



Toolkits for children and practitioners





The Scoping,
Planning and Design
of Child Rights
Strategic Litigation

What is child rights strategic litigation?

Our definition of child rights strategic litigation is:

'litigation that seeks to bring about positive legal and/or social change in terms of children's enjoyment of their rights'.

It is where the aim of the litigants is broader than just resolving a problem for an individual child; rather, the litigation seeks to bring about legal and/or social change that will benefit all children or a category of children.

About these toolkits

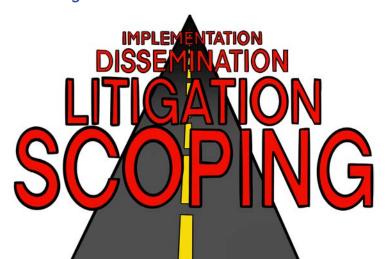
This is a series of 4 toolkits about child rights strategic litigation.

These four guides can be used by children who are involved in or interested in bringing child rights strategic litigation.

They can also be used by lawyers and others seeking to support children through the strategic litigation process.

We hope these toolkits can act as empowerment tools to increase children's engagement in and understanding of strategic litigation, while providing practical tips and ideas for children and practitioners.

The toolkits have been produced as part of the Advancing Child Rights Strategic Litigation project, www.acrisl.org



We have identified four stages of decision-making in child rights strategic litigation and have developed a toolkit for each stage.



The scoping, planning and design of child rights strategic litigation



Operationalising child rights strategic litigation



Follow-up to child rights strategic litigation



Extra-legal advocacy in child rights strategic litigation (communication, the media and campaigning)

This is toolkit 1: it is focused on the scoping, planning and design of child rights strategic litigation.

Background to these toolkits

For this project we listened to the voices of children and young people (CYP) in the UK and South Africa. We thank them for their help which will undoubtedly contribute to changing the way in which litigators work with children to bring about legal and social change.

The CYP told us that it was important for them to be able to use the law as a tool to make change in the world. However, they made clear that there were barriers to them doing that, which included a lack of knowledge, awareness and tools.

The CYP we worked with told us what they believe lawyers and others who want to work with children on strategic litigation need to do.



What practitioners can do to enable children to participate in strategic litigation.

- this can be hard because the law is complex and often inaccessible even to adults)
- 2. 'Take children's views seriously'
- 3. 'Allow children to voice their own opinion' and ensure that opinion is considered as seriously as those of practitioners and other adults
- 4. 'Make room (and time) for children to participate'
- 5. 'Provide guidance and knowledge'



6

What is the UN Convention on the Rights of the Child (UNCRC)?

- 1. The UNCRC is a statement of children's rights
- 2. It is the most widely ratified international human rights treaty in history
- 3. Children and practitioners may want to refer to different parts of the UNCRC (e.g., the different articles that rights are set out in) in their legal arguments. This might include referring to General Comments produced by the body that monitors whether states are giving effect to the UNCRC (the UN Committee on the Rights of the Child). These are considered authoritative guidance for interpreting the articles of the UNCRC.
- 4. UNCRC rights can also be used as a framework to shape the way that litigation is carried out by lawyers and others.

UNCRC rights that should play a key role in shaping the way that strategic litigation work is carried out by lawyers and others



Article 12(1)
Right to be heard



Article 13
Right to freedom of expression



Article 17
Right to information



Article 5
Evolving capacities
of the child



Article 2
Non-discrimination



Article 3(1)
Best interests



Article 19(1)

Right to protection from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation



