



Children's Rights: A Guide to Strategic Litigation



Acknowledgement

Children's Rights: A Guide to Strategic Litigation was written by Patrick Geary, Legal Coordinator for the Child Rights Information Network (CRIN), with the support of Simpson Thacher & Bartlett LLP. We welcome comments, suggestions, feedback or links to further resources; contact us at: The Child Rights Information Network, 2 Pontypool Place, East Studio, London SE1 8QF, United Kingdom. Tel: +44 20 7401 2257. Email: info@crin.org; Web: www.crin.org.

**Published by
Child Rights Information Network (CRIN)
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First published 2008.

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Children’s Rights: **A Guide to Strategic Litigation**

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Introduction

This guide has been produced to help those working toward the advancement of children's rights to understand what strategic litigation is, and to consider using the law in the courtroom as an option for effective advocacy. The guide is aimed at legal and non legal NGO staff and can be adapted to local settings and procedures.

The report is available online in eight different sections. Each contains links to relevant information, case law, and reports. Please note that these will be updated on a regular basis. Below is a brief summary and link to each section on the website.

Chapter Summaries

1: WHAT is strategic litigation?

Strategic litigation is much more than simply stating your case before a judge. This section introduces some of the broader goals of strategic litigation, as well as some of the more important considerations that should be addressed before entering the courtroom.

Go to: <http://www.crin.org/resources/infoDetail.asp?ID=17127&flag=report>

2. WHEN would you bring strategic litigation?

As with many other decisions, timing can be a critical element to success in strategic litigation. This section looks at when it would make sense to bring a case, what factors influence this decision, when you can expect to get results, and what sort of time line you might operate on.

Go to: <http://www.crin.org/resources/infoDetail.asp?ID=17139>

3. WHO can bring strategic litigation?

Not just anyone can bring a case to the courts. In strategic litigation, as in all kinds of lawsuits, determining who the players are is key. This section will help you identify who will file the lawsuit, who they will sue, and whether or how people or organizations not named as parties in the lawsuit can intervene or otherwise get involved.

Go to: <http://www.crin.org/resources/infoDetail.asp?ID=17144>

4. WHERE would you bring strategic litigation?

Filing your lawsuit may not be as simple as going down to the local courthouse. When it comes to strategic litigation, choosing where to file your case has a huge bearing on both your chances of success and the eventual results you achieve. As you do your research, you may be surprised at how many options you have. This section will give you guidance on where exactly you can file your case, and from those options, where it makes the most sense to file.

Go to: <http://www.crin.org/resources/infoDetail.asp?ID=17145>

5. HOW would you bring strategic litigation?

Bringing strategic litigation can be a lengthy, complicated process, and there will be many decisions to make along the way. This section will help you figure out how you find, select, and pay for a lawyer, how you and your lawyer will prove and support your case, and - once the case is over - how you will follow up on the result.

Go to: <http://www.crin.org/resources/infoDetail.asp?ID=17146>

6. WHY should you consider bringing strategic litigation?

Strategic litigation is a creative and powerful means of advocacy, but it may not always be the best or most appropriate option. Bringing strategic litigation can undoubtedly be an exciting adventure in and of itself, but you should think through things thoroughly before you pursue it. This last section will address what strategic litigation can do for your cause, what difficulties you are likely to encounter, and whether there would be other ways to achieve the same result.

Go to: <http://www.crin.org/resources/infoDetail.asp?ID=17135>

Part I: WHAT is strategic litigation?

Summary:

Strategic litigation is much more than simply stating your case before a judge. This section introduces some of the broader goals of strategic litigation, as well as some of the more important considerations that should be addressed before entering the courtroom.

1. Goals. Strategic litigation, sometimes also called impact litigation, involves selecting and bringing a case to the courtroom with the goal of creating broader changes in society. People who bring strategic litigation want to use the law to leave a lasting mark beyond just winning the matter at hand. This means that strategic litigation cases are as much concerned with the effects that they will have on larger populations and governments as they are with the end result of the cases themselves.

Advocacy. Through filing lawsuits, advocates for social justice can use the courts to bring about legal and social change. This is often a part of an overall advocacy campaign designed to raise awareness on a particular issue or promote the rights of a disadvantaged population. Many groups or individuals who bring strategic litigation also seek to convince others to join their cause, or to influence the government to change its laws.

Results. When it is successfully used, strategic litigation can bring groundbreaking results. It can spring a government into action to provide basic care for its citizens, guarantee the equal rights of minorities, or halt an environmentally damaging activity. There are no set limits as to what strategic litigation can accomplish.

Strategic litigation vs. Legal services. It is, however, important to note that strategic litigation is very different from many more traditional ideas of legal services. Traditional legal service organizations offer valuable services to individual clients and work diligently to represent and advise those clients in whatever matters they may bring through the door. But because traditional legal services are client-centered and limited by the resources of the providing organization, there is often no opportunity to look at cases in the bigger picture. Strategic litigation, on the other hand, is focused on changing policies and broader patterns of behavior. Because of this, strategic litigation is not designed to provide the best services to the largest number of people possible as traditional legal services would.

2. Considerations. Before you bring or help someone else bring strategic litigation, there are many things you should consider. You will need to look at what the legal issues are, what your goals are, who can bring the case, when you can bring the case, where you will bring the case, and how you will see the case through. These issues are discussed in more detail below.

Strategic Litigation and Children. Seeing your rights enforced in the justice system is truly empowering, and strategic litigation can be an exciting and rewarding journey for children. However, it can also be a long, involved and even painful process, and it may prove difficult for children to be taken seriously in court. If you are thinking about bringing a case on behalf of or otherwise involving children, you should thoroughly consider the likely impact this will have on the judicial process and, perhaps more importantly, the ways in which it might affect those children's lives. Many particular concerns are addressed throughout this guide, although these are by no means the only challenges you may face in bringing strategic litigation to advance or enforce children's rights.

Part II: WHEN would you bring strategic litigation?

Summary:

As with many other decisions, timing can be a critical element to success in strategic litigation. This section looks at when it would make sense to bring a case, what factors influence this decision, when you can expect to get results, and what sort of time line you might operate on.

1. When does it make sense to bring strategic litigation?

Examining your options. Not all cases make sense to file as strategic litigation, and it may not always be necessary to file a case to reach your goal or further your cause. In general, litigation can be a costly and time-consuming process. In some instances, it may make sense to reserve filing lawsuits only for people or governments who have been resistant to all other forms of change. There are many factors you might consider in making the decision whether or not to bring a case:

- Is there a legal issue involved that exemplifies or relates to a broader social or societal problem?
- Would a court decision be able to address that problem? Would the court decision have a widespread effect?
- Are your cause and the key issue in the case easy to understand for the media and the general public? How great is the potential for media coverage?
- Are other methods of accomplishing your goals possible? If so, how effective would they be compared with a strategic litigation approach?
- Are the courts in the jurisdiction you would file the case in independent from the other branches of government, well-regarded, and receptive or sympathetic to both your cause and strategic litigation in general?

Assessing your case. Because litigation can be so resource-intensive, it is wise to assess and investigate your case and the claims you wish to bring before filing a lawsuit. You should thoroughly examine the facts, the evidence, the claims themselves, and the jurisdiction in which you are planning to bring the claim. You could ask yourself:

- What are the relevant laws to your claims? Are they generally enforced? How clear are the laws? How clearly are they written? How clearly are they interpreted? How clearly are they applied?
 - ⇒ Note that clear laws are generally easier to work with and bring claims under, whereas unclear laws offer a greater chance to create new and groundbreaking precedent, but at a higher risk.
- How strong are the legal claims? How will they be regarded by the courts and legal system? How popular will they be in the local, state, and national community?
- How likely are you to receive a favorable decision from the courts?
- Would the court be able and likely to provide for any more innovative or non-traditional remedies in your case?

In some jurisdictions, courts may be able to order that the person, government, or organization being sued not only stop from causing further harm, but actively work to remedy the damage they have caused and prevent such things from happening in the future. These bodies may be required to devise and put into place new systems and mechanisms to protect rights, provide care, or prevent abuses.

- Would there be any backlash or other political reactions or repercussions if your claims in court were successful? If they were unsuccessful?
- Is the theory behind your case clear, simple, and easy to understand? If you were successful, is the remedy that you are requesting clear, simple, and easy to implement?
- Is there another group or organization that might be better able to handle the case?

Examples:

1. **India:** *M.C. Mehta v. State of Tamil Nadu and Others*. In this case, Indian activist plaintiff M.C. Mehta sued the state of Tamil Nadu to improve the working conditions for children and to provide children rescued from hazardous labor with an education. Full details: <http://www.crin.org/Law/instrument.asp?InstID=1264>

2. **Paraguay:** *Niños en conflicto con la ley: Instituto de Reeducación del Menor vs. Paraguay*. In a case surrounding an overpopulated juvenile detention center in Paraguay,

the Inter-American Court of Human Rights established minimum standards of care for young people in conflict with the law held in state custody.

