

USING THE LAW FOR CHILDREN'S RIGHTS: AN INTRODUCTORY GUIDE



About CRIN (www.crin.org)

Our goal: A world where children's rights are recognised, respected and enforced, and where every rights violation has a remedy.

Our organisation: CRIN is a global research, policy and advocacy organisation. Our work is grounded in the United Nations Convention on the Rights of the Child.

Our work is based on five core values:

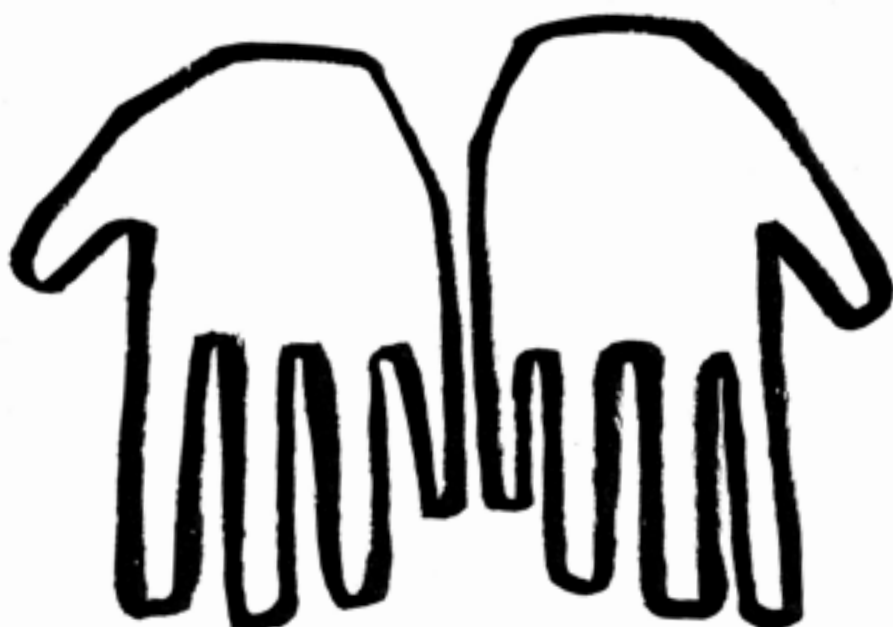
- We believe in rights, not charity
- We are stronger when we work together
- Information is power and it should be free and accessible
- Societies, organisations and institutions should be open, transparent and accountable
- We believe in promoting children's rights, not ourselves.

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Illustrations by Miriam Sugranyes Coca
Designed by Remember Creative

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INTRODUCTION



The Child Rights International Network (CRIN) supports organisations and activists around the world to advocate effectively for children’s rights. We are keen to work with organisations using legal advocacy to strengthen their campaigns, and have produced this introductory guide for those who may be interested in this work.

While many authorities can tolerate some traditional campaigning methods, it is usually harder to ignore the law. As part of broader campaigns, the law can be a powerful tool for achieving the changes that children need. Legal advocacy is now being used systematically in a few countries – leading to strong outcomes for children – and it has great potential for wider use.

There are many occasions for legal advocacy. International law sets out the principles and standards that states are obliged to meet but frequently do not, and so their domestic law violates children’s rights. Often, a State meets a standard in domestic legislation but its policy fails to implement the law. Sometimes, it is unclear what a law means in practice, or the meaning is clear but no one knows whether it is being implemented. These various gaps between international legal standards, domestic law and state policy (or corporate policy) present potential opportunities for legal advocacy.

There are also many avenues for legal advocacy. It is a broad term, not limited to taking rights violators to court. Many small-scale legal activities can enhance traditional campaigning, such as reporting on the implementation of a law, or raising awareness of what the law says. Sometimes, simply documenting and publicising the gaps between law

and practice is enough to persuade decision-makers to act. But only sometimes. Towards the other end of the spectrum is work that demands more time and resources, including taking a government or corporation to court in order to bring about broader social change. A successful case might improve the legal standards that apply to children, or lead to a major policy change of long-term benefit to children.

As with all campaigning, the outcomes of legal advocacy are always uncertain, but it has helped to secure many of the rights that children enjoy today. Among the many examples are preventing the exploitation of children for labour in Liberia, strengthening protections for children against sexual abuse in India, and introducing new laws and policies to prevent corporal punishment in several European countries. Often, children and their families have stood as witnesses in court, or brought cases directly with the support of NGOs and lawyers working for free (*pro bono*). CRIN’s website includes many [stories of litigation for and by children](#). They show what can be achieved, as well as how much remains to be done as children continue to live in jeopardy around the world.

