

# STRATEGIC LITIGATION MANUAL:

## FROM THEORY TO PRACTICE, LESSONS FROM COLOMBIA AND LEBANON

Gabriela Eslava, Lama Karamé,  
Maryluz Barragán y Mauricio Albarracín

Dejusticia



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*“Injustice anywhere is a threat  
to justice everywhere”*

*Martin Luther King*



# FOREWORD

The Center for Law, Justice and Society (Dejusticia) and The Legal Agenda jointly developed this strategic litigation manual as a contribution to the practice on public interest litigation. It is meant to complement available manuals through promulgating lessons which two Global South organizations have learned through their extensive experience pursuing strategic litigation in Colombia and the Latin American region (Dejusticia), as well as in Lebanon and the Middle Eastern and North African regions (The Legal Agenda).

This handbook is meant for civil society organizations, law clinics, and individuals who have pursued their own public interest lawsuits or are interested in doing so and who would appreciate insights from the experiences of other Global South organizations. Each step is explained through actual cases that Dejusticia and The Legal Agenda have pursued and supported, with reflections on what worked and what did not.

The design of this strategic litigation manual was only possible thanks to the work of every single litigant, researcher, allied organization, community, and people with whom we, Dejusticia and The Legal Agenda, have been working with every day on this path of defending human rights and social justice.

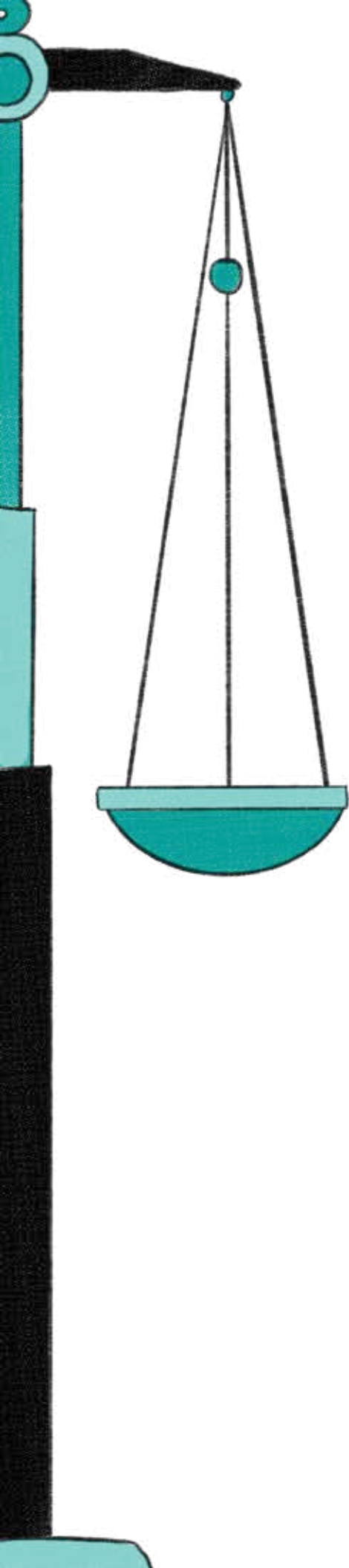
This manual is not meant to be prescriptive and it is based in our practice on litigation. It is intended to be used as a toolkit to be improved upon with lessons learned from every case. As learning is a key pillar of this manual, we encourage readers to retool the manual and keep improving it with each new case you pursue.

# INTRODUCTION

The use of strategic litigation as an advocacy tool has gained visibility in over the past twenty years, particularly among NGOs and activists around the globe. It has sparked a remarkable transnational movement, and the development of tools and guidelines shared among practitioners, academics, and researchers. This legal tool's emergence and success has undoubtedly been impacted by the emancipatory power of human rights tools. Strategic litigation involves developing and implementing a strategy to solve a dispute in a specific stakeholder's interest and to develop principles that others may use to produce a broader impact (Ramsden & Gledhill, 2019). In this sense, it aims to advance various causes that transcend private and individual interest instead focusing on furthering public interest causes, mainly human rights issues. The goal of this specific trend of litigation is thus not limited to obtaining a favorable legal ruling from the court. Instead, it aims to instigate broader social effects, such as empowering certain marginalized groups,

changing attitudes, and pushing towards political reform. Thus, it is a special type of litigation that aims to remedy structural injustice and prevent further human rights violations (American University, 2016). Strategic litigation thus combines legal, political, and advocacy strategies to advance a cause beyond the actual case and parties to the matter.

These strategic litigation goals make it suitable not only to different legal systems but also to various interest groups and causes. Strategic litigation differs from the conventional type of litigation, and thus requires other methods and tools. Rather than focusing on one case at hand as in traditional legal services, strategic litigation uses the case as one of many tools to solve a complex social problem (Child Rights Information Network, 2018). The case can be the starting point or endpoint of a sustained campaign to improve the protection of human rights overall, or it can be one tool pursued at some point throughout a campaign. In contrast to ordinary cases, strategic litigation



invites judges to make judicial pronouncements that spur large-scale social changes and advance and strengthen human rights, particularly those of groups that would otherwise not have their voices heard. Furthermore, strategic litigation requires lawyers to adopt different strategies, and also to play a role that goes beyond strict legal representations. In this sense, the boundaries between lawyers and activists are blurred, creating a hybrid category of “Cause Lawyers” (Sarat & Scheingold, 1998; Sarat & Scheingold, 2001; Sarat & Scheingold, 2004).

This publication aims to address important steps of the process of strategic litigation. Part 1 discusses how to select a strategic case and its components, Part 2 provides practical insights on the litigation itself, and Part 3 explores the post-decision phase. This manual contains ten key steps that should be developed in a human rights litigation strategy. These steps include 1) identifying the injustice to be remedied, 2) envisioning the goal, 3) developing a legal strategy, 4) identifying the parties, 5) assessing risks and resources, 6) collecting evidence, 7) developing legal arguments, 8) building an outreach strategy, 9) ensuring that a win is effective or investing in a loss, and 10) learning and retooling. The manual presents a theoretical conception of each of these steps, followed by an illustration of real case examples gathered from the litigation experiences of Dejusticia and The Legal Agenda, thus explaining strategic litigation in both theory and practice.





# PART 1: SELECTING THE CASE

In this first part of our reflective work, we will proceed through a step-by-step guide on how to select the case. In doing so, we will identify the main factors to consider and provide the lessons learned from the experiences of two organizations: The Legal Agenda and Dejusticia. We argue that selecting a strategic litigation case requires advocates to 1) identify the injustice to be remedied, 2) envision the goal of the litigation, 3) develop a thorough legal strategy, 4) select the parties when possible, 5) and assess risks and resources.

## STEP 1: IDENTIFYING THE INJUSTICE TO BE REMEDIED

Before launching the litigation, it is necessary to identify and frame the issue clearly and understand its context from a multidisciplinary perspective. During this first stage of identifying and framing the problem, advocates should assess whether the problem is justiciable.

As organizations, we are often asked to file lawsuits on behalf of various communities and individuals. Every marginalized group may rightly think that their issue should be a national priority. However, given limited time and financial resources, it is pivotal to assess whether an issue is relevant within a legal narrative and should be a priority in litigation. Furthermore, strategic litigation should not be considered the “go-to” advocacy choice and should instead be resorted to in exceptional and strategic cases.

Strategic litigation aims to change, reform, and advance broad issues in society, often rooted in social marginalization and discrimination. Accordingly, it is likely that the problems that strategic litigation tackle transcend the legal sphere. These problems may be intertwined with social behaviors, social constructs, economic considerations, and political interests. In fact, this complex intertwinement is the core reason one would adopt strategic litigation as an advocacy tool, given its multidisciplinary approach to combining legal techniques with social mobilization. Thus, it is pivotal to situate a problem within the broader context of public policies and understand it from multiple angles. Before launching a strategic litigation case, activists and lawyers alike must consider the social, political, and historical factors that have influenced the issue at stake and the possible risks and challenges that a ruling could bring to the issue (Open Society Justice Initiative, 2018).

Strategic litigation is a tool used to advocate for issues that are identified as a priority to an organization’s mission and values, ranging from socio-economic and political rights to individual rights affecting marginalized groups. A significant part of Dejusticia’s and The Legal Agenda’s work is monitoring human rights violations, from which we derive the basis for identifying cases that should be litigated as part of an overall reform strategy. There are two other components that help identify issues for litigation. First, monitoring court hearings allows us to perceive the problems

that marginalized groups encounter in courts. Second, parliamentary and judicial observatories permit us to follow and monitor courts and legislative bodies' work closely. Accordingly, these different fronts provide a holistic understanding of the issues at stake and enable us to assess their relevance to broader social or legal issues. Other important indicators of an issue's relevance and urgency could be the number of people affected, the severity of the violation, the rights infringed, and the response (or lack thereof) of public institutions through ordinary legal channels. The litigation's timing and the momentum to open the debate are also key elements to consider.

*From “Problems” to “Rights”:  
Translating Claims Through  
the Rights Discourse*

In addition to placing the problem within its broader context and assessing its relevance, lawyers and activists should consider how the problem can be translated into courts' language, the discourse of rights. This characterization debate is a substantial component of any legal advocacy effort, aiming to ensure that the case is presented to the court under the appropriate claim. This involves translating the problem from the societal/political perspective to the legal lens and its formulation within the discourse of rights (Centro de Estudios Legales y Sociales, 2008). It is of-

ten possible to define the problem in various forms. For example, it could be the absence or non-recognition of a certain right within national law or the lack of enforceability of a positive law. Another example of a problem could be the contradiction between a certain law and human rights' principles.

Many issues are not “justiciable” and litigation will not be successful when it is impossible to frame an issue within the legal framework. In many instances, the state of discrimination is clear; however, depending on the context, it may not be possible to formulate certain types of discrimination within the language of rights, thus leading to an immediate dismissal of the matter. When an issue is not justiciable, it could be possible to resolve it through alternative mechanisms, such as negotiations and alternative dispute resolutions (EENEB, 2017). Accordingly, clearly identifying the problem and framing it under a legally recognized right has allowed us to assess whether an issue is justiciable and, thus, whether strategic litigation is a feasible tool to approach the issue.



## CASE STUDY 1: Forced Disappearances After the Lebanese Civil War

An illustrative example of translating issues into legally recognized rights is The Legal Agenda's work on the forcibly disappeared, a problem that has long been rooted in deep political stances. Following the end of the Lebanese civil war (1975–1991), Lebanese authorities failed to offer any remedies regarding the cases of the 17,000 individuals from different factions who disappeared at the hands of Lebanese militias and foreign armies during the war. The ruling class sought to delegitimize the demands of the families of those who disappeared. First, they claimed that the missing persons had been killed, and later, they enacted laws to ease the process of declaring the missing relatives dead, thus, ending their relatives' attempts to know their fate. During this time, the political class argued that further investigation and attention to this topic would threaten civil peace by reopening the memories of a bloodstained war. The reluctance to treat this issue seriously was rooted in the post-war political consensus that had been made official through

the 1991 amnesty agreements.<sup>1</sup> The agreement declared amnesty for all crimes committed during the war. Thus, warlords were able to rise to power in the government, where they formed the so-called consensus of power-sharing. With this consociationalism, public policies did not address the fate of those forcibly kidnapped and disappeared during the war for fear that any substantial work on remembrance and memory would hinder the status quo.

1. General Amnesty Law, No. 84/91, 26 Aug. 1991, Lebanon.





In this particular case, the relatives' political struggle to know the whereabouts of their loved ones had to be translated into a legally enforceable right. The "right to know" was thus manufactured from within the Lebanese legal landscape. There are no clear laws or legal texts that specifically recognize this right; however, lawyers were able to develop the relatives' right to know by referencing international jurisprudence and connecting their argument to related Lebanese laws (Saghieh, 2012). In this sense, the political aspirations of accountability and memory were translated into legal claims.

Furthermore, placing the problem within the broader context of state-building has given this litigation a unique relevance and priority in activism. The Legal Agenda prioritized litigation related to forced disappearances because it aimed to solidify the right to know within Lebanese jurisprudence and because it used litigation as a tool to denounce the amnesty law and the ruling class's hold on power. The development of the right to know is particularly important given the persistent presence of warlords in public office. This right provides a new foundation for transparency, dem-

ocratic representation, and participation in public life.

The legal recognition of the right to know has been an essential step in state-building and establishing the rule of law. Litigation became a tool for uncovering and resisting the hegemony of the Lebanese political system. Accordingly, contextualizing the issue within its socio-political and historical context has allowed The Legal Agenda to understand the underlying fears of the Lebanese political class in reopening the files of the war. Therefore, the organization was able to take these social, political, and ideological fears into consideration while framing the strategy.



## Case Study 2: The Land Rights of Afro-Colombian Communities

The enslavement of Black people in Colombia was abolished in 1851. From the beginning of colonization, agricultural exploitation on the continent occurred through slavery. This practice led to an unequal distribution of land between Afro-Colombian communities and the rest of the population. During the transition towards emancipation in the mid-19th century, Black families who lived on the Rosario Islands (Cartagena de Indias) were able to gain productive land. There, former owners gave land to the Afro-Colombian community, who then began to plant coconut crops. However, a plague occurred in the middle of the 20th century, which forced Afro-Colombians to sell part of their land for a very low price. This allowed external actors who traditionally held economic power to build recreational houses and exploit tourism on the islands.

There was an increase in state intervention in the 20th century. Agricultural and environmental authorities mainly utilized administrative procedures to clarify property ownership on the islands. Administrative authorities have typically favored hotel entrepreneurs' interests over the rights of Afro-Colombian families when determining property ownership, which has shed light upon the tension between private property rights and the cultural rights and survival of this marginalized community.

Dejusticia litigated this case by supporting the Afro-Colombian communities' interest. It was challenging to determine whether

this case was justiciable or better kept in the political advocacy sphere. Judicial precedent regarding the recognition of land rights for Afro-Colombian communities was unclear. There were administrative tools used to grant land rights to the Afro-Colombian community, but the public entity with the competence had demonstrated an inclination to favor the private sector. Given the lack of access to administrative channels, Dejusticia saw litigation as necessary to address the issue. The organization built a complex litigation strategy with the goal of advocating public administrative actors to recognize Afro-Colombian land rights through administrative channels. Litigation before the Constitutional Court of Colombia was the main goal of the strategy.

Dejusticia helped to file a lawsuit on behalf of the Orika Afro-Colombian community, arguing that the case's implications extended beyond property rights and included a matter of cultural survival for this ethnic-racial minority. Its relationship with the territory deeply marked the Orika community's culture. The case should have been solved urgently by the Court, given that a delay in resolving the case could cause irreparable harm and possibly a complete obliteration of the community. The Constitutional Court ruled in favor of the community, ordering the administrative authority to declare collective land ownership to the people of Orika (Dejusticia, 2014, May 8).





## STEP 2: ENVISIONING THE GOAL

Strategic litigation differs from traditional litigation in many ways, the most important of which is the goal of litigation. In strategic litigation cases, the goal is to defend the interests of a particular individual or community in a dispute, and to advocate for systemic change in policies and practices. Given this unique characteristic of strategic litigation, it is crucial to determine the lawsuit's goals prior to filing it. As this manual will demonstrate, these goals often shape the strategies, legal tools, and narratives of the litigation. Strategic litigation can have either immediate or long-term goals or, more often, a combination of both.

### *Immediate and Long-term Goals*

The goal of strategic litigation may extend beyond a favorable ruling on a particular matter. Sometimes a favorable outcome for an individual party is not one of the goals. As will be discussed in the final section of this manual, an unfavorable decision from the court could, eventually, generate positive outcomes.

In this regard, it is crucial to distinguish between immediate goals and long-term goals. The immediate goals can be targeted towards a specific and clear policy change or decision, whereas long-term goals aim to achieve social change if the litigation successfully instigated social mobilization. Common immediate goals of strategic litigation include the judicial recognition of a particular right, acknowledging a widespread violation, a rul-

ing which generates a specific remedy, or the pressuring of authorities to implement or revoke a certain measure or policy. An additional goal may be to identify and highlight the gaps between the national legal system and international human rights standards or push towards the effective implementation of a law (Cummings, 2008).

For long-term goals, litigation can serve as an ideal space for mobilizing the community and public opinion around a particular matter and raising awareness on the violations and discrimination at stake. Litigation also provides a space for learning, where marginalized communities can better understand the work of dominant institutions while building solidarity among themselves and sharpening their tactical political skills (White, 1987). Furthermore, in many instances, plaintiffs may use strategic litigation solely for the opportunity to have a judge hear their personal narratives, an opportunity they may have long been denied (Open Society Justice Initiative, 2018).

Choosing the goal of the strategic litigation often depends on the issue at stake. A strategic litigation case involving a problem with widespread popular support may have a wide-reaching, systemic goal. On the other hand, the goal of a socially sensitive or controversial matter may be more reserved, where litigation could be used as a channel to launch the debate around a controversial matter.

Finally, litigation goals may evolve and progress over time. The success of one case could allow for the development of a related case with a broader purpose. The first case lays the foundation for the next case. A demand, once considered provocative or radical, becomes more acceptable through incremental changes (Open Society Justice Initiative, 2017; 2018).



## *Limits and Opportunities of Strategic Litigation*

As discussed above, both The Legal Agenda and Dejusticia have relied on strategic litigation as an effective advocacy and reform tool. However, strategic litigation is not always possible or efficient. It has numerous limitations and risks, and litigation may also be incapable of creating structural social change (Rosenberg, 2008). Many barriers exist that may prevent organizations from being able to use litigation to promote social change successfully. Thus, overemphasizing the power of litigation can be dangerous and sometimes counterproductive to social change. It is important to consider these limitations when determining what strategic litigation can and cannot achieve.

In certain cases, a court decision cannot resolve the issue at stake, particularly when the issue is grounded in structural discrimination, xenophobia, or racism, or when resolving an issue requires State funding and support. Such problems exceed the capacities of litigation. And, while litigation may mitigate such issues, it often is not the appropriate tool to resolve them.

However, despite the limitations of litigation, we have identified strategic litigation as the most adequate reform tool for many issues. For example, the Lebanese context explains the effectiveness of strategic litigation, as previously discussed. Within a highly politicized and polarized context, courts are among the few spaces capable of fostering non-parti-

san debates, unlike the legislative and executive bodies, which are controlled by the ruling party. The rationale for resorting to strategic litigation can be found in many aspects.

