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Strategic Human Rights Litigation: 'Bursting the Bubble on the Champagne Moment'

Helen Duffy, Inaugural Lecture, 13 March 2017

Maneer de Rector, esteemed colleagues and friends,

It is a familiar photograph: triumphant lawyers and clients on the steps of the court after judgment is rendered - the proverbial (and sometimes literal) champagne moment celebrating litigation success. In my lecture this afternoon, I am going to invite you to reflect critically on this champagne moment, and to adjust the lens through which we view “success” in human rights litigation.

The Champagne photo - a static snapshot of judgement day - could be taken with an old camera obscura, with its tiny hole that projects a single image into darkened room. Like the camera obscura, we often consider litigation through a narrow frame. As lawyers, trained to analyse, persuade and manoeuvre our clients towards the light, we tend to focus on Judgment day, when the Almighty reflects on our carefully crafted arguments, and awards the legally righteous (or right). Within this narrow frame, the judgment may be seen as the culmination of the litigation journey, when fates will be sealed and justice done.

We know of course that the reality is quite different. A winning judgement that remains (as many do) unimplemented, may change little. A judgment, win or lose, that creates legal or political backlash may aggravate the situation on the ground. Conversely, a losing case that exposes injustice and catalyses further action, for example, may ultimately be transformative. It follows that we need to rethink success in HR litigation - as Jules Lobel noted, to see the “success without victory,” and conversely recognize that failure may follow fast on victory’s heels.

Strategic human rights litigation, in some systems called public interest litigation, test litigation, simply impact litigation, is a growing area of practice globally. It involves the increased use of the courts (national and supranational) by lawyers and civil society groups around the world, to advance human rights goals that go beyond the interests of *just* the applicants in the case. It reflects also the need to be strategic in the *way* litigation is done, to ensure that the *process*, both inside and outside of the courtroom, contributes to real success, beyond legal victory.

As strategic human rights litigation has grown in recent years, so has controversy as to the role that courts can or *should* play in human rights change. To some extent this reflects long established academic debate in some parts of the world, notably around civil rights litigation in the United States. At one end of the spectrum, some appear to *assume* the inherent value of the judicial process and its outcome. Lawyers and litigators may be particularly prone to this, perhaps unconsciously to justify our own role in the exotic rituals of the dark sanctum of court, with our flowing robes and in some systems funny wigs (... though this it may not be the best moment for me to mock unusual costumes). But if there are some for whom litigation takes on almost religious connotations, there are others that almost demonise the role of the courts, as ‘anti-democratic’ for example, wresting power from elected processes, or as inherently elitist and *ineffective*, disconnected from social struggles within which real change happens.

My question is where, within these extremes of heaven and hell, the value of HRL lies.

As a human rights litigator for many years, I am not a neutral observer, but rather a skeptical believer in the potential of human rights litigation; if done strategically and used properly it *can* change the human rights landscape in many ways. But that transformation is not automatic. Impact may be positive *or* negative. The value of litigation cannot be assumed, and it cannot be appreciated if we peer through a narrow lens to a snapshot ‘outcome’ of a case.

My suggestion today then is that we need to update the camera. To view the significance of human rights litigation, we need to look through three, more modern, sophisticated lenses.

- The first lens is a high definition one, sensitive enough to pick out detail; with this lens we will see the *multi-dimensional* impact of human rights litigation;
- The second lens is a long one, required to view impact over time; with this lens we look beyond the judgment, to see how litigation may also influence change before cases are even presented, throughout the process, and a very long time after judgment;
- The third lens is wide-angled, enabling us to see litigation in context; with this lens we see the synergy between litigation and other agents for change, such as civil society advocacy, education or legislative reform.

What we can explore with these lenses may not be so much whether litigation *provided* a solution (which will only rarely be case for some of the broad-reaching social or political problems that underpin rights violations), but whether and how litigation *contributed*, directly and indirectly, to positive change.

2. Panoramic Shot of Human rights litigation

Before exploring impact, let's pause for a moment and take a panoramic view of HR litigation in the world today, and see the *rapidly evolving* landscape that lies before us.

Judge Christopher Greenwood, opening the academic year at the Grotius centre in the Hague a couple years ago, spoke of this as an 'Age of international adjudication'. In no area is this more fitting than in relation to the practice of human rights litigation, which has burgeoned in recent decades. There has been a proliferation of regional and international courts and bodies to hear human rights claims, human rights litigation intersects with a growing range of areas of international law and practice, and the volume of human rights claims has grown exponentially.