This introductory guide offers a brief overview of avenues for legal advocacy. It also offers guidance on how to explore your options, and how to promote legal advocacy work with other children’s rights advocates. This is the first version of the guide, so please let us know what you think of it, and send us any suggestions for improvements – thank you.

MAPPING THE LEGAL TERRAIN



Legal advocacy has improved children’s rights in many countries, but it is an uphill push, which is more difficult in some countries than others. Appraising the democratic and legal environment of your country can help when deciding which kinds of legal advocacy are most likely to bring results.

Guiding questions about the legal terrain in your country

1. Are there people’s movements and NGOs willing, free and able to stand up for children’s rights?
2. Can national government, local authorities, and corporations be held to account before the law?
3. Is the judiciary genuinely independent of the government?
4. Do government and parliament accept that children have rights, including the right to be safeguarded from policies and laws that undermine their best interests?
5. Do the government and parliament respond to pressure from NGOs, the media, and the public?
6. Can parliamentarians shape legislation effectively?
7. Can parliamentarians influence government policy?
8. Can the government hold corporations to account? Does it do so?
9. Does central government properly regulate local government?
10. Are media organisations free from state and corporate control?

If you can mostly answer ‘yes’ to these questions, then there may be fertile ground for legal advocacy. Where legal advocacy at the national level is particularly difficult, you might still be able to bring change by working with international processes, including UN legal processes, foreign media, and international NGOs.

Find out more

CRIN’s Access to Justice report [ranks countries](#) by the accessibility of the legal system to children and the means of enforcing children’s rights.

Another resource is the [Freedom House annual league table](#), which uses the Universal Declaration of Human Rights to rank countries according to democratic freedoms, including the rule of law.

In most cases, both reports include a detailed assessment for each country.

BUILDING LEGAL ADVOCACY INTO CAMPAIGNS



Legal advocacy can help to stop abuses of rights which have been allowed to persist by laws that are absent or weak, or laws that violate children’s rights directly. This section outlines four kinds of legal advocacy: exposing gaps in the law, using the law to improve policy and practice, improving the law, and bringing legal complaints.

Option One: Expose the legal gaps

One of the simplest forms of legal advocacy is to research and publicise the gaps in the law, and between the law and policy or practice. It is also the first step when contemplating more complex forms of legal work.

One way of framing children’s legal rights is as a ‘cascade’: from internationally agreed standards, through national legislation and policy, to the lives of children in their families and communities.

- International human rights law sets the standards by which all states must abide.
- Domestic law should reflect, and ideally directly incorporate, these standards.
- In turn, state and corporate policy should comply with domestic law – on paper and in practice – so that children can enjoy their rights.

The gaps in this ‘cascade’ are many and need to be named. The research need not be exhaustive; it only needs to establish: a) that the legal gaps exist; b) that they adversely affect children (and how); and c) and that a remedy is available.

Guiding questions for legal research

It may be useful to order your research by the following areas:

1. International law. Which treaties has the state ratified and what do they say? Some of the main treaties covering children’s rights are:
 - Convention on the Rights of the Child (and its three Optional Protocols, which are binding once a state has ratified them). This is the main children’s rights treaty.
 - International Covenant on Civil and Political Rights, which is a major international treaty covering a broad range of human rights.
 - Convention on the Elimination of All Forms of Discrimination Against Women
 - International Covenant on Civil and Political Rights
 - International Covenant on Economic, Social and Cultural Rights
 - Convention on the Rights of People with Disabilities.
2. International Labour Organisation (ILO) Conventions 138 and 182, which cover child labour.
3. Several regional conventions on human rights, such as the African Charter on the Rights and Welfare of the Child, and the European Convention on Human Rights.
4. These are not the only treaties that address the rights of children. You can see a longer list of the treaties ratified by your state on the UN human rights site (see ‘**Find out more**’, below)
5. Domestic law. Which domestic laws apply and what do they say? Do they reflect international law or are there significant differences? This work is made easier if the state keeps an online database of legislation, and/or if you have access to *pro bono* or low-cost legal advice.
6. Policy versus practice. What is the policy of the local authority, government, or corporation in question? Is this followed in practice? Does the policy/practice violate the law, and how? (It is important to distinguish whether the government or a corporation is behaving unethically from whether it is breaking the law.) You can use ‘hard’ evidence, such as documented proof of violations, or ‘soft’ evidence, such as eyewitness accounts and anecdotes – both matter.
7. Remedy. What could the government or parliament do to close the legal gaps that you have identified? How would this improve the lives of children in practice?