Full details: <http://www.crin.org/Law/instrument.asp?InstID=1074>

International law considerations. If your claim involves international human rights law or international law in general, you may want to look at how international law interacts with the jurisdiction in which you plan to bring your case. (See the guide to international law for children's rights at <http://www.crin.org/law/index.asp>).

One of the best ways to do this is to look at how a government is applying existing national and international laws. If the application of existing laws has been arbitrary or inconsistent, it may strengthen your case and provide an opportunity to give the local courts or authorities guidance. You might ask yourself:

- How do the government and national courts interpret their own national civil, political, and human rights standards? Is this in line with the way the international community interprets those standards?
 - ⇒ If standards have not been clearly established, there may be an opportunity through strategic litigation to work with governments and courts to figure out what the best practices should be.
- Would national or local government officials and authorities benefit from court guidance on how they can meet and operate under international human rights standards?
- Is there a reason to believe that the government isn't fully complying with either international standards or its own national standards? If so, is there any evidence that this might be open to a legal challenge?

Look up international, regional and national laws related to children's rights by country:

<http://www.crin.org/law/>

The United Nations Convention on the Rights of the Child (CRC). The CRC grants wide-ranging human rights for children and has been approved in every country except for the United States and Somalia. Although there is currently no specific international court or other body exclusively for the CRC where children can bring cases, it is a valuable source of law for national and regional courts. While courts will deal with the CRC in very different ways and some may be more receptive than others to international children's rights, it is certainly worth thinking about the CRC as you put together your claims.

For the text of the United Nations Convention on the Rights of the Child, go to:

<http://www.crin.org/docs/resources/treaties/uncrc.asp>

Look up international, regional and national case law examples citing the CRC:

http://www.crin.org/law/crc_in_court/

See the campaign to introduce an individual complaints mechanism under the CRC: [http://](http://www.crin.org/resources/infoDetail.asp?ID=20291)

www.crin.org/resources/infoDetail.asp?ID=20291

Evidence. Providing a court with evidence - information that proves your case - is key to your success. If there is no evidence to support your claims, you may have a difficult road ahead and a tough time winning in the courtroom. You should also be aware that although you may learn many things in your assessment, research, and investigation, there is a chance that a court might not accept all of your information as evidence when it examines your case.

Rules of Evidence. You should be sure to look at the rules of evidence in the relevant jurisdiction; in particular, since many claims brought in strategic litigation are unconventional and can be difficult to prove, you should try to determine the rules for submitting less common evidence like sociological and field studies.

Experts. Experts can be critical in providing and analyzing evidence. In many jurisdictions, relevant experts in the field may express opinions to the court in the way that lawyers and other representatives cannot. For this reason, it is worth exploring whether there would be well-respected and reliable expert witnesses or consultants willing to participate in your case.

Children and Evidence. In many jurisdictions, courts may be mistrustful of or reluctant to accept evidence from children. To the extent possible, you should try to figure out whether there are particular rules, procedures or practices in the relevant jurisdiction for dealing with evidence that is produced or presented by children. If you have serious concerns about the court taking children's evidence seriously, you might also consider looking for adults who have personal knowledge of the evidence you are working with.

Resources. In considering whether to bring strategic litigation, resources are critical. Litigation can go on for many years, even decades, and resources must be available to support your legal team and fully fund all activities necessary to continue with the case. Given the uncertain outcome at every stage of litigation, you should think long-term and be sure to consider the worst-case scenario.

2. What are requirements and expectations about timing?

Statute of limitations/Prescriptive periods. A statute of limitations or prescriptive period is a law that sets out how long you have to file your lawsuit, and is often thought of and discussed as a sort of countdown clock.

Different types of claims or lawsuits usually have different time requirements, so it is important to know the nature of the claims you are hoping to bring in order to determine how long you have to file them with the court. You should always check the statute of limitations or prescriptive period in the jurisdiction in which you hope to bring your suit before you file it. Because of the statute of limitations or prescriptive period, finding the best case to advance your cause or goal through strategic litigation may be difficult. You might want to research the time limits you will face as soon as you have an idea that strategic litigation could be a strategy worth pursuing.

Starting the clock. The clock usually starts running from when the actions over which you hope to sue actually occurred, although in some cases there may be special extensions. These extensions often involve cases where the injured party was not aware of the damage being done at the time it was happening, as may be the case with things like fraud or exposure to toxic and dangerous substances. In those instances, the clock may start running from when the injured party becomes aware of the harm.

Stopping the clock. “Tolling” the statute or limitations or prescriptive period is a legal term meaning that the clock has stopped running. The clock may stop running for any number of reasons, including if the person suffering the harm is temporarily disabled or the person causing the harm becomes involved in certain other legal proceedings.

Tolling the clock for children. In many jurisdictions, the clock may not even start running for children until they reach the age of majority. This preserves children’s legal claims, and may mean that young adults in some jurisdictions can still bring claims related to children’s rights. You should also be aware, though, that many jurisdictions toll the statute of limitations or prescriptive period until adulthood because they do not allow children to bring legal claims. If this is the case, working with child plaintiffs on their own to bring a case may not be possible.

Appeals. If you lose your case in a lower court or other judicial proceeding, you may be able to challenge this loss and ask for a higher court to take another look at the case.

However, it is likely that if you are able to appeal, there will be a time limit on how long you have to ask the higher court to look at the lower court's order or decision.

When you first bring a case, you should be sure to look at whether you are guaranteed an appeal, whether you can apply for an appeal but will not automatically be entitled to appeal, or whether the court's decision will be final. If you will be able to at least apply for an appeal, note the deadline to start the process, which usually begins by filing a legal request or otherwise contacting the court. Some jurisdictions may allow you to extend this deadline, but be sure to investigate this fully as extensions may not be automatic.

Exhaustion of remedies. In order to have your case heard by some international or higher national courts, you must have exhausted your remedies. This means that you must first go through other judicial channels available before the new court will hear your claim.

In terms of international tribunals, this may mean that you will be required to go through the national courts of the jurisdiction in which you would file your claim until you can no longer appeal. Once you have done so, there may be a time limit on how long you have to bring your claim to a higher court, or else the last court's opinion or order may stand. Many international tribunals set this limit at six months.

Exceptions. There may be exceptions made both for the exhaustion of remedies requirement and for any time limits set. For example, if you can prove that the courts in the jurisdiction you would file your claim in are corrupt, you may not be required to pursue a remedy in those courts. Or if you can show why you could not bring your case within the expected time limit, you may be given an extension.

Time frame expectations. Because litigation necessarily involves other people, organizations, or governments and must be overseen by a judicial body, it is often difficult to predict how long it will take before getting a final decision. Any number of factors may influence how long a lawsuit takes, but in general litigation will go on for longer periods of time the more complex the case, the more parties who are involved, the less willing the parties are to resolve matters, and the busier the court's schedule. In the best of worlds, cases may be resolved in a matter of months. In some instances, it can take years, or even decades to get a final decision. This may also vary widely both across and within jurisdictions.

Before you file your case, you should do your best to estimate how long you think the litigation process might take. You will never be able to pinpoint exactly when you will get a resolution, but you may come up with a range of time during which you might hope to hear

back from the court. Based on this range, you can allocate time and resources appropriately and set the expectations of all parties involved.

Provisional Measures. In some courts or tribunals, you may be able to apply for provisional measures, also called provisional remedies, interim measures, interim injunctions, and preliminary injunctions. Provisional measures are designed to prevent any further harm to the parties while the case is being decided, so the court or tribunal may order the defendants to cease certain actions at the outset of the case or prevent a potentially harmful law or policy from going into effect. Once a final judgment has been issued, the provisional measures may become permanent, be modified, or be lifted entirely.

Children and time commitments. If you are working with young clients, it is especially important to be clear about both how long it can take before they get a final answer from the court and how unpredictable things may be along the way. Also bear in mind that children often have many different obligations and schedules that change from year to year, so it can be difficult for them to make the kind of long-term commitment that strategic litigation requires. Because of this, however, courts in some jurisdictions are able to “fast track” certain types of cases involving children, especially those that relate to family matters or claims of child abuse and neglect. If you are concerned about the time line for a case you hope to bring involving children, it may be worth investigating whether there are rules or practices in the jurisdiction in which you hope to file that would provide for you to reach a speedier resolution.

Part III: WHO can bring strategic litigation?

Summary

Not just anyone can bring a case to the courts. In strategic litigation, as in all kinds of lawsuits, determining who the players are is key. This section will help you identify who will file the lawsuit, who they will sue, and whether or how people or organizations not named as parties in the lawsuit could intervene or otherwise get involved.

1. Who will file the lawsuit?

Standing. Many jurisdictions still require what is known as standing. Standing is just another way to figure out who should bring a lawsuit. For example, in some countries, in order to have standing to bring a lawsuit, you must have been directly damaged or victimized by the person, organization, or government you are suing. It is important to look at whether your jurisdiction or the jurisdiction in which you plan to bring a case requires standing, and – if so – what limits that places on who can bring a lawsuit. Some jurisdictions may relax the standing requirement for cases filed in the “public interest,” which often include cases about human rights violations.