Yet not *so* long ago the idea that HR law could be given teeth by allowing individuals to bring claims against the state was considered revolutionary. Anthony Lester in his recent book *Five Ideas to Fight For* (2016) notes that when the European Court of Human Rights was proposed in 1950, the UK AG, Sr Hartley Shawcross, wrote that "*the possibility of UK citizens lodging complaints against their government in Strasbourg is wholly opposed to the theory of responsible government.*" A Foreign Office Ministerial Brief went further: "*to allow governments to become the object of such potentially vague charges by individuals, is to invite Communists, crooks and cranks of every description to bring actions.*" Thankfully, that advice was rejected and the UK joined the Court when it was created in 1959 (a situation that will hopefully continue!). And human rights litigators (us commies, crooks, cranks & others) have been bringing cases with increased regularity ever since.

The expansion of HR litigation is seen on the national level too. Colombian Cesar Rodriguez Garavito in his excellent work on "Courts and Social Change" identifies an '*international tendency towards constitutional protagonism* in respect of rights." Well known examples of this "*progressive neo-constitutionalism*" include the work of the Indian supreme court, South African constitutional court, but also courts across Latin America, that are increasingly engaged in long term, multi-staged litigation processes to oversee the remediation of deep-rooted, "structural" HR problems.

We also see an ever-broader array of *types of litigation* for HR purposes, brought nationally and *trans*-nationally, and against a expanding *range* of defendants. Recent cases brought by Dutch lawyers against FIFA, to secure human rights standards in preparations for the World

Cup, is just one example of this increasingly colourful display of creative litigation against states and diverse *non-state* actors.

Within our panorama we also see increased movement and engagement by a range of actors: growing numbers of NGOs specifically dedicated to SHRL; growing practice of resort to amicus or third party interventions, on the international and national levels, drawing a broader range of voices into the litigation conversation; in turn, what has been called the “*growing trans-judicial dialogue*,” of judges referring increasingly to one another’s jurisprudence, horizontally between national judiciaries, vertically between national and international courts, and between supra-national systems. This enhances the significance of litigation for other courts and systems, and develops the tapestry of international human rights law and practice.

But as we peruse this rich and fertile landscape, we should also be aware of potential blindspots, and acknowledge the serious contemporary challenges facing human rights litigation.

Despite the plethora of fora, the majority of the worlds citizens still have *no* access to an international human rights remedy at all. Existing human rights courts and bodies are blighted by challenges, including overload, delays, crippling resource constraints, and variable - but notoriously poor - records of implementation. Increasing political push-back against human rights courts is a testament perhaps to their impact. This has troubling reflections here in Europe in the novel open refusal to implement judgments of the ECtHR, or threats to leave the system, or in Africa in the suspension of the Southern African Development Community’s Tribunal at the behest of the Zimbabwean government, following a high profile ruling against it.

On the national level, the role of the judiciary is rendered more challenging, but also more important, in light of political developments in some states – reflected perhaps in Pres. Trump’s infamous attack on the “so-called judge” blocking his immigration ban. The scourge of growing attacks on human rights defenders and lawyers around the world is another dark part of the litigation landscape, with obvious consequences for the ability of victims to challenge violations. Myriad other impediments, from costs and delays, harassment and reprisals, to the more subtle impact of the power dynamics, underpinning HR violations and the justice system itself, often block access to justice on the national level. Lord Bingham in his recent book “The Rule of law” refers to writings 350 years ago complaining that, in matters of justice “*the remedy is worse than the disease. You must spend 10 pounds to recover*

5!” The reality today is that equality before courts remains elusive, in line with the old ironic refrain that “*Justice is open to all, like the Ritz hotel.*”

Reflecting on our panoramic view, then, we see an expanding and increasingly rich body of litigation, with more fora, litigation tools, engaged actors and opportunities. At the same time, access to human rights litigation is irregular, and even when it is possible, it can be a slow, expensive and risky business.

The developing practice of rights litigation, and its risks, underlines the importance of careful enquiry into litigation’s potential and limitations. I would therefore like us to now leave the panoramic view, and zoom in with our advanced new lenses.

Using our first two lenses - one focused on high definition, the other on the long range view - I would like to identify and illustrate some of the dimensions on which strategic human rights litigation may have an impact, over time. Although there are many, I will focus on four levels of impact: 1st the impact on victims and survivors, 2nd on the law, 3rd on political and social change, and 4th on democracy and the rule of law.