Article 16 (1)
Right to privacy



Article 6
Right to life, survival and development



Article 39
Right to physical and psychological recovery



Article 4

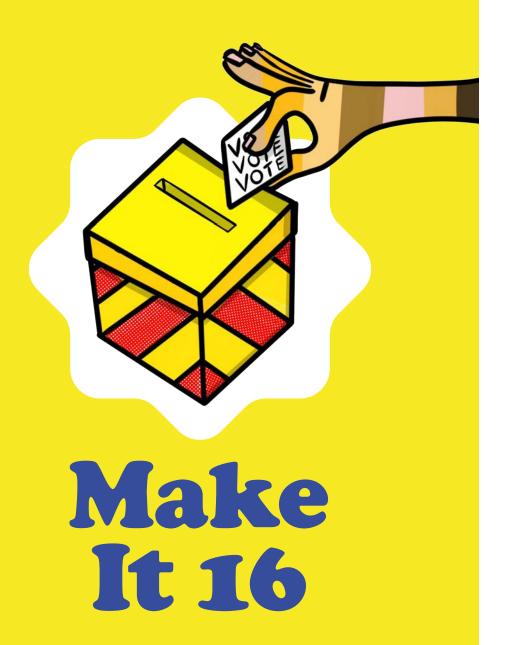
Appropriate legislative, administrative and other measures for the implementation of the rights recognised in the present Convention

8

UNCRC rights suggest that when it comes to the scoping, planning and design of child rights strategic litigation, lawyers and others working with children should do certain things...

- Where there are children involved in a case, they should be involved in identifying the issue(s) to be argued in the case, the goals to be pursued by the litigation, and in the whole planning of the case
- From the start, children should be provided with appropriate information to allow them to understand and weigh up the opportunities and risks involved in litigation
- Where a decision is taken not to involve children in a particular case, this should be done following an assessment of the risks and benefits to children's rights
- Litigators should ensure that their litigation work is always in children's best interests (which also requires explanations to children, and taking account of their views)
- Litigators should be aware of how strategic litigation work may impact on children's policy/ advocacy agendas





Make it 16 is a youth-led campaign pushing for 16-17 year-olds to be free from age discrimination in New Zealand. Their legal case argued that the New Zealand Bill of Rights protects people from age discrimination and so 16-17 year-olds should not be stopped from being able to vote.



They went to Court seeking a declaration that parts of the Electoral Act 1993 and Local Government Electoral Act 2002 (which prevent 16-17 year-olds from being able to vote) breaches New Zealand's Bill of Rights.

- ▶ They were initially unsuccessful in the High Court, but they appealed to the Court of Appeal where the judges agreed that there was discrimination, and the government had failed to justify It. However, the Court of Appeal refused to grant a declaration of inconsistency, claiming it would be too political.
- ▶ Their case went to the Supreme Court where they hoped to receive a declaration that preventing 16-17 year-olds from voting is a breach of the New Zealand Bill of Rights. The Supreme Court granted Make it 16 a declaration that the Electoral Act, which says the minimum voting age is 18, is inconsistent with the right to be free from discrimination due to age. (In New Zealand the right to be free from age discrimination begins at 16). The Supreme Court said that the declaration of inconsistency was a protection of the fundamental rights of a minority group
- n November 2022, the Prime Minister of New Zealand, Jacinda Ardern, said the New Zealand government would draft legislation to change the voting age to 16.

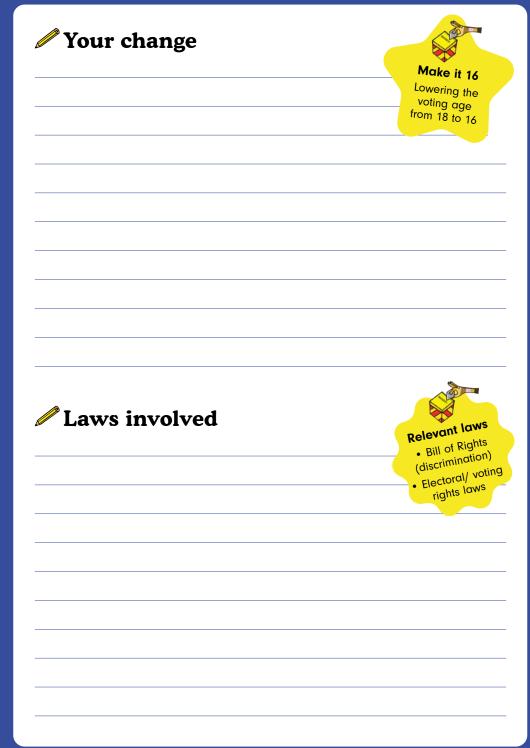
If you are interested in working on a similar campaign Make it 16 can be contacted at hello@makeit16.org.nz

12

Think of something that you would like to change in the world.



