East Asia

One case study presented a landmark case on the rights of undocumented migrants to join labor unions using international jurisprudence (including review by the UN Special Rapporteur on migrants' rights, International Labor Organization, Human Rights Committee and Committee on the Elimination of Racial Discrimination) in domestic cases. Another case study involved a youth-led movement to reduce the voting age, which saw millions of potential voters collaborating and using their skills in advocacy and media to pressure legislative change.

b) Southeast Asia

The case study concerned a lawsuit against the prohibition of protests during the COVID-19 outbreak through an emergency decree. The plaintiffs managed to obtain the support of the corporate sector which filed a second lawsuit. This increased pressure on the government and eventually led to the withdrawal of the prohibition.

c) South Asia

Participants from the region focused on a case challenging an emergency state decree using public statements from UN Special Rapporteurs and the local bar association. Like the experience in East Asia, some participants reported forming strategic alliances with government agencies to achieve a desired result as an alternative to court proceedings.

## 2. Challenges in advancing human rights in Asia

Participants identified a number of salient challenges in advancing human rights relating to strategic litigation which fall under the following broad categories:

- Lack of funding and resources to sustain strategic litigation and support the affected community;
- A fragmented network of actors engaged in public interest cases, which may result in overwhelming workload;
- Threats to life and security of lawyers and victims or communities leading to lack of motivation and general apprehension to participate;
- Community fatigue after long years of waiting for the outcome of the case;
- Lack of legal standing to bring a case in certain situations;
- Language barriers when the case is brought in another country;
- Authoritarian regimes and censorship that make advocacy and media work on the case difficult;
- Lack of an independent judiciary;
- Information asymmetry where defendants have more resources and access to evidence;
- Lack of implementation of judgments.

### **D. Participants' Feedback**

To measure the success of the SL Lab, participants answered surveys at the beginning and conclusion of the convening to gauge the effectiveness of the training modules and discussions, as well as measure and evaluate its overall impact on each participant.

In general, all participants reported an overall improvement in their knowledge and understanding of the topics

covered in the modules. Most beneficial were the modules around the practical aspects of developing and sustaining impactful strategic litigation and the facilitated exchange of case studies across Asia.

Participants also found the SL Lab helpful in increasing their awareness of available resources and networks and providing them with a platform to share their experiences and engage with peers from and outside of their region. See *Annex C* for a break-down of the survey results.

Participants were generally satisfied with the structure and outcome of the SL Lab. Some suggestions for improvement include providing interpreters for participants, spending more time on discussing case studies in-depth, including other thematic areas or issues of interest (e.g. LGBT and women's rights).

## **E. Ways forward**

### 1. Knowledge and resource exchange

The SL Lab concluded with discussions on how to leverage newly formed partnerships to carry forward knowledge and resource exchange within the region. The action points included setting up a secure mailing list and online messaging group and establishing dedicated litigation labs and public interest lawyer networks within sub-regions.

The overall aim of these efforts is to foster collaboration on transnational or multi-jurisdictional cases, as well as to encourage swift communication regarding relevant developments and learning opportunities in Asia. To increase awareness and boost membership, participants also shared known networks engaged in public interest work (see *Annex D*).

## 2. Capacity-building

In terms of capacity-building, some ways forward suggested included regular follow-up convenings, online workshops and webinars, and the compilation of landmark decisions within the region. The learning exercises can cover thematic areas of law as well as practical aspects of strategic litigation.

## **F. Conclusion**

The SL Lab demonstrated the wealth of knowledge and experience in strategic litigation in Asia. However, there seems to be a lack of opportunities to foster cross-country collaborations in the region, in particular across sub-regions. It is hoped that this convening will serve as starting point to form new connections.

### III. Annexes

#### A. Programme

##### Day 1

9:00-9.30	Opening remarks
9:30-10:30	<u>Introductions</u>
10:30-10:45	<u>Break</u>
10:45-11:45	<u>Understanding and planning strategic litigation</u> <i>Objectives:</i> Participants will gain an overview of strategic human rights litigation. The session will introduce participants to practical factors and considerations in deciding whether to take out strategic human rights litigation and how to undertake cases.
11:45-12:00	<u>Break</u>
12:00-13:00	<u>Tools, tactics, and impact</u> <i>Objectives:</i> The session will examine the different ways that strategic litigation campaign can achieve impact.
13:00-14:00	<u>Lunch</u>
14:00-15.00	<u>Evidence collection and case building</u> <i>Objectives:</i> The session is intended to cover an overview of principles and tools for evidence collection and evidence analysis.
15:00-15:15	<u>Break</u>
15:15-17:30	<u>Case studies and experiences from the region</u> <i>Objectives:</i> The session will explore case studies, experiences, and tactics for impactful strategic litigation across jurisdictions in Asia. Through peer exchange, the session seeks to have participants proactively think about appropriate tactics when developing and pursuing litigation domestically and transnationally.

