

## MODULE 14

Legal ethics regulate the conduct of persons within the legal profession. Other professional groups such as doctors will have their own codes of ethics. There are several sources for legal codes of conduct, including:

- The UN Basic Principles on the Role of Lawyers.
- The Istanbul Protocol (also touching on professions other than legal).
- The IBA International Principles of Conduct for the Legal Profession.
- National rules of ethics and codes of conduct.

The UN Basic Principles on the Role of Lawyers highlight the role of lawyers in relation to their clients. In particular they note that the role of the lawyer is to:

- Advise clients as to their legal rights and obligations, and as to the working of the legal system insofar as it is relevant to the legal rights and obligations of the clients;
- Assist clients in every appropriate way, and take legal action to protect their interests;
- Seek to uphold human rights and fundamental freedoms recognised by national and international law and act freely and diligently in accordance with the law and recognised standards and ethics of the legal profession.

The IBA International Principles note that lawyers shall exercise independence and maintain and be afforded the protection of confidentiality regarding the affairs of their clients.

### Confidentiality

Lawyers and NGOs representing clients must keep their client's information confidential and their ability to disclose the client's information is therefore limited. In instances where the lawyer represents a victim of human rights violations, confidentiality and security of the information is paramount (see also *Module 16: Security*). Lawyers and NGOs representing clients must keep the information securely, to avoid any potential hacking or security breaches that would compromise the security of the victim.

### Consent

In cases of public interest litigation, it is important to:

- obtain the consent of the client not only relating to the legal representation but also the consent to share some details of the case for advocacy purposes, and
- make sure the client understands what sharing the case with the public and using it for advocacy means.

### Client's interest

Lawyers and NGOs must treat each client fairly and act in the client's best interests. They should ensure that any advice given is understood (including by avoiding the use of legal jargon) and ensure that the client is able to make an informed decision based on the information and advice given by the lawyer. Acting in the client's best interest means that the lawyer or NGO must avoid 'conflicts of interest' – where there is potential conflict between (a) the interests of the client, and (b) the interests of another client or of the lawyer's own organisation.

### Do no harm

Lawyers and NGOs should ensure that their client is not harmed or retraumatised during the legal proceedings or the search for justice. If the client decides not to proceed with the case or expresses a desire to withdraw the case, the client's wishes must be respected, as they are paramount.

### Competent representation

Lawyers and NGOs must have the necessary expertise to represent the client. Lawyers must also have the necessary qualifications. Representation of victims of torture requires additional skills and responsibilities. As lawyers and NGOs conducting public interest litigation cases, the responsibilities usually extend beyond the court room. They must adopt a holistic approach in their work, consider the wellbeing of their client and put them at the centre:

- *Gather or document evidence.* Lawyers and NGOs are responsible for collecting evidence of torture that may prompt authorities to open or reopen investigations that can lead to **criminal prosecution** of the perpetrators. Lawyers and NGOs often assist the authorities in the investigation or prosecution of torture at the national, regional, or international levels (this includes providing all medical and psychological certificates that demonstrate the harm done to the client; providing information about witnesses; and preparing the clients for interviews to ensure that their account is clear and persuasive). In addition to potential criminal prosecution, a lawyer/NGO should collect evidence for **civil litigation** (this includes quantification of damages and evidence to demonstrate loss of earnings, amongst others). Further, lawyers and NGOs must work with **other professionals** to obtain evidence (medical profession, psycho-social workers, etc.). One of the types of evidence most commonly used in cases of torture and other human rights violations is legal, medical or psychosocial reports. This will mean working with medical professionals to ensure that medico-legal reports include all the necessary details, and that the victim is not retraumatised by being interviewed independently by several different professionals. Gathering evidence relating to patterns of torture in the country and failures of the State to fulfil its obligations according to the UN Convention against Torture (UNCAT) is also key to documenting regional and international cases brought against the State.
- *Advocate for the client both in their legal case and beyond it.* Legal professionals and NGOs not only advocate for their clients. They also play a vital role in persuading governments to comply with their international obligations, including on the absolute

prohibition of torture, the investigation and prosecution of this crime and the provision of reparations to the victims. In addition to advocacy to the government, lawyers taking on public interest litigation cases advocate on behalf of their clients at international and regional forums, including for example the United Nations, the African Commission, or the Inter-American human rights system (see *Module 7: Advocacy*).

