

DISCIPLINA: STRATEGIC LITIGATION AND HUMAN RIGHTS	CÓDIGO: GRDDIRATCE0529
PROFESSOR: JULIANA CESARIO ALVIM GOMES	CARGA HORÁRIA: 30h
<p>EMENTA</p> <p>1. INTRODUCTION. 2. THEORETICAL ISSUES – 2.1. What is strategic litigation? 2.2. Who are the strategic litigators?. Governmental and non-governmental actors. 2.3. When to engage in strategic litigation? Structures of legal opportunities, resources, circumstances. 2.4. Where to engage in strategic litigation? Globalization, international and domestic orders. 2.5. How to strategically litigate? The role of the litigator. 2.6. Why strategic litigation? Specific and general goals. 2.7. Why not? Criticisms and reasons not to engage in strategic litigation. 3. PRACTICAL ISSUES – 3.1 Framing & Strategizing: defining problem, solution and tactics. 3.2. Client-Attorney relationship: emotions, doubts, ethics and challenges. 3.3 Daily work: formal, less formal and informal mechanisms of access to courts. 3.4 Support actions, advocacy and long term strategies. 3.5 Media, social media and multiple audiences. 3.6 Implementation and enforcement.</p>	
<p>OBJETIVOS GERAIS</p> <p>The course's goal is to prepare future law operators to deal with the theoretical and practical challenges of strategic human rights litigation both in domestic and international arenas.</p>	
<p>OBJETIVOS ESPECÍFICOS</p> <p>Strategic human rights litigation operates in the crossroads between social movements and state institutions, conservation and transformation, law and politics. As a result, practical and theoretical dilemmas arise: can strategic litigation make a difference in the world? What is the role of the litigator in this process? How to ethically work in benefit both of a client and a cause? How to make use of the judicial system without reinforcing the injustices it promotes? By drawing on the instructor's experience as a human rights litigator, the course aims to promote engagement with these discussions while critically and constructively analyzing concrete cases.</p>	
<p>METODOLOGIA</p> <p>Class debates based on assigned readings and recent and ongoing events related to the course topics. No prior technical knowledge is required. The instructor will make every reasonable effort to help with the language. The course will include two one-page response papers (which can be written in Portuguese), and a final take home exam (which must be in English). Comments and questions are always welcome, and I am pleased to meet with you individually outside of class in mutually convenient time to discuss the issues raised in the course or simply to become better acquainted.</p>	
<p>PROGRAMA</p> <p>Session 1 (February 21st) Presentation and course overview.</p> <p><u>THEORETICAL ISSUES</u></p> <p>Session 2 (February 28th) <i>What is strategic litigation? What does it mean to engage in human rights strategic litigation?</i></p> <p><u>Readings:</u> Evorah Lusci Costa Cardoso . Litígio estratégico e sistema interamericano de direitos humanos. Belo Horizonte: Fórum, 2012, Chapter 1.</p>	

Session 3 (March 7th) *Who are the strategic litigators? Governmental and non-governmental actors: State and Federal Prosecution Services, Public Defenders, Legal Clinics, NGOs and others.*

Readings:

Uppendra Baxi. The future of Human Rights. Oxford University Press, 2002, Chapter 7.

Session 4 (March 14th) *When to engage in strategic litigation? Structures of legal opportunities, resources, circumstances.*

Readings:

Marta Villarreal. El litigio estratégico como herramienta del Derecho de Interés Público. La Oficina en México del Alto Comisionado de las Naciones Unidas para los Derechos Humanos. El Litigio Estratégico en México: la aplicación de los derechos humanos a nivel práctico - Experiencias de la sociedad civil, 2007. Pp. 17-30. <
https://www.hchr.org.mx/images/doc_pub/litigioestrategico.pdf>

Session 5 (March 21st) *Where to engage in strategic litigation? Globalization, international and domestic orders.*

Readings:

Austin Sarat, Stuart Scheingold. Cause Lawyering and the State in a Global Era. Oxford Socio-legal Studies, 2001. Introduction.

Session 6 (March 28th) *How to strategically litigate? The role of the litigator.*

Readings:

Thomas M. Hilbink, You Know the Type...: Categories of Cause Lawyering, 29 Law & Soc. Inquiry 657 (2004)

Session 7 (April 4th) *Why strategic litigation? Specific and general goals.*

Readings:

César Rodríguez Garavito, Diana Rodríguez Franco. Juicio a la exclusión: El impacto de los tribunales sobre los derechos sociales en el Sur Global. 1ª ed.- Buenos Aires: Siglo Veintiuno Editores, 2015, pp. 238-245.