3: Dimensions of Impact

3.1: Victims and Survivors

The starting point for any analysis of the effects of human rights litigation, ‘strategic’ or not, should be the impact on those *most* affected – victims and survivors. While systems vary greatly, human rights litigation may secure many different forms of reparation for applicants and often also for a broader range of affected persons than just the petitioners in the case.

The value of reparation *orders* from courts - compensation, restitution, concrete measures of satisfaction etc. - when they are implemented, is perhaps clear. Somewhat more neglected though, is the *restorative* function of the HR litigation process. The declaratory impact of the judgment itself has a role to play here – validating experience, authoritatively recognizing wrongs and allocating responsibility. But the *power of the process* also deserves emphasis.

Allow me to share an example from my work in Guatemala that may be illustrative. During 1990s, I represented the indigenous community of Plan de Sanchez, survivors of a massacre that killed 268 on one day in July 1982 as part of the Guatemalan genocide. The case went to the Inter-American commission on human rights, and from there to the Inter-American Court, resulting in the *Plan de Sanchez v Guatemala* judgment of 2004.

The significance of the case might be seen on multiple levels and at various points of time. Its impact might be considered *now*, so far as the litigation has been referred to as the “foundational phase” of on-going criminal accountability processes on genocide in Guatemala. Moving a decade back, to 2004, others focus on the Court comprehensive reparations order. I recall before we presented the case when I asked the community about its goals for the case, they said (among other things) schools, hospitals and crops. I said I was sorry but I did not think that a very likely result of human rights litigation. I am pleased to have been wrong. The wide-reaching reparations order included socio-economic measures – the provision of roads, sewage systems, teachers, a medical centre and psycho social support - as well as measures to promote the Mayan culture and to honour the memory of the dead for example. Notably these were ordered not only for the *applicants* in the case, from Plan de Sanchez, but other affected communities. Even before the judgment was rendered, the long process of reparation began when Guatemala erected a chapel, acknowledged wrongs and apologized.

To appreciate the significance of the case though, I would cast our eye further, and jump another decade back in time, to the very earliest days of the preparation of case: when conversations with and between communities began; when they began to share and to confront experiences for the first time; when they began to organize themselves for purposes of litigation; when we in turn drew together, with journalists and academics, research on the massacres and their systematicity as part of a genocidal plan. Discussing this with the community, we realized the insidious notions some of them harboured as to what, or *who* among them, might have brought this misfortune on their community. These *processes* were one way, as Argentine legal philosopher Jaime Malamud Goti notes, that victims came to internalise that they were not in any way ‘responsible for their own misfortune.’ As such the preparatory process of litigation, and its contribution to personal and collective restorative and transitional processes, should not be overlooked.

3.2 Legal change

The second site of impact I would like to hone in on this afternoon is the impact of human rights litigation on the law itself. Legal change may arise from litigation in many ways.

Legislative change is obviously one. Depending on the system, law reform may flow, directly or indirectly, from judgments, though the change may be for the better or worse. A classic example was the *Broeks v Netherlands case* where the tax and social security system of this

country was fundamentally changed following a decision that provisions assuming “breadwinners” to be male heads of household was discriminatory.

Important in this context is legal change through jurisprudence, in other words how the law also develops *through* the litigation itself. Over the past fifty years, a detailed body of international human rights law has been grafted onto the skeletal framework of human rights treaties through litigation. Unsurprisingly, a key goal of much strategic human rights litigation in recent decades, by those who have been referred to as “*norm entrepreneurs*,” has been to shape international standards, and to open up *domestic* systems to these international standards, thereby providing normative tools for future cases.

New rights, such as right to truth, have emerged through jurisprudence, and travelled across systems. New remedies and procedures have emerged from the litigation process too. It was only for example through lawyers asking for things they perhaps thought they wouldn’t get that the Inter-American system developed its holistic approach to reparation, or that amicus practice became embedded across systems.

This strategic litigation *opportunism* has shaped remedies and procedures nationally too. A creative example were the “collective habeas corpus” claims lodged for all persons detained in inhumane conditions in Argentina, which although entirely unprecedented, were accepted by the Courts - “trail-blazing” litigation that created new collective remedies for the future.

3.3 Political, social and practical change.

Our third dimension of impact is the broad category of political or social change. Perhaps the most obvious way in which human rights litigation pursues change is by challenging practices that violate human rights, and states policies that often underpin them.