The Legal Agenda has found that the chances of persuading a single judge,<sup>2</sup> or a bench of three judges,<sup>3</sup> are often greater than the chances of persuading Parliament and the various political and ideological parties represented therein.

The judiciary is more likely to be persuaded and it is more accessible to individuals than other institutions.<sup>4</sup> The reliance of marginalized groups on the judiciary to enact change is not unique to Lebanon; political scientists have documented this trend in other regions as well. For example, studies of the American civil rights movement have shown that groups lacking influence over members of the executive, legislative, or regulatory bodies were more likely to turn to the court system to pursue their

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2. Cases related to homosexual relations or drug use are under the jurisdiction of the single criminal judge. Cases related to the arbitrary detention of refugees are tried in front of the summary affairs judge.
  3. The Court of Appeals is composed of three judges, decisions issued by the single criminal judge and the summary affairs judge are appealed in front of this court.
  4. This argument does not negate the existence of several barriers to the access of marginalized groups to the judiciary, the most important of which being prevailing prejudices. Still, access to the judiciary, especially with the help of a lawyer, remains less difficult than access to political institutions.

policy goals (Vanhala & Kinghan, 2018). Recent research has continued to identify strengths and weaknesses in a country’s political system as a factor marginalized groups consider when deciding whether to seek recourse from the judiciary (Bouwen, 2017). While it may seem like a lengthy option, litigation can offer a relatively quick resolution given procedural deadlines. The Lebanese court<sup>5</sup> must issue a judgment even if a petition is ambiguous or incomplete. Accordingly, the judge is obliged *ex officio* to issue a ruling and provide litigants with a response, which differs greatly from political authorities who often ignore constituents’ demands, given that no instrument exists to mandate their response. After years of empty promises from authorities, the families of the forcibly disappeared in Lebanon turned to strategic litigation because courts were mandated to respond to their claims.

Additionally, presenting a case in court has the benefit of forcing the opponent—whether a private or public entity—to respond and present its arguments. The nature of the adversarial system in litigation (or *Audiatum et altera pars*) obliges the opponent to justify their actions through the language of rights. Accordingly, if the opponent fails to answer in the language of rights, they are exposed as “undemocratic” and seen as breaching the rule of law.

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5. Code of Civil Procedure (Lebanon).  
Decree 90 of Article 4, 16 Sept. 1983.



Courts are often seen as the avenue fostering a rational debate. This is particularly important in rationalizing the debates around issues often embedded with strong stereotypes and prejudices. An illustrative example of this approach is found in the strategic litigation on behalf of LGBTQ+ individuals in Lebanon. Article 534 of the Lebanese penal code, derived from the French criminal law of 1943, criminalizes “unnatural sexual conduct.” This article has been historically used to prosecute LGBTQ+ individuals. However, given that the executive and legislative powers are dominated by conservative parties, it was difficult to expect any amendment to the said article. Because this enforcement pattern in the legal regime contributed to a broad atmosphere of marginalization, The Legal Agenda viewed the courts as the only available arena to foster a rational, non-religious, and non-moralistic debate. Accordingly, the organization utilized strategic litigation to re-examine Article 534 and advocate for reinterpreting it in a manner compatible with human rights protection. The goal was to enhance the role of the judiciary as a space for rational reflection, and The Legal Agenda utilized litigation to stimulate the debate around socially controversial topics.

Litigation serves as a bridge between personal narratives and legal rules. It allows the framing of narratives within a legal language and encourages the understanding of legal rules through substantial examples of individuals with whom ordinary people can identify (Depoorter, 2013). In other words, explaining legal issues through personal narratives may make such rules more accessible and understandable to the general public. The real implications of legal provisions are critically examined through concrete cases or controversies. This application of the law allows the average observer to understand how the law can apply to factual occurrences that they may experience in their everyday life. In other words, the use of litigation could provide the opportunity to highlight how abstract legal rules affect people’s everyday lives. For example, it may be more powerful to explain that a refugee, as in the case of a refugee named Yusra, was detained for over six months even though she was only sentenced to one month in jail, than to try to explain the legal definition of arbitrary detention. In this sense, strategic litigation has not only provided an occasion to raise awareness about a subject, but also to clarify legal rules for the general public.

### Case Study 3: Litigation on Behalf of Refugees in Lebanon

Between 2008 and 2009, the General Directorate for General Security (GDGS), an official security agency in Lebanon, adopted the practice of prolonging the detention of Iraqi refugees who had been convicted of unauthorized entry into Lebanon beyond their sentence. This practice was meant to pressure refugees and asylum seekers into agreeing to being repatriated. At a certain point, the number of persons the GDGS arbitrarily detained reached 600–700 in the Roumieh Central Prison. As a consequence, The Legal Agenda’s lawyers and advocates from other human rights organizations turned to the judiciary to put an end to this practice. Advocates selected refugees who had not been convicted of crimes other than unauthorized entry to be plaintiffs, and subsequently filed lawsuits on their behalf before different courts.

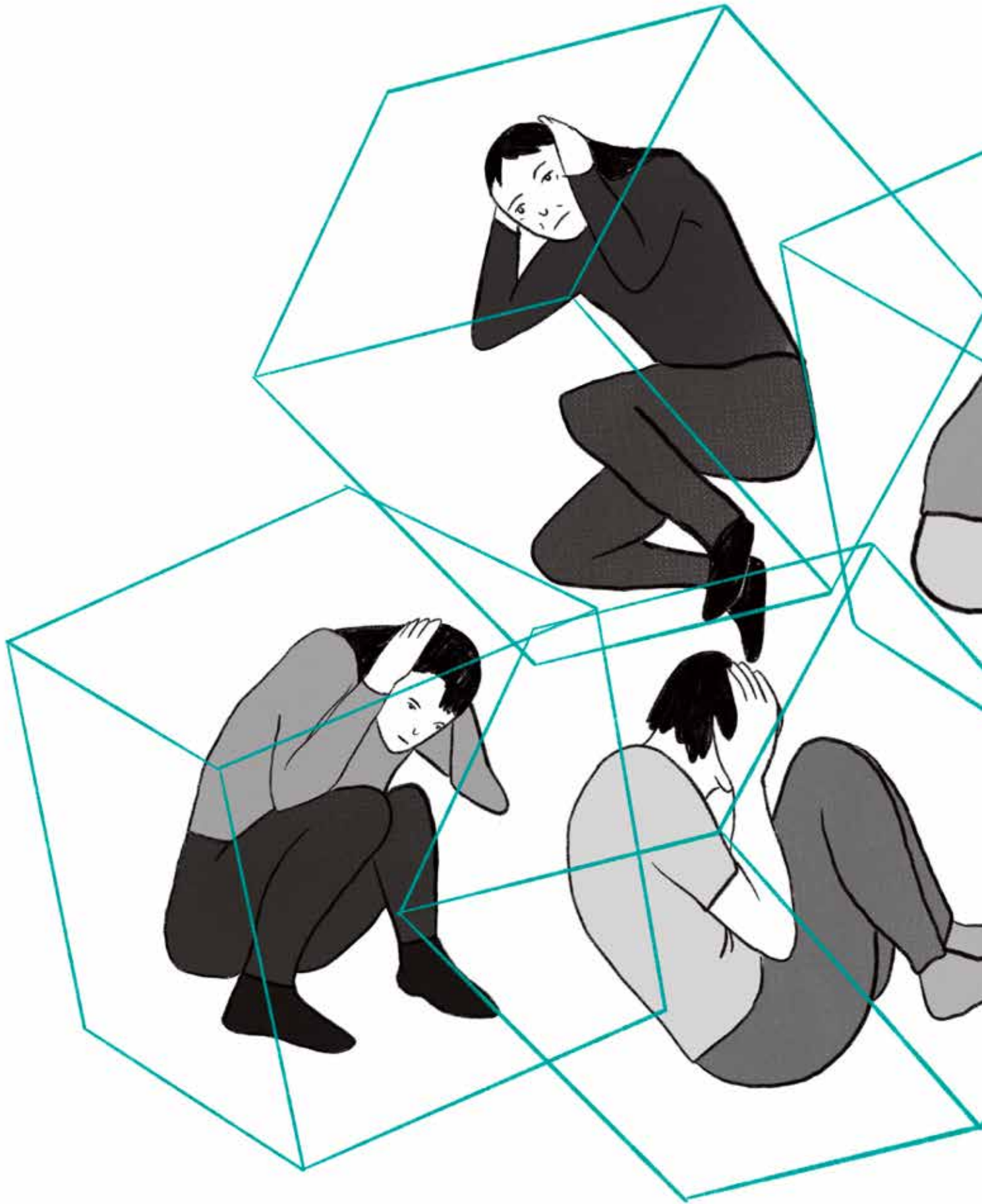
The first lawsuits aimed for the release of arbitrarily detained refugees.<sup>6</sup> The early wins of these lawsuits permitted The Legal Agenda to set lofty goals in later cases, including summoning the State to pay compensation for the harms arbitrarily detained refugees suffered.<sup>7</sup> Once a positive decision was issued regarding compensation, the litigation progressed to a third stage, aimed at compelling the State to pay the compulsory fine for refusing to release one of the refugees, which violated the first judicial ruling. This progression of cases demonstrates that, depending on the context, starting with easier, stronger cases before moving to more complex or controversial cases may be an effective strategy to achieve broad goals. It also illustrates how advocates can build on incremental changes.

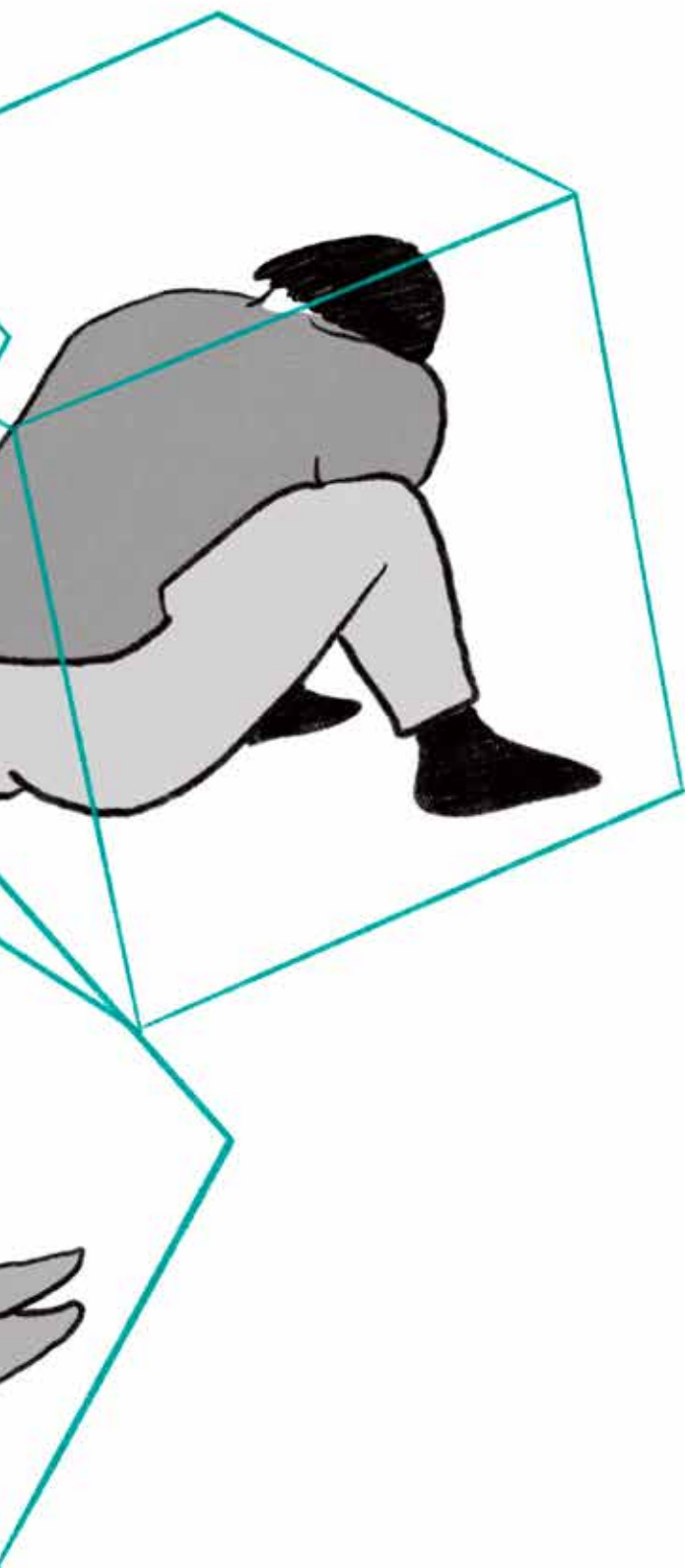
Furthermore, the litigation on behalf of Iraqi refugees in Lebanon presents a good example of using litigation to raise legal awareness and to galvanize the public. It is mostly an illustration of how to use legal discourse to rationalize public debates. When faced with claims regarding the right to refuge, the Lebanese State’s answer was one of political and confessional interest, that Lebanon is not a “country of refuge.” However, the judicial process of articulating claims framed in the language of rights, entitlements, and obligations has highlighted the discrepancy in

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6. Summary affairs judge in Zahle (Kasarji), 11/12/2009.

7. Summary affairs judge in Beirut (al-Hassan), 08/06/2010.





arguments between legal and political sectors. The State did not respond in a rights based context. Rather, the State brought its political arguments to the legal sphere, demonstrating its flawed position and portraying it as undemocratic. Going to court and using the language of rights created a dichotomy of claims: rational vs. irrational, objective vs. subjective. By creating such dichotomies, this strategic litigation matter served as an effective tool for advocating a particular claim and delegitimized the discourse of sectarianism and political interest. Framing the issue within the discourse of rights was helpful to highlight that the GDGS breached Lebanon's public order and the rights of refugees. In other words, the use of the rights discourse framed the problem around the GDGS's failure to abide by the rule of law in general. The focus was no longer solely on refugees.



## Case Study 4: Social Stigma Against People Living with HIV in Colombia

People living with HIV/AIDS in Colombia face stigma and discrimination daily. They are often denied access to health services, education, and work opportunities. Additionally, the legal system criminalized those living with HIV/AIDS in the country through a law that addressed the act of spreading the virus generally. The law contained a provision that punished those who exposed others to HIV with imprisonment for three to eight years. This provision existed as a crime against public health in the Penal Code until 2019 when the Constitutional Court declared it unconstitutional.

When the HIV case reached the Constitutional Court, Dejusticia's principal motive in intervening was not to reduce the number of HIV-positive people incarcerated due to this law because the law was rarely enforced. Rather, its objective was to remove this norm from the legal system because it promoted stigmatization and discrimination against people with HIV. The main argument in its amicus brief was that the measure criminalizing the spread of HIV, and any measure that criminalized a public health crisis, would be ineffective in protecting public health. Instead, the organization argued, the threat of a conviction discouraged people from revealing their HIV-positive status or treating the disease, further exacerbating the spread of HIV.

Through the intervention, Dejusticia helped remove this norm from the Colombian legal system, showing that it promoted stigmatization and discrimination against

people with HIV. The resolution was mostly symbolic, but the Constitutional Court's decision sent a clear signal to civil society: in Colombia, it is unconstitutional for the legal system to stigmatize people with HIV. This litigation did not end discrimination against people with HIV, but it was a step in that direction because it discouraged the use of the law as a tool to discriminate against vulnerable populations.

### STEP 3: DEVELOPING A LEGAL STRATEGY

Strategic litigation places the lawsuit at the heart of social mobilization. Accordingly, and given the importance that the particular lawsuit plays, it is pivotal to be careful and methodical when developing a litigation strategy. A badly selected or poorly developed case can be detrimental to the intended social cause as it risks foreclosing the possibility of re-litigating the issue in the future, which could result in an unfavorable law or measure.

We have adopted a method of drafting litigation strategies before filing lawsuits. It develops these strategies in a written document including analyzing the issue and whether objectives can be achieved through strategic litigation. This procedure often includes developing many options for litigation, each with its own challenges and risks. The strategy also includes a discussion of the choice of

the venue and the parties involved. Before filing the lawsuits, drafting this strategy helped identify foreseeable risks and opportunities, thus avoiding possible failures and preparing contingency plans (EENEB, 2017).

The litigation strategy should act as a roadmap throughout the litigation to answer the following question: How can we achieve our goal? Many factors should be considered to answer this question. These factors include the type of lawsuits to be filed, which court, which parties, what timing, and the possibility of recurring lawsuits.