Day 2

9:00-10:45	<u>Working with affected groups / communities</u> <i>Objectives:</i> This session is intended to cover the challenges which arise from working with affected groups / communities for purposes of strategic litigation.
10:45-11:00	<u>Break</u>
11:00-12:45	<u>Litigating and implementing Economic, Social, Cultural Rights</u> <i>Objectives.</i> An overview of economic, social and cultural rights (ESCR) cases followed by discussion of areas and cases for strategic litigation.
12:45-13:30	<u>Lunch</u>

Day 3

10:00-12:00	<u>Climate and environmental justice</u> <i>Objectives:</i> Participants will learn about the use of strategic litigation to achieve climate and environmental justice in Asia.
12:00-12:45	<u>Lunch</u>
12:45-14:30	<u>The role of international and transnational fora</u> <i>Objectives:</i> This session will provide an overview of international and transnational fora, and explore how such fora may be used for collaboration and to advance human rights in Asia.
14:30-14:45	<u>Break</u>

14:45-15:45	<p><u>Challenges in advancing human rights relating to strategic litigation in Asia</u></p> <p><i>Objectives:</i> Moderated session to identify salient challenges faced by participants in advancing human rights relating to strategic litigation in Asia, with a view to identifying potential avenues for support.</p>
-------------	--

#### Day 4

10:30-13:00	<p><u>Exploring collaboration and putting principles into practice</u></p> <p><i>Objectives:</i> Participants will consolidate learnings from the convening, explore potential strategic litigation ideas for collaboration and how they can put the principles learnt into practice in the future.</p>
13:00-14:00	<p><u>Lunch</u></p>
14:00-15:00	<p><u>Interactive conclusion and closing remarks</u></p> <p><i>Objectives:</i> This session will help obtain feedback for planning continued engagement with the participants and future labs.</p>

### **B. Different types of fora**

<b>International Fora</b>	<b>Remarks</b>
1. UN Human Rights Committee	Option for jurisdictions with unresponsive judiciary
2. UN Working Group (Business and Human Rights, Arbitrary Detention)	No requirement for ratification of a treaty by the state in question. Can deal with individual complaints as well as problematic legislation / policies.
3. Committee on the Elimination of Racial Discrimination	Provides possibility of urgent procedure (no requirement of exhaustion of domestic remedies); findings/statement issued fairly quickly

5. International Court of Justice	Limitation: only states may file (NGO's role: lobbying). Can also issue advisory opinions (possible avenue for environmental issues).
6. UN Special Rapporteurs	Most approachable in UN system (individuals that are deeply involved in a variety of issues). Creates moral pressure.
7. EU entities. External Affairs Services, EU Commission	Advocacy purposes. EU may have leverage via trade agreements.

<b>Transnational Fora</b>	<b>Remarks</b>
1. Country of domicile/incorporation	Cases against corporations in their “home” countries or the parent company’s “home” country
2. OECD national contact point	National contact points mostly in global north countries.
3. Due diligence laws in Europe	France most progressive (due vigilance law). New laws emerging in Germany and Netherlands.
4. Anti-corruption laws	Challenges: discretionary/limited jurisdiction, corruption issues.
5. Corporate Grievances Mechanisms/ Ethics council	Possible "add-on" to overall strategy (e.g., European investment banks). May cover human rights issues other than environmental/climate justice (e.g., forced labour issues).
6. Tort Claim against companies in their “home” jurisdiction	Difficult to bring (jurisdiction, standing, causation)

7. Targeted human rights sanctions regime (EU, Australia, Canada, UK, US)	Limited types of violations. Asset freezes and travel bans.
8. Universal Jurisdiction	Used mostly in international crime cases
9. Consumer protection laws	'Green-washing' claims (misleading corporate practices)
10. Securities and Exchange Commissions (US)	Corporate misrepresentation to shareholders (share price manipulation).

<b>Comparative Fora</b>	<b>Remarks</b>
1. Amicus Curiae	Can be issued by former judges, UN Special Rapporteurs, INGOs (e.g. Human Rights Watch, Amnesty International), law clinics
2. Expert witness	Same testimony can be referenced in other jurisdictions.
3. Court decisions	Can be referenced mostly in other common law jurisdiction.