States may *directly* cease violations and change policy as a result of cases that expose unlawfulness. An example would be the security detention of non-nationals in the UK post 9/11, which already ceased in the *course* of the *A&Ors v UK litigation*. Of course *new* policies and measures emerged - in that case, control orders – new rounds of litigation, and new policy adjustments ... and so the dialogue between the executive, judiciary and legislature goes on.

Often, the relationship between litigation and policy change is less direct. Litigation may simply serve to draw out and clarify state policy, as the state elaborates (and sometimes modifies) its position for litigation. It may serve to *put*, or to *keep*, an unfavourable issue on

the political agenda, or to create political space for dialogue towards broader solutions. In Latin America in the past decade, a series of “meta-cases” have involved the courts in supervising the elaboration and implementation of policy over time, while securing the active participation of affected persons whose voices are rarely heard in political debate.

Perhaps most important, is the elusive question of behavioural change, and the impact on the attitudes and ‘collective social constructs’ that contribute to violations. In this context we should consider the role of litigation in *exposing, reframing and catalysing*.

The power of the litigation process to expose information arises directly, in for example, the ‘Freedom of Information Act’ type of litigation that has grown around the world, but it also surfaces *indirectly* as the truth is prised open through evidence gathering and litigation exchange. The lack of justice may be exposed, through litigation’s failure. Preparing for litigation may lead to documenting violations, and contribute in turn to historical *clarification*. Last year I asked a Palestinian applicant, whose home is sandwiched between two expanding settlements, why he continued with legal action, despite negligible prospects of success before Israeli courts, and serious threats. He answered: “*There is an Arab proverb that ‘Even the bullet that misses makes a noise.’ If they do nothing I have a record.*”

Turning to its *reframing* function, litigation may influence perceptions concerning affected individuals and groups, by telling the human story. The litigation narrative has a *humanising power*, highlighting for example - in the case of torture and rendition victims such as our client Abu Zubaydah - what euphemisms such as “enhanced interrogation techniques” mean for real human beings. Litigation may also help to reframe the way issues are discussed, with the judicial process naturally helping to recast violations as not only *political* issues but as legal issues and questions of fundamental human rights.

In 1965 Rev Martin Luther King Jr noted that “*It seems to be a fact of life that human beings cannot continue to do wrong without eventually reaching out for some thin rationalization, to clothe an obvious wrong in the beautiful garments of righteousness.*” The courts, as King observed, had on occasion provided those garments to legitimize rights violations, through cases such as *Plessy v. Ferguson*, which established the doctrine of “*separate but equal*” to justify segregation, or the notorious *Dred Scott* case affirming the constitutional right to own slaves. But King also believed that litigation could *unravel these rationalisations*, as it has done but in 1954 with the seminal *Brown v Board of Education* case, which exposed the disingenuity of ‘separate but equal.’ In this way litigation can help to

awaken or shape public consciousness, to expose the frailty of justifications for abuse, or (as one Turkish activist I interviewed said of torture litigation) at least to “denormalise” violations (even if it didn’t stop them).

Critics have at times described litigation as disempowering lawyer-led processes, disconnected and a distraction from more effective struggles. This is often true. But much as ever depends - on how litigation done, by whom it is driven and its relationship with social movements. Litigation can and *has* also given visibility, credibility and a public voice to human rights advocates, and facilitated organisation and mobilisation.

The case of *Hadijatou Mani v Niger* may illustrate some of these issues.

Hadijatou’s story is both extraordinary and typical. Like tens of thousands of others in Niger, she was born into slavery, sold by her mother’s master at 12, and subjected to a daily diet of rape and domestic abuse. One day her master provided her a signed “liberation certificate” in order to make her one of his four wives. She refused, and left, spurring lines of litigation. Her former master had Hadijatou prosecuted for bigamy (as she had taken a husband of her choice), while she asserted her right to be free in accordance with prohibition on slavery in Nigerienne law. Unsuccessful before domestic courts, we took her case to the court of the Economic Community of West Africa (the ECOWAS court). To its credit, the ECOWAS court agreed to hold a public hearing in Niamey, Niger, with the victim, dignitaries, much fanfare and, importantly, great press interest.

Judgment was rendered some months later, in Hadijatou’s favour, finding the state responsible for slavery, which was described as historic. The judgment, and compensation paid, are undoubtedly significant. But the impact of the case was felt long before - Mani herself was released from prison when the case was lodged. And in large part the enduring impact of the case may lie in the *empowerment* dimension that I just mentioned.