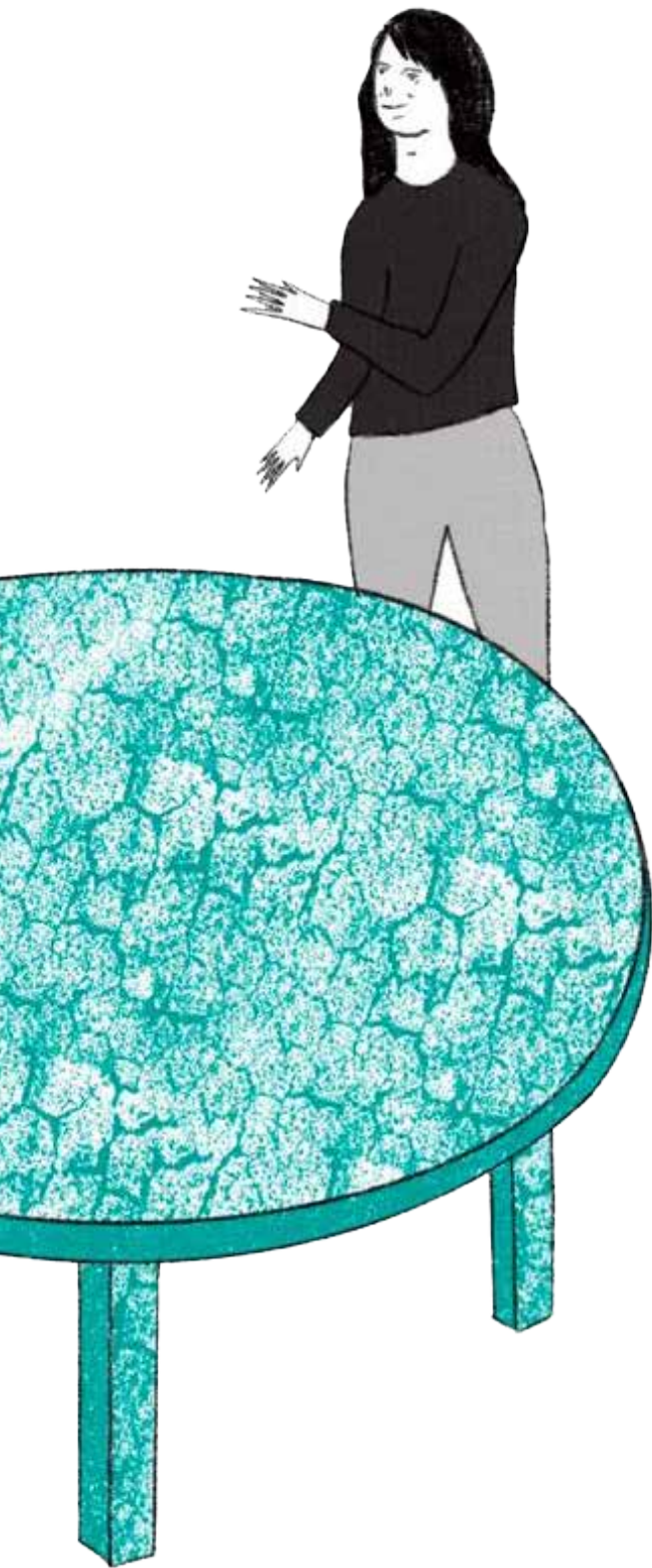
### *Strategy #1: Building the plan*

To prepare a holistic and effective strategy, a minimum understanding of the legal system and the larger social issue context are required. One method that has been beneficial is to conduct preliminary research prior to drafting the strategy. In many of these cases, our organizations have conducted an empirical analysis of judicial decisions prior to initiating litigation. This data analysis offers an understanding of the approaches and rationales courts have adopted. Another method used while creating the strategy is conducting interviews and panel discussions with stakeholders, particularly judges. The main aim of such meetings is to introduce the idea of strategic litigation in a specific area and discuss the feasibility of our goal.

### *Strategy #2: Deciding on the Type of Lawsuit*

Choosing the type of lawsuit largely depends on the goal of strategic litigation. For instance, if the goal is to achieve accountability for a human rights violation, we would ideally resort to a criminal lawsuit (where legally possible). However, if the aim is to obtain remedies for groups or individuals, then a civil lawsuit would be more suitable. In other cases, the goal of the litigation is to obtain information or document a certain abuse. These lawsuits can be filed in a civil court to request the appointment of an expert who can conduct and publicize investigations. The choice of the lawsuit type also depends on the availability of evidence, the statute of limitations, and the





global legal framework. It is important to reflect on the type of lawsuit and investigate the available legal schemes and tools in a particular jurisdiction (domestic or international) as this will impact the litigation strategy.

### *Strategy #3: Choosing the Venue*

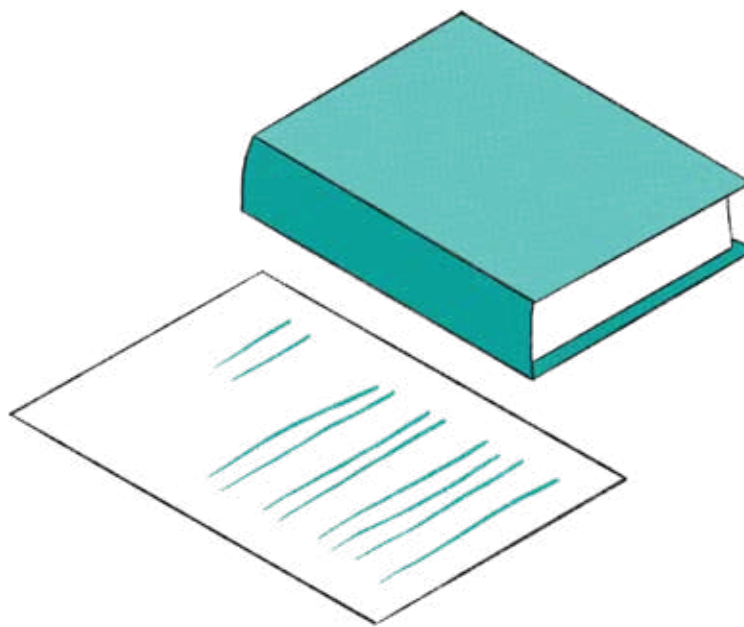
The choice of the type of lawsuit impacts the choice of venue, as procedural rules determine the jurisdiction of each court. However, and whenever possible, it is recommended to reflect on whether the potential venue is capable of creating effective change. Many factors should be considered when choosing the venue, including the venue's precedent with regard to the relevant legal issue, the procedural rules of standing, the typical length of the proceedings, and the type of remedies that can be awarded within the venue. The extent to which the court abides by judicial independence standards and its progressivity towards marginalized groups and human rights have also been determining factors in choosing the strategy. For instance, we have avoided filing strategic litigation lawsuits before courts that do not meet basic independence standards, such as military courts (Mehanna, 2015). In other cases, we were inclined to avoid litigation in front of judges known to be unsympathetic to human rights issues, or who do not adhere to the principles of judicial independence.

#### *Strategy #4: Investing in momentum*

Assessing timing is an essential element in any strategic litigation. Initiating litigation too soon can be detrimental to a case, especially if the relevant evidence is not in place. Furthermore, we have delayed litigation when beginning a case poses risks to the stakeholders. For instance, the case involving domestic workers in Lebanon.

#### *Strategy #5: Identifying the Optimal Number of Lawsuit*

Once the type of lawsuit and venue are selected, it is important to think of the procedural strategy for filing the case or cases. The classic scenario of strategic litigation involves filing one major case. Another strategy, often referred to as “impact litigation” is extensive in terms of time and venue and includes filing several similar lawsuits in many courts. Public interest litigation frequently does not achieve its goal through a single case but rather through a series of cases brought over a substantial period. Impact litigation aims to increase opportunities to generate as many favorable rulings as possible. The benefit of such a strategy is also in its capacity to reopen the debate with every new case, which ensures that the debate remains open irrespective of the outcome of one case (Open Society Justice Initiative, 2018).



## Case Study 5: Litigating the “Right to Know” in Lebanon

The Legal Agenda developed a legal strategy prior to commencing the strategic litigation on the matter of the disappeared. The organization used the strategy as a guideline when considering various litigation options, identifying four different possibilities. This case study is an illustrative example of a litigation strategy; however, the options presented will likely not be feasible for every jurisdiction and organization.

### *Strategy #1: Criminal Lawsuit*

The organization considered a criminal lawsuit aimed at holding the perpetrators of forced disappearances accountable. However, the law issued in 1994 provided amnesty for all crimes committed during the war and served as a challenge to presenting a criminal suit. While the judge could have interpreted the offense of kidnapping to be an ongoing crime that did not fall within the statute of limitations, there was a risk that courts would immediately dismiss the case. Furthermore, according to Lebanese law, the prosecution of a felony would require the Public Prosecutor to conduct an investigation. Should they decide to prosecute, the case is referred to the investigation judge, accusatory chamber, and then the criminal court. Accordingly, pursuing a criminal case would have been lengthy and would have involved different courts.

Furthermore, it would be challenging to identify the individuals responsible for the forced disappearances and kidnappings during the war. If the prosecution or plaintiff identified a specific person, they would likely be subordinate and lowrank soldiers, not individuals with significant power in the military. Low-ranking military officials who perpetrated these crimes often belonged to political movements whose leaders held (and may still hold) high positions in government. Prosecuting these low-level officials may shift blame away from leadership and create the perception that low-ranking officials always pay the price for the decisions their leaders make. Accordingly, The Legal Agenda believed that prosecuting low-ranking individuals would generate negative sentiments within broad segments of society, threatening the overall goal of the strategic litigation. However, one possible benefit of filing a criminal lawsuit would be to be able to pressure perpetrators to provide information that could reveal the fate of those still missing.

After analyzing the benefits and drawbacks by developing a litigation strategy, The Legal Agenda chose to intervene in one criminal suit that had already been filed by a family member of a missing person. (See Case Study 16: The Hashisho Law in Lebanon).

*Strategy #2:  
Civil Lawsuit Seeking  
Compensation*

Another litigation option outlined in the legal strategy included filing a civil suit seeking compensation for damages caused by forced disappearances and the concealing of information about the fate of a missing person. It was suggested that families of the missing utilize the special procedures in the Civil Procedures Code for disputes requiring urgent action in order to summon persons or organizations known to be involved in forced disappearances to court and claim compensation for the damages they faced. The intent of the civil claim would be to highlight the families' harm and suffering, which encompassed a restorative justice approach rather than a punitive approach. Another goal of this type of litigation would be to obtain information, as the amnesty law and immunities were inapplicable in civil proceedings. Therefore, presenting a civil claim would be procedurally more straightforward, given that plaintiffs could file the lawsuit immediately in court, without having to present the case to different entities as would be the case in the criminal lawsuit. More so, evidence rules in civil lawsuits were less stringent than in criminal proceedings.

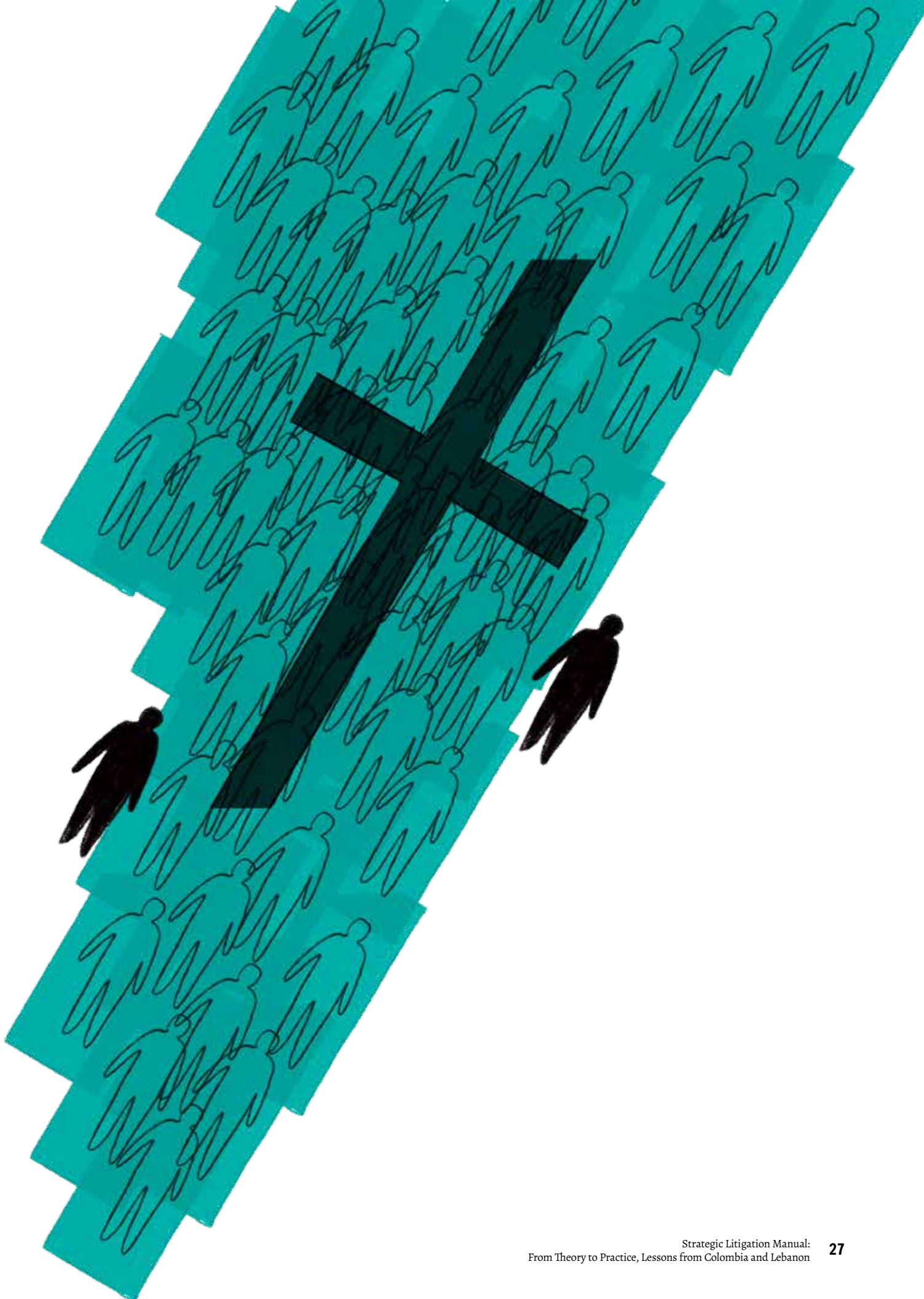
*Strategy #3:  
Protection of Mass Graves*

The third suggested lawsuit in the legal strategy was to request the protection of mass graves through judicial orders. Protecting mass graves would prevent tampering or desecration, ultimately with the hope of detecting

and identifying the persons buried therein. The Legal Agenda represented the Committee of the Families of the Kidnapped and Disappeared (CFKD) in five cases against owners of property with mass graves. Even though these lawsuits did not lead to the desired protective order, it was an opportunity to obtain evidence of mass graves, as well as document witnesses' testimony on the history of these mass graves and their composition. Documenting such data has also served the purpose of preserving the memory of the disappeared.

*Strategy #4:  
Suing the State*

The fourth type of lawsuit included in the legal strategy had the purpose of guaranteeing the right of the families of the disappeared to access public information on the fate of their relatives. In 2000, the Council of Ministers established a commission to determine the fate of the missing in Lebanon. This commission identified mass graves all over the country, but only mentioned three of them publicly. The commission did not take measures to protect the mass graves they had identified and families had no access to the official report. Accordingly, the litigation strategy suggested that families of the disappeared file a request to the Council of Ministers to obtain the Commission's report on mass graves. If the Council refused to provide the report, litigants would have an option to appeal the decision to the State Council—which is the higher adminis-





trative court in front of which illegal administrative decisions can be appealed.

The Legal Agenda and the families of the disappeared chose to implement this strategy. After the refusal of the Council of Ministers to provide a copy of the report to the families, the Committee of the Families of the Kidnapped and Disappeared (CFKD) in Lebanon and the Association for the Support of Lebanese in Detention or Exile (SOLIDE) filed a lawsuit before the State Council on the matter on December 24, 2009.

The choice to include both organizations (SOLIDE and CFKD) in the matter was strategic, as they both have a representative legitimacy. The strategy had recommended that the lawsuit be filed by a representative group of relatives or families, and not solely individuals. It was argued that the associational framework would not only enforce the position of the families before the court, but also strengthen the solidarity among them, given that presenting a lawsuit could unduly burden an individual.

While determining this strategy, The Legal Agenda's lawyers mentioned a reluctance to rely on the State Council given its history of conservative rulings. However, on March 4, 2014, the State Council issued a landmark decision annulling the Council of Ministers' decision to deny parents of the disappeared the official investigation commission's file on the fate of the kidnapped and missing persons (The Legal Agenda, 2014; Frangieh, 2014; Halawani, n.d.). The State Council based its deci-

sion on the right to truth, declaring the family members' rights to access a full copy of the file. The Council held that the right is an inherent right stemming from several other well-established rights included within international treaties to which Lebanon is a signatory: the right to life, to decent living, and to a proper burial; the right of parents to have family values and family ties respected; and the right of children to have a family, emotional care, and a stable life. The rights of parents of missing persons indicate that these individuals should be informed about all investigations that could shed light upon the fate of their children.

It is to be noted that the strategic litigation movement defending the right to know has relied on combining "rapid" and "slow" lawsuits to keep the debate on the issue relevant over time. While the lawsuits before the Summary Affairs judge demanding the protection of mass graves provided a somewhat immediate response, the lawsuit in front of the State Council took five years before a verdict was issued. Accordingly, both options were used simultaneously.

## Case Study 6: Recognizing “the Right to Defend Human Rights” in Colombia in Colombia

### *Strategy #1: Framing the Right to Defend Human Rights*

Everyone has the right, individually or collectively, to promote and seek the protection and realization of human rights and fundamental freedoms at the national and international levels. This is the basic principle of the right to defend human rights. Although it seems a basic duty of states, many do not guarantee the protection of this right.

The first article of the American Convention on Human Rights establishes the duty of

the states to create the necessary conditions for the effective enjoyment of the rights of the convention. In fulfilling this duty, the work of human rights defenders is central. This is what the Inter-American Court of Human Rights has said. In its jurisprudence,<sup>8</sup> it establishes that the role of the States within the system is complemented by the human rights defenders’ labor, since they act as guarantors against impunity in front of the violation of human rights in the countries.

Violence against human rights defenders (HRD) has been a reality throughout Colombia’s history, with a particular connection

8. Corte Interamericana de Derechos Humanos (CIDH [Interamerican Court of Human Rights], 27 Nov. 2008, Caso Valle Jaramillo y otros vs. Colombia. Sentencia de Fondo, Reparaciones y Costas [Case of Valle Jaramillo et al. v. Colombia. Judgment on Merits, Reparations and Costs].



to the armed conflict. This violence has been accentuated in recent years, particularly after the Colombian Government and the FARC-EP ex-guerrilla faction signed the Final Peace Agreement. Since 2016, Colombia has been one of the three most dangerous countries to defend human rights in the world.

To understand the violence against human rights defenders (HRDs), Dejusticia found it necessary to carry out a socio-legal investigation on the subject (Ball, Rodríguez, & Rozo, 2017). When Dejusticia got involved in the matter, statistical data reflecting the number of fatalities of HRDs per year was available in publications by the national organizations of victims, the State, and international human rights organizations such as the UN. Dejusticia encountered disparities in the reports, which made it difficult to understand the magnitude of the problem.