## C. Feedback survey results

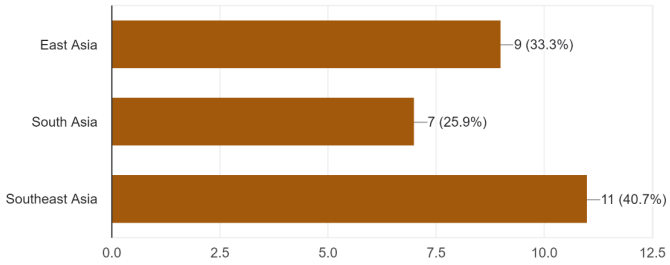
### Summary of results

- (1) Majority agreed / strongly agreed that they improved their knowledge and understanding of:
  - a. Use and planning of strategic litigation **(96.3%)**.
  - b. Tools and tactics involved in strategic litigation **(88.9%)**.
  - c. Evidence collection and case building **(74%)**.
  - d. Case studies and experiences in Asia through the World Café **(100%)**.

- e. Working with affected groups and communities **(81.5%)**.
  - f. Litigation and implementation of economic, social and cultural rights **(7%)**.
  - g. Climate and environmental justice **(81.5%)**.
  - h. Avenues for litigation before international or transnational fora **(81.5%)**.
- (2) Majority agreed / strongly agreed that the strategic litigation lab helped with:
- a. Their awareness and/or use of available resources and networks pertaining to strategic litigation **(100%)**.
  - b. Ability to leverage on networks as intellectual and practical partners, resources and advisors for strategic litigation **(92.6%)**.
  - c. Ability to develop impactful strategic litigation **(96.3%)**
- (3) In terms of knowledge sharing, peer exchange and engagement, majority agreed / strongly agreed that they:
- a. They were provided the opportunity to share their case studies, experiences and knowledge **(96.3%)**.
  - b. Learned from the case studies, experiences and knowledge of other participants **(100%)**.
  - c. Found the opportunity for knowledge sharing, peer exchange and engagement with practitioners from their region helpful **(85.2%)**.
  - d. Found the opportunity for knowledge sharing, peer exchange and engagement with practitioners outside of their region helpful **(96.3%)**.
  - e. Developed a better understanding of potential avenues and networks for transnational strategic litigation and collaboration **(88.9%)**.

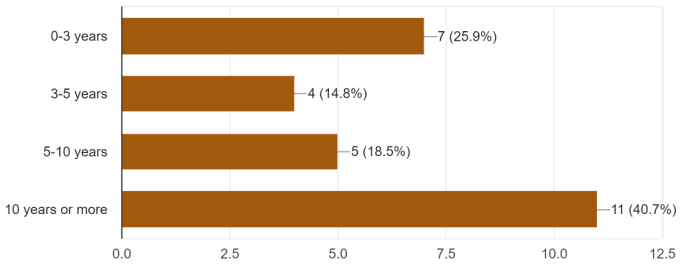
## Region

27 responses



## Professional Experience

27 responses



## D. List of networks

Amnesty International
Anti Death Penalty Asian Network
Asia Alliance Against Torture (A3T)
Asia Human Rights Defenders Network
Asia Justice Coalition
Asia Pacific Refugee Rights Network (Legal Aid & Assistance Working Group)
Asian Pro Bono Consortium
CEDAW for Change
Coalition of Human Rights in Development
Commission on Lawyer Assistance Programs (CoLAP)
Commission on the Status of Women (CSW)
Diplomacy Training Program Alumni
Disability Studies India
Environmental Law Alliance (ELAW)
Frontline Defenders
Gender and Public Health Emergency Working Group
Global Innocence Network
Harm Reduction International
International Advocate Working Group
International Commission of Jurists (ICJ)
International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA)
International Network for Economic, Social and Cultural Rights (ESCR-Net)
IPROBONO
LAWASIA Human Rights Lawyers Network
Legal Aid Foundation
Namati Institute
Public Interest Law Network (PILnet)
Reprieve UK
SOS Asia Litigators Group
The Asian Forum for Human Rights and Development (FORUM-ASIA)
Transitional Justice Asian Network
Women's Major Group (WMG)
Women's UN Report Network (WUNRN)
Women's UN Report Network (WUNRN)





**Purak Asia**

Kathmandu, Nepal

[www.purakasia.org](http://www.purakasia.org)

[info@purakasia.org](mailto:info@purakasia.org)