When I first went to meet Hadijatou, to prepare the case, I was warned she would not look me in the eye, as this was forbidden for slaves. This proved true. Yet she decided to testify before a packed courtroom in Niamey. She did so faltering at first, but as her story was heard, you could see her physically grow in stature and confidence. Beyond the palpable empowerment of Hadijatou that this process represented, her case prompted other victims to come forward to claim their freedom or seek support, even before judgment. The NGO Timidria that made the case possible, founded in part by former slaves, describes being taken more seriously by

government and the judiciary since the case. Crucially, on the night of the hearing, the taboo problem of slavery was debated on public radio for the first time.

There is a long way to go to eradicate slavery in Niger and her case was no panacea. But the what Stanley Cohen calls the “state of denial” has been shattered, slavery is acknowledged and now the subject of state policies, and activists - on whom the ultimate success of this work will largely depend - are mobilized and empowered for the struggle ahead.

3.4. Democracy and The Rule and Law

The fourth dimension of impact of litigation which I will deal with briefly, though it is fundamental – is the role of litigation in preservation and promotion of the rule of law. The courts provide vehicles through which the law, including international human rights law, can be interpreted, applied and given real effect. “*A right without a remedy is no right at all,*” and it is through litigation those whose rights are denied can seek to enforce them, and the government held to account under the law.

The vast and variable body of litigation relating to the so-called ‘war on terror’ gives us much to reflect on in this respect. Courts have often been acutely deferential in face of national security concerns. Extreme examples, such as refusal by courts of the United States to even *hear* torture suits on “state secrecy” grounds, clearly undermine the rule of law. But in myriad other cases around the globe, courts have at least called the state to account as regards the necessity and proportionality of measures taken in name of counter-terrorism, however imperfectly. This litigation has often contributed to valuable debate – inside the courtroom and beyond - on the proper function of courts, and the separation of powers, in a democracy. This is exemplified by Lord Bingham rebuke to the UK govt in A &Ors (arbitrary detention) case, that:

“I do not accept the distinction which ... the Attorney General drew between democratic institutions and the courts The function of independent judges ... [is] a cardinal feature of the modern democratic state, a cornerstone of the rule of law itself. The Attorney General is fully entitled to insist on the proper limits of judicial authority, but he is wrong to stigmatize judicial decision-making as in some way undemocratic.”

Experience since 9/11 ought to teach us that it is in times of greatest strain, when the executive is drawn to *exceed* the boundaries of the law, and the legislature to exceed the boundaries of *international* law, that meaningful judicial oversight is most important.

I will therefore take as the last example of the afternoon the series of *habeas corpus* cases in US courts brought on behalf the detainees at Guantanamo Bay.

The Guantanamo litigation was a multi-staged journey that culminated in a *quintessential* champagne moment. In 2008, in the *Boumediene* case, the US Supreme Court found that all Guantanamo detainees had the constitutional right to challenge the lawfulness of their detention. It was hailed as a historic victory for the rule of law.

Jubilation was somewhat tempered by the fact it had taken 6 years to reach a decision on a remedy that is intended to provide relief within hours, days or maybe in the most exceptional circumstances weeks. This reflected judicial caution at each stage: In the first round of cases (*Rasul & Ors*), the Supreme Court found in favour of the applicants, but based on a *statutory* rather than constitutional right to habeas. Congress changed the statute, clearly removing the right. In the second round of cases, (*Hamdan & ors*) the Court decided narrowly that the new statute did not apply to pending applications. So a third round was necessary (*Boumediene* and ors). Mr B was no stranger to the vicissitudes of HR litigation. Years earlier, he had a champagne-warranting victory when a Bosnian court held there was no evidence to support his transfer to the US, and ordered his release. He was abducted as he left by the US and bundled off to Gitmo regardless. And so his case gave rise to the historic *Boumediene* judgment where the US SC finally found constitutional right to habeas corpus.

Jubilation at the 2008 judgment was further tempered by the fact that despite the victory of principle and habeas proceedings exposing the lack of basis for detention in the *first* few years after *Boumediene*, in practice the system has ground to a halt since. Courts have found that while they have power to review the lawfulness of detention, they have no power to order release. Moreover, standards of review have been altered to the point where, as a dissenting US judge noted “*it is difficult to see what is left of Boumediene’s requirement of meaningful review.*”

A historic victory or an epic failure?

On one view, as Jules Lobel has stated, it was a pyrrhic victory, that risks legitimizing a profoundly unjust system by creating an illusion of judicial review that does not exist. While many *were* released, he notes this was due to *other* action.