Another key area of research was developing an understanding of existing legal protections for HRDs in the country. The Colombian legal system consists of a large body of laws and regulations, often promulgated by executive or administrative bodies. More than fifty disjointed norms discussed legal protections for HRDs, making the legal protections unintelligible. Due to the political importance of resolving this issue, different executive administrations had tried to solve the problem. They all employed different approaches, which resulted in many contradictory laws and regulations. Dejusticia found that a highly bureaucratic protection system existed with little capacity to respond to HRDs' needs.

After conducting this legal research, Dejusticia concluded that the solution involved clarifying the conflicting norms, mechanisms, and entities in charge of HRD protection with the rights guaranteed under the Constitution and international law. The strategic litigation's main objective was to push the government to comply with international law to ensure "the right to defend human rights." Establishing this precedent would create a legal regime where conducting human rights defense would no longer put HRD lives at risk (Dejusticia, 2019, December 10).

*Strategy #2:  
Select the Appropriate  
Lawsuit for Protecting HRD*

Hundreds of human rights defenders have died between 2016 until today. Regularly, when lawyers are facing death cases, the first thing we tend to think about is a criminal procedure to solve it. This is due to the importance of determining the material perpetrators of these crimes, as well as seeking reparation for the victims' relatives. One might think that the natural opponent would be the people who were killing the human rights defenders. However, the strategy focused more on those who were allowing or facilitating crimes to occur because of their negligence. That is, the entities that, even having the legal duty to protect the lives of these people, were not doing it effectively. With the intention of having a broader impact than individual cases of murdered HRDs, the case lawyers decided to



study the State's whole protection policy and identify the flaws that blocked the fulfillment of the protection objective. This determined that the proper type of lawsuit was not criminal, but constitutional.

*Strategy #3:  
Choose the Legal Venue  
That Can Have the Most Impact*

Given that the defendant was the Colombian government, the Constitutional Court was the appropriate body for the dispute. While crimes against HRDs have criminal dimensions and possibly invoke corporate responsibility, the litigation was, initially, to identify the government's shortcomings in improving HRD protection and mandate that the government fulfill its obligation to investigate, prosecute, and punish the actors responsible. These goals raised constitutional claims that had to be brought before the Constitutional Court. Specifically, a special legal action aimed to protect fundamental rights, which also has shorter procedural times.

*Strategy #4:  
The Timing of the Litigation  
Should Be Symbolic*

In most matters, the urgent necessity to guarantee the protection of rights determines the timing of the litigation. However, in cases where urgency is not a determinative factor, the timing of the litigation can correspond with symbolic moments. For example, Dejusticia chose to file the case to demand protection for HRDs on International Human Rights Day, which amplified media coverage because

the media was more likely searching for issues related to international human rights on that day.

*Strategy #5:  
Each Story Should  
Explain the Problem*

Litigation with many different interested parties does not always have a strong chance of success because of the complexity of stakeholder interests. Sometimes it is more efficient initially to opt for a progressive strategy with few parties to promote the effective protection of rights. In the case of HRDs, Dejusticia documented ten cases of HRDs who defended different causes and practiced in different regions of the country to demonstrate that the security problems occurred on a national scale and impacted those defending a variety of causes. This was a small number of plaintiffs, given the number of HRDs who face violence in all parts of the country. These cases also highlighted the need to issue public policy orders that would achieve a positive impact on the largest number of defenders in Colombia.

**STEP 4:  
IDENTIFYING THE PARTIES**

*Selecting the Plaintiffs*

The legal strategy should include analysis on whom the litigants should be. This method of selecting the parties is not always possible, especially for the stakeholders, and it particularly contradicts the traditional notion that the lawyer's job is to assess the legal strength of a case, not the moral merits or societal ben-



efits that may come from a case (Meyer, 2006). However, because the litigation narrative impacts the strength of a broader social movement or cause, it is important to consider the power of personal narratives and stories in attracting public support for the cause.

Throughout our work, The Legal Agenda and Dejusticia have learned the following: Representing grassroots organizations or a movement rather than individuals may provide more legitimacy to cases relating to collective rights and may garner more support from the public. Therefore, it is often best to select organizations or groups who have legitimacy in the communities they represent rather than selecting a few individuals. Organizations are often more equipped than individuals to coordinate with the media and provide support with scientific expertise and social mobilization, elements that are essential to strategic litigation.

In many cases where representing an organization was not procedurally possible, we have partnered with grassroots organizations to complement their efforts in representing individuals. These organizations offer direct services to marginalized groups and are in direct contact with them, which has helped identify individual plaintiffs. Additionally, the role of these organizations in providing psychosocial support to individuals has been pivotal, as we do not have the infrastructure (shelters, medical services, health assistance, etc.) to do so.

Prior to selection, it is important to make sure that litigants would have standing in court. Litigation requires time, resources, and effort and it would be unfortunate to lose a case due to a lack of standing.

It is crucial to select trustworthy and reliable individuals who can best advocate for the cause and attract public support. It is important to select plaintiffs for whom the public would feel sympathy, who have legitimacy from the community, and who can represent the cause in the best way possible. It is important to set a clear criterion of the plaintiffs selected to represent the case.

Finally, it is pivotal to ensure that individuals are aware of the goal of the strategic litigation and that they are able to engage with the issues beyond their individual case.

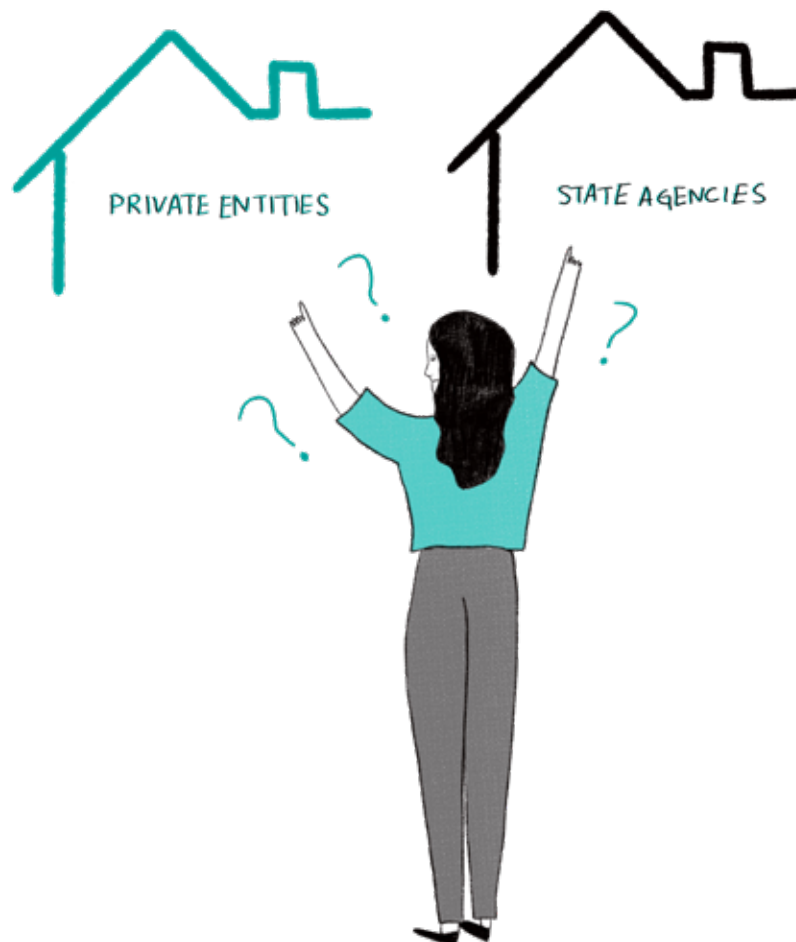


### *Selecting a Defendant*

Another issue to consider while preparing for the strategic litigation is against whom the lawsuit should be filed. Some potential defendants are more likely to acquiesce to systemic change through litigation than others. Is it more impactful to sue private entities not complying with human rights standards or state agencies for not exercising their oversight?

The possibility of choosing the opponent largely depends on the case, and it is often impossible to do so. The choice of the opponent largely impacts the risks of the lawsuit. For instance, litigating against big corporations usually drains the capacities (and pockets) of opposing grassroots lawyers. Corporations tend to use their social and financial capital to overwhelm opponents, exhausting their energies, and distracting them from the initial lawsuit, often through filing harassment lawsuits against activists and supporters. This is also a tactic to exhaust the lawyer who often works on a pro-bono basis, while the company can afford to appoint various high-fee lawyers.

While litigating against private corporations has its downfalls, litigating against the state also has its risks and challenges. State entities may retaliate with oppressive and arbitrary measures. Both situations should be taken into consideration to identify the opponents.





## Case Study 7: “To Take into Account the *Campesino*” in Colombia

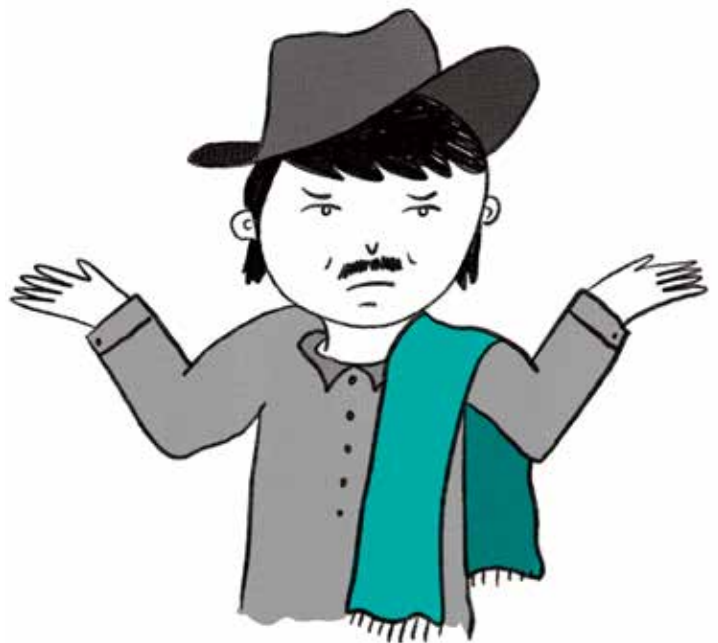
In Colombia, the main statistical instrument used to design public and social policies is the Population and Housing Census which the National Statistics Department (DANE) carries out. Until 2018, the characteristics of the population that the census captured were sex, age, ethnicity, and economic status. However, with this information the *campesino* population was invisible in terms of public policy. Just to clarify, in Colombia, the *campesino* is a person who lives principally in rural areas, has various types of land rights, produces for self-consumption, and, with any surplus, participate in the local market (ICANH, 2017).

In 2017, Dejusticia filed a legal action requesting that the DANE include the *campesino* population in the 2018 census. We argued that failing to include *campesinos* in the census violated their right to equal protection of social, culture, and economic rights. The lack of public information on the group blocked the State from developing policies to promote equal protection of *campesino* rights. This was problematic because the *campesino* population traditionally and historically has been marginalized in Colombia.

Dejusticia chose to present this legal action because several *campesino* organizations had requested DANE to recognize them in the census, without success. For years, DANE ignored the *campesino* organizations' requests. Because of this lack of protection, Dejusticia subsequently formed an alliance with these *campesino* organizations to analyze possible ju-

dicial avenues to resolve the issue of the *campesino*'s statistical invisibility.

One of the biggest challenges in this litigation was choosing stakeholders. The *campesino* organizations had previously presented a judicial action to request that DANE include their community in the census, but the judge denied their request. Therefore, Dejusticia's litigators decided to modify the litigation strategy by selecting *campesinos* from across the country as plaintiffs. In this opportunity, the *campesinos* would act directly and not through the representation of *campesino* organizations. The litigation was viable thanks to the organized *campesino* movement, because they made it possible to put together 1,770 *campesino* plaintiffs, who agreed to participate in the litigation.



The Supreme Court ruled in favor of the 1,770 peasants. Litigation strategy did not leave the judge room to doubt that the plaintiffs were a representative sample of Colombia's *campesino* population. The Court ordered the addition of the *campesino* category to all of DANE's statistical instruments.

In this case, selecting the plaintiffs was a great challenge; however, identifying the opponent was an easy task. It was absolutely clear that the DANE was the public entity to sue. DANE had the legal and constitutional competence to make changes to the statistical instrument that could collect relevant information from the *campesino* population.

## STEP 5. ASSESSING RISKS AND RESOURCES

It is important to consider risks relating to the stakeholders and to the case broadly before commencing the litigation. Identifying risks allows litigators to adopt preventive strategies, particularly regarding a stakeholder's physical and reputational safety.

Strategic litigation usually receives great public scrutiny, with a lot of attention placed on the parties involved. Accordingly, victims may face retaliation or reputational risks. Fear of retaliation or a risk to one's reputation may deter victims from seeking remedies through the courts, which creates an obstacle to strate-

gic litigation. In countries without strong rule of law, such as Lebanon or Colombia, these fears are particularly palpable. Losing a case could result in the legitimization of an unfavorable legal regime and in significant harm to the victim. For example, filing a lawsuit on behalf of a foreigner whose residency permit has expired would signal to the government that the individual does not have a regular migratory status, potentially subjecting them to deportation.

Another example of the risk of strategic litigation has been discussed in the strategy on litigation on behalf of Palestinian refugees in Lebanon seeking to register ownership of their property (Saghieh & Nammour, 2017). Lebanese law prohibits Palestinians from owning real estate and the goal was to challenge this rule through litigation. However, a strategy that included filing a motion for a Palestinian buyer to register their property could pose a significant risk that the property would be repossessed by the seller if the lawsuit failed. Accordingly, the litigators identified a safer strategy that included a Palestinian buyer and a Lebanese seller from the same family. For example, it was recommended that a Palestinian refugee would file a case to compel their Lebanese mother to register a property endowed to them via a written deed. In this case, both the mother and the child would agree on this strategy before filing the case. It would be the mother's aim to ensure the transfer of her

property to her Palestinian son/daughter in her lifetime and to overturn the legal prohibition on the latter from acquiring the property either via endowment or inheritance. If the case succeeds, the litigants succeed in delegitimizing the legal prohibition. If the case fails, the property retains its previous status and no one sustains any material loss. This strategy does not put the mother at risk, nor does it jeopardize the ownership of the property.

Another risk of strategic litigation is that the victim develops litigation fatigue, which may lead them to drop the lawsuit. The stakeholder may also choose to drop the lawsuit if the opponent pressures them to do so or offers a remedy. The case of a domestic worker who was sexually assaulted by her former employer offers an illustrative example. When the opposing party proposed to settle the matter amicably, the worker accepted the settlement. This settlement was beneficial to the worker; however, settling the case prior to a judicial resolution was not in the best interest of the broader cause of establishing legal protections for domestic workers.

Other common risks of strategic litigation relate to the lack of judicial independence and backlash after judicial opinions. This may hinder judges from issuing decisions that contradict the interests of the ruling class or powerful and influential entities. Furthermore, litigation may trigger backlash, and a judicial win could be circumvented by a regressive law or by violence against marginalized communities (Cummings & NeJaime, 2010).

### *Evaluating Needs and Resources*

It is important to be realistic about the resources we have and those we must acquire to launch and maintain a potentially lengthy litigation. Important resources to consider include the composition and capacity of the team, and external allies who can support the matter, available time, and financial support.

The litigation team may consist of the organization's internal employees or external stakeholders integrated into the matter to support the litigation. For example, in some cases, establishing an interdisciplinary team within the organization can be an effective strategy. Given that strategic litigation seeks to solve complex social problems, neither the problem nor its solution can be understood from an exclusively legal perspective, often creating the need for non-lawyer participation. An interdisciplinary team is often strongest when it includes anthropologists, sociologists, economists, statesmen, and engineers, among others, to help lawyers understand the sources of the problem and propose solutions.

In other circumstances, building alliances and working in coalition with external stakeholders to assist in the matter is the best option for developing a multidisciplinary team. Identifying the organizations that work in the field relevant to the litigation strengthens the litigation and provides an opportunity to consult with outside expertise. Making political and organizational alliances, even if they are not an integral part of the litigation team, may

still be beneficial because outside groups can present interventions during hearings or file *amicus curiae* before the judge, strengthening the relevance of the case. Additionally, while state entities are often the opposing party in strategic litigation, this is not always the case. In fact, public entities and their officials are diverse, and some may become allies in litigation. Establishing collaborative relationships with the public entities can be incredibly beneficial, especially when these entities can facilitate access to relevant public information (EENEB, 2017). Building rapport with public officials may help organizations obtain information promptly, saving on another important resource—time.

Time and financial capacity are also relevant resources to consider. Establishing a timeline helps determine the estimated length of each stage of the litigation to ensure that all members of the team and allied organizations understand what is required of them at each step. Understanding potential costs that could arise in a case is useful when strategizing financial resources. Litigation can be costly, especially if it requires experts or scientific evidence. While organizations may be able to offer pro-bono representation services, it is recommended that organizations that engage in strategic litigation plan for additional sources of funding.



## Case Study 8: Universal Right to Health Regardless of Migration Status in Colombia

Up until the last decade, immigration law was a relatively new and unexplored topic in Colombia. Historically, Colombia has had extensive external migration due to displacement from the country's internal armed conflict, but generally Colombia has not been known as a migrant host country. This reality changed as the political and economic crisis in Venezuela intensified. As Venezuela's neighbor, Colombia became the leading destination for Venezuelan migrants and refugees, as well as Colombians returning from Venezuela.

Colombia's disjointed migration laws and policies have been insufficient to provide protection for Venezuelan migrants and refugees who have resettled in the country. According to the Colombian Migration Office, as of February 2020, more than 1.8 million Venezuelans are now living in Colombia. However, care policies for the migrant population in the country are precarious. For example, the healthcare system, beyond providing limited emergency response care, is practically inaccessible to migrants in Colombia who have no pathway to regularize their migration status. Strategic litigation, therefore, has been a very important tool to guarantee the fundamental rights of migrants, such as the right to health, which is often violated due to Colombia's limited healthcare guarantees for migrants. Dejusticia has been a pioneering organization in the defense of migrants' health rights in Colombia.