Organization vs. Individual. Standing requirements usually make clear whether an organization may file a complaint on behalf of people who have suffered wrongs, or if those people must file their cases directly. If you have the choice between the two, note that a case filed in your group’s name will likely generate much more publicity for your group than if your group’s name were not directly involved.

Third parties. Standing may determine whether interested third parties are allowed to directly intervene or join in a case that has already been filed. These third parties might be people or organizations who were not directly damaged by actions or behavior of the person, organization, or government you are suing, but retain a strong interest in the outcome of the litigation.

⇒ Legally-oriented non-governmental organizations (NGOs) might want to intervene in a case for numerous reasons. They might see the key issues in the case as

central to their mission, feel that their resources would be of necessary or genuine assistance to the case, or see the case as an opportunity for good publicity.

⇒ If third parties are not allowed to directly intervene or join in a case, they may still assist in the litigation by making their opinions known as *amicus curiae*. *Amicus curiae* means “friend of the court,” and many jurisdictions permit interested organizations to prepare and file legal papers in support of one of the parties in the case.

Children and standing. Many jurisdictions and international courts or tribunals do not allow people under the age of majority to bring cases directly. This may mean that children will need to wait until they have reached adulthood before they can start legal proceedings, or that simply that they cannot bring legal claims at all. In some courts, parents, guardians, or other adult representatives may be able to file claims on a child’s behalf. Where this is possible, be aware that children and their representatives may not always have the same interests at heart. You should do your best to be sure that everyone involved is on the same page before bringing a case, particularly true where children’s legal claims relate to family or other sensitive matters.

Group action lawsuits. A group action lawsuit, also known as a class action, collective action or group litigation, may be a possibility in some jurisdictions. Under the collective action model, a small group of people or a representative organization sues on behalf of a much larger group.

Filing a group action lawsuit may require approval from the court, and you should find out what these requirements are before bringing the case to the court. Courts may want to examine the people who are hoping to bring the lawsuit, their claims, and the people they are hoping to represent, so it would be wise to consider each of these if you wish to pursue a group action suit.

Example:

1. **United States:** The American Civil Liberties Union successfully brought a class action suit against a school district that had been discriminating against Native American students. Full details: <http://www.crin.org/Law/instrument.asp?InstID=1227>

2. How do you choose plaintiffs?

Finding and recruiting plaintiffs. Not all strategic litigation cases are carefully selected

from the outset, but given the nature of strategic litigation, you may find yourself in a position of looking for the right people to bring a case that supports your cause or goal. If you have such a case in mind, there are many ways you can search for and identify people who can file their claims with the courts. These people are usually known as plaintiffs, but may also be called complainants, claimants, or petitioners.

Before you begin looking for plaintiffs in any manner, be sure to look at local laws and practices to determine whether and how it is permissible to recruit or solicit clients. Bear in mind that the rules may differ for paying and non-paying clients. Regardless of whether you expect plaintiffs to pay for legal services in connection with the case, do remember that you are seeking to advance your own or your organization's cause when you speak with potential plaintiffs. Be sure to be up front about this goal. With this in mind, below is a list of common ways to find or recruit plaintiffs:

- Field visits/interviews;
- Referrals from legal aid or other law-oriented client-based services;
- Referrals from NGOs;
- Existing channels for complaints, like local groups or organizations, community centers, and trade or labor unions;
- Setting up new channels or points to receive complaints with the assistance of local and national advocates, willing and interested lawyers, law students, and other volunteers;
- Keeping consultation or office hours;
- Training programs;
- Journals, newsletters, casework bulletins and other publications;
- Print or online advertisement; and
- Meetings or conferences with interested advocates and legal practitioners.

Contacting child plaintiffs. Searching for young plaintiffs can raise many sensitive issues. Remember that it can be very intimidating for children to be approached by people they do not know, particularly when they are not in familiar environments or with adults they know and trust. Where possible, you might first consider contacting children through their families, schools, recreation or youth centers, or other safe spaces. If you do feel you need to approach a child directly, you should do so on the child's terms and be extremely careful that your interaction does not place them at any unnecessary risk of harm.

Evaluating potential plaintiffs. Once you have determined that a potential plaintiff's (or potential plaintiffs') case would advance your cause in a meaningful way, you should then evaluate their particular circumstances and individual characteristics thoroughly *before* you or they file a lawsuit. Things you might want to consider in this evaluation include:

- The strengths and weaknesses of the potential plaintiff's claims, and the individual facts surrounding those claims;
 - ⇒ Plaintiffs' claims may be more appealing if they stem from many incidents or involve multiple grounds.
 - ⇒ In some cases, it may be wise to stay within more traditional and established fields of law if you are testing the powers of a new law or fighting system-wide discrimination. For example, you might want to bring straightforward employment discrimination claims rather than adopting a more creative or novel argument.
- The plaintiff's financial means, particularly if they will be paying in any way for legal services;
- The plaintiff's lifestyle, schedule, free time, and availability to meet and actively participate in the case;
- The plaintiff's interest in the cause;
- Personal characteristics like credibility, charisma, and the ability to communicate clearly and effectively; and
- The likelihood of success and the effects that success or failure might ultimately have on the plaintiff's existence.

Safety concerns. It is extremely important that you consider the safety of potential or actual plaintiffs and any additional people involved in the case at all times.

Plaintiffs, lawyers, organizations and other persons assisting in the case, or even simply supporting the case, may face severe economic, social and personal consequences. It is critical to make sure those involved in the case feel safe and protected. If there is immediate backlash against the case when it is filed or the situation worsens down the line, you should ensure that all parties involved know whom they can contact should they ever feel that they are in danger.

If a person or organization ultimately feels that they must discontinue their involvement in the case, you are certainly encouraged to discuss this decision with them, but must above all else respect their wishes.

Confidentiality. All communications between lawyers and potential or actual clients must be held in the strictest confidence. Even the fact that you are meeting with lawyers or thinking about filing a lawsuit is confidential. When you are interviewing potential plaintiffs in connection with a lawsuit, you should assure them that you intend to keep any information you learn in confidence unless they give you permission to share, broadcast, or otherwise use that information. This should be the case regardless of whether they ultimately become a plaintiff or otherwise participate in your lawsuit.

3. How do you choose defendants?

Determining and selecting from possible defendants. Just as important as finding people who will be bringing a lawsuit is figuring out whom exactly they should sue. Once a case is filed, the party being sued is usually known as a defendant, or may also be called a respondent. In some instances, it will be very clear who the appropriate defendant for a lawsuit would be. Even so, there may be more options available than you think, and there are several things you might wish to consider:

Substance. The substance of your claim and the laws you wish to enforce may dictate or explicitly direct who the appropriate defendant would be.

Procedure. The laws that underlie your claim or the court in which you bring your claim may have procedural requirements that suggest or mandate selecting a particular defendant.

Success. The likelihood of success you might have in bringing your suit against potential defendants could also come into play. It might be easier to prove that one potential defendant was responsible for the harm your plaintiff suffered than another, so you might consider focusing your attention and resources on defendants against whom you have more evidence.

Remedies. Different defendants may be able to offer different solutions to remedy the harm your plaintiff suffered if you win the case. For example, if you sue a company, they may be able to offer money, but will not be able to change a law. When selecting defendants, you should revisit your central goal in the case to figure out which defendants

could offer you the results you desire. Remember that the defendant will be instrumental in bringing about the social change you desire.

Multiple Defendants. Just as it is possible to have multiple plaintiffs, it is possible to have multiple defendants. It may make sense to sue more than one party to get the relief that you are requesting, particularly if you are seeking money. In some instances, one defendant may be required to pay for the wrongs that all other defendants have inflicted. This is called joint liability.

Common defendants in strategic litigation. There are a few sorts of defendants that are sued regularly in strategic litigation. Since the aim of strategic litigation is broader social change, the defendants are most often branches of the government.

Sometimes, however, it may be possible to sue public or private companies and corporations. A list of the most common defendants in strategic litigation cases and things you might want to think over in bringing a lawsuit against them follows:

National governments. National governments have the broadest power to change the laws or practices on a large scale. They may also have the most resources to defend a suit and be the most resistant to change. Questions you might ask yourself before suing a national government include:

- What is the national government's likely position on your lawsuit? Will they be supportive, or will they vow to fight it? Why?
- If the national government is not supportive, is there any organized political opposition? Is that opposition public and vocal?
- If the national government as a whole is not supportive, are there individual national or local politicians who are or would be supportive?
- How many resources will the national government be able to devote to defending the case? How skilled are their lawyers? What will their strategy likely be?
- Are there any upcoming elections or other changes in power that might impact the national government's position?

Arms of the national government and lower levels of government. This category includes national and local authorities, government ministries or agencies, and certain institutions. Within a national jurisdiction, counties and municipalities or other political subdivisions may have their own governmental powers and be appropriate defendants. In a federal system, state governments may be similarly appropriate. As above, it will be important to

ask yourself questions about the potential defendant's stance and resources, but suing a lower level of government comes with its own set of considerations as well:

- If your suit is successful, will the defending government body have the resources, funds, and infrastructure to supply the relief you have requested?
- Is there localized or community opposition? If so, are there feasible ways to overcome it?
- Will the lawsuit draw national attention? If this is likely, will national politics change the perception of the suit or otherwise influence the government body or community at large?