Find out more

The [UN human rights site](#) shows which treaties have been ratified by your state. Select your country page and then click ‘Status of ratifications’.

The [country pages of CRIN’s Access to Justice database](#) outline the status of treaties in domestic law.

This work is easier if the public has freedom of information rights and/or parliamentarians have a right to ask for government information. The International Consortium of Investigative Journalists has a [list of countries with freedom of information laws and how to use them](#).

Some *pro bono* advice from a lawyer may be needed, particularly if the law is ambiguous. [CRIN’s legal assistance page](#) explains how to find free or low-cost legal help.

Option Two: Use legal research in political advocacy

While local authorities, governments and corporations often ignore evidence that they are acting unethically, they may be more likely to respond to evidence that they are also acting unlawfully.

Even if they still ignore or discredit your case, it might persuade important other parties which have influence. For example, your work could strengthen the hand of parliamentarians, faith groups, investigative reporters, or some parts of the state, such as children's commissioners (if they exist in your country). It can also provide a platform for children to speak out, and it can strengthen the rest of your campaigning on the issue.

One way to strategise this work is to draw an 'influence map'. Taking a large sheet of paper with your child rights issue in mind, decide which individual or group has the political authority to make the change you seek, and write them in the middle of the page. Then ask: under what circumstances will this individual or group make the change you seek? Usually, this will depend on first persuading people who are likely to have the most influence on the people with the power to make the final decision. There might be several of these critical influencers; add these in a circle around the centre. Can you influence this second group directly with your legal evidence? If not, whom else do you need to persuade first? Add these to a third circle out from the centre, and keep going until you reach the edge of the paper (or further!). Each circle moving outwards is less directly influential on the change you seek, but is also easier for you to reach.

For example, you might persuade a faith group of your case, and with their support persuade a children's welfare organisation, and with their support persuade the person with statutory responsibility for children's welfare. Perhaps this puts the issue on the agenda of a parliamentary committee, which then makes a public statement calling for the change you want. Perhaps the media publicise this, and the government is forced to defend its policy. Then other parliamentarians take up your cause, too, asking awkward questions about the government's compliance with the law. Eventually the decision-maker(s) in the centre of your influence map is/are politically surrounded by people arguing for the change that children need.

This takes patience and persistence – even years – and there are usually many setbacks, but progress is usually more likely if your case is grounded in legal principles, and not limited to ethical concerns alone, important though they are.

Option Three: Use children's rights principles to improve the law

When laws are made or refreshed, they can be strengthened in the interests of children. This work involves following the legislative agenda, assessing its potential impact on children's rights, and intervening when opportunities arise, usually at an early stage. In practice, this means working with parliamentarians to promote amendments to draft legislation, and to speak up for these in debate.

This work is valuable in at least four ways. First, it creates opportunities to pass amendments to improve the law directly, though this usually depends on a broad base of parliamentary and public support. Second, the draft amendment can force the government to discuss the issues with senior parliamentarians, which can lead the government to amend its own draft legislation as a compromise. Third, it can publicly expose a government's unwillingness to use legislation to promote the highest standards of children's rights, particularly if the issue attracts media attention. And fourth, it is an opportunity to build parliamentary support for your cause for the long term.

In the UK the law governing the armed forces is refreshed every five years, which offers campaigners an opportunity to work with parliamentarians on amendments that challenge the enlistment of children. In 2016, when the government refused, as expected, to support two amendments to improve the rights of children in the armed forces, more parliamentarians began to question the policy of enlisting them, and became strong advocates for change.

Guiding questions

Since most new and amended law affects children's rights to some degree, there are usually many opportunities to work with the legislature. Here are some guidelines:

1. How are laws passed in your country? Research the legislative process.
2. What change are you calling for? Monitor the legislative schedule; choose carefully which draft law you plan to influence, and in what way.
3. What would success look like? Decide whether you aim to see an amendment passed, or whether you want to use the legislative process to generate publicity and support for your cause. This will affect the tone of your messages, particularly how 'radical' or 'moderate' they are.
4. Do you have the resources, commitment and time to sustain this work? Plan your work long before the legislative process begins, if possible – six months is

usually enough.

