



## **Collective Actions for Protecting and Advancing Reproductive Rights in Tanzania (CAPART Project)**

**Increase CAMMAC members and Allies' ability to use strategic litigation as a complementary advocacy component to set progressive legal standards for access to safe abortion within the existing legal framework.**

### **Strategic Litigation Skills Building Workshop**

**13<sup>rd</sup> - & 14<sup>th</sup> May 2022 | Bagamoyo, Tanzania | Millenium Sea Breeze Hotel**

#### **Introduction:-**

This was a Two days skills building workshop to Reproductive Rights Defenders (RRDs) on Strategic Litigation attended by 14 RRDs from CAMMAC, lawyers from LSN and TLS, journalists, health service providers from public and private sector, and activists from CSOs. This workshop facilitated by Mr. Martin Onyango from CRR, Mr. Nondo Ejano & Wango Nyagwegwe from WGNRRR AFRICA.

#### **MEETING FLOW.**

##### **Session 1: Welcome and Opening**

This session facilitated by Mr. Wango from WGNRR AFRICA and he started by introducing the participants by grouping them into two people and everyone introduced his/her partner by his/her name, organization, title and what is he/he expect from this 2 days workshop. After an introduction Mr. Wango welcomed Mr Nondo a WGNRR Africa Regional Director for a word of opening remark and Mr. Nondo welcome all the participants in this two days Workshop of skills building on strategic litigation , and he emphasize that at the end of this workshop he expect that we will build a strong allies of different expertise to collaborate in a Strategic Litigation Case.

##### **Session 2: Workshop program outline, goal and objectives (conducted by Wango)**

During this session Mr. Wango introduced facilitators for these two days and also shared in brief about the last of consultative meeting of February 2022 and some of the participants were the same attended a consultative meeting. He explained to the participants the goal and objectives of the workshop as follows;

##### **Goal of the Workshop**

To build a common understanding of strategic litigation and foster collaboration around an abortion case.

##### **Objectives of the Workshop:**

The objective of this workshop was as follows;

- To equip the Reproductive Human Rights Defenders ( RRDs) with skills to effectively engage in Strategic Litigation around an abortion case.

- To enhance the capacity of Reproductive Rights Defenders (RRDs) to assess the viability and feasibility of Strategic Litigation around abortion case in the Tanzanian Context.
- To increase participants' understanding of strategic litigation as a legal mean to tackle injustices that have not been adequately addressed in law or policies via taking carefully-selected cases to the court.

### **Session 3. Contextualizing abortion in the Human Rights Framework.**

This session facilitated by Mr. Nondo from WGNRR Africa looked at how international, regional and national laws guarantee women's right to access abortion and post abortion services. In the presentation he highlighted that statistics shows that the maternal mortality rate in Tanzania stands at 556 per 100,000, this number translate to a rate of 36 abortions per 1000 women aged 15-49. In Tanzania, Unsafe abortion is the third leading cause of maternal mortality, 19% of maternal deaths in Tanzania are due to complications from unsafe abortion., and this infringe a number of rights guaranteed in international, regional and nation laws, including the right to life, (include other rights related to access to safe abortion here) for women. Tanzania has laws and has signed various human rights instruments whereby these instruments state that all human being shall enjoy and realize their rights, so for not considering this context of abortion as a human rights infringing women rights. Some of the people failed to understand why are we saying that access to abortion is a Human Rights, In this session a facilitator tried to show the participants on how access to safe abortion can be framed in a broad Human Rights framework by taking the participants into global development of abortion rights, then Regional level on how Africans tried to look at abortion as a Human Rights and finalizing by looking at laws in Tanzania relating to abortion rights. The aim of this session was to get understanding of International, regional and national Human Rights standards that support access to safe abortion as a Human Rights, this is an area where women all over the worlds need this service and that's why we term access to safe abortion as a gender issue. All women deserve to get this service regardless their age, status etc because they are all equal to get this inherent right which include right to life, right to health, rights to equality, right to dignity. All these rights helps to establish Reproductive rights of women which has been recognized by different International Instruments (Treaty, protocol and convention), and by recognizing these rights all governments who agreed and signed these international instruments every state have obligation to fulfil these rights. And because these rights goes together with provision of Safe abortion and cPAC, So all Governments which signed and ratify any treaty, protocol or convention a state position it self to recognize abortion as a Human Rights so by criminalizing of abortion infringe the HRs.