Siri Gloppen. Courts and Social Transformation: An Analytical Framework. In: Roberto Gargarella, Pilar Domingo, Theunis Roux. Courts and Social Transformations in New Democracies: An institutional voice for the poor? Ashgate Publishing Company, 2006, pp. 35-60.

Session 8 (April 11th) *Why not? Criticisms and reasons not to engage in strategic litigation.*

Readings:

John O. Calmore, "Social Justice Advocacy in the Third Dimension: Addressing the Problem of 'Preservation-Through-Transformation'". 16 Florida Journal of International Law 615 (2004).

PRACTICAL ISSUES

Session 9 (April 18th) *Framing & Strategizing: defining problem, solution and tactics.*

Readings (pick one and skim it):

The opportunity Agenda. Talking Human Rights in the United States. A Communications Toolkit. <<http://environmentandhumanrights.org/resources/HumanRightsToolkit.pdf>>

Richard J. Wilson , Jennifer Ramussen. Promoting Justice: A Practical Guide to Strategic Human Rights Lawyering. International Human Rights Law Group, 2001. <http://pdf.usaid.gov/pdf_docs/Pnadf477.pdf>

Public Law Project. Guide to Strategic Litigation. Public Law Strategic Support Project. <<http://www.publiclawproject.org.uk/data/resources/153/Guide-to-Strategic-Litigation.pdf>>

Session 10 (April 25th) *Client-Attorney relationship: emotions, doubts, ethics and challenges*

Readings:

Jonathan Darling. Emotions, Encounters and Expectations: The Uncertain Ethics of ‘The Field’. Journal of Human Rights Practice Vol. 6, Number 2, July 2014, pp. 201–212.

Meyer, Michelle N., The Plaintiff as Person: Cause Lawyering, Human Subject Research, and the Secret Agent Problem (December 1, 2006). Harvard Law Review, Vol. 119, pp. 1510-1531, 2006; Harvard Public Law Working Paper. Available at SSRN: <https://ssrn.com/abstract=2103775>

Session 11 (May 2nd) *Daily work: formal, less formal and informal mechanisms of access to courts*

Readings:

Juliana Cesario Alvim Gomes. Behind the Scenes: Informal private hearings between lawyers and judges in Brazil under the Inter-American Court of Human Rights’ jurisprudence. Forthcoming.

Reuters. The Echo Chamber: A small group of lawyers and its outsized influence at the U.S. Supreme Court. <<https://www.reuters.com/investigates/special-report/scotus/>>

Session 12 (May 9th) *Support actions, advocacy and long term strategies*

Readings:

Ina Zoon. Acciones de apoyo al litigio. In: El Litigio Estratégico en México: la aplicación de los derechos humanos a nivel práctico - experiencias de la sociedad civil. Oficina en México del Alto Comisionado de las Naciones Unidas para los Derechos Humanos, 2007. Pp. 33-43

Ester Rizzi, Salomão Ximenes. Litigância Estratégica para a Promoção de Políticas Públicas: As ações em defesa do direito à Educação Infantil Em São Paulo. In: Terra de Direitos. Justiça e Direitos Humanos Experiências de Assessoria Jurídica Popular. Curitiba, 2010, pp. 105-128.

Session 13 (May 16rd) *Media, social media and multiple audiences*

Readings:

Robert C. Hornik. Why Can't We Sell Human Rights Like We Sell Soap? + Coda. In: Understanding Social Action, Promoting Human Rights. Ryan Goodman, Derek Jinks, and Andrew K. Woods (eds.). Oxford University Press, 2012, pp. 47-69.

Amy Kapczynski. Why Civil Disobedience, and Why Now?, Law and Political Economy Blog. December 18, 2017. < <https://lpeblog.org/2017/12/18/why-civil-disobedience-and-why-now/>>

Session 14 (May 23th) Implementation and enforcement**Readings:**

Salvador Herencia Carrasco. Public Interest Litigation in the Inter-American Court of Human Rights: The Protection of Indigenous Peoples and the Gap between Legal Victories and Social Change (May 23, 2014). Revue Québécoise de Droit International, Hors-série: L'État de droit en Amérique Latine et au Canada (March 2015). Available at SSRN: <https://ssrn.com/abstract=2441536>

Session 15 (May 30th) Implementation and enforcement: structural litigation**Readings:**