Schools. Many children spend much of their time in the classroom, and education authorities are often appropriate defendants where cases arise from things that happened at school. Because schools can play such important roles in children's lives, though, you should be very careful that bringing a lawsuit against a school authority does not jeopardize a child's educational, social, or extracurricular opportunities.

Corporations. Suing corporations may have a sizable global impact and set a strong precedent for business practices. However, corporations also have many legal resources, and lawsuits can be tricky given how many places and in what ways a sizable corporation does business.

- ⇒ Publicly held corporations, which are listed on stock exchanges and tend to be larger in scope, can expect reactions to the lawsuit from many interested parties. These parties include the corporation's shareholders, management, workforce, creditors and competitors. The general financial markets and market regulators may also take interest. This will likely result in more people paying greater attention to your case, but bear in mind that this could work both for and against your lawsuit depending on what the interested parties have to say.

Examples:

1. National Government. **Russia**: Chelyabinsk/Mayak Nuclear Production Facility cases. Following one of the largest nuclear disasters in world history, children in affected areas were forced to assist in clean up efforts and have suffered long-standing serious health problems. Many have successfully sued the government and now receive small support payments. Go to: <http://www.crin.org/Law/instrument.asp?InstID=1262>

2. School. **United States**. Brown v. Board of Education of Topeka, Kansas. A group of parents sued on behalf of their children attending racially segregated schools. In a landmark decision, the U.S. Supreme Court ordered that schools across the country integrate their student bodies. More details: <http://brownvboard.org/>

3. Corporation. **Nigeria:** A collective action lawsuit was brought by the Nigerian government seeking compensation for the families of children harmed by pharmaceutical firm Pfizer's illegal testing of an unregistered drug on children. News item:

<http://www.crin.org/resources/infoDetail.asp?ID=13828&flag=news>

4. Corporation. **Cote d'Ivoire:** A case was brought in United States courts against three large corporations (Nestlé, Archer Daniels Midland Co., and Cargill) on behalf of individuals who had been trafficked into slavery on cocoa farms as children. Full details:

http://www.crin.org/docs/FileManager/nestle_cocoa.pdf

4. What role can NGOs and other players take?

NGOs. Many, if not most, NGOs are not fully equipped to run large scale strategic litigation cases without assistance. If a case is to be filed in a location beyond commuting distance from an NGO's headquarters or field office, it may be very difficult to bring that case without local representation. However, NGOs without the resources to bring their own cases can still be heavily involved in strategic litigation. They can identify potential plaintiffs and cases; manage, service, and advise on active lawsuits; publicize case progress and the eventual results; monitor enforcement of judicial decisions; and advocate for the cause behind the litigation in other ways.

Other interested organizations. You may want to think about getting people and organizations who are not directly involved in your case, but have an interest in it, to participate.

Think about who these people and organizations might be, and why you think they might want to get involved. If they are interested, you may be able to pool resources or work on the case together. For example, you can consult with legal advisers, local NGOs, or experts in the field your case addresses to help you formulate your legal strategy, provide useful evidence, gather support in the community, or simply give general feedback and encouragement. Before and as you reach out, do bear in mind that you may be dealing with sensitive or confidential information. You should be sure to first run any potential third party you hope to consult with by your lawyers and the plaintiffs involved to ensure that you have their permission.

Part IV: WHERE would you bring strategic litigation?

Summary: Filing your lawsuit may not be as simple as going down to the local courthouse. When it comes to strategic litigation, choosing where to file your case has a huge bearing on both your chances of success and the eventual results you achieve. As you do your research, you may be surprised at how many options you have. This section will give you guidance on where exactly you can file your case, and from those options, where it makes the most sense to file.

1. Where can you file your case?

Researching jurisdictional laws. Your first step should be to determine where you can file your case. You should track down and examine the relevant local, state, national and international laws, rules and customs that set forth who may file a claim, when they may file a claim, and what filing a claim would entail.

You will need to figure out where your claim would meet the threshold criteria for filing; be creative and thoughtful when you begin your research and you may be surprised by how many options you have.

Jurisdiction. If you file your case in a local, state or national court, the place where you file will be known as your jurisdiction. Jurisdictions have very different rules as to when and by whom a case may be filed. There may be residency, citizenship, or other requirements. The laws and rules that apply in this jurisdiction will be very important to the outcome of your case. Sometimes a court may look to or apply the laws of another jurisdiction when they are relevant, but will likely do so in its own discretion and with its own point of view.

International mechanisms. If you file your case with an international body, they may still apply the rules and laws of a certain jurisdiction. But in determining whether you are eligible to file your claim, you will most likely find your answer in the court or tribunal's rules. If you choose to file with an international body, be sure to think about how the case could interact with other local, regional, national or international efforts.

Find out more about international mechanisms:

http://www.crin.org/law/mechanisms_index.asp

See how to file a complaint with the UN here: <http://www.crin.org/resources/infoDetail.asp?ID=15489&flag=report>

2. Where should you file your case?

General options. In thinking about where to file your case, it is not just a matter of location. Your first thoughts may include the jurisdictions where the plaintiffs reside, where the defendants reside, and where the actions or violations about which you are suing occurred. However, these are not your only choices – there are both international tribunals and national courts in other jurisdictions that might be willing to hear your case. After you have figured out your full range of options, it is well worth your while to research the possible jurisdictions, courts, tribunals, and other judicial bodies before you make your selection. A general list of places you might consider filing your case follows:

- Municipal, local, or state courts;
- National courts;
- International courts, tribunals, or commissions (see http://www.crin.org/law/mechanisms_index.asp)
- [United Nations treaty bodies](http://www.crin.org/UN/TBs.asp) (see <http://www.crin.org/UN/TBs.asp>)

Judges and Legal professionals. The independence and integrity of judges and legal professionals working in the jurisdiction is crucial to your success. In order to ensure that your case is given a fair chance, judges, lawyers, and all judicial and legal personnel must have the means, opportunity and support to do their jobs well.

Judges. As judges and judicial employees will both oversee your case and write relevant orders and decisions, you will want to look for a system that offers a competent, well-trained, independent and impartial judiciary. Given the progressive nature of strategic litigation, you might also prefer more proactive judges.

If judges in a certain jurisdiction are known to be prone to outside influence or otherwise partial, the goal of your case might not be to win, but to highlight this corruption and bring it to the attention of the international community.

Example:

1. **Guatemala:** Two NGOs jointly brought a case before the Inter American Commission on Human Rights to challenge adoption proceedings where judges had allegedly been taking

bribes to fast track approval. Full details (in Spanish):

<http://www.crin.org/resources/infoDetail.asp?ID=15672&flag=news>

Lawyers. Lawyers are key to winning your case as they will be advocating in the courtroom on behalf of the plaintiffs. To be effective, lawyers must be able to work without being threatened, intimidated, harassed, or otherwise confronted with interference. They must be able to freely travel to meet their clients, experts, consultants, and other persons involved with the case both domestically and internationally. If they act within a jurisdiction or tribunal's codes of professional or ethical conduct, they must be able to rely on those codes and know that they will not be sanctioned or otherwise punished for their behavior in connection with the case.

Legal systems. Because of the different legal systems operating across jurisdictions, the impact your case can have on the laws in those jurisdictions varies widely. The three major types of legal systems in the world are common law, civil law and religious law. You should determine which system each of the potential jurisdictions has adopted and be aware of the impact that it will have on your case. You may also wish to research the way in which international laws or treaties interact with the relevant jurisdiction's legal system.

Common law. Some jurisdictions, particularly those of the United Kingdom and former British colonies, operate on a system of common law. In common law jurisdictions, the law is determined not only by written laws, but by court decisions. This means that when a judge looks at your case, he or she will not only look to the statutes, regulations, guidance, code, or other written laws you reference, but will also look for any past court decisions that might relate to your case. In common law systems, precedent – the body of past court decisions – plays a much larger role than in other legal systems.

Civil law. Civil law is the most widespread system of law, and is in place across most of the continent of Europe and many former European colonies. Civil law relies more heavily on written codes than common law. As a result, precedent plays less of a role and judges are less likely to give weight to past decisions in civil law jurisdictions. This means that although your case may have a big impact on your plaintiffs' lives, it may not necessarily greatly alter the courts' ways of looking at the law in general or in any similar cases that might arise in the future.

Religious law. In religious legal systems, religious doctrines or texts take a primary role in the crafting, interpretation and application of the jurisdiction's laws. The importance of court decisions and precedent varies depending on the predominant religion and the precise legal system in place, but judges in many jurisdictions do give at least some weight

to both previous court decisions or orders and the opinions of respected religious legal scholars.

International law – Monist and Dualist systems. In general, there are two ways jurisdictions approach treaties and other international agreements. In what are called monist systems, international laws and agreements can be enforced directly by national authorities and in national courts once a treaty or agreement has been signed, ratified, and entered into force. In dualist systems, however, treaties or agreements cannot be enforced by the authorities or in the courts until there are national laws passed to incorporate the principles behind those treaties or agreements. Because of this, if your lawsuit involves international matters, it may be in some ways easier to bring a case in a monist system, a jurisdiction that would apply the clear language of the treaty or agreement itself.