Facilitator cited an example of the case from Peru which CEDAW Committee decided that Peru violated CEDAW CONVENTION, in this case there was a pregnant woman who has a fetus who had been recognized that it has a problem in the brain and it can't survive after birth, she requested for abortion but they denied.

However facilitator went further to Tanzanian laws criminalize abortion but there is a section which allows abortion only in a circumstances where it is performed to serve the life of the woman, we still have a gap because if we have a guarantee that abortion should be performed to serve the life of the woman in that aspect we should think how can it be accessed. How are we going harmonize these contradictions in these laws in favour of

access to safe abortion because contradictions of the language can be a barrier to access to safe abortion

**Session 4. Strategic Litigation; Framing a case around the denial/delay of access to safe abortion/post abortion care;** This session facilitated by Mr. Martin Onyango from CRR and he started the session by stating that the moment you try attack the unconstitutionality of the PC in any African Country you should make sure that you combine together with regional fundamental abortion rights you must tell the court what are the feasible alternative . The factual issue that you raise before the court is that there is a problem in relying on the provision of the Penal Code to blanket charge anyone and everyone involved in an incident around abortion with a crime of abortion while the penal code talks about unlawfully so the question is what is suppose to be lawfully must be found in several circumstances, facilitator cemented that with his experience any case related to abortion the target is service provider, and because they are not lawyers can't defend and find themselves into trouble. Denying access to safe abortion to any pregnant woman whose decision is to terminate the pregnancy with professional opinion of the doctor is an infringement of Human rights and it can cause physical, mental, emotional health.

He cited an Example of Malawi's case that in Malawi it was difficult to seek abortion care even for survivor of sexual violence even if they don't want to keep the pregnancy they are actually advised otherwise and what the law enforcers do is that a child/girl suppose to identify the perpetrator/defiler to the police and failure to do so a child is the one who is detained until she identify who impregnated her. And once she identify the perpetrator he is arrested and charged with defilement and suppose to provide maintenance for the child. So initially In 2018 CRR together with a team in Malawi try and push together the case that will push the court to get a harmonize interpretation to;

- i. Access to safe abortion in Malawi
- ii. Who can access safe abortion service in Malawi
- iii. When can she access safe abortion
- iv. Who can provide safe abortion care.

However in Malawi case the target was very specific but CRR in collaboration with the team in Malawi started with lowest entry point survivor of sexual violence are protected in all Royal Countries but In most of the African countries people are struggling with teen pregnancy children who are getting pregnancy but the question is how do they get pregnancy? Sex with their peers or defilement, so either SOSPA or Penal Code are codified divided almost tricking in many countries, the product of that defilement when it is accepted the survivors have no clear access to remedy and one of the remedy is termination of pregnancy so in this case they move the court with the conversation by seeking the remedy of termination of pregnancy, from 2018 they started conversation with police and Government stakeholders started by discussing "What is the problem", What does the laws say"?, and "what are the possible solutions"/options? Top of the option was wether the court can interprete how do they protect survivors of sexual violence to access abortion in the legal framework in Malawi so that we can find a broad interpretation of right to life, right to health and allow remedy to survivors of sexual violence. So CRR and team in Malawi identified a potential survivor who can be a part to the case. So for Tanzania we can learn from this scenario to frame a strategic litigation case.

**Session 5: Strategic Litigation: Filing a law suit for democratic debate.** This session facilitated by Mr. Martin Onyango and he stated that in the public interest case if you want a court to redress any Human rights violation the following should be considered;

- i. Right to fair trial; in this context during the case all the necessary court procedures should be followed.
- ii. Right to fair hearing; this means all fair procedure of the court should be filled including right to be heard and to provide any witness or evidence on your case.