- *Design a legal strategy.* Lawyers and NGOs must review the evidence available and assess whether the client can cooperate in the legal process, which can go on for several years before an outcome is obtained. Lawyers and NGOs must also design a legal strategy which covers the whole case, from the beginning (*i.e.* filing) through to the successful outcome and implementation (see *Module 1: Elements and Definitions of Holistic Strategic Litigation Against Torture*). This can take many years and the costs of such lengthy proceedings should be factored in. Sources of funding to support such costs should be identified at an early stage. As a result of the torture they have suffered, victims of torture may have complex legal needs and require more support than other clients; they may need assistance in order to participate effectively in the legal process (whether a prosecution or a civil claim) and may also need legal support for asylum claims, family reunion, prevention of deportation, accessing protective measures, and responding to continued detention, amongst others. Several lawyers with expertise in different areas might need to assist in relation to more than one case.
- *Referral services.* Victims of torture and other human rights violations may have ongoing medical and psychosocial issues. The representation of clients by lawyers and NGOs is mainly focused on the legal aspect of the case. However, lawyers and NGOs need to have referral services in place to help clients in need of medical, psychosocial, housing, employment, and other services if possible, as such issues are likely to arise.
- *Deadlines and files.* Lawyers have a professional obligation to represent their clients competently, which includes ensuring that they meet deadlines and that they look after any documents which are provided to them. The same ethical obligation applies to NGOs undertaking representation. This requires lawyers and NGOs working on torture cases to have in place effective systems for case management and document management.

### Accompaniment

Because of the inherent vulnerability of clients who are torture survivors, those representing them have an enhanced responsibility to journey alongside them throughout the legal process in which they are engaged, in order to provide holistic support. This includes being available to respond to a variety of needs (as discussed above), providing a safe space for the survivor, and contributing to the re-humanisation of someone who has suffered an experience which is profoundly de-humanising.

Survivors of torture are not a uniform group. It is essential to understand the unique needs of survivors and pay special attention to the following specific groups of victims of torture who could be in a specific situation of vulnerability:

- *Women.* Assistance should involve the consideration of medical, psychological, legal, social, economic and cultural issues related to sexual and gender-based violence as a form of torture and tied to shame and stigma (see *Module 4: SGBV as Torture*).

- *Unaccompanied children and young people.* Assistance might involve social care, educational support, advocacy and prevention, and individual or group therapy (see *Practice Note on Psychological Aspects of Working with Child Victims of Trauma*).
- *Families.* Assistance might involve the consideration of economic needs and social care/integration.
- *Persons with disabilities.* Assistance may require particular attention to the delivery of different forms of rehabilitation.
- *Ethnic Minorities.* Assistance could require consideration of equality of access to services and the ability to voice concerns with the majority population.
- *LGBT+.* Representing LGBTI+ survivors might require specialist assistance with respect to mental and physical wellbeing, which takes into account the needs of those targeted on the basis of gender identity or sexual orientation.

### Ethical issues relating to cases against torture

*Victim perpetrators.* Lawyers may be asked to assist a victim of torture, who is also a perpetrator:

- *Accepting the client.* It is permissible to reject a potential client. This assessment should be done in light of all of the circumstances of the case. Care should be taken not to reject a client for discriminatory reasons (such as on the basis of their race, gender, sexual orientation, religion, or age).
- *Assessing conflicting rights.* Taking on a client who is also a perpetrator of torture may impede their victims from accessing justice, or mean that you assist a person potentially still carrying out acts of torture. There would also be a potential conflict of interest if the lawyer/NGO was also representing the victims of that perpetrator.

*Risks for the Victim.* Lawyers and NGOs need to be aware of the risks for the victim. Such risks may include security concerns in the event that the client brings a case, whether to the client or to their family. If assistance is denied the violations affecting them may continue, although this consideration should be weighed against the lawyer/NGO's capacity to take on more cases.

*Client versus Cause.* In cases being pursued which have a strategic element, where it is hoped that the case will have an impact on the cause and not just on the client, it is important for lawyers and NGOs to ensure that they are always acting in the client's best interest.

*Settlement.* Sometimes, the client's opponent(s) in legal proceedings may try to "settle" the case, without completing the legal process. Often this can be accompanied by strict conditions on the settlement, such as confidentiality, which prevent the terms of the settlement being publicised. Whilst such a settlement may impede the ability of the lawyer or NGO to make full use of the non-legal tools beyond the litigation process, it may be in the best interests of the client (for example, it may take into account the risks of not succeeding in the legal proceedings). Therefore, any offers of settlement need to be discussed in detail with the client and the client should be offered objective advice (see *Module 6: Negotiation and Settlements*).