Convention on the Rights of the Child. Although the CRC is in force almost everywhere in the world, this means very different things in different jurisdictions. In some countries, children enjoy their full legal rights under the Convention and may be entitled to bring cases where their CRC rights have been violated. In others, the Convention serves only as a source of aspiration and is not directly enforceable in court. Even where it does not carry the full force of law, however, the CRC may be a valuable tool for courts to look at claims that relate to children's rights.

See how the CRC has been incorporated in various jurisdictions at:

<http://www.crin.org/law/index.asp#th>

For case law examples referencing the CRC: http://www.crin.org/law/crc_in_court/

Laws and precedents. Different courts, even within the same jurisdiction, may have widely varying laws, rules and procedures. They will rely on different precedents in analyzing both your claims and the law itself, and you want to be sure to figure out what each court or tribunal's likely outlook or predisposition towards your case might be. To begin, you should look to see if the court or tribunal you hope to file your case in has dealt with any similar cases before or any strategic litigation in general. If not, you might want to try to figure out how active a role judges and courts take in overseeing cases and what their general tendencies are. More conservative jurisdictions or tribunals may be less open to innovative claims or potentially groundbreaking activist litigation.

⇒ If during your research you uncover that a court or tribunal is currently addressing a case with a very similar subject matter, you may want to contact the lawyers on that case about intervening, cooperating or pooling your resources. You may also

be able to file your own case and then have the court or tribunal consider the two of your cases together.

Remedies and impact. Depending on the court you file in, the remedies you can seek in your case may also be vastly different. Some courts may only be able to offer monetary compensation, whereas others will have broader powers. By the same token, the impact of your success or loss may be dramatically higher or lower depending on the court or tribunal that issues the order or decision.

As a general rule, the higher the court or tribunal, the broader and more powerful the impact. You might wish to choose a well-known or respected court whose judgments will be influential not only on a national level, but potentially on an international scale as well.

Appeals. Access to higher courts may be wholly or partially restricted to appeals, cases where a lower trial court has already made a determination and the losing party has asked a higher court to review that decision. Appeals can be key to strategic litigation, both in terms of ensuring that your case will be fairly heard and in terms of getting access to higher, more prominent courts to raise the profile of the case and offer a deeper impact. You should be sure to investigate the appeals procedure in the jurisdiction where you want to file your case and figure out which courts you could appeal a decision to (including relevant international tribunals) and how long the process might typically take at each step or level.

Timing. The impact of your case and the effectiveness of the remedies the courts could offer might also depend greatly on timing. Where the harm being done to the plaintiffs is severe and continuing, you may want the court to intervene early on to prevent further damage and ensure the plaintiffs' safety. If the damage has already been done, though, timing can be less crucial as the court may be able to offer little more than monetary compensation. Nevertheless, obtaining a quick, early win may still be able to help gather momentum and support behind your cause and lay the groundwork for other cases to succeed.

Children and time lines. When you are working with child plaintiffs, keep in mind that children sometimes operate with a different sense of time and may expect a faster resolution than is possible in the court system or with the kind of claim that you are bringing. Because of this, you should be sure to be clear and up front with child plaintiffs about your timing goals and expectations.

Civil vs. Criminal. In some instances, you may have the option to pursue both civil and criminal cases. Civil cases are generally brought by individuals or organizations seeking remedies from the court to cease or compensate for damage caused by the defendants. Criminal cases are usually filed by government or tribunal lawyers (often called prosecutors) to punish or otherwise sanction a defendant for breaking the jurisdiction's criminal laws or codes of conduct, although some jurisdictions may allow for privately-filed criminal cases in certain circumstances.

Civil cases. Filing a civil case generally gives you more control over the proceedings as you are pursuing your claims directly before the court. With imprisonment and other criminal punishment off the table, there may also be more relaxed standards for evidence or proof which could make it easier for you to win your case. As the goal in civil cases is to remedy the wrongs that were done, they also generally provide opportunities not only to force defendants to stop harmful actions, but also to seek compensation for damage already inflicted. However, civil cases are generally lengthier and more expensive to bring than criminal cases. This is especially true where separate criminal cases have been filed against the same defendants; in those instances, courts or government lawyers may suspend all civil cases until the criminal cases have been resolved.

Criminal cases. Criminal cases can be higher profile and more powerful than civil cases. Because of the penalties or punishments that criminal cases bring, they may also serve to warn other people or organizations involved in similar activities to change their behavior. However, criminal cases may be both harder to bring and harder to win. The standards for evidence or proof could be higher, and the government lawyers might have more limited resources or be politically constrained. These factors may be worth considering before you encourage the government to press charges, pursue a private criminal lawsuit, or otherwise agree to participate in a criminal case.

Context: In addition to looking at the laws of the land, you must not forget about the context in which the lawsuit will be filed. You should think carefully about the levels of corruption in the jurisdiction; the general stance of the government as to human rights; and the physical or other dangers those involved with your lawsuit might face. If you have serious reservations about safety or fear of retaliation in a jurisdiction, it may be best to file and run the case from outside that jurisdiction.

Children in context. Children are particularly vulnerable to the potential negative effects of bringing lawsuits in their name, especially where cases involve schools they attend, places they reside, or close family members. Children may not have the resources or ability to leave dangerous situations, so you should be extremely vigilant in ensuring that child plaintiffs receive the security and support they need.

Financial considerations. Bringing a case can be very expensive, so it would be wise to investigate court costs, legal fees, bond or security requirements, and other financial commitments involved in every potential jurisdiction. Legal costs might be prohibitively expensive in some jurisdictions, so it may make more sense to file your case in a jurisdiction where your resources would go further. You should also investigate whether legal fees would be recoverable if you won, meaning that the losing defendants would have to pay for your lawyers and court costs. Some jurisdictions provide for this arrangement specifically in human rights or general public interest litigation.

Part V: HOW would you bring strategic litigation?

Summary

Bringing strategic litigation can be a lengthy, complicated process, and there will be many decisions to make along the way. This section will help you figure out how you find, select, and pay for a lawyer, how you and your lawyer will prove and support your case, and - once the case is over - how you will follow up on the result.

1. How do you find a lawyer?

First steps. As soon as you realize that you may want to bring strategic litigation, your first step should be to consult with a lawyer.

Because you might not be sure where exactly you would file your lawsuit and there will be many decisions to make, you may want to speak with both an international organization that works in many different countries and a lawyer qualified to practice in your jurisdiction.

Once you know where you will file your case, you can make a more informed decision about where to look for a lawyer and what kind of lawyer could best handle your case.

Finding a lawyer. Once you have a general sense of the lawyer you are looking for, you will need to begin your search. Since there are likely quite a few lawyers to choose from, contacting a few of the groups suggested below may help to narrow down your search.

Lawyer networks. You may want to start by contacting any local or national lawyer networks in the jurisdiction, like a bar association or trade guild.

Legal aid organizations. Both government and non-government funded legal aid organizations and traditional legal service providers are run by lawyers knowledgeable in their field who may be able to provide you legal advice or services free of charge.

NGOs. NGOs frequently have in-house lawyers who might be willing and able to take your case or can refer you to an organization or firm that more likely meets your needs.

Legal clinics. Some universities and law schools have legal clinic programs run by professors, staff lawyers, and law students, and may be similarly able to handle or refer your case.

Referral. Referral is very common in the legal field, and if a lawyer or organization cannot help you, it is always worth asking if they could recommend someone who can.

Retaining counsel. Once you have several candidates in mind to handle your case, you will need to learn more about them and hopefully meet with them before you make your decision. There will be many factors to consider, including but not limited to those described below.

Fees. First and foremost, you should get a sense of how the lawyer, organization, or firm will be charging you for legal services. Financing your case is discussed in more detail below, but here are a few things to think about:

- ⇒ In some cases, you may be able to find *pro bono* representation for strategic litigation, meaning that your legal services will be provided free of charge. Even where this is the case, however, you should be sure to work out whether you will be expected to cover any other costs or expenses associated with the case, like court fees or travel expenses.
- ⇒ Where you will be paying for legal services, you will need to figure out how you will be charged. Will you be paying by the hour, or a flat fee? Will you only pay if you win, or will you pay no matter what the outcome? How will you be billed?

Background and experience. Try to get a sense of the lawyer, firm, or organization's background and level of experience. Look for experience in general, in the jurisdictions and courts you could file your case in, and with similar cases, groups, or clients. You may also want to investigate whether the lawyers have any ties or contacts with NGOs or other potentially valuable connections.

- ⇒ Involving children in strategic litigation can pose many unique and sensitive issues. If you hope to do this, you may wish to seek out lawyers or organizations who have experience with or specialize in working with children in the legal system.

Resources. You should ask potential lawyers how much time and how many resources they expect to have available to manage your case. Do they have adequate facilities and support staff? If not, would they be willing to accept outside help? In general it is also a good idea to get a feel for how closely the lawyers would manage the case and how open they would be to working with experts or other groups.