5. Who is willing to work with you? Who has influence? Identify and seek the interest of parliamentarians committed to children's rights, and also those with an interest in the policy area. Consider parliamentarians in both the upper and lower houses, as well as those who sit on a legislative committee with special responsibility for the draft bill. Often, committed parliamentarians have little influence, and influential parliamentarians have little commitment; ideally your advocates need both.
6. How will you work together? Typically, parliamentarians take the lead, with NGOs in support. NGOs can provide expert knowledge and sometimes draft speeches, letters, or amendments. NGOs can also gather support for the amendment (etc.) and manage publicity.
7. After the process is complete, look back at what has been achieved and how you will maintain your parliamentary relationships for the future.

Option Four: Bring a legal complaint

Even if you have strong legal evidence and your political advocacy has made progress, governments and corporations often continue to ignore the law, your legal case, and the influential people whom you have drawn to your cause. In these circumstances, an option is to seek legal redress for the rights violation, for which there may be several options.

Bringing a case to court

Strategic litigation is the use of the legal system to correct law, clarify law, or bring policy into line with the law. In these ways, it can bring broader, long-term changes in society. It begins by bringing a case to court. Sometimes, the case is based on a legal complaint by an individual whose rights have been violated. Other times an NGO or other agency can apply to challenge a law or policy directly, without a formal plaintiff.

If the court agrees to hear the case, then the government or a corporation has to respond to your legal evidence and arguments, and so devote serious attention to the issue. If the case is won, a state or corporation may be legally required to change its policy; a judge could also rule that the law must be changed to protect children's rights more effectively.

If the case is lost, there can still be many benefits. Over the course of the case, a government often has to release information that is not normally public; the media may become interested; and the process can strengthen your own expertise. Sometimes, the case prompts elements of government and parliament, who might previously have ignored or discredited you, to discuss the change you are calling for on its merits.

There are also risks, such as having to pay legal costs – your own and your opponent's – if you lose, although costs are

capped by an upper limit in many countries. If the court judges that the government (or a corporation) has not been acting unlawfully, this can set back your campaign. Even if the legal arguments fall your way in principle, the personal politics of a judge can strongly bias the outcome. The case can also drag on for a long time, especially if it goes to appeal, adding a strain on your resources.

Despite these risks, strategic litigation can bring substantial, lasting changes, and children have much to gain from a carefully chosen case. But it is a major undertaking. Legal help is essential, as are time and money, although funding and *pro bono* support are often available.

Guiding questions

Here are some questions to think about when deciding whether strategic litigation might be an option for your campaign:

1. Do you have a strong legal argument with clear supporting evidence, and would winning the case make a real difference to the lives of children?
2. Is the judiciary open, in practice, to legal challenges to the state or corporations?
3. Does the government abide by legal rulings requiring a change in policy (and is it able and willing to ensure that corporations do the same)?
4. Is there only a low risk of a backlash from the government/corporation, and could you manage it?
5. Is low-cost or *pro bono* legal help available, and would it remain available for the duration of the case?
6. Do you have the time, commitment and funds to sustain your involvement in the legal process?
7. Are you confident that bringing the case is a better use of your time and resources than other avenues for campaigning?
8. Will litigation support your broader campaign (rather than distract from it) and if you lose the case, will the campaign still benefit?
9. Are the full financial costs of losing the case manageable?
10. Is there only a low risk that an adverse ruling could set back your campaign?

If the answers to most or all of these questions is yes, then it is worth giving strategic litigation serious consideration.

Sentenced to death for a crime allegedly committed when he was just 14, Shukur Ali became the centre of a lengthy legal battle which ultimately led to mandatory executions being declared unconstitutional. At a sham trial, Shukur Ali was convicted of the rape and murder of a young girl, and sentenced to death by hanging. Bangladesh Legal Aid and Services Trust (BLAST) contacted Ali. Their lawyers filed a case that the law he had been tried under was unconstitutional. After nine sessions in court, the Supreme Court agreed. Eventually, Ali's sentence was commuted, but he will still spend the rest of his life in prison unless the President pardons him. Since his imprisonment, the death penalty and life imprisonment can no longer be used for convicted children, although the age of criminal responsibility in Bangladesh remains very low, at nine. [Read about Shukur Ali's case on our case studies page.](#)

Find out more

CRIN has published a comprehensive [guide to strategic litigation](#).