While these are compelling points, there are other dimensions of impact we should not neglect. The expressive value of this judgment for one, in shattering the underlying assumptions that anyone can be held in legal limbo. In addition, perhaps the key contribution of the GB litigation did not arise in 2008, but earlier, when the US was forced to provide detainees with access to lawyers in order to *prepare* for litigation. In so doing, the world was in turn given access to information about the detainees - who these people, described generically as “the worst of the worst,” *really* were, and the terrible torture many had endured.

And things began to change (not *enough*, but significantly). For example, allegations against our client - that he was the ‘no 3 al Qaeda’ - were dropped and he was no longer alleged to have been a *member* of AQ at all. Many cases of mistaken identities, and entirely empty files, emerged.

The litigation may not have led directly to release, or even to meaningful judicial review for many. But it triggered access, exposed facts and lack of justifications, maintained international attention despite Guantanamo fatigue, and influenced the terms and the tenor of the conversation, increasing the pressure on foreign governments to intervene, on international organisations to condemn, and on the US to reduce detainees (which are down from 779 to 41).

Part 4. Context and the Road Ahead

Which brings us back to our lenses. We have seen with our first sensitive lens the multidimensional, often concealed, levels of impact. With the 2nd long lens we saw how impact arose at multiple stages, before during and long after litigation. With the third lens we must also take a wide-angled look at litigation in context. This is a crucial aspect of strategic litigation.

The impact, potential and dangers of litigation can only be assessed in the context of the particular individual, local, national and international context in relation to the particular issues at the particular time.

Moreover, the wide-angled lens shows how litigation forms part of and intersects with other action for change. Change happens gradually and cumulatively, often not from an isolated

case but from a series of cases, in conjunction with other processes. Whether litigation meets its potential to influence legal, social, cultural change for example, may depend less on what courts say and do, or what people say and do *in court*, than on the work of a much broader range of actors – civil society, media, legislatures. Years of civil society engagement often precedes, and lays the groundwork, for litigation. In turn, it is only through the follow-up of multiple actors that what happens in the dark room of the court can be projected back out, seen, heard and felt, in the real world.

I will end with few conclusions and observations as regards the road ahead.

SHRL will be a growth industry in years ahead, which presents opportunities, and tensions and challenges, of relevance to us as an academic community, across disciplines, in partnership with litigators and civil society. I look forward to working with many of you on these in the years ahead.

There is a need to enhance understanding of the impact – positive *and* negative - that HR litigation has had in particular contexts, and why, to inform strategies for the future. We should enrich the conversation on *evaluating* impact in context, grappling with methodological quagmires, while being mindful that many forms of impact elude “measurement” as such. *Tensions*, and ethical and professional issues, need to be addressed when multiple ‘strategic’ goals conflict with those of clients, as they sometimes do. In the way we use litigation, as a tool among others for change, we need to respect and safeguard its *particular* role in the protection of the rule of law.

There is scope for more fruitful partnerships between academia and practice in litigation proceedings themselves; in building the capacity of judges and lawyers; and of course, importantly, in preparing the next generation of responsible, strategic lawyers.

To conclude, SHRL has enormous potential. But it is not a neutral enterprise, and it is crucial to avoid lenses - rose coloured ones this time - that may distort reality. Around the globe today, HR litigation brings devastating consequences victims, lawyers and NGOs. Bad cases happen, and bad cases sometimes do make bad law. Backlash against groups and causes, from case brought in the wrong place at wrong time, can set human rights progress back years.

Litigation may only rarely provide *solutions* for human rights problems. But it can and does make a difference, sometimes directly and dramatically, at other times in ways not anticipated, often subtly and even imperceptibly changing the human rights landscape.

Perhaps, then, what we look through is not a camera but a Kaleidoscope, with litigation turning and changing context just a little.

So, reflecting on the value of SHRL, do we get our champagne I hear you ask (a reasonable question at this time of the afternoon)?

If we are to understand litigation as part of lengthy processes of change, the champagne may have to stay in the fridge for a very long time. Alternatively, we may find smaller champagne moments (excuses for thimbles full?) – when the tenor of conversations shift; when a lawyer takes an unpopular case or a judge decides it, without fear or favour, and despite risks; when a government is forced to give account; when a chapel to honour thousands dead is erected; when a victim speaks up; when a man sitting in GB knows that the prospect of justice, while remote, is not abandoned; when a former slave finds the strength to testify, and then looks you in the eye.

I think we can toast to that.