Personal philosophy. Although lawyers' jobs require that they place their clients' interests first, it may be important to you to find lawyers who are committed to or at the very least

understand your cause. As you could be working together for years to come, seeing eye-to-eye on the central issues in your case can make things move along much more smoothly and efficiently.

2. How do you pay for your lawyer?

Financing your case. In many jurisdictions, legal fees can quickly become very expensive. In terms of strategic litigation, this may be even more true as novel ideas or never before seen claims can take large amounts of time to research and prepare for court. However, you may be able to work out arrangements for paying your lawyers only if your case succeeds or, even better, not paying your lawyers at all. There are many common ways of financing strategic litigation beyond traditional fee for service arrangements:

Pro bono. Lawyers in private practice may be willing to offer you their legal services for free. In some jurisdictions, the *pro bono* ethic is well-established and you may even have a choice of law firms to assist you in bringing your case. Many law firms look to NGOs or legal aid organizations to screen and refer cases, so you might contact relevant organizations in potential jurisdictions for your lawsuit to see if they have any partnerships or other referral mechanisms in place with local law firms or practitioners. Do be aware that even in *pro bono* relationships, you may still be expected to cover court costs or other expenses.

Legal aid. Although many traditional legal service organizations do not have the means to handle a large strategic litigation case, some legal aid providers may have divisions or sectors designed to promote lasting change and tackle complex litigation. These organizations may be willing to bring and manage your case free of charge.

Contingency or Conditional Fees. In some jurisdictions, it may be permissible to work out a contingency fee or conditional fee arrangement. In a contingency fee arrangement, your lawyers would not charge up front or hourly for their services; instead, their payment would be contingent on their success. If the lawyers win your case, they will get to keep a percentage of the plaintiffs' damages, that is, the amount of money the judge, tribunal or jury awards the plaintiffs to compensate them for the harm they suffered at the hands of the defendants. If the lawyers lose, they may get nothing. In a conditional fee arrangement, legal fees may be increased or reduced depending on the amount of damages you receive, but may not disappear entirely.

Since this approach often requires that your claim seek a substantial sum of money, it may not make sense to request a contingency or conditional fee arrangement when you are asking the court for a more novel remedy.

Insurance. You may be able to obtain legal expenses insurance for your case, which would pay for at least a percentage of your legal costs if you lost. However, this kind of insurance can be very expensive, and if your case is risky or very novel, it may simply be unavailable.

3. How do you prove your case?

Beginning your investigation. Thoroughly investigating your case is critical to figuring out the best strategy for success in the courtroom. As a first step, you should gather all publicly available documents and data relevant to your case. This includes newspaper, journal and magazine articles; media and academic reports; and statistics, studies or other scientific information.

Once you have a good grasp on this background information, you should think about going out into the community to speak with people who have actual knowledge or experience with the events and occurrences that underlie your legal claim. Where it would not endanger the plaintiffs or harm your case, you should consider talking with plaintiffs' friends, family, and colleagues; government officials or authorities; other advocates or lawyers in the area; and anyone else who may have witnessed or known about things that happened in your case. Remember, though, that you can't learn everything, and you will have a chance to find out more through official channels once your case has been filed.

Confidentiality. As always, all communications between lawyers and potential or actual clients must be held in the strictest confidence. Bear this in mind when you are investigating your case as you do not want to place the plaintiffs or your case in jeopardy, and should never reveal information about your case or client without consulting your lawyer and getting the plaintiff's permission. Sometimes, even letting other people know that you are planning to file a lawsuit may violate confidentiality.

Keeping records. It is very important to create a paper trail of your investigation. Keep copies of all published or written information you find. Take notes and pictures during any interviews or field visits you conduct, and if possible, ask permission to record them. Be sure to account for every piece of information you learn during your investigation in some way. The more organized you are in how you gather and store your information, the easier it will be to find and use it throughout your case.

Children and Investigations. You should be even more careful when investigating cases that involve children. In particular, speaking with a child plaintiff's parents, teachers, or other authority figures may raise very sensitive issues. To avoid placing a child in harm's way or damaging family or school relationships, you should fully explain to child plaintiffs

who the people you would like to meet with are and what you hope to learn before you begin your investigation.

Filing. When you have learned enough information in your investigation to understand and explain your claims, you might then consider initiating legal proceedings. The procedure for filing a lawsuit is determined by the laws, regulations, and practice in the jurisdiction in which you are bringing your case, but will likely involve providing the court with a document that sets out your claims. Before you file, be sure to research all of the relevant rules – some systems may require very formal and detailed documents, while others need only a letter signed by the plaintiffs.

Serving. After you have filed your case, it is likely that you will need to serve the defendants with your papers, which usually requires a formal delivery process to let the defendants know that you are suing them. This might be done by providing them with a copy of your filing, either directly or through the court. If you are filing in a jurisdiction different from the one in which the defendant's actions or violations occurred, it may be difficult to serve the defendant with your papers in line with the rules of the court. If you cannot successfully serve a defendant, it is possible that you will not be able to proceed with your lawsuit in that jurisdiction. If that is the case, you may need to file your suit either where the violations occurred or where the defendant is currently located.

Fact-finding. Most jurisdictions provide for a fact-finding or discovery period when you first file your case. During this period, you have an opportunity to get documents and information from your adversaries, and they likewise have an opportunity to get documents and information from you. As you find out more information from your opponents, you should continue investigating on the ground with more specific goals and questions to help your case further as it develops.

Proof. In order for the court to make its decision, you will need to submit evidence to prove your case. As discussed above, the rules of evidence vary widely across jurisdictions, and you should thoroughly understand them before your investigation is underway. With these rules in mind, you will want to bring the court's attention to many of the relevant things that you have learned during your investigation.

Witnesses. People who know, saw, or otherwise experienced things that are relevant to your case may be able to serve as witnesses. Typically, you would arrange for a witness to come to court where your lawyers, the defendants' lawyers, and the judge would all have an opportunity to ask questions. It may also be possible to meet and interview a witness on record outside the courtroom if the other parties in the case agree to this arrangement.

Think about who could serve as a witness in your case and begin meeting with those people early on in the process – remember that you may very well want to ask the plaintiffs and defendants in your case to serve as witnesses. You should thoroughly prepare the questions you hope to ask witnesses and any documents or other evidence you might want them to discuss. Before you bring any witness to court or otherwise ask that witness questions on record, you should be sure that he or she understands how the process works and what he or she will be expected to talk about.

⇒ Serving as a witness can be a very stressful experience, and working with young witnesses in particular can raise issues for both the children and courts involved. It can be very hard for children to talk about upsetting events, especially where family members or authority figures are involved. Moreover, legal proceedings are difficult to understand for most adults, much less children, who are likely to be even less familiar with the actors, processes, and vocabulary of the justice system. If you are working with a child witness, you should therefore be sure to explain the process in clear and straightforward terms that they can understand. When the time comes for the child witness to speak to the court, you should also remember that many courts may not be designed for or accustomed to dealing with child witnesses, and judges may be skeptical of what children have to say. More recently, though, some jurisdictions have begun to make special provisions for child witnesses, and you should be sure to research whether the court hearing your case has separate rules and procedures for children or can offer any special arrangements or accommodations.

For more information on bringing children into the courtroom, see the Council of Europe's website on child-friendly justice:

http://www.coe.int/t/dghl/standardsetting/childjustice/default_en.asp

Evidence. If you have written or photographic documentation, scientific studies or surveys, voice or video recordings, or physical evidence, you may be able to submit this to the court directly. In some jurisdictions, it may be possible or preferable to bring this evidence to the court's attention while you are questioning a witness whose role in the case relates to the evidence you want to submit. Be aware that you may be required to bring the person who provided the evidence to the court with you so that the court can assess how reliable and credible the evidence is.

Experts. If you have consulted with any experts, those experts might submit reports to the court or appear before the judge as an expert witness to explain their views. As with any other witness, you will need to thoroughly prepare any experts you work with for questioning before you bring them to court.

Strategy. Strategies and tactics on the road to and inside the courtroom will be central to any victory, and will in large part be the responsibility of your lawyers. However, this is only one part of the overall strategy in your case. You should try to develop a comprehensive vision of advocacy that includes drawing international attention and gathering widespread support to your cause, and you may want to push for educating courts and legal professionals on the issues in your case locally, nationally, and globally.

You will need to have a follow-up strategy for after the case has been decided, and you should certainly anticipate that your cause will have a much longer and broader struggle than one simple court decision, no matter how groundbreaking or symbolic it may be.

Settling. Often times, settling your case out of court may not be in line with the goals of strategic litigation as it does not typically offer an opportunity to set precedent for future cases. However, it may at times be the better option for strategic or practical reasons. If you do decide to settle your case, think about negotiating solutions and remedies that would extend beyond simply the plaintiff or plaintiffs involved in the suit. You can actively involve the defendants, the government, and the public. You should also seek to make your settlement public knowledge by filing the agreement with the court if permissible and discussing the terms with the media. Settlement can provide a valuable means to initiate advocacy and reform movements, and may also serve to prevent future harm or damage done in similar cases by defendants.