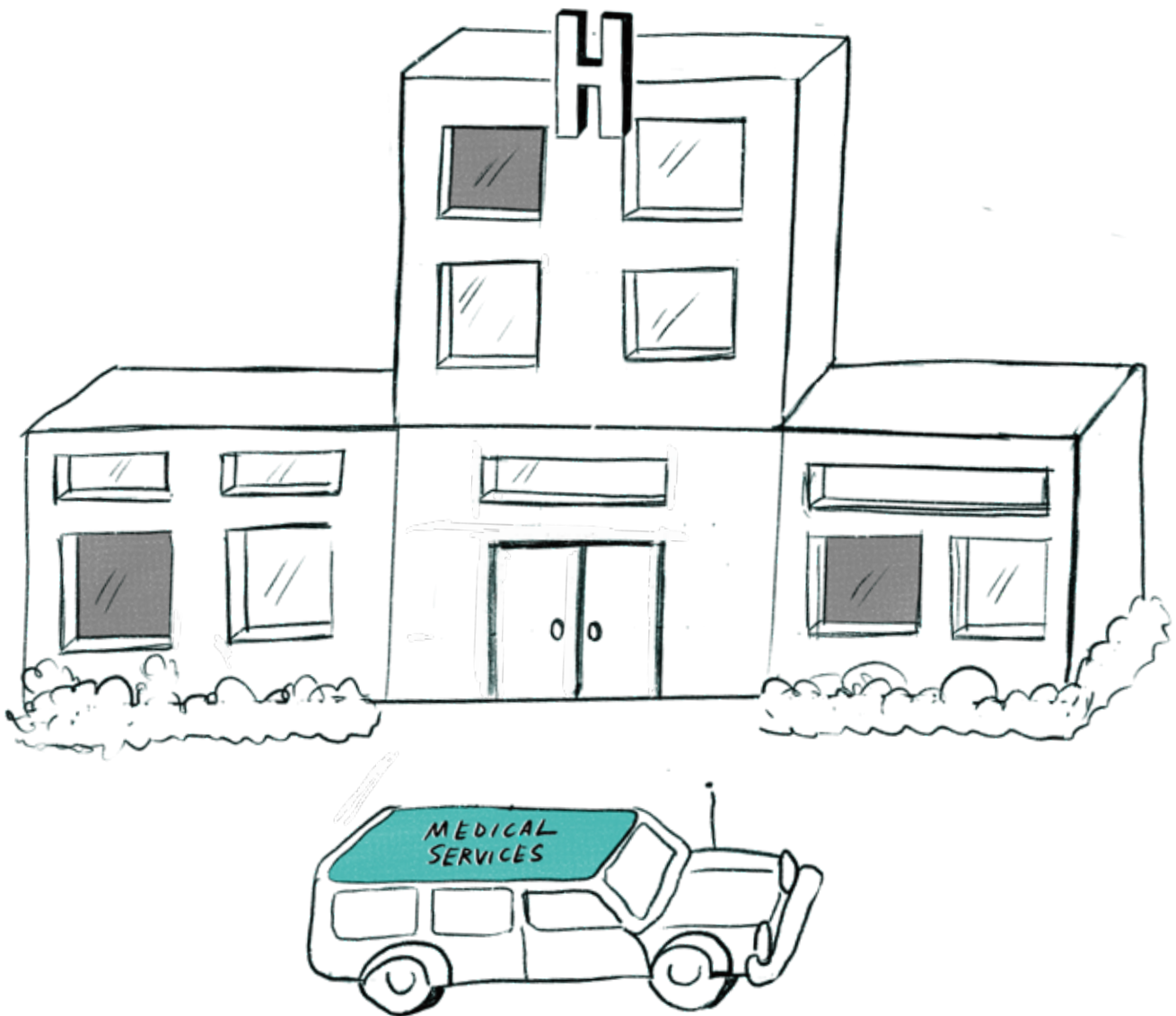
Dejusticia's litigation strategy involves supporting consecutive cases before the Con-

stitutional Court to solidify a more holistic interpretation of the right to health for migrants, regardless of immigration status (Dejusticia, 2018, May 29). Developing these cases has not been easy, given the variety of issues involved. Dejusticia has collaborated with professionals from different disciplines, including lawyers, economists, anthropologists, and communication specialists. The interdisciplinary nature of this team helped Dejusticia to present high-quality *amicus curiae* and also to anticipate and counteract the opposing party's xenophobic narrative and legal arguments.

Xenophobia, a pressing issue in Colombia, is often exacerbated by the precarious quality of essential services, such as healthcare for Colombian nationals. Given Colombians' own struggles with their healthcare system, it is challenging to advance the idea of universal healthcare for migrants. In advancing a universal healthcare strategy, Dejusticia has seen an increase in nationalist and xenophobic responses, including the idea that migrants in Colombia weaken the rights to health of Colombian nationals through attempting to access health services. Faced with the reality of the limited access to medical services in Colombia, Dejusticia included a "cost-effectiveness" argument in the case. For example, Dejusticia cited evidence that in health systems throughout the world, it is cheaper to provide preventive care and treat patients in the early stage of diseases than to wait to treat patients when their disease has progressed.

The work done by public health experts, economists and lawyers within the team was crucial to the construction of this argument.

This argument helped silence xenophobic criticism and allowed Dejusticia to convince judges and the public that the right to health should not be linked to a migration status. While the right to health for undocumented migrants in Colombia remains limited, Dejusticia has made progress in amplifying services available to the undocumented community due to its litigation successes.



## PART 2: LITIGATING THE CASE

In this second part of our reflective work, we detail three of the key steps in developing legal strategy. In doing so, we argue that in this path three of the most important challenges are collecting the evidence, developing legal arguments, and building an outreach strategy.

### STEP 6: COLLECTING EVIDENCE

Collecting and presenting proper and sufficient evidence is an essential element of any dispute. Evidence primarily serves to prove facts and bolster arguments, which may lead the judge to rule the desired outcome (Public Law Project, 2014). The introduction of effective evidence also may help establish the parties' legal standing, prove the defendants' acts or omissions, demonstrate the resulting harm caused to the plaintiffs, and determine the rights or laws violated. Evidence can show that the defendants are the proper parties against whom to bring a suit due to their ability to remedy the rights violation.

Evidence is often difficult to obtain in the human rights litigation context for several reasons: 1) the State may have the evidence and may refuse to share it; 2) there may not

be enough information on the rights violation and the State may not have the capacity to produce it; 3) there may be no conclusive scientific evidence to prove the causality between a fact and the violation of a right; or 4) private entities (corporations or individuals) may possess the evidence but cannot be legally compelled to produce it (Duffy, 2018).

Since strategic litigation aims to produce benefits for groups not directly involved in the case, litigants should present evidence that demonstrates a larger societal issue rather than solely focusing on evidence directly pertinent to an individual plaintiff. Evidence should seek to prove the existence of systemic human rights violations to demonstrate that the plaintiff's circumstances do not represent an isolated incident. This strategy encourages the court to provide relief not only to the plaintiff's situation, but also to address the structural problems under which the case was brought.

There are two evidentiary levels that must be presented: 1) proof of the violation of the petitioners' rights, and 2) proof that such circumstances are widespread, demonstrating the need for the defendant to respond urgently to remedy the violation effectively. Technical evidence, such as information from human rights reports, specialized literature, scientific research, and interdisciplinary research from fields such as social science, economics, public health, and ecology may be useful to prove the scope of the generalized rights violation.







## Case Study 9: Understanding Technical Evidence in Lebanon

The Eden Bay resort (previously known as Eden Rock) situated along Ramlet al-Baida — Beirut's last public beach—has been a topic of interest for urban activists and environmentalists in Lebanon. The main objection to this resort stems from the country's long history with the infringement of private resorts on the public domain, a practice that has led to the privatization of almost the entire coastline.

The construction of the resort, which began in 2016, triggered unprecedented opposition, mainly because this construction is on the last remaining public beach in the capital city. The Legal Agenda joined activists in campaigning to stop the ongoing construction; however, there was little available evidence of legal violations. While construction work on the hotel had started, activists did not have access to the construction permit or the master plan, which were arguably necessary to stop the project. Gathering all necessary information to complete a lawsuit was one of the obstacles faced by The Legal Agenda and many civil society organizations, especially since the documents were held by the municipality of Beirut and the governor who refused to provide a copy of the construction permit (Karame, 2017).

However, and despite the lack of evidence, The Legal Agenda submitted a request to annul the construction permit on behalf of the environmental NGO Greenline. The first motion included general legal arguments regarding

the right to access public lands and evidence that the resort was being constructed on a protected area.

This case revealed two important lessons about evidence. First, important evidence may not be available at the start of the lawsuit. One of the aims of a strategic lawsuit can be to obtain evidence otherwise unavailable. In the case of the Eden Bay resort, The Legal Agenda did not have access to the construction permit. However, advocates demanded that the court order the company to submit a copy of its documents, which was successful in making the evidence available. Lawyers were able to identify violations in the permit, producing public outrage.

Second, similar to the Guajira (Case 10), this case's multidisciplinary approach was indispensable to producing the evidence and understanding and analyzing the available data. Once the court ordered the submission of the documents, the corporation produced a myriad of maps, masterplans, and impact assessments. These documents were only comprehensible to those in the field and familiar with the plan, which the company knew when it produced the documents. The lawyers had to determine how to decode the map written by engineers to be able to use it as evidence and identify any legal violations. The Legal Agenda decided that it was necessary to gather a multidisciplinary team of experts. Engineers and

architects helped decipher the maps, which identified over eleven violations, including fraud, in the permit. This joint effort culminated in a motion that enumerated the violations in detail, so clearly that they could not be questioned. The file was also submitted to the president of the Beirut Order of Engineers and Architects (OEA) who issued a report documenting the violations.

As a result of this litigation, the State Council issued two consecutive decisions halting the construction work. However, this did not prevent the company from continuing the construction work, thus proving clear political backing since the internal security forces did not interfere to enforce the execution of the decision. The Legal Agenda then resorted to the judiciary of urgent matters, and on March 21, 2017, following the issuance of the third decision ordering any violator to pay a fine amounting to LB150 million (US\$99,219), the construction work stopped temporarily. Unfortunately, less than a month later, on April 11, 2017, the State Council issued a ruling reversing its earlier decision to suspend the construction permit of the resort.

## CASE STUDY 10: DEATH FROM MALNUTRITION IN COLOMBIA

Between 2015 and 2016 in Colombia, 266 children died due to causes associated with malnutrition. The different local authorities did nothing to investigate the causes of these deaths or propose remedies to prevent more victims of malnutrition. A private citizen filed a legal action, specifically a Constitutional writ of protection (*tutela*), before the Colombian Constitutional Court on behalf of Indigenous Wayúu children whose rights to food and water had been violated. Dejusticia intervened in support of the *tutela*.

The Constitutional Court conducted an inspection visit and on-site hearings to gather evidence for the case. Dejusticia conducted a parallel investigation to provide complementary information to the Constitutional Court about the humanitarian crisis in La Guajira, the region in Colombia where the Wayúu community lives. The investigation also served to generate an understanding of the structural factors behind the violation of the Wayúu community's rights. An interdisciplinary group of researchers from Dejusticia traveled to the region and conducted field observations and interviews. The advocates visited several communities and municipalities in La Guajira over two trips, holding interviews with various members of the affected communities and authorities.

Dejusticia narrowed its research to focus on the situation of children, women, and the elderly because Indigenous leaders explained to the researchers that approximately eighty to

ninety children had died from malnutrition in the year preceding the interviews. Additional interviews conducted by advocates with members of the community helped show that there were systemic violations of the general Wayúu population's rights to water, food, health, and education (Dejusticia, 2018, September 5).

From their research in the community, advocates identified five crucial factors that contributed to the violation of the Wayúu community's rights: 1) La Guajira's complex desert geography; 2) the Government's scarce presence in the region and consequent lack of understanding of the situation of Indigenous peoples; 3) the community's loss of self-determination and autonomy over its territory; 4) changes in the economic manual of the region from one dependent on agriculture to one dependent on extractive industries; and 5) institutional weaknesses at the local level. Dejusticia submitted a report to the Constitutional Court, outlining these factors. Additionally, Dejusticia presented photographs, videos, and recorded interviews to the judge.

This report helped convince the Court to rule that there were severe systemic violations of the Wayúu community's constitutional rights. The court held that structural failures had created a pattern of fundamental rights violations that affected a significant number of Indigenous people. The Constitutional Court took note of Dejusticia's submission, ordering the creation of a special mechanism to monitor the situation in the region as well as

giving authority to civil society organizations to exercise oversight of the implementation of the court order. This is the first case in which the Court recognized a violation of the constitutional rights to health, drinking water, and food and the right of Indigenous peoples to participate in decisions that affect them (Dejusticia, 2018, June 8).

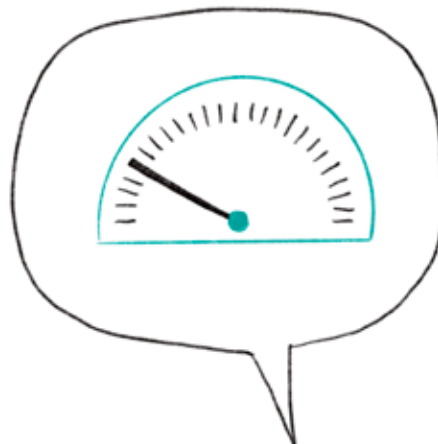
The research that Dejusticia's interdisciplinary team conducted and presented to the court in the form of a report was vital to the success of this litigation. Lawyers, journalists, and photographers jointly carried out this project, which allowed Dejusticia to present factual stories related to relevant legal arguments and to display these stories highlighting the precarious situation of the children and youth in La Guajira through audiovisual means. Dejusticia's participation in this case is an example of how comprehensive evidence can shed light on a larger systemic issue than the litigant's story alone could do.

### STEP 7: DEVELOPING LEGAL ARGUMENTS

After gathering evidence, the next step is to construct the legal arguments. Advocates must develop the facts, legal issues, arguments, and effectiveness of potential remedies in a legal strategy before litigation. A legal strategy should focus on producing evidence or proving the link between acts or omissions and the responsibilities that result from them

and on evaluating the legal claims that could generate real solutions to the overall issue. Unfortunately, there is no single formula for the construction of effective arguments. The structure of arguments largely depends on the legal tradition of the litigation forum. However, we describe some recommendations that could be applied in any legal research.

There are two types of legal issues to consider in any legal strategy and throughout the litigation: 1) procedural issues, or issues of form, and 2) substantive issues related to the case. Procedural issues pertain to whether the matter before the court is one that the judge is permitted to resolve. Analyzing jurisdiction, for example, helps determine whether advocates should present the case in front of a national or international tribunal. The decision may depend on which avenue would be most effective for a given case. The applicable law in a jurisdiction (constitutional law, civil law, family law, labor law, etc.) is also an im-



portant procedural issue to analyze during the legal strategy phase. Substantive questions, however, deal with the merits of the case—the violation of a particular right, the legitimacy of the harm caused, and the proper legal protections necessary to remedy the violation.

In preparing legal arguments for litigation, it is important to consider the legal research that the case will require. The research may include the use of many sources of law to help develop the procedural and substantive arguments, including statutes and their legislative history, judicial precedent, and international legal norms and jurisprudence. It is also crucial that lawyers consider counterarguments and policy arguments when gauging the strength of a case. The usefulness of each of these sources and strategies will be discussed in turn:

**1) Statutes and legislative history.** In addition to the analysis of the applicable statutes, for some cases, it is useful to investigate their legislative history to add meaning to ambiguous language in a statute's text and to determine what the legislative intent was at the time of the statute's drafting. Using legislative history to support a statutory interpretation could be useful to guide an argument. While a helpful tool in constructing legal arguments, some judges do not consider legislative history to be persuasive.

**2) Judicial precedent.** When developing arguments, it is important to utilize the precedent of the applicable jurisdiction from cases in which the courts have developed rules that relate to the facts of the current strategic litigation. Advocates should note whether precedent is binding or persuasive. Additionally, in some jurisdictions, advocates should be aware

that codes of professional conduct may mandate that attorneys present unfavorable precedent to the court if it directly relates to the facts of the case.

**3) Norms of international law.** International human rights instruments, as well as the jurisprudence of international courts, can be useful tools for constructing arguments around national norms. This also includes using comparative jurisprudence and referring to global and regional mechanisms to interpret the scope of a right.

**4) Counterarguments.** It is essential to identify the weak points of an argument, as well as to anticipate the other party's counterarguments. Identifying counterarguments prior to drafting a court document, such as a brief, allows advocates the opportunity to distinguish the present matter from other situations in which unfavorable rules were applied.

**5) Policy arguments.** Although policy arguments are not usually decisive for judicial decision-making, they can play an important role in persuading the judge to decide in the public interest. Policy arguments can also be usefully for a case of first impression or cases where there is limited precedent that speaks directly to the issue.



## Case Study 11: LGBTQ+ Rights in Lebanon

Article 534 of the Lebanese Criminal code criminalizes “sexual intercourse that is contrary to nature.”<sup>9</sup> This article has been used to prosecute LGBTQ+ and non-binary individuals. The Legal Agenda identified strategic litigation as the most effective advocacy avenue to decriminalize same-sex relations in Lebanon. We developed an exhaustive legal defense strategy, which included advocating for the reinterpretation of Article 534 of the Criminal Code.

The approach of turning to the judiciary to put an end to the marginalization of the LGBTQ+ community derived from the conviction in Lebanon that the judge’s role is to instigate change in society. The Legal Agenda argued that the legislature authorizes the judiciary to determine the meaning of laws that legislative bodies leave ambiguous. In this case, the judge had broad power to reinterpret the ambiguous phrase “contrary to nature.”

The Legal Agenda’s substantive arguments relied on reinterpreting Article 534 in light of legal and psychological studies that referred to the “natural” aspect of homosexuality, in addition to academic scholarship, doctrine, and judicial precedents from around the world that consider same-sex intercourse to fall within the scope of natural relations. We also argued that the application of Article 534 to criminalize same-sex conduct was contrary to

international standards and conventions that Lebanon had ratified, and violated the right to privacy, the right to human dignity, the right to equality, and the right to mental health. Furthermore, The Legal Agenda presented a subsidiary argument that charges should be dropped in cases where the elements of the crime are absent (i.e., where there is no sexual intercourse or “penetration”), and where there is insufficient evidence, particularly when evidence consisted of anal probing or private communications between plaintiffs. Throughout the fifty-page defense, lawyers relied on national law, comparative global jurisprudence, and scientific and legal studies.