ADPF 347. STF, Pleno, Rel. Min. Marco Aurélio. Petição Inicial. < <http://www.jota.info/wp-content/uploads/2015/05/ADPF-347.pdf>>

Kameshni Pillay. "Implementation of Grootboom: Implications for the enforcement of socio-economic rights". Law Democracy and Development, 2002. <<http://www.saflii.org/za/journals/LDD/2002/5.pdf>>

Session 16 (June 6th)

Conclusion session

CRITÉRIOS DE AVALIAÇÃO

1) Attendance (Total 2,0)

16 sessions: 2,0

14-15 sessions: 1,5

12-13 sessions: 1,0

10-11 sessions: 0,5

Less than 10: 0

2) Response paper (Total 3,0)

Critical response papers (300-500 words) should be submitted to julianacesarioalvim@gmail.com on the week of their respective class, by 11:59pm on Sunday. By February 25th, all students must sign up for 2 different classes of their choice for their response papers. Not more than 3 students can sign up for the same class. Sign up for each class will work on a first-come, first-serve basis. The sign up document is available at <https://docs.google.com/spreadsheets/d/11BANwIZrnWumdPhjArMYHlq8fAW4crV4NXXPf0k8Ov4/edit?usp=sharing>

3) Take home exam (Total 5,0)

Take home exam: June 13th.

Deadline: June 20th

In class final exam: July 4th.

All take home exams have to be submitted to julianacesarioalvim@gmail.com by 11:59pm of the day of the deadline.

For both the exam and the final exam, a penalty for failing to submit by the deadline will be applied. If the answers are submitted after 11:59 and before 0:59 (of the following day), the grade will be deducted 0,5 (out of the total of 5,0). Submission after 0:59 and before 1:59 will cause a deduction of 1 and so on.

BIBLIOGRAFIA COMPLEMENTAR

Ana Milena Coral-Díaz, Beatriz Londoño-Toro, Lina Marcela Muñoz-Ávila. El Concepto de Litigio Estratégico en América Latina: 1990-2010. Vniversitas. Bogotá (Colombia) N° 121: 49-76, julio-diciembre de 2010. < <http://www.scielo.org.co/pdf/vniv/n121/n121a03.pdf>>

João Elbio de Oliveira Aquino Sequeira. Estruturas de Oportunidade Legal dos movimentos anti-barragens no Pará. Rev. Direito e Práx., Rio de Janeiro, Vol. 08, N. 1, 2017, pp. 474-506 <<http://www.e-publicacoes.uerj.br/index.php/revistaceaju/article/view/27769>>

Joseph Otteh (ed.). Litigation for Justice. A Primer on Public Interest Litigation (PIL). Access to Justice, 2012. (on different countries experiences) < <http://accesstojustice-ng.org/Litigating%20for%20Justice.pdf>>

Juliana Cesario Alvim Gomes. Por um Constitucionalismo Difuso: Cidadãos, movimentos sociais, e o significado da Constituição. Salvador: JusPodivum, 2016.

Makau Mutua. Savages, Victims, and Saviors: The Metaphor of Human Rights. 42 Harv. Int'l L. J. 201 (2001)

Nancy Fraser. Reframing Justice in a Globalizing World. In Scales of Justice: Reimagining Political Space in a Globalizing World, New York, NY: Columbia University, 2009, pp. 12-29.

Open Society Justice Initiative. From Rights to Remedies Structures and Strategies for Implementing International Human Rights Decisions, 2013. < <https://www.opensocietyfoundations.org/sites/default/files/from-rights-to-remedies-20130708.pdf>>

Owen Fiss. "The Forms of Justice" (1979). *Faculty Scholarship Series*. 1220. http://digitalcommons.law.yale.edu/fss_papers/1220 (on structural litigation)

Ricardo Nery Falbo, Luiz Otávio Ribas. Advocacia e lutas emancipatórias: o que há de político na advocacia? Rev. Direito e Práx., Rio de Janeiro, Vol. 08, N. 1, 2017, p. 507-555. < http://www.scielo.br/scielo.php?pid=S2179-89662017000100507&script=sci_abstract&lng=pt>

Scott L. Cummings, Deborah L. Rhode. Public Interest Litigation: Insights From Theory and Practice. 36 Fordham Urb. L.J. 603 (2008). Available at: <http://ir.lawnet.fordham.edu/ulj/vol36/iss4/1>

Seyla Benhabib. "The new sovereigntism and transnational law: Legal utopianism, democratic scepticism and statist realism". 5(1) Global Constitutionalism 109 (2016) <<https://doi.org/10.1017/S2045381716000010>>