Losing. If you do not believe that your case will succeed in court, all is not lost. You can adopt different advocacy strategies from the outset or as soon as you realize that you are likely to lose. You may start calling for the courts to be monitored and reformed, or begin an effort to overturn a decision outside the courtroom with the help of the local, state, or national government. If support is lacking in the jurisdiction in which you have filed, you may want to take your advocacy outside its borders. International pressure can be instrumental in promoting social change.

4. How else can you support your case?

Amicus curiae briefs. Some jurisdictions allow NGOs, governments, trade associations, corporations, or other interested parties to submit legal briefs as amicus curiae, papers written by “friends of the court” that take a position in support of either the plaintiff’s or defendant’s arguments.

In jurisdictions where these kinds of briefs are accepted, you may want to recruit groups that support your cause to write and file papers with the court. You may find that there is a limit to the number of submissions that non-parties can make, in which case you will want to carefully select whom you invite or allow to file supporting papers. You might want to consider potential contributors' profiles, reputations, institutional knowledge, prestige, general mission, motive for supporting your case, and the quality and importance of the work you think they will be able to contribute.

Examples:

1. **United States:** With the assistance of a U.S. law school, Human Rights Watch presented an amicus curiae brief in a case involving the deportation of immigrants following criminal convictions before the Inter-American Commission for Human Rights.

Full details: <http://www.crin.org/resources/infoDetail.asp?ID=14053>

2. **Europe:** The **Commissioner for Human Rights** at the Council of Europe can submit amicus curiae briefs. Full details:

http://www.coe.int/t/commissioner/Activities/mandate_en.asp

Training. If your case is novel and the judges and lawyers who work for the court system or tribunal do not have a lot of experience, you may be able to offer, arrange for, or advocate for training programs conducted by outside experts to educate court officials and employees on children's issues, human rights, international law, or other developing areas of the law that are particularly relevant to your case.

Media. Strategic litigation can be an excellent way to get the media interested and involved. The media provide a platform to dramatically increase awareness surrounding both your case and your cause in general; if you manage the publicity for your case well, this awareness may in turn become support. Even if your case is unpopular locally or nationally, international media may foster widespread support beyond your jurisdiction's borders.

When you first file your case or when any subsequent major steps are taken, you may want to write a press release or otherwise alert local, national, and international media outlets. In some cases, it may also make sense to contact politicians you think would support your efforts. As always, do bear in mind that your legal strategy and communications between lawyers and clients are privileged and confidential information.

Children in the spotlight. Dealing with the media can be very intimidating for children, and you must remember that litigation is by its nature a very public process. This is particularly

true of strategic litigation, where the primary purpose of bringing a case is often to draw national or international attention to violations of human rights. Because of these concerns, you should be sure to prepare any children involved in your case for dealing with journalists or reporters. If the children you are working with do not wish to interact with the media, you may also be able to ask courts in some jurisdictions to ensure that their identities remain anonymous even where other details of the case are publicized.

NGOs, Academics, and other Human rights specialists. There is likely a wide range of groups and people willing to offer their help and support for your case. NGOs can provide invaluable assistance by campaigning for your case in the community, networking with other supporters, researching legal or factual issues, and gathering information on the ground. Academics have access to extensive research facilities and can write articles about the issues in your case, speak at meetings and conferences, or otherwise raise awareness in the legal and human rights communities.

National human rights institutions (see <http://www.crin.org/GMI/Ombudsperson.asp>) may offer libraries, general advice, and a chance to link up with other interested groups, while individual human rights advocates and specialists can share their own experiences and offer friendly advice. And, of course, do not forget the invaluable messages of support you may receive from plaintiffs' families, friends, and communities.

5. How do you follow-up once your case has been decided?

Enforcement/Monitoring. Settling or winning a case before the court is only the beginning of the broader social change that strategic litigation seeks to bring about. In fact, enforcing court orders and settlement agreements has historically been one of the biggest challenges faced by those involved in strategic litigation. Remember that the goal of strategic litigation is lasting reform, and you may well need to continually monitor compliance with judgments or agreements to ensure that they remain in force.

Sanctions. If there is a history, pattern, or practice of judgments or other court orders not being enforced in a jurisdiction or against a particular defendant, you may want to argue for a court order or decision that gives realistic and easily enforceable sanctions in the event that the losing parties do not comply with the judgment. These may include things like putting oversight and monitoring programs into place or awarding punitive money damages.

Assistance. It may often make sense to ask other interested organizations in the jurisdiction to assist you in monitoring and enforcing your judgment. If they receive reports that governments or other defendants have not changed their behavior in line with a court judgment, you might ask them to document these instances and refer the parties involved to you or your lawyers. Other groups may also offer to help proactively ensure that your judgment takes effect by providing services ordered by the court or interviewing members of the affected community to see whether they feel their positions have improved.

Continued Advocacy. Without continued advocacy, any victory in the courtroom can be quickly forgotten or – worse yet – undone. Whether you win or not, post-litigation advocacy is essential to furthering the goals of strategic litigation, and you must not stop arguing for better government policies and improvements like more effective aid programs, education, and general community services in line with your cause. Connecting with grass roots organizations in the affected communities in particular and the jurisdiction overall can be vital to your effort's success.

Part VI: WHY would you bring strategic litigation?

Summary: Strategic litigation is a creative and powerful means of advocacy, but it may not always be the best or most appropriate option. Bringing strategic litigation can undoubtedly be an exciting adventure in and of itself, but you should think through things thoroughly before you pursue it. This last section will address what strategic litigation can do for your cause, what difficulties you are likely to encounter, and whether there would be other ways to achieve the same result.

1. What can strategic litigation do?

Rule of Law. The clearest goal of strategic litigation is to somehow alter the existing laws that govern a jurisdiction. Whether that is through enforcing laws already on the books, clarifying laws that remain untested, challenging laws you believe should be repealed, or building a body of new law, strategic litigation aims to use the power of the courts to defend and promote human rights and to change the way that laws control behavior in a society.

Enforcing laws. If there are laws in place in a jurisdiction and those laws are simply not being followed, you can bring strategic litigation to draw attention to, improve and hopefully ensure enforcement of those laws. Although people living in that jurisdiction may already be entitled to certain rights and protections, that matters little if they do not in practice receive those protections or cannot exercise those rights.

Clarifying laws. You might bring strategic litigation to clarify an existing law. Strategic litigation can help to strengthen the power of a law or a legal system overall by providing a better interpretation and understanding of how the law and system work.

Challenging laws. Probably most strategic litigation cases are brought to challenge laws or policies that violate rights or protections. Strategic litigation can prevent the enforcement of these laws, strike them from the books, and force governments or other defendants to change their policies and practices

Building laws. Strategic litigation can reveal gaps in existing laws, and can at the same time create new laws and precedents. It can both lay the groundwork for future cases and

speed up the development of new practices and policies to address violations of rights or provide other protections on the ground.

Advocacy. Strategic litigation can be an excellent tool for advocacy and advancing your cause or goal, and a single case can have a dramatic impact. Advocacy inside the courtroom is only one part of strategic litigation, and your case gives you an opportunity to send your message out to the media, the public, and the governing forces.

Awareness. Strategic litigation can bring a cause or issue into the limelight, sometimes at far less expense than an overall media campaign. This attention can raise general awareness and foster public discussion and debate. Given the open and public nature of most courtroom proceedings in many jurisdictions, it can also provide an excellent opportunity for media coverage surrounding all parties and organizations involved to gather momentum behind your cause. Changing public attitudes can be instrumental to any victories achieved being felt on the ground.

⇒ Strategic litigation also creates a record of the injustices that underlie your case for all to see. Even if you lose, you can still highlight these injustices and potentially lay a foundation for future efforts to succeed.

Education. Strategic litigation can educate the courts and legal professionals about your cause and the way that laws have brought about or failed to remedy the problem. As awareness spreads, your case may even lead to the introduction of formalized training programs both inside and outside the courthouse walls.

Reform. Strategic litigation can serve as a way for people to organize and bring pressure on a government for social change or legal reform. This pressure can come from both within and outside a jurisdiction; strategic litigation frequently becomes a matter of international discussion. Strategic lawsuits can hold governments accountable for their actions, mobilize communities, change public attitudes, and empower people whose rights have been violated to press for reform themselves.

2. What are the difficulties with strategic litigation?

Precedent. One of the main reasons to bring strategic litigation is to set a precedent for similar cases in the future to succeed. As discussed above, the impact your case will have varies based on the legal system in place in the jurisdiction in which you bring it. If your case will have little value for future plaintiffs, you may think twice about bringing it.

Highest court. In jurisdictions that rely heavily on precedent, your case may not achieve a great impact unless it is heard by the highest court available. Because of the different ways appeals work, you may not always have a chance to get a judgment from the highest court.

Losing. Remember that if you lose your case, you could be setting bad precedent and building roadblocks for future cases. Losing can reinforce or strengthen a harmful law or practice, only making matters worse. On the other hand, a clearly unjust loss may be helpful to your cause overall.