What kind of laws relate to that change?



For the change that you want to see, where do you need the change to happen?



Your change	Where is the change needed?
	change fleour city or state Nationally = your country Internationally = lots of countries change fleour Make it 16 Locally (local elections) Nationally (national elections)

If the change happens, who or what will benefit?

These people are sometimes called the beneficiaries



Your change	
	Make it 16 beneficiaries Children aged 16-17 Everyone in New Zealand (as more people get involved in democracy)

Why is this change important to you?

Think of some reasons why you want to see this change – for example, it may be about something which affects you directly, or you would like to see the change because it will help other people. You can give some general reasons, personal reasons, or both, if you feel comfortable to.

Some reasons this change is important to you might include:



You have read/learnt about the issue.



Y

It would affect your family/ those you care about.

It would change the way you see yourself.

Ø G	eneral	Reaso	on	
/ Pe	ersona	l Reas	on	

Try and think of which areas of the law are involved

There may be several different areas of law involved. Some examples of different types of law are listed below for you to use

- Criminal
- Constitutional
- Medical
- Immigration
- Education
- Environmental
- Family
- Human Rights





What is the ultimate change you would like to see – your long-term goal?



- By giving yourself an end goal, you can break up the steps you need to take in order to reach it
- This is really important when thinking about bringing legal action as it helps to visualise the process you will need to go through in order to achieve the change you want to see
- Having the 'Big Picture' in mind helps you remain focused on the issue

Your example	
	Make it 16 16-17 year-olds in New Zealand are able to take part in elections

Are there smaller goals on the way to the longterm goal?

- (which might be easier)
- Try and break the change you want to see up into steps - sometimes it's the smaller goals that help to build up towards the ultimate goal
- It is important when thinking of bringing a case to try and plot out smaller victories along the way
- Doing this helps you plan out how you want your cause to advance, allowing you to see your progress as you go

Your example				

Why go to court?

COURT HOUSE



1	the best way to make this change happen?
•	What does bringing a case add to other work you do
	to make this change happen (for example, political campaigning or public education?)
_	,
•	What might be some of the risks of bringing
	litigation to try to achieve this change?
_	

田田田

田田田

Do you know of any other campaigns or groups working on issues similar to the one you are try to change by bringing a case?

These may be in your country or other countries - try searching for some on the internet to find out.

By understanding what other action is being taken on the issue you are passionate about, you can find inspiration in the work that others are doing for your particular cause





From your research, list some useful websites, news articles, or podcasts that help explain the issue you are looking to change through bringing a case

Try and summarise the information that you have found – for example, have you found a particularly simple and clear way of explaining your desired change and how to go about it that would help you explain it to others?