This legal defense culminated in a number of landmark decisions throughout Lebanon in favor of the LGBTQ+ community. The first decision providing a reinterpretation of Article 534 was issued in a case in which The Legal Agenda was not directly involved. However, the ruling had followed the reasoning that The Legal Agenda was advocating for, by reinterpreting Article 534. In the ruling, the court considered that “*mankind has not yet been able to fully understand the law of nature in all its aspects and is still seeking until this very day to discover nature and even his own nature.*”<sup>10</sup>

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9. Lebanese Penal Code 1943, Article 534, *Toute conjonction charnelle contre l'ordre de la nature sera punie de l'emprisonnement jusqu'à une année* [Any carnal conjunction against the order of nature will be punished with imprisonment for up to a year]).

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10. Verdict issued on 2 Dec. 2009 by the single criminal judge in Batroun. For consultation, see <http://helem.net/sites/default/files/BatrounSentence534.pdf>

The court continued,

*That a person is a part of nature, and one of its constituent elements. It is therefore not possible to say that any human practice or behaviour is contrary to nature, even if it is criminal, because those practices and behaviours are themselves consequences of nature.*

By claiming that “the concept of nature is linked to the mentality and customs of society,” the decision clarified the extent to which the term “nature” is fluid and evolving, and that the understanding of natural/deviant is in itself socially constructed. The ruling was issued by the single criminal judge in Batroun on December 3, 2009, a period during which lawyers from The Legal Agenda were involved in drafting an analytic report on judicial decisions based on article 534. They had met with the judge and proposed this interpretation informally.





In 2014, in a particular case in the Metn District, a judge referred to the argumentation of the manual defense in a case related to a transsexual woman who had engaged in sexual relations with men and was charged with violating of Article 534.<sup>11</sup> The decision recognized for the first time the existence of a non-binary gender identity and presented a rationale, similar to that of the 2009 ruling that adopts a strict interpretation of “contrary to nature” founded on “external” criteria, such as one’s appearance and behavior, thus excluding sexual identity. It referred to the “principle of non-expansion in interpretations of criminal law,” as well as the “principle of interpretation in the benefit of the defendant” and stated that the criminal law’s interpretation of what is “unnatural” differs from that of Abrahamic religions. Furthermore, the decision was based on the constitutional principles of equality and individual freedom, especially when it does not infringe other people’s rights (Makhlouf, 2014). The ruling also referred to the UN Human Rights Council on June 17, 2011,

*Which laid out clearly, for the first time, measures to counter [rights] violations and discrimination against individuals due to sexual orientation and gender identity, although this mentioned resolution is non-binding for Lebanon,*

which shows an evolving commitment to in-

11. Decision on 28 Jan. 2014, unique criminal judge in Metn; see: <http://www.english.legal-agenda.com/newsarticle.php?id=1&folder=legalnews&lang=en#.Ux3OaT-SyyY>

ternational standards. Even though the ruling does not expressly decriminalize same sex relations, it offers an implicit reassessment of the conditions of such a criminalization, as it goes beyond rigid socially defined gender classifications, and looks into the psychology of the individual, which could be seen as a step towards more fluid interpretations of sexual identity (Makhlouf, 2014).

In 2016, a third first instance decision<sup>12</sup> to decriminalize homosexuality, stating that it does not “contradict nature,” was put forward (Karame, 2016), followed by a fourth decision<sup>13</sup> in 2017 in which The Legal Agenda was representing the defender. Ultimately, by means of strategic litigation, the Court of Appeal of Mount Lebanon<sup>14</sup> confirmed in 2018 the latter decision, marking it as the first second instance jurisdiction to decriminalize homosexuality in the country. It defined intended sexual intercourses as those that “fall outside the traditional understanding of natural sexual relations between a man and woman whenever they occur in view or earshot of another person or in a public place or whenever they involve a minor who must be protected.” It was followed by the Court of Appeal of Beirut<sup>15</sup> which, in the same year, issued a bold decision refusing to incriminate three men charged

12. Single criminal judge in Jdeidet al-Metn (Hisham Qantar), 05/05/2016.

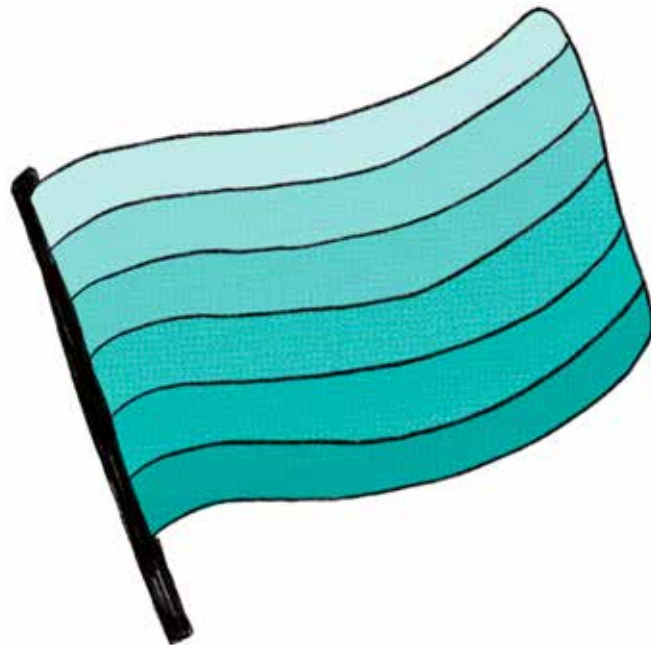
13. Single criminal judge in Jdeidet al-Metn (Rabih Maalouf), 26/01/2017.

14. Court of Appeal of Mount Lebanon (Randa Kfoury), 12/07/2018.

15. Court of Appeal of Beirut (Rola al-Housseini), 14/11/2018.

with homosexual relations by the first instance single criminal judge. It ruled on their discharge because of the absence of the crime's material element, "sexual intercourse contrary to nature," that it did not establish in this case. The Court of Appeal of Beirut limited the criminalization of homosexuality to in-the-act arrests, a matter that goes beyond private life, as its Mount Lebanon homologue did four months prior (Frangieh, 2019).

However, these progressive verdicts do not represent a unanimous position of the judiciary: both the Criminal Court in Beirut and the Court of Cassation have recently ruled cases in favor of the incrimination of five men solely because of their sexual identity, in application of Article 534 and without any evidence of intercourse (Nammour, 2016). According to Lebanon's hierarchical organization of jurisdictions, decisions of all first instance and appeal courts are intended to conform with the Court of Cassation, without this being binding, as is the case in Common Law jurisdictions. Nevertheless, divergent verdicts continue to be issued by lower courts, as more and more judges defy the traditional image of their role and refocus on the protection of liberties and human rights without discrimination (Nammour, 2017).



## Case Study 12: Freedom of Expression and Access to Information in Colombia

Dejusticia utilized different sources to build its legal arguments in the ad censorship case regarding the right to healthy food. In August 2016, Educar Consumidores (EC; in English, Educate Consumers), a non-profit organization that works to implement health policies in Colombia, broadcasted an informational advertisement on television that showed the amount of sugar in several popular drinks. Postobon S. A., an incredibly popular and influential Colombian soft drink company, filed a motion requesting an injunction against the ad, alleging that it was “false advertising.” In a decision dated September 7, 2016, the government agency responsible for consumer rights, the Superintendence of Industry and Commerce (SIC), issued an official resolution ordering EC to stop broadcasting the commercial in all media outlets, including the Internet. Additionally, it ordered EC to “forward to the [SIC] any advertising piece related to the consumption of sugary drinks [. . .] before its broadcast” in an effort to control the information disseminated through the group’s campaign: “Take Care of Your Life—Do it Seriously.”

Two legal actions were initiated against the SIC to respond to its resolution. The first suit, filed by Educar Consumidores, argued that 1) the SIC violated EC’s freedom of expression when it censored an ad with informative content about the health effects of consuming sugary beverages and 2) that the SIC violated EC’s fundamental right to due process because the

decision was issued without giving EC proper notice of the proceedings.

Twenty-three citizens who are part of member organizations of the Alliance for Food Health (including Dejusticia) filed the second suit as consumers (Dejusticia, 2017, April 8). In this second case, the plaintiffs developed two principal legal arguments. First, the plaintiffs argued that the SIC’s resolution to stop the ad’s broadcast, thus silencing the campaign “Take Care of Your Life—Do it Seriously,” violated their right to information about the health risks of the consumption of sugary drinks. They argued that their consequent lack of knowledge led them to make uninformed decisions about what to consume, impairing other rights like the right to health. To support this argument, the plaintiffs presented an analysis of the censored message, demonstrating that EC intended the ad to convey information about health effects of consuming sugary beverages to ensure that consumers



make informed consumption decisions. This analysis helped the plaintiffs establish that the ad was simply meant to inform, differentiating it from a commercial ad, which seeks a business transaction.

Second, the plaintiffs characterized the right of access to information as a necessary condition for informed choice, specifically for consumers to develop a free and educated opinion about the products they purchase. Here, Dejusticia argued that the SIC's action resulted in censorship, which the Constitution expressly prohibits. Legal precedents were particularly important when developing this argument. Two Constitutional Court decisions spoke to the importance of information for consumers—one decision on consumers' rights and other on Genetically Modified Organisms (GMOs). Given the limited binding national precedent, the plaintiffs also gathered international precedents from the Inter American Human Rights System to strengthen the argument.

The Colombian Supreme Court ultimately upheld the right to due process for the 23 plaintiffs, and ordered the SIC to include them in its proceedings. The ruling also defended the consumers' right to access information related to the health effects of sugary drinks and recognized them as "decision-making citizens." The Court found that the SIC's decision violated consumers' right to access information and that its resolution was groundless. Therefore, the Court allowed the commercial to be broadcast.

## STEP 8: BUILDING AN OUTREACH STRATEGY

One of the defining features of strategic litigation is that the litigation is meant to galvanize public support to pressure policymakers to generate systemic social change. A robust outreach strategy and advocacy campaign are essential to garner public support. An outreach strategy should include: 1) defining the objectives of the outreach; 2) identifying the target audience(s), who can deliver the message most effectively, and the most appropriate communication channels, and finally 3) crafting the message.

### *Defining the Objectives*

An outreach strategy has two common objectives: to educate the public about strategic litigation and to advocate for institutional change (Corporación Humanas Colombia, 2015). To educate the public effectively, the communication should provide information about the problem the litigation seeks to solve, the parties responsible for the problem, the main arguments in the litigation, and the change sought from the courts. Raising awareness of the litigation should go beyond merely presenting the information. It is important to explain new ways to perceive the social problem, as well as introduce new and innovative solutions to the target audience. To achieve

the second objective of advocating for change, the strategy should provide simple examples of how the public can support the case and the cause. For example, outreach efforts can provide simple recommendations, such as supporting the cause in public debates or public mobilizations, or more involved recommendations, such as lobbying the judge and/or policymakers to resolve the wrong.

*Legal Outreach:  
Targeting Legal Professionals  
to Change Legal Practices*

Some human rights organizations utilized both these outreach strategies to promote legal cases and to disseminate legal arguments and advocate for positive change. For example, creating “model defenses,” a series of legal defenses on topics that were already the subject of strategic litigation (The Legal Agenda, 2016). These templates could include the legal arguments utilized in strategic litigation, judicial precedents, scholarly evidence, and comparative jurisprudence relevant to the issue. The litigation teams can draft these models so that other advocates could use them easily in court.

For instance, The Legal Agenda created four defense models, which include petitions 1) to remove the deportation penalty for refugees, 2) to stop the arbitrary detention of foreigners detained by the General Security Directorate, 3) to reinterpret Article 534 of the Lebanese Penal Code to stop the criminalization of homosexuality, and 4) to stop the prosecution of persons charged with the consumption of narcotic substances who are under treatment for addiction. To create each model, we conducted extensive research monitor-

ing the jurisprudence and tendencies of the courts. These models continue to be subject to development. The arguments are not static, but rather are adjusted based on the court’s ruling, the facts of the case, and how courts react to particular arguments.

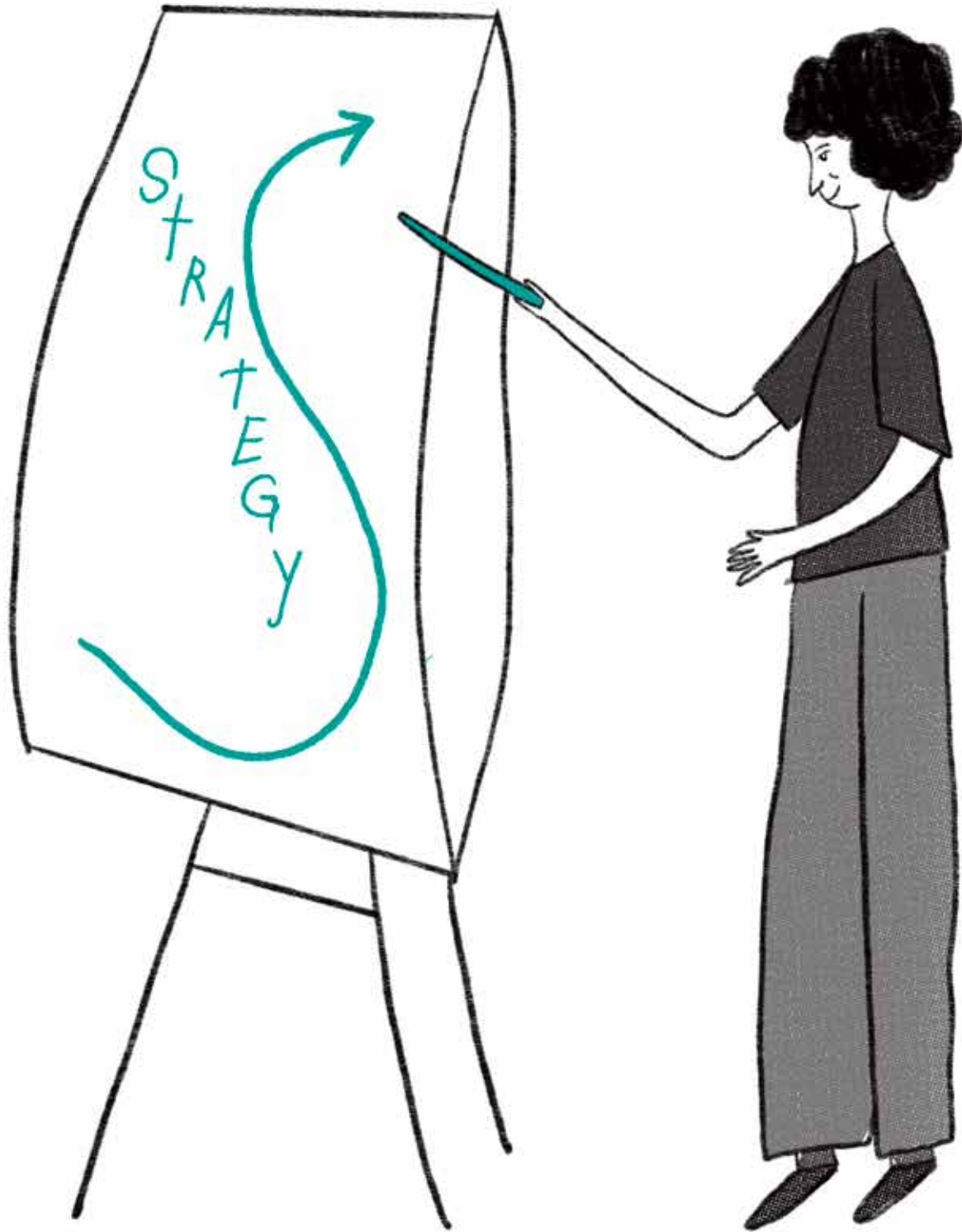
The outreach strategy for disseminating a model defense includes an introduction to explain the rationale behind engaging with courts and the role of the judiciary as a body to protect marginalized groups. The strategy also includes presenting to advocates how they could use the defense through strategic litigation or legal aid, as well as explaining their potential to improve the situation of the marginalized and ensure that these groups have access to justice.

Even in cases where lawyers did not use the defense models, we have noticed that judges’ reasoning has been consistent with defense models, suggesting that judges had seen the model used in a previous case. The defense models have thus served to create change, as many judges have used arguments and issued decisions based on the models.

*Identifying the Audiences, Speakers,  
and Communication Channels*

In addition to defining outreach objectives, it is critical to determine who the target audience is, who can reach this audience most effectively, and through which channels this audience can be most easily reached.

An outreach strategy may include different audiences. Among the most conventional audiences are the media and the general public. It is important to raise awareness and



pique the interest of the media and general public on a particular issue. Such external allies can often serve as valuable resources for the litigation. While it is traditionally difficult to engage the media in human rights cases, constructing a strong case narrative and contacting journalists early in the litigation process facilitates media coverage. Positive media coverage can strengthen public support for the litigation and the cause it represents, which is particularly important for controversial topics.

More strategic audiences may include law students, judges, public commentators, and social groups that may generate strong public debates and support for the cause, thus assisting in galvanizing public support.

After identifying the target audiences, it is important to determine who can reach the audiences most effectively and how the message should be adjusted for each audience. Finally, it is critical to identify the most effective medium to deliver each message, as well as the timing for the message and the campaign's delivery. If one campaign is insufficient to target an audience and galvanize public support, a follow-up campaign may be needed.

### *Crafting the Message*

The final aspect of developing an outreach strategy is to craft a clear message to use in communication pieces. Messages can be purely informative about the facts of a strategic litigation, such as the human rights violations at issue. Or the message can be more complex,

aiming to change conceptions about a commonly misinterpreted issue, and thus aim to change or advance public policy. For example, in cases involving the rights of undocumented migrants in Colombia and Lebanon, it may be important to issue communication pieces that dispel xenophobic myths, such as the commonly held belief that an increased number of migrants causes an increase in crime. By counteracting these myths, organizations can gain



public support for litigation, as Dejusticia has continually done in its litigation regarding the right to health for undocumented migrants in Colombia. It is worth noting that two versions of the same message may have to be developed: one that is easy for the media and the general public to understand, and another that contains the technical and legal elements that explain why a particular change is necessary.