Cost. Strategic litigation can be an incredibly expensive undertaking and a costly way of launching an advocacy campaign or bringing attention to an issue. Legal fees and expenses can be difficult to predict, and may easily become prohibitive. In addition, you may also be responsible for the winning parties' expenses if you lose your case. If you cannot find affordable counsel or volunteer lawyers to handle your case, you may be better off funneling your resources into other forms of advocacy that are less expensive or more stable and predictable.

Control. Strategic litigation can be very difficult to control as you are bringing in both plaintiffs and lawyers to your campaign. Understandably, plaintiffs in strategic litigation can be less than ideal clients to begin with. Some may be afraid, inconsistent in their statements, have few resources, and lack the education to fully understand the legal process. Particularly where there are many of these plaintiffs involved, it may not be easy to run and manage the case. Lawyers are another potential source of conflict, and you may find that you do not always agree with their legal advice or recommendations and prefer to maintain more direct control over your advocacy strategy.

Lack of impartiality. Where the courts are not truly independent from the government, it may not be worth your while to bring strategic litigation in an effort to change the way the law works. Instead, it might make more sense to avoid the hassle of the courtroom and put your efforts toward convincing the ruling government to change its laws, policies, or practices directly.

Impact. As is the risk with any lawsuit, the outcome cannot be guaranteed. Even if you win

in the courtroom, your case may have little impact on the ground if there is no system in place to enforce new rights, laws, practices or policies. It is also important to remember that the judgment from the court may not necessarily reflect public opinion, and you may have little support on the ground for change. If there is widespread opposition, it may even be the case that the government overturns your result by instituting or passing a new rule or law. If you fear that your case will have little impact in the community or jurisdiction in which you bring it, you may consider first trying other methods of advocacy to build support and lay a foundation for change.

Risk of harm. Strategic litigation can be a long, drawn out, and traumatic process, and the risk of psychological or even physical harm to plaintiffs may be great. While strategic litigation can promise broad systemic changes, you must not forget about the people who have been directly affected by your case.

⇒ Particularly if your case would involve child plaintiffs, who may be especially vulnerable, you should think twice before bringing strategic litigation where there are concerns that doing so would have a serious negative impact on their lives.

3. Is strategic litigation the right decision?

Other forms of Advocacy. Strategic litigation is but one of many strategies to advocate for your cause. When you make the decision whether to bring strategic litigation, you should look at all of the other ways you might be able to use your resources to further your goal. If you can achieve the same or similar results through awareness campaigns, lobbying efforts, community outreach programs, or other forms of advocacy without the expense and unpredictability of a trial, you may want to consider funneling your resources into non-courtroom oriented advocacy campaigns.

Continuing the fight. Strategic litigation can achieve truly innovative, groundbreaking victories and change the fabric of society, but it can also be a costly and unpopular endeavor with uncertain or ineffective results. However you paint it, strategic litigation is an incredibly interesting and creative means to advocate. Whether you choose to bring strategic litigation or not, it is above all else most important to find the best ways support your cause and continue to fight for change.

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Annex 2: Glossary of legal terms

Amicus curiae means “friend of the court,” and many jurisdictions permit interested organizations to prepare and file legal papers in support of one of the parties in the case as amicus curiae.

Appeals are cases where a lower trial court has already made a determination and the losing party has asked a higher court to review that decision. Appeals can be key to strategic litigation, both in terms of ensuring that your case will be fairly heard and in terms of getting access to higher, more prominent courts to raise the profile of the case and offer a deeper impact.

Civil cases are generally brought by individuals or organizations seeking remedies from the court to cease or compensate for damage caused by the defendants.

Civil law. See Legal systems.

Common law. See Legal systems.

In a **Contingency fee arrangement**, your lawyers would not charge up front or hourly for their services; instead, their payment would be contingent on their success. If the lawyers win your case, they will get to keep a percentage of the plaintiffs’ damages, the amount of money the judge, tribunal or jury awards the plaintiffs to compensate them for the harm they suffered at the hands of the defendants. If the lawyers lose, they may get nothing.

Criminal cases are usually filed by government or tribunal lawyers (often called prosecutors) to punish or otherwise sanction a defendant for breaking the jurisdiction’s criminal laws or codes of conduct, although some jurisdictions may allow for privately-filed criminal cases in certain circumstances.

Damages are the amount of money that judges, tribunals or juries award the plaintiffs to compensate them for the harm they suffered at the hands of the defendants.

Defendants. Once a case is filed, the parties being sued are usually known as a defendants, although in some courts they may also be referred to as respondents.

Dualist systems: see Monist and Dualist systems.

Evidence is information that you submit to the court to prove your case.

An **exhaustion of remedies** requirement means that you must first go through other judicial channels available before a court will hear your claim. For instance, before appealing to an international court, you are usually expected to go through the national court system first.

In a **group action lawsuit**, also known as a class action, collective action or group litigation, a small group of people or a representative organization sues on behalf of a much larger group.

Jurisdiction. If you file your case in a local, state or national court, the place where you file will be known as your jurisdiction.

Legal systems. The three major legal systems in the world are common law, civil law and religious law:

- In **Common law** systems, most prominent in the United Kingdom and former British colonies, the law is determined not only by written laws, but by court decisions. This means that when a judge looks at your case, he or she will not only look to the statutes, regulations, guidance, code, or other written laws you reference, but will also look for any past court decisions that might relate to your case. In common law systems, precedent – the body of past court decisions – plays a much larger role than in other legal systems.
- **Civil law** is the most widespread system of law, and is in place across most of the continent of Europe and many former European colonies. Civil law relies more heavily on written codes than common law. As a result, precedent plays less of a role and judges are less likely to give weight to past decisions in civil law jurisdictions.
- In **Religious legal systems**, religious doctrines or texts take a primary role in the crafting, interpretation and application of the jurisdiction's laws. The importance of court decisions and precedent varies depending on the predominant religion and the precise legal system in place, but judges in many jurisdictions do give at least some weight to both previous court decisions or orders and the opinions of respected religious legal scholars.

Monist and Dualist systems. In general, there are two ways jurisdictions approach treaties and other international agreements. In what are called monist systems, international laws and agreements can be enforced directly by national authorities and in national courts once a treaty or agreement has been signed, ratified, and entered into force. In dualist systems, however, treaties or agreements cannot be enforced by the authorities or in the courts until there are national laws passed to incorporate the principles behind those treaties or agreements.

Plaintiffs, also called complainants, claimants and petitioners, are people who can bring the case to court that supports your goal or cause.

Precedent represents the body of past court decisions, and is often most relevant in common law systems.

Pro bono legal services are provided free of charge.

Provisional measures, also called provisional remedies, interim measures, interim injunctions, and preliminary injunctions, are designed to prevent any further harm to the parties while the case is being decided, so the court or tribunal may order the defendants to cease certain actions at the outset of the case or prevent a potentially harmful law or policy from going into effect.

Religious law. See legal systems.

The **Rules of Evidence** determine what kind of proof you will be allowed to present to the court.

Serving the papers you file with a court to begin a lawsuit means formally delivering a copy to the defendants to give them notice that you are suing them.

Standing is just another way to figure out who should bring a lawsuit. For example, in some countries, in order to have standing to bring a lawsuit, you must have been directly damaged or victimized by the person, organization, or government you are suing.

A **Statute of limitations** or **prescriptive period** is a law that sets out how long you have to file your lawsuit. Different types of claims or lawsuits usually have different time requirements, so it is important to know the nature of the claims you are hoping to bring in order to determine how long you have to file them with the court.

Strategic litigation: sometimes also called impact litigation, involves selecting and bringing a case to the courtroom with the goal of creating broader changes in society. People who bring strategic litigation want to use the law to leave a lasting mark beyond just winning the matter at hand.

Third parties are people or organizations who were not directly damaged by actions or behavior of the person, organization, or government you are suing, but retain a strong interest in the outcome of the litigation.



Our vision

CRIN envisions a world in which every child enjoys all of the human rights promised by the United Nations, regional organisations, and national governments alike.

Mission

Guided by our passion for social and legal change, CRIN has built a global network for children's rights. We press for rights, not charity, and advocate for a genuine systemic shift in how governments and societies view children.

Our inspiration is the United Nations Convention on the Rights of the Child (CRC), which we use to bring children's rights to the top of the international agenda. We launch advocacy campaigns, lead international children's rights coalitions, and strive to make existing human rights enforcement mechanisms accessible for all.

More than 2,100 organisations in 150 countries rely on CRIN's publications, research and information.

The values that guide our work

- We believe that the only means of bringing long-term positive change to children's lives is through the strong and explicit promotion of their rights. We are not afraid to challenge harmful traditional beliefs and practices concerning children. We recognise this will often be controversial.
- We believe that information is a powerful tool, indeed a prerequisite, for effective advocacy in children's rights and that it must be freely available and widely disseminated.
- We believe that it is by working together with a broad range of actors committed to a similar vision that we will be most effective and influential.
- We believe that civil society, grass roots activists and children all have the right to participate and express themselves freely and openly in all matters affecting them

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