In Strategic Litigation we are talking about the problem that affecting the population and identify the segment of the population and for which the solution relies on changing laws, policy and administrative action to resolve that problem and you make an assessment that going to court will help you to resolve that part of the problem. So you identify nature of the violation, analyze the shortcoming in the legal and policy framework, provide analysis shows that violate HRs and then build evidence that can be used before a court of law and in the HRs institution then identify the opportunities for litigation. You can decide to do national, regional or international litigation.

**Session 6: Building evidence for strategic litigation: evidence collection, documentation and reporting.** This session facilitated by Mr. Martin Onyango emphasize that in SL you can win if you have prepared enough that is why you need to collect more evidence for your problem. Although in a SL not all the time you can win but for the successful litigation you should prepare to plan what do you want to achieve or what do you want to happen and you need to highlight an issue, to clarify a certain points and may be you need a good decision.

However, to build evidence there is a need to consider five things which include;

- i. Build consensus of the problem; here you need to ask yourself what problem do you want to solve/you need solution for our Strategic Litigation.
- ii. Evidence of the problem
- iii. Relevant research of the problem
- iv. What are the expert opinion of the problem
- v. What is the Face of the problem.

Once you have done with all those above then the issue of evidence collection, documentation and reporting will be complete. As we are in an agreement that we need to continue with SRHR advocacy on access to safe abortion but we need to narrow down and advocacy tool to add which is Strategic Litigation, in that concurrence we are going to the next question which we should ask ourselves what is the problem so that start looking to move towards strategic litigation, what do we see as some of the problem in access to safe abortion or what causing unsafe abortion. On our context the main problem which we are going to address is reducing Maternal Mortality that arising from unsafe abortion, that we prevent preventable deaths among our population and one of the causes of preventable death is unsafe abortion.

Moreover we need collect more evidence to avoid challenge of a narrative by pro choice movements. We need to be aware of various research and data from various current data eg DHS data, when your presenting evidence make sure you put all relevant materials .

**Session 7: Reflection on the possible cases.**

This session focused more on all what we have discussed and learn over the all 2 days then before we develop a strategic case we should task ourselves like identifying who is going to lead. And facilitator finalize that we should ask ourselves that “who became the face of the case” that if you have done all the efforts needed for example , analysing a problem then ,collecting evidence to be brought to court then we will be in a good position to this joint effort.

### **Discussion:-**

- ✓ During the discussion one participants raised a concern and develop 3 asks before we start the implementation of Strategic Litigation plan we should ask ourselves on what do we want so that we can rely on the need on either of the following;
  - i. Asking for the Revision of contradicting abortion laws?
  - ii. Asking for the interpretation of the specific sections(provision) of the Penal Code.
  - iii. Amendment of Laws which contain provisions relating to abortion.
    - o Adv. Mecktrida suggested that if we want to advocate for the domestication of Maputo protocol it will take our time so it's better we move by seeking for the interpretation of relevant Sections from the current Penal Code. RE 2019.

All Participants agreed on the approach no. 2 as suggested by Adv. Mektrida of framing a Strategic Litigation case to seek for the interpretation of sections relating to abortion in the Penal Code.
  
- ✓ One of the CAMMAC Member (Mr. Meshack ) suggested that a representative of WGNRR should brief the CAMMAC members during the CAMMAC QUARTER REVIEW MEETING about this advocacy initiative of Strategic Litigation so that if anyone is interested in supporting can join efforts technically or financially.
  
