

Block 3 | Causes of action and legal remedies: regional and international

Introduction to regional/international litigation: as mentioned in the last video, some claims can be raised before international or regional courts when they involve an infringement or violation of international law. International law will only be engaged, however, in circumstances where a country or government has failed to protect or violated your rights.

- When applying this to the context where a journalist has been harassed online, there will only be two angles in which you could pursue a claim at international/regional level. First, where you have been harassed or abused by a **government body/official**. If such harassment/abuse violates the rights or obligations recognised under relevant international law, then it may be possible to take a case under international law against your government. Second, you could pursue a claim against your government before an international/regional court when they have **failed to protect you against certain violations of your rights by private individuals**. As mentioned in the last video, to raise such cases before international/regional courts you generally must first raise the matter before your domestic courts (i.e. take a domestic case against the government/private individual for the harassment).
- In relation to online harassment, there are a number of potential rights under international law upon which a case for violation of rights can be pursued.
 - **Right to Privacy** - Article 17 ICCPR and Article 8 ECHR (two examples) - Historically, this right has been described as the "right to be left alone." This right usually protects an individual's personal life from unjustified intrusions. Article 17 ICCPR, for example, defines this right as follows "1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. 2. Everyone has the right to the protection of the law against such interference or attacks." This right is aimed at protecting the physical and psychological integrity of the individual. This can include protecting the individual against the disclosure of private information, as well as against particularly serious and unwarranted attacks on an individual that could result in physical or psychological harm. It is, therefore, the right that is most likely to be engaged in cases of online harassment or abuse. Under Article 17(2) ICCPR, there is an explicit obligation on countries that have signed up to it to protect such a right in law. This

means that if a country's legal system fails to protect an individual, whether a journalist or otherwise, against online harassment or abuse that violates this right then they could be brought before an international or regional court for breaching their international obligations.

- **Right to freedom of opinion and expression** - Article 19 ICCPR and Article 10 ECHR - harassment and abuse against a journalist could amount to an infringement of their right to freedom of opinion or expression. Online harassment and abuse are often intended, and has the effect of, silencing, censoring or inhibiting a journalist from freely expressing themselves. Under international law, states are obliged to protect the right to freedom of expression against attack, including by private individuals. This obligation also requires the creation of “an enabling environment by allowing for everyone to take part in public debate and express their thoughts and opinions free from fear even if such thoughts and opinions are contrary to those held by official authorities or a significant segment of the public and even if such opinions shock or disturb the public.” Although the online harassment or abuse of a journalist interferes with their right to freedom of expression, free speech claims are rarely used as a means to challenge such attacks. Governments are required, under international law, to provide journalists with the means to challenge and remedy violations of their free speech rights. There are other closely associated rights, such as the right to freedom of thought, conscience, religion and political participation, that might be similarly engaged by online abuse and harassment of journalists.
- These rights are all qualified. That means, in cases where the state has failed to protect these rights against individuals who have abused or harassed journalists online, it may be possible for the state to justify this failure. This usually involves a balancing of the violation against certain interests put forward by the state (such as national security, rights of others, etc.)
 - **Right to freedom from inhuman or degrading treatment** - Article 7 ICCPR and Article 3 ECHR - This right is most closely associated with the protection of an individual against physical torture by the state. However, an individual does not have to sustain a physical injury for them to be a victim of inhuman or degrading treatment. For this right to be engaged, harassment of an individual has to result in sufficiently serious and severe feelings of fear and helplessness. The level of severity is usually assessed with reference to the nature and sex, age and state of health of the victim. Treatment will be ‘inhuman’ when it is applied for hours at a stretch and

caused either actual bodily injury or intense physical and mental suffering; whilst treatment is 'degrading' when it was such as to arouse in its victims' feelings of fear, anguish and inferiority capable of humiliating and debasing them. It is a state's responsibility to adopt measures to ensure individuals are not subject to this kind of treatment, even by private individuals who are threatening and abusing the victim.

- This is an absolute right. Therefore, if the state has failed to protect you against interferences with this right, it is not possible for them to justify such behaviour under international law.
 - **Right to an effective remedy** - Article 2 ICCPR and Article 13 ECHR - Everyone has the right to an effective remedy by competent national authorities for acts violating their fundamental rights. In short, this provides individuals with the right to take action when their rights have been breached. It is the state's responsibility to ensure that individuals whose rights have been violated can raise a complaint, their complaint can be decided on and relief can be provided to the person filing the complaint. If a journalist operates within a legal system where they have no recourse to the justice system for human rights violations caused by their online abuse or harassment, this will raise the possibility of a violation of their right to an effective remedy.
- **How do I know if my case is a rights issue?** - Identifying whether your human rights have been violated can be more difficult than you might think. This is why it is important for you to access legal support or help (as set out in video 6) before you try to pursue a legal claim following online harassment or abuse.
- For there to be an interference with a right, you have to demonstrate that your exercise of that right has been harmed or impacted in some way. For example, to assess whether online harassment or abuse has violated your right to privacy, you would need to demonstrate a negative impact on your private/personal life, intrusion upon your personal sphere, an attack on your reputation or dignity, or that information has been collected or disclosed about you that you had a legitimate expectation of privacy over. To determine whether there has been an interference with your right to freedom of expression, it would be necessary to show the impact the harassment/abuse has had on your ability to write or otherwise perform your journalistic role. Some courts may require you to show a certain level of severity of harm before pursuing a legal complaint.
- When it comes to **collecting evidence**, there are a number of things to keep in mind:

- Document all examples of harassment/abuse you have sustained - both online and offline - this will include messages you have received through different channels (social media, post, etc). If you are physically being harassed, and are unable to take a direct record of it, note down the time, place and facts of the harassment;
- Remember to document examples even when the messages are not sent directly to you, e.g. where statements have been made online via forums etc. that are about you. Try to act quickly, as it can be considerably harder to document online messages after they have been removed by online intermediaries;
- You should try to collect medical evidence of the impact the harassment/abuse has had on you mentally and physically;
- You should try to document the impact it has had on your work, for example have you stopped working for a period of time, stopped using certain social media or other platforms to carry out your reporting, have you stopped covering/pursuing certain stories or issues, and has it impacted your ability to work with others (e.g. sources) on certain stories/issues - this can all be relevant to a free speech claim;
- Since international law will be primarily concerned with how your government/country has responded to the relevant abuse/harassment, you need to make sure you collect all information and documentation related to the claims you have raised officially with the state - e.g. police complaints you have filed, cases you have filed with judicial bodies and other state authorities, responses you have received from state officials, decisions that have been reached by all official bodies/courts. This will all be relevant to the assessment of whether the state violated your rights by failing to protect you against or redress violations caused by online harassment/abuse by private individuals.

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