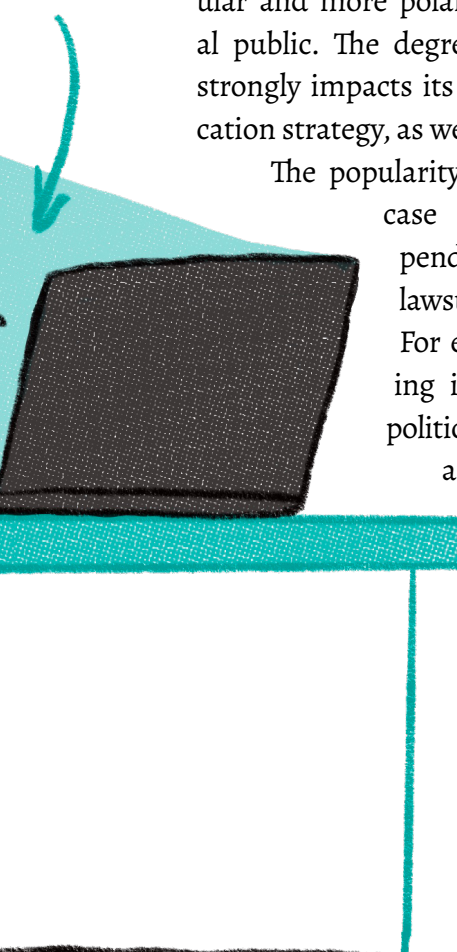
### *Distinguishing Between Popular and Unpopular Cases*

Certain cases will garner overwhelming public support, while others will be less popular and more polarizing among the general public. The degree of a case's popularity strongly impacts its outreach and communication strategy, as well as the strategy's goal.

The popularity of a strategic litigation case varies considerably depending on the parties in the lawsuit and the rights at issue. For example, litigation involving issues that challenge the political and social status quo are often highly controversial, such as The Legal Agenda's litigation on behalf of LGBT+ individuals or on behalf of refugees. Based on The Legal Agenda's experience in Lebanon, cases challenging demographic imbalances or related

to preconceived religious ideas may not generate widespread public support. Some issues are more popular than others; for example, those relating to the enforcement of legally recognized rights or to universally sympathetic groups, such as children.

Accordingly, outreach strategies should be tailored to the particularities of each case. For cases considered popular (e.g., the protection of public spaces or the environment), The Legal Agenda tends to adopt outreach strategies that target the general public and ask people to get involved. These strategies may include circulating petitions for people to sign, sending letters to members of parliament, organizing sit-ins and demonstrations, and publishing videos explaining the impact of the case. However, for more unpopular cases, the organization focuses on asserting the legitimacy of the case through the outreach strategy to shift the discourse from one of morality to one of rights. For these cases, the organization keeps the outreach strategy confined within the realms of the legal discourse by targeting legal actors (lawyers, judges, and official stakeholders) as the audience. For example, this may include outreach strategies focused on utilizing strategic litigation as a tool for legal empowerment by explaining the legal process, promoting certain legal arguments, or organizing conferences and panel discussions. In a few of these cases, we were able to transform the unpopular issue at stake into a popular case by reframing the debate. For example, in cases relating to the arbitrary detention of refugees, instead of focusing on the case per se, the organization focused on





the authorities' refusal to execute judicial decisions, framing the issue as an infringement on judicial independence.

The Legal Agenda's capacity as an alternative media platform institution often complements its work in strategic litigation and outreach. The Legal Agenda has three different media publications, namely The Legal Agenda–Lebanon, The Legal Agenda–Tunisia, and The Little Agenda magazines, in addition to its website. Via these platforms, The Legal Agenda contributes to public debate with its research results, investigative journalism, and watchdog activities. The aim of the media department within the institution is to provide access to reliable and accurate information free from the influence of governments and corporations.



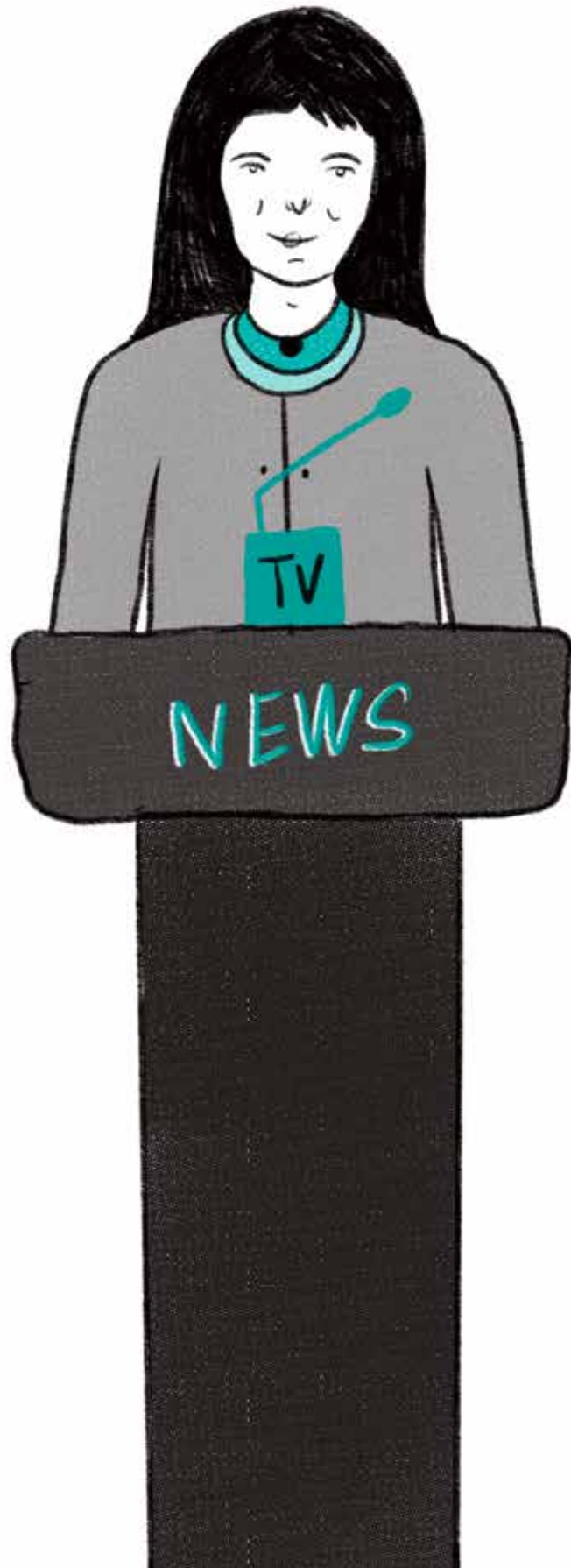


### Case Study 13: Media Pressure for Iraqi Refugees in Lebanon

Even when an organization receives a favorable ruling in court, decisions may not be implemented. Naturally, the failure to implement a ruling severely limits the impact of the strategic litigation. In The Legal Agenda's experience, one of the most notable cases suffer from implementation problems was that of Iraqi Refugees, and most notoriously, the specific case of Yusra al-Amiri, in which the General Directorate of General Security (GDGS) refused to implement the judgment ordering her release and kept her arbitrarily detained (see Frontiers Ruwad Association, 2010).

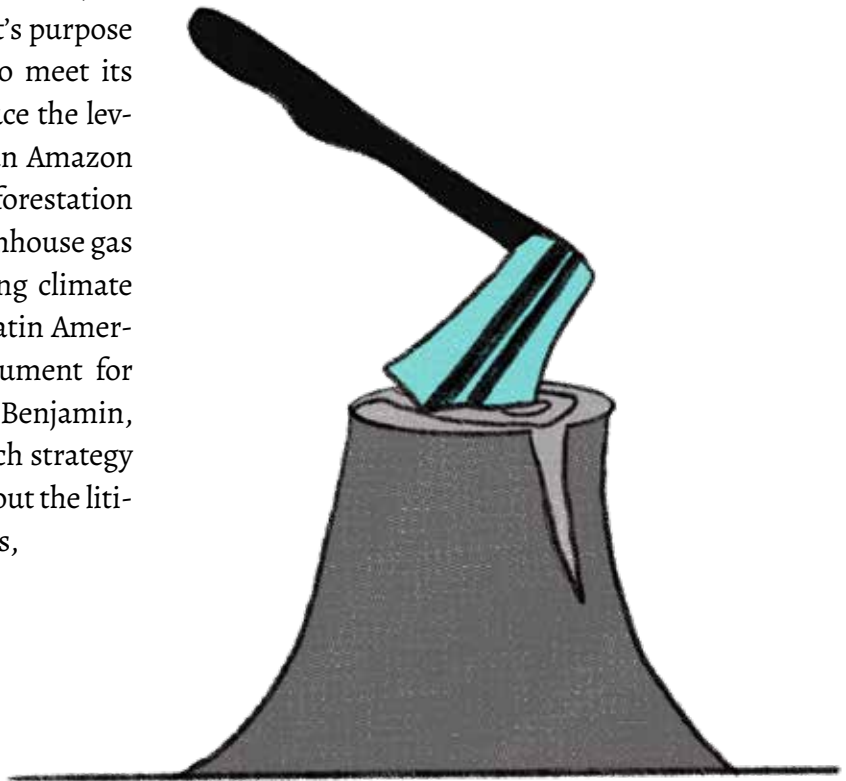
Yusra al-Amiri is an Iraqi refugee who entered Lebanon without authorization with her brother. She was detained in the Zahle prison for over six months, despite the fact that she had only been sentenced to one month of detention. Consequently, advocates filed a lawsuit before the interim relief judge in Zahle for her release. The judge ordered Yusra's immediate release, which turned the case into a larger public debate since the State refused to execute the decision. The GDGS argued that because Yusra al-Amiri had no residence permit and was not entitled to a permit upon release, the General Security had the right to detain her notwithstanding the judge's order. However, the GDGS's arguments and practices violated the legal principle that "no person shall be arrested without a legal basis."

The case started to gain additional momentum when the deadline to appeal elapsed without any appeal request from the state. Legally, the state was bound to release Yusra. Practically, there was no legal channel to enforce such an obligation. Accordingly, The Legal Agenda's lawyers turned to the media to exert pressure on authorities to release Yusra. Newspapers headlines read "The GDGS Challenges the Judiciary," and television networks provided extensive coverage of the case, demonstrating that the lawyers' outreach strategy was effective. Thanks to media pressure, the State released Yusra. Altering the outreach strategy when the State refused to comply with the court order to release Yusra transformed this case into a public matter and shifted the narrative from defending refugee rights to respect for the Lebanese judiciary.



## Case Study 14: The Amazon and the Rights of Future Generations, Part 1

Dejusticia's litigation regarding climate change and future generations' rights demonstrates the importance of building an effective outreach strategy. In this case, a group of twenty-five young plaintiffs from seventeen cities and municipalities of Colombia that were among the most vulnerable regions to the effects of climate change filed a lawsuit against the President of Colombia, the Ministry of Environment and Sustainable Development, the Ministry of Agriculture and Rural Development, and other authorities from fourteen municipalities in the Colombian Amazon (Dejusticia, 2018, April 26). The lawsuit's purpose was to pressure the government to meet its prior national commitment to reduce the level of deforestation in the Colombian Amazon to net-zero by 2020. Amazonian deforestation has been the primary source of greenhouse gas emissions in Colombia, exacerbating climate change. This case was the first in Latin America to make a climate change argument for future generations' rights (Setzer & Benjamin, 2019). Dejusticia created an outreach strategy for this case to inform audiences about the litigation and promote advocacy efforts,



<p><b>IDENTIFYING THE MAIN OBJECTIVES OF THE OUTREACH STRATEGY</b></p>	<p>One of the main objectives was to create awareness of the real effects of climate change in different parts of the country. Other objectives were: 1) to provide information about the urgency of acting promptly to stop deforestation in the most biodiverse regions of the country; 2) to show links between deforestation, the water cycle, and climate change; 3) to involve youth as crucial political actors in the climate change debate.</p>
<p><b>IDENTIFYING COMMUNICATION CHANNELS</b></p>	<p>Traditional communication channels were essential to spreading the message. We spoke with and through the most important Colombian newspapers and TV channels throughout the litigation to talk about the case and the change we sought. Because the plaintiffs were young, we explored other non-traditional communication channels like social media, where they could reach out to their networks to spread the message.</p>
<p><b>IDENTIFYING THE AUDIENCES AND THE SPEAKERS</b></p>	<p>We reached out to different audiences, including Colombians who were unfamiliar with the scale of deforestation in the Amazon and its relation to climate change, academics and scientists who could confirm the truth of our messages, and the judges who would decide the case. To reach out to these audiences, we worked with the young plaintiffs who could explain the case's legal aspects.</p>
<p><b>CRAFTING THE MESSAGE</b></p>	<p>The outreach strategy included three stages with three different messages. First, when the suit was filed, Dejusticia published an animated video through social media that explained the relation between deforestation and climate change, as well as its consequences for the different ecosystems in Colombia. In the video, Dejusticia briefly presented the case's main facts and invited others to join the cause and support the legal action by signing a petition on Change.org. Second, once the case had been filed, the organization published a new video featuring some of the plaintiffs who explained, in their own words, why climate change was a threat to their rights as future generations. The video also reiterated the invitation to support the litigation through the Change.org petition.<sup>16</sup> Third, when the Supreme Court of Justice rendered its decision—one based on issues the court rarely considered—advocates explained its significance and implications through national and international media channels (Setzer &amp; Benjamin, 2019).</p>

<sup>16</sup> Through this petition we got the support of more than 100,000 people.

The climate case is recent; it was decided in April 2018. Although it is not yet possible to measure the litigation's effectiveness in fulfilling its goal to reduce deforestation in the Amazon, it is certainly a case that illustrates a successful social mobilization strategy. In Colombia, in 2017, climate change was a concern almost exclusively reserved for the academic and scientific communities. One of the virtues of this litigation and its communication strategy was that young people were able to participate and convey the litigation's messages. The idea of the rights of future generations was not a novel concept. However, Dejusticia's outreach strategy was innovative in raising the voices of those who will experience the harmful effects of climate change in the coming decades.

Young people were incredibly effective messengers, particularly for the judges. Beyond the courtroom, the plaintiffs used social networks like Facebook, Twitter, and Instagram to disseminate information, which allowed other Colombian youth to support and amplify the message. The widespread awareness of this litigation throughout Colombia resulted in international media outlets publicizing stories about the case in countries such as the USA, England, France, Spain, and others. The international attention helped build pressure on the issue so that future generations' rights may be recognized. Even after the decision, the publicity on the case put additional pressure on national authorities to implement the court's orders.

# PART 3:

## WORKING WITH THE DECISION

In this final part, we start by considering that the decision is just one more step on the road to strategic litigation. It is an important step, but only one step in the path for social justice. As advocates, we are prepared to win or lose, perhaps not to identify the opportunities in either scenario. The challenge is to recognize any chance to strengthen the protection of rights. For this, we consider two processes to be crucial: 1) ensuring that a win is effective or investing in a loss; and 2) learning and retooling.

### STEP 9: ENSURING THAT A WIN IS EFFECTIVE OR INVESTING IN A LOSS

After a decision is rendered, it is important to consider how to ensure the implementation of a favorable decision or how to manage and learn from a loss. On some occasions, what happens outside the judicial space may become more relevant than the judge's decision. It is important to identify when a case is a "success without a victory" (Lobel, 2004) or when there is power in the losing case. Within this process, the legal strategy is inserted into a broader agenda of social mobilization that influences political discourse and sociocultural behavior. The results of a process cannot be seen exclusively by the results of the judicial process. Although the judicial setting is one of the most important components of strategic litigation, it is not the only one.

### AN EFFECTIVE WIN

The effects of judicial rulings are often equally as crucial as the litigation itself to ensure the adequate protection of rights. There are several effects of judicial rulings, which can be useful to understand the effects of litigation (Rodríguez & Rodríguez, 2010). Specifically, there are direct and indirect effects, as well as material (instrumental) and immaterial (symbolic) effects. The direct effects are the judicial orders that affect the actors in the case, while indirect effects are consequences that derive from the ruling and affect individuals outside of the case. Instrumental effects are the changes in the behavior of an individual or group of people as a result of the judicial ruling, and the symbolic effects are the changes in popular perception regarding the subject matter of the litigation (Open Society Justice Initiative, 2017).



## DIRECT

## INDIRECT

### MATERIAL

### SYMBOLIC

Design of public policy ordered by the Court or Tribunal.	Coalition building to influence the issue of the ruling.
Definition and perception of the problem as a violation of rights.	Transformation of the public opinion about the urgency and seriousness of the problem.

Source: Rodríguez and Rodríguez (2010).

Thus, victory or defeat in litigation should be analyzed through this multidimensional logic. Litigation can simultaneously have a direct negative effect and a positive effect on one or more of the other dimensions (Goldston, 2018). In other words, a judge may not rule favorably on a specific case, but the litigation nonetheless may cause a positive change in social perception (Cummings & Rhode, 2009). For example, a judge may rule that same-sex marriage should not be legalized in a country, but the social mobilization around the litigation may cause more people to identify marriage inequality as an injustice, and thus feel more empathy towards the cause.

In a case where a decision has positive direct effects, it is important to work to ensure the full implementation of the court orders, which could occur by creating monitoring entities that oversee the implementation of the decision. In the case of a loss, when the judge orders negative direct effects, one should think about how to turn an unfavorable decision into a positive outcome for the broader campaign. Since strategic litigation goes beyond the particular case, the direct, indirect, material, and symbolic effects of judicial decisions, favorable or unfavorable, should be examined to identify how to move forward.

## INVESTING IN A LOSS

To invest in a loss, an organization should conduct an analysis of the effects of the litigation, which are not limited to the direct effects of the judgment. Some positive effects that will serve the organization in the future as advocates continue to fight for the protection of rights are a change in social perception around the violation of rights at issue, the political coalitions achieved through litigation, and changes to narratives regarding the problem. Additionally, the litigation may produce a restorative effect, signaling to the victims that their cause is in the public interest and encouraging community empowerment (Open Society Justice Initiative, 2018).