CRIN also has a detailed [guide on getting legal help](#).

Read stories of strategic litigation for children's rights on [CRIN's case studies page](#).

CRIN's [case law database](#) documents cases involving children's rights around the world and their outcomes. You can search by keyword to see whether your potential case has been brought in a similar form in another country.

[Sign up for CRIN's Children in Court monthly email](#).

Bringing complaints to UN treaty bodies

Eight of the nine major global human rights treaties are overseen by treaty bodies (committees), which can receive complaints from individuals and groups of individuals. The main conditions are that:

1. The state has ratified the treaty and has opted in to its complaints mechanism;
2. The complainant can substantiate their complaint with evidence, and show that the state party is responsible for the violation of their treaty rights; and
3. The complainant has exhausted domestic legal avenues, unless those avenues are 'unlikely to bring effective relief' and/or would be 'unreasonably prolonged' (e.g. they may be corrupt, very costly or too lengthy).

Most European and Latin American states have opted in to at least some of the main treaties' complaints mechanisms, whereas most North American, Middle Eastern, African and South and East Asian states have not; [see map](#).

The process is usually simpler and quicker than bringing a case to a national court. It is normally conducted on

paper rather than in person, and within set time limits. Treaty bodies are only 'quasi-judicial' – they cannot force a government to change its policy or law – but a favourable judgement can support children to gain redress, while strengthening your advocacy with parliamentarians, the media and others.

In the case of the main children's rights treaties – the Convention on the Rights of the Child and its Optional Protocols – states activate the communications procedure by ratifying the CRC's third Optional Protocol, known as OPIC.

Under OPIC, any child or group of children may bring a complaint, with the support of a representative if they wish, if they believe that a state party has violated one or more of their rights guaranteed by the Convention (and its Protocols if they have been ratified). Special arrangements ensure that the complaint is the genuine wish of the child or children concerned. If the complaint is admissible, children are supported through the process, which is conducted with their best interests in mind, according to their age and maturity. The UN has published guidance and a model complaint form, which further ease the process.

The CRC's complaint mechanism is very new and few complaints have been complete, but the Convention' covers a broader range of children's rights than any of the other international mechanisms.

Find out more

The [UN human rights site](#) shows whether your state has ratified the relevant treaties and opted in to the complaints procedures. Select your country page, click 'Status of ratifications', and scroll down to 'Acceptance of individual complaints procedures'.

CRIN has published a comprehensive [guide to bringing a complaint under OPIC](#) and another guide for bringing complaints to other treaty bodies.

Regional courts and complaint mechanisms

Some of the most effective international complaint mechanisms are only available in certain regions, but may provide the most effective way of moving forwards when national legal complaints have failed.

- The European Court of Human Rights has jurisdiction over all Council of Europe States and has a strong track record of enforcing its judgments. Complaints can be brought alleging a violation of any of the rights under the European Convention on Human Rights, provided domestic remedies have been exhausted.
- The European Committee on Social Rights can hear collective complaints on any issue covered by the European Social Charter and there is no need to exhaust domestic remedies before bringing a complaint.
- The Inter-American Court of Human Rights can hear cases from 23 countries across the Americas where it is alleged there has been a violation of the rights under the American Convention on Human Rights and national courts have not been able to remedy the violation.
- The ECOWAS Community Court of Justice can hear complaints about violations of the rights under the African Charter on Human Rights. The Court has been willing to hear cases where domestic remedies have not been exhausted.
- The African Committee on the Rights and Welfare of the Child can hear complaints of rights violations under the African Charter on the Rights and Welfare of the Child if they have exhausted domestic remedies.

SCOPING A LEGAL ADVOCACY STRATEGY



There are so many avenues for legal advocacy that finding the right way forward can be confusing. This section offers some guidance about how to scope your options and decide on a course of action.