Websites	
News articles	
Podcasts	

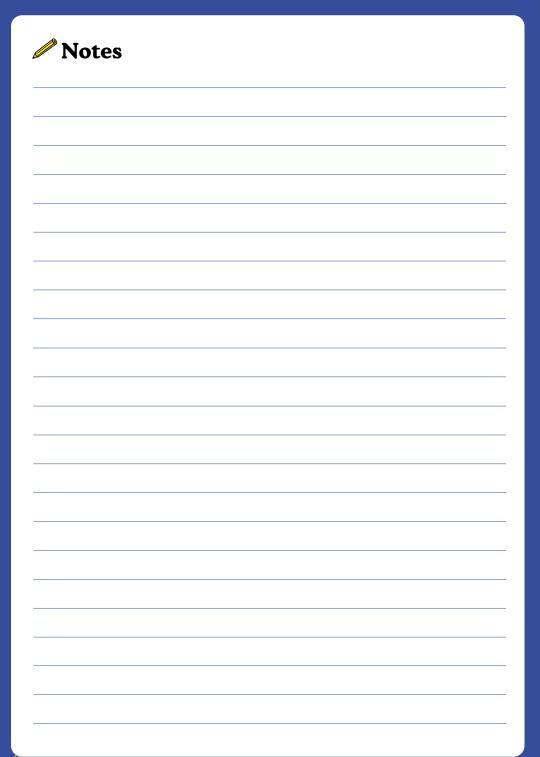
 \mathcal{S}^2

Questions that children can ask lawyers to help them understand about bringing a case – or that lawyers can answer so as to help children understand

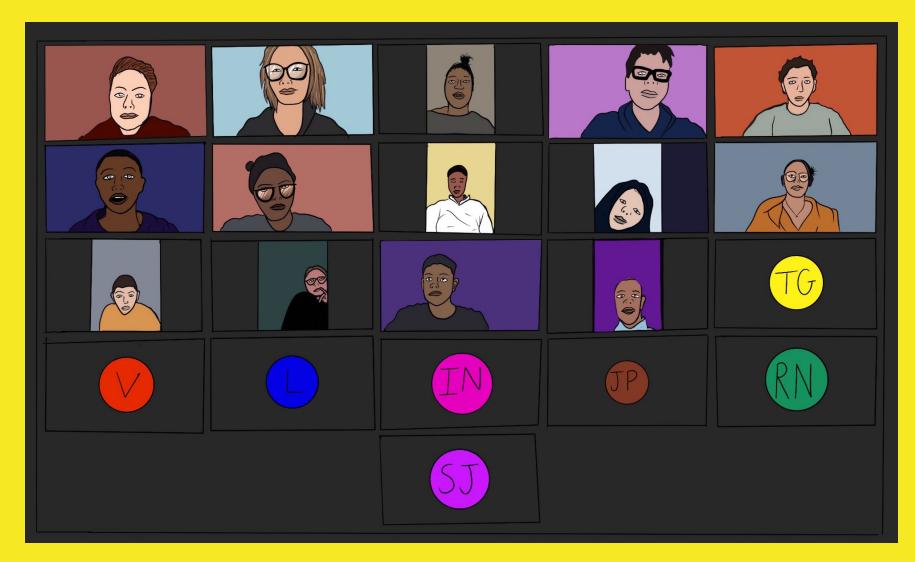
Some examples:

- What is the problem and what is the problem with the law?
- What does law say about this issue at the moment?
- What might the court say?
- Does the law itself need to change or is it about a change in how the law is applied?
- Are there ways that we can take a case (in this country or internationally)?
- What might happen if the case wins?
- What are the risks?
- What other work is going on and who is doing it?





Notes		



Huge thank you to the children and young people from South Africa and the UK, and all the others, who participated in making this guide clear, particularly to Theo who led on the youth design of this guide. We hope that it will be useful to children and practitioners across the world. If you would like to follow up with us, join our global Network or ask any questions, please check out www.acrisl.org

With particular thanks to Jacob Stephenson Nairn for his illustrations. More of his work can be found at Instagram @mysftsart or on YouTube @mysftsart279









Thank you:

Cailin Brandi **Zubair** Vimbai Lukhanyo Masego **Ambrose** Rushaan Winetha Saadiq Robin Christopher Ezra (Kereen) Ayabongwa, Ruan, Janishca, Lilitha, Vimbai. John-Lee Inathi Scarlett Theo Ash Sid Clemmie Keshon Katie Finn

ACRISL 'Toolkit 1: The Scoping, Planning and Design of Child Rights Strategic Litigation' (ACRISL 2023)







Toolkits for children and practitioners