## Case Study 15: Forced Displacement in Colombia

In 2004, the Colombian Constitutional Court rendered decision T-025, which declared that the plight of more than three million internally displaced people in Colombia constituted an *Unconstitutional State of Affairs*.<sup>17</sup> In its decision, the Court found a massive and systemic violation of human rights and held that the structural failures of the Colombian State's policies were a central factor causing the situation. Significantly, the Court ordered the development and implementation of programs to confront the underlying humanitarian crisis that caused massive and widespread rights violations, most notably forced displacement.

Four characteristics distinguish the case from others: 1) the scope of the ruling was broad; 2) the size of the beneficiary population was large and the rights violations were grave; 3) there were many State and social actors involved; and 4) the implementation of the decision was accompanied by court-installed mechanisms. With regard to the fourth factor, the goal to ensure full implementation of the court decision was explicit and systematic.

This case is a particularly good example of the importance of ensuring effective implementation after a favorable decision. Between 2004 and 2010, there were eighty-four follow-up decisions and fourteen public hearings

to promote compliance with the court decision. The Court established a participatory and progressive procedure to ensure its decision would be implemented, and it offered innovative alternatives for courts to protect constitutional rights beyond their decisions. This case also demonstrated that there are many arguments in favor of orders and procedures that open participatory and deliberative spaces for implementation.

It is also important to consider other elements to evaluate the feasibility of implementation, including available public resources, institutional knowledge and capacity to carry out the orders, and the ability of the court to monitor compliance with its orders.



17. This is a legal mechanism in which the Constitutional Court declares that certain facts are openly contrary to the Constitution. It should be declared when some facts massively violate constitutional rights and, consequently, is necessary for the urgent adoption of public measures to correct or overcome the situation.

## Case Study 16: The Hashisho Law in Lebanon

## STEP 10: LEARNING AND RETOOLING

Muhieddine Hashisho, an official in the communist party, was kidnapped from his house in the city of Sidon (Sayda) in the early 1980s. Hashisho's spouse filed a lawsuit in the early 1990s against three suspects. The Legal Agenda's lawyers joined this lawsuit later on, and defended the right of the victim's family to know the fate of Mr. Hashisho and prosecute the suspects. Even though the Criminal Court in Southern Lebanon had held that suspects cannot benefit from the amnesty law since the committed crime is continuous, it issued a decision in September 2013 acquitting all of the defendants on grounds of insufficient evidence.<sup>18</sup>

This judicial loss came as a disappointment to the families of the disappeared and to the advocates, especially because this case was the only criminal case since the civil war, which made it symbolic. However, the strategy was to invest in this loss in order to highlight the need to enact the draft law for Missing and Forcibly Disappeared Persons, naming it the "Hashisho Draft Law." In April 2014, the draft law was adopted by the legislative committees in parliament. The draft law was ratified by the Lebanese parliament in November 2018.

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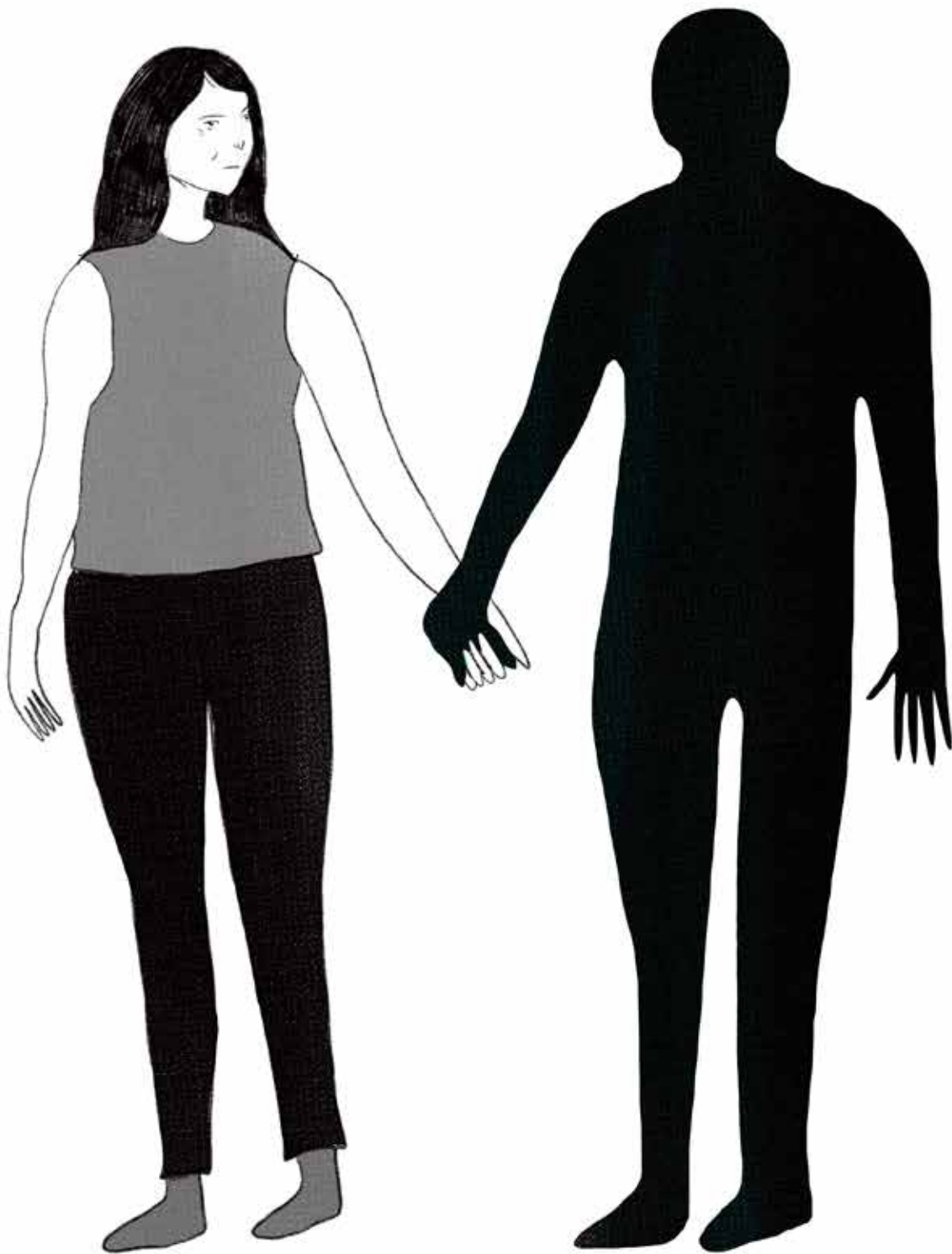
18. *This argument does not negate the existence of several barriers to the access of marginalized groups to the judiciary, the most important of which being prevailing prejudices. Still, access to the judiciary, especially with the help of a lawyer, remains less difficult than access to political institutions.*

After a court renders a decision, it is essential to evaluate the litigation, both its process and its subject. Yet, how should organizations evaluate and assess the outcome of strategic litigation? How can advocates identify changes to improve the strategy for future litigation? There is no formula to assess the impacts of litigation, and often it is difficult to measure its effects of litigation. Unlike traditional litigation, strategic litigation seeks to create structural changes and sometimes cultural changes in society, which are challenging to measure. However, certain indicators can help evaluate the effectiveness of strategic litigation.

**Indicator 1. Decision.** The judge's decision is one step in achieving the objective of litigation. The judge may deny or grant, in part or in full, the claims. A positive decision can be one indicator of success.

**Indicator 2. Acceptance of the argument by the Court.** Once the desired decision is obtained, it is important to look at how the judge based their decision. Advocates should analyze the rationale of the Court's decision to determine whether it coincides with the arguments in the plaintiff's claims. It is possible that a favorable decision is obtained for reasons other than the proposed arguments (e.g., on procedural grounds), which could be indicative of a weakness in the legal strategy or reflect a partial victory.

**Indicator 3. Raising public awareness.** Sometimes achieving the objective of litigation



tion involves generating public support for the cause, as is the case with marriage equality or climate change. Therefore, advocates should evaluate the level of public discussion the litigation generated, and the general population's participation in the call to action (Open Society Justice Initiative, 2018).

**Indicator 4. Fulfillment of orders by the authorities obliged to comply.** This indicator seeks to evaluate the performance of the authorities tasked with guaranteeing rights. It is not sufficient that public servants appear to comply with court orders on paper without generating any substantial impacts in practice. For that reason, citizen oversight is important to ensure that decisions are fully implemented and communities feel positive impacts from cases. One way to ensure effective compliance is to have victims or plaintiffs and their legal representatives participate in decision-making processes and in mechanisms to oversee the implementation of court orders.

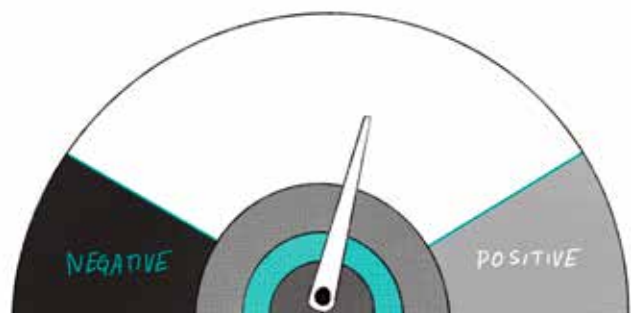
**Indicator 5. Perception of satisfaction.** This indicator seeks to measure the perception of satisfaction among the stakeholders directly involved in the litigation. This indicator often does not yield positive evaluations because orders are often not fulfilled immediately due to their complexity.

The above indicators of success show that litigation does not end when the Court issues a ruling. Often, obtaining a judicial decision is just one part of the process of creating systemic change. An essential part of the litigation does not depend merely on the case itself but also on the social and institutional context in which it must be implemented. As mentioned above, different levels of compliance should be

analyzed for each part of the decision when measuring success and restructuring legal strategies.

When evaluating the Court's decision and its implementation, it is worth noting that compliance with the orders may be difficult due to various obstacles: from the problem the decision seeks to solve (e.g., environmental cases tend to be around structural problems such as the contamination of a river or deforestation) to the availability of resources necessary to guarantee compliance with judicial decisions. Other issues that may create some difficulties around implementation include cultural and social factors that do not allow for the implementation of rights, possibly due to negligence, institutional resistance, or, in some cases, conscientious objection (e.g., those relating to LGBT+ rights or women's sexual and reproductive rights).

Applying this list of indicators to evaluate the litigation is useful for internal learning and for improving the litigation manual to ensure success in subsequent efforts. Often, thoroughly analyzing a litigation's impact takes years. Implementation, especially of structural orders, is a long-term process. The evaluation of these indicators involves analyzing the situation before, during, and after the issuance of the decision.



## Case Study 17: The Amazon and the Rights of Future Generations, Part 2

After obtaining a favorable judgment in the case on deforestation in the Amazon, Dejusticia analyzed the effectiveness of the strategic litigation, using the aforementioned factors. This is one of Dejusticia's most emblematic cases, which had the following results:

**1. Decision.** Dejusticia obtained a favorable decision. The Colombian Supreme Court recognized the rights of the future generations and even declared the Amazon rainforest as an entity subject to rights. This is the first judicial decision which has reached this conclusion in the Global South regarding the rights of future generations.

**2. Acceptance of the argument by the Court.** The Court accepted Dejusticia's argument that deforestation in the Amazon rainforest was a justiciable problem and subsequently ordered remedies. The rationale behind the Court's decision opened avenues for the presentation of other climate change cases not only in Colombia but throughout the Global South.

**3. Raising public awareness.** Because the communication strategy had a widespread impact both domestically and internationally, the effect of public awareness was diverse. The litigation led to the creation of academic, social, and media spaces to reflect on climate change, deforestation, future generations, rights and nature rights in Colombia and the region.



**4. Fulfillment of orders by the authorities obliged to comply.** One year after the decision, the relevant authorities had not complied with the Court's orders. Therefore, a constitutional judge demanded the creation of an implementation mechanism. Over ninety public entities participated in a public hearing to present advancements in compliance. Despite evidence that deforestation persists in the Amazon, two years after the decision, the advocacy for the correct implementation continues.

**5. Perception of satisfaction.** Paradoxically, some local communities in the Amazon had a negative perception about the defendant's response to the litigation's resolution. The government advanced a simplistic policy path to stop deforestation in the Amazon—criminalizing the people in the territory. The authorities' first response did not consider the historical, social, and economic reasons for the problem. Ignoring the local dynamics, they continued implementing the decision without a human rights perspective. A critical lesson from this case and others reviewed in this manual is to strategically consider what implementation and policies might come out of favorable litigation. Taking these additional steps—assessing the policy challenges and risks from the beginning—allows streamlining a litigation strategy to policy by considering how to manage the unintended consequences.







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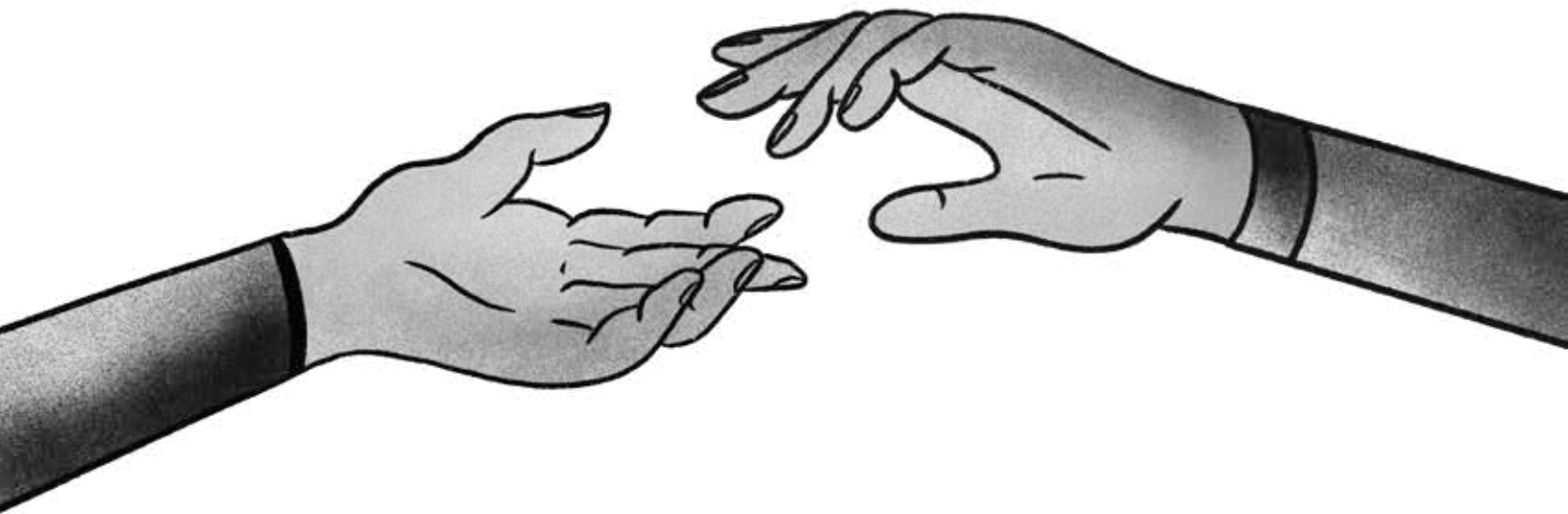
*About the Center for Law, Justice and Society (Dejusticia)*

Dejusticia is a Bogotá-based think-do tank that contributes to the protection and promotion of human rights from a distinctly Global South perspective. It uses an action-research methodology that combines academic rigor with strategic activism to remedy structural injustices and achieve social change. Dejusticia's work includes economic, social, and cultural rights; environmental justice; transitional justice; drug policy; gender, ethnic, racial and *campesino* antidiscrimination; migration rights; technology and human rights; judicial systems; freedom of expression; transparency, anti-corruption and the rule of law.

*About The Legal Agenda*

The Legal Agenda (LA) is a Beirut-based nonprofit research and advocacy organization with offices in Lebanon and Tunisia and correspondents in several other Arab countries. It was established in December 2009 by a group of legal professionals, scholars, and human rights activists who institutionalized their efforts to build a critical and multidisciplinary approach to law and justice in Arab countries with a special focus on political, civil, social, and economic rights.





# ACKNOWLEDGMENTS

The idea of this publication emerged in a strategic litigation workshop organized by the two organizations in October 2017 in Tunisia. Our conversations had highlighted the coincidences and divergences of employing strategic litigation as a tool for advocacy. At that time, we decided to document the similarities between our experiences and build a prototype that would be useful for human rights defenders in the Global South. Although the idea was born in 2017, the pieces that make up the puzzle we have called the “Strategic Litigation Manual” are the products of a collective construction of cases that were litigated before and after that date. The technique used in each of the 10 litigation steps draws on the accumulated experience of the two organizations and, of course, of each of its lawyers and members.

This publication would not have been possible without the essential support of Diana Rodriguez, Lucia Ramirez, Joyce Tan, Emily Hauck, Erin Formby, Luisa Cruz and Ruth Bradley (from Dejusticia) and Nizar Saghieh (from Legal Agenda). Equally important was the guidance of Claudia Luque (Dejusticia) and Jessica Chemali (Legal Agenda) in the publication process, and the research assistance of Aya Goraieb, Khalil El Hachem and Marianne Rahme (Legal Agenda).

Undoubtedly, it is thanks to those that have trusted us to fight with them and be a part of the litigation history of Legal Agenda and Dejusticia that you can read the book you have in your hands today.”

Strategic Litigation Manual: From Theory to Practice, Lessons from Colombia and Lebanon aims to address every step of the strategic litigation process, including how to select a strategic case and its components, practical insights on the litigation itself, and the post-decision phase.

The manual contains ten key steps for a human rights litigation strategy: 1) identify the injustice to be remedied, 2) envision the goal, 3) develop the legal strategy, 4) select the parties, 5) assess the risks and resources, 6) collect the evidence, 7) develop the legal arguments, 8) build the outreach strategy, 9) ensure that a win is effective or invest in a loss, and 10) learn and retool.

The manual presents the theory behind each of these steps, followed by illustrations from real cases fought by Dejusticia and The Legal Agenda. This model, based on our litigation practice, is not meant to be prescriptive. Rather, it is a toolkit to be improved upon with the lessons learned from every case. Since learning is key to this model, we encourage readers to keep improving it with each new case they pursue.

Keywords: Strategic litigation, human rights, advocacy, social problem, significant impact

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