- ✓ Also during the meeting there was a debate arose from Adv. Jebra he stated that basing on the Constitution specifically Article 14 which provide for “**Right to life**” so he asked that can't we see that abortion can infringe the right to life to a fetus? So from this question an issue of when does the life start arose Adv. Mecktrida respond on legal basis she analyzed section 204 of the Penal Code CAP 16 with a short title of “ when child deemed to be a person” which state that “***A child becomes a person capable of being killed when it has completely proceeded in a living state from the body of it's mother, whether it has breathed or not and whether it has an independent circulation or not and whether the navelstring is severed or not***”.
- So according to this section a fetus become a human being when it's capable of being born and Flora Mwangusa a Service provider she stated that on the medical perspective and scientific right to life start from the **Conception**. And Adv. Victor cemented that our laws, guidelines and policies are slightly allow abortion in some circumstances through it's provisions/sections so it's a time now to harmonize our laws through Strategic Litigation and we can file a case to ask for the interpretation of some of the provisions in the penal code CAP 16 which

are related with Abortion so that we can use them as a defense mechanism. For example our constitution is silent about right to Health but it provide for the right to Life and Section 230 of the Penal Code state that ***“A person is not criminally responsible for performing, in good faith and with reasonable care and skill, a surgical operation upon any person for his benefit or upon an unborn child for the preservation of the mother’s life if the performance of the operation is reasonable, having regard to the patient ‘s state at the time and all the circumstances of the case”***. So basing on this section some women are dying due to the negligence & stigma o of the service providers on abortion and Adv. Mecktrida gave an example of her relative who had a problem and she was suppose to undergo surgical abortion to save her life and health as well but service providers delayed to perform surgical abortion and she suffered a lot although later on she succeed to get abortion service to rescue her life, therefore there is also a need to frame a case basing on denial right to safe abortion for those who are seeking this service to save Woman’s life.

- ✓ Also another discussion arosed from Greysmo Mutashobya about seeking to the court the clarification of the **terminologies on section 230** of the penal Code which need more interpretation Forexample; **“Good Faith”**, **“Reasonable care and skills”** and **“Preservation of Mothers Life”** etc these terminologies need more clarity so that a lay person can understand at what time the court could considere that a surgical abortion has been perfomed in good faith , reasonable care and skills

### **Lesson learned**

- In order to achieve our Goal on strategic litigation we should also learn from the countries which allows abortion but with the same system, for example under the current constitutional arrangement Tanzania is a dualist state, meaning for international treaties to acquire the force of law or become legally enforceable in a court of law, mere ratification of the treat in question not enough and this would be enough if Tanzania was a Monist state.so we should learn from the dualist countries who succeed on abortion rights.
- In order to have a successful Strategic Litigation case we should include different experts from Legal, Health, Social, Journalists and non experts like Survivors of unsafe abortion to balance an evidence to be proved beyond reasonable doubt.
- In order to have successful Strategic Litigation case we need to gather more evidence, research and other related reports to bring to the court.
- For a vibrant Strategic Litigation to be more powerful we need to include various people with interest on our agenda and avoid people or experts who are opponent.
- If you want to win a strategic litigation you need to do more preparations forexample collecting evidence, analyzing partners to collaborate with different expertise.

### **AGREEMENT (WAY FORWARD).**

During the last day all participants agreed on the following;

- ✓ Esther Shedafa from Marie Stopes Tanzania Suggested that we should establish a task force of all participants who have been attended both consultative meeting and Strategic Litigation Workshop in Bagamoyo, and WGNRR Africa should create a WhatsApp group of the Task Force as a platform for the update and feedback on the

progress of the planned Strategic Litigation and all people agreed on this suggestion.

- ✓ We should plan for either Virtual or Physical meetings if resources would be available so that the task force could discuss more and planning on how to go with Strategic Litigation Case, and during this meeting the task force should make sure that they prepare necessary documents, evidences which could assist our Strategic Litigation to be successful.

### **CLOSING REMARKS.**

WGNRR Africa Regional Director closed the workshop by a word of thank to all participants for their time and he emphasized that this is just a beginning but through collective efforts we can reach our goal of having a successful strategic litigation and the group will be formed for more update and further actions for successful Strategic litigation.





## **LIST OF ABBREVIATIONS**

1. AGOTA

## **LIST OF PARTICIPANTS.**

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