Guiding questions

1. How and why are children’s rights being violated, and how does this affect children’s lives?
 - Which children’s rights issue are you and children most concerned about, to which legal advocacy might make a difference?
 - Why does the violation persist? Why have traditional forms of advocacy and campaigning not yet stopped it?
 - Would successful legal advocacy bring lasting benefit to children in practice? How?
2. Is there a strong legal case for change, and evidence to support it?
 - With your chosen issue in mind, which international laws are being violated in your country, and how? Which domestic laws are being violated, and how?
 - Do you have objective evidence – ‘hard’ or ‘soft’ – that these legal violations are occurring? How strong is the evidence, in your view, and how much further research is needed to make the case?
 - What legal challenges have been made on the issue in the past? What were their outcomes?
3. Which options for legal advocacy seem most promising?
 - How viable is legal advocacy in your country? For guidance, see *Mapping the legal terrain*, above.
 - Of the four options for legal advocacy outlined in this guide, which one or two seem the most likely to strengthen your work on the issue, and which the least?
 - Publicly exposing legal gaps.
 - Using legal arguments to challenge policy and/or practice.
 - Using children’s right principles to improve the law.
 - Bringing a legal complaint.
4. Focusing on the most promising options, how would you take this work forward?
 - For guidance, see *Forms of legal advocacy*, above.
 - What are the prospects for success, in your view? What are the ‘best’ and ‘worst’ outcomes?
 - What resources would be needed (time, money, people, legal advice)?
 - Who are your potential partners?
 - What are the obstacles and risks (to your organisation, to your campaign, to people)?

Having scoped your options, you may be ready to make concrete plans to build a legal advocacy approach into your campaign on the issue.

During CRIN’s workshop on child rights advocacy in Turkey, a group working on corporal punishment identified a specific article of the Turkish Penal Code which needed to be challenged, and set out a plan to take this issue to the constitutional court and then, if necessary, to the European Court of Human Rights. Once they had decided on a target and a pathway for their campaign, they were able to begin planning for the specific actions they would need to take in order to achieve their target - i.e. the preparation of legal opinions, liaising with state authorities, involvement of the legislature and the judiciary and fulfilling the conditions for appealing to regional human rights bodies.

DEVELOPING LEGAL
ADVOCACY IN YOUR
REGION:

ORGANISING AN
NGO WORKSHOP



To promote the use of legal advocacy around the world, CRIN has begun a series of workshops for children's rights advocates to devise their own legal advocacy strategies. This section provides an outline template for organising a workshop in your own country/region. CRIN can offer some support for this.

To date (2017), four workshops have taken place, each supporting participants with and without a background in law to develop legal advocacy in the following issue areas:

- Turkey, 2011: Corporal punishment and children's economic and social rights.
- Nepal, 2013 (with participants from Afghanistan, Bangladesh, India, Nepal and Pakistan): Juvenile justice and the trafficking of children.
- Tanzania, 2015 (with participants from Kenya, Tanzania and Uganda): A range of regional persistent violations of children's rights, including privatisation of education and ritual killings of children with albinism.
- Ukraine, 2015: Children with disabilities, the oppression of Roma children, violence against children, and access to justice.

Workshop outline

Below, in brief outline, are the process and agenda that were used to organise these events, which can be adapted as needed. If you are interested in organising a workshop, please contact CRIN and we can discuss the process in more detail.

Preparation

- Identify potential sources of funding.
- Identify potential participants from legal and non-legal backgrounds and gauge their interest.
- Secure funding.
- Agree a date, venue, partner/host organisation(s), and participant commitment.
- Agree working language(s) and arrange interpretation if necessary.
- Prepare evaluation form (template available).

Mail-out

With partner/host organisations, prepare and send out short introductory briefing on persistent children's rights violations in the country/region.

- Send out draft agenda.
- Send out questionnaire asking participants to identify: their current legal advocacy work, if any; examples of successful legal advocacy action; any forthcoming opportunities for such action; and any other issues that may be relevant to the workshop.

Substantive agenda: Day one

Plenary:

- Introducing legal advocacy, with discussion.
- Naming the persistent violations of children's rights in the country/region.
- Grouping the violations as the themes for working groups.

Working groups:

- Understanding the violation, how it affects children, and why it persists.
- Recalling any legal advocacy on the violation so far.
- Exploring options for legal advocacy now, and their obstacles and risks.

Substantive agenda: Day two

Working groups:

- Working towards concrete legal advocacy plans (template of key questions is available).

Plenary:

- Reports from working groups.
- Agree next steps.
- Final discussion and close.

Follow-up

- Workshop report (template available).
- Follow-up meetings to take forward the commitments made.

Resources

CRIN has published the [reports from previous legal advocacy workshops](#).

CRIN can also provide examples of the papers, agendas and evaluation materials used in these workshops.

If you want to organise a similar workshop in your country or region, please contact CRIN.