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ACRISL

# Toolkits for children and practitioners

Advancing **Child  
Rights**  
Strategic  
Litigation 



# 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

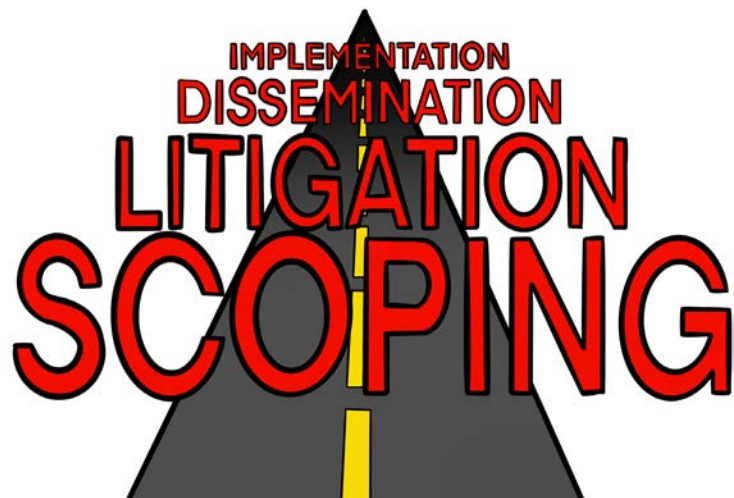
**This is a series of 4 toolkits about child rights strategic litigation.**

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](http://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.

1. **'Treat children as equals'** (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'**














# 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

 <p><b>Article 12(1)</b> Right to be heard</p>	 <p><b>Article 13</b> Right to freedom of expression</p>	 <p><b>Article 17</b> Right to information</p>
 <p><b>Article 5</b> Evolving capacities of the child</p>	 <p><b>Article 2</b> Non-discrimination</p>	 <p><b>Article 3(1)</b> Best interests</p>
 <p><b>Article 19(1)</b> Right to protection from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation</p>		 <p><b>Article 16 (1)</b> Right to privacy</p>
 <p><b>Article 6</b> Right to life, survival and development</p>	 <p><b>Article 39</b> Right to physical and psychological recovery</p>	 <p><b>Article 4</b> Appropriate legislative, administrative and other measures for the implementation of the rights recognised in the present Convention</p>

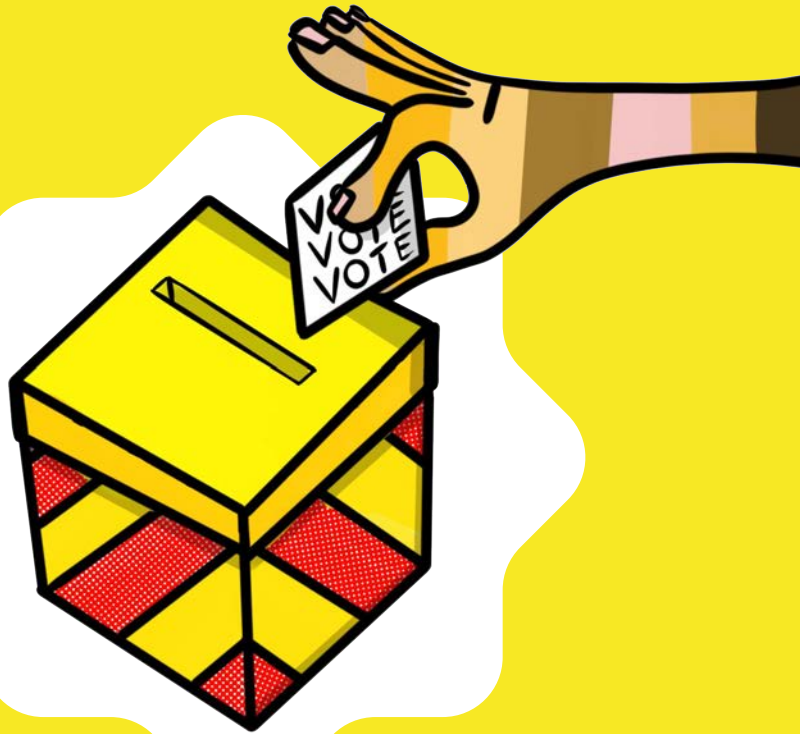


# UNCRC rights suggest that when it comes to the scoping, planning and design of child rights strategic litigation, lawyers and others working with children should do certain things...



- 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

**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.**



*As an example of a campaign that included child rights strategic litigation, **Make it 16** will be used as an example throughout this guide*

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
- ▶ In 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](mailto:hello@makeit16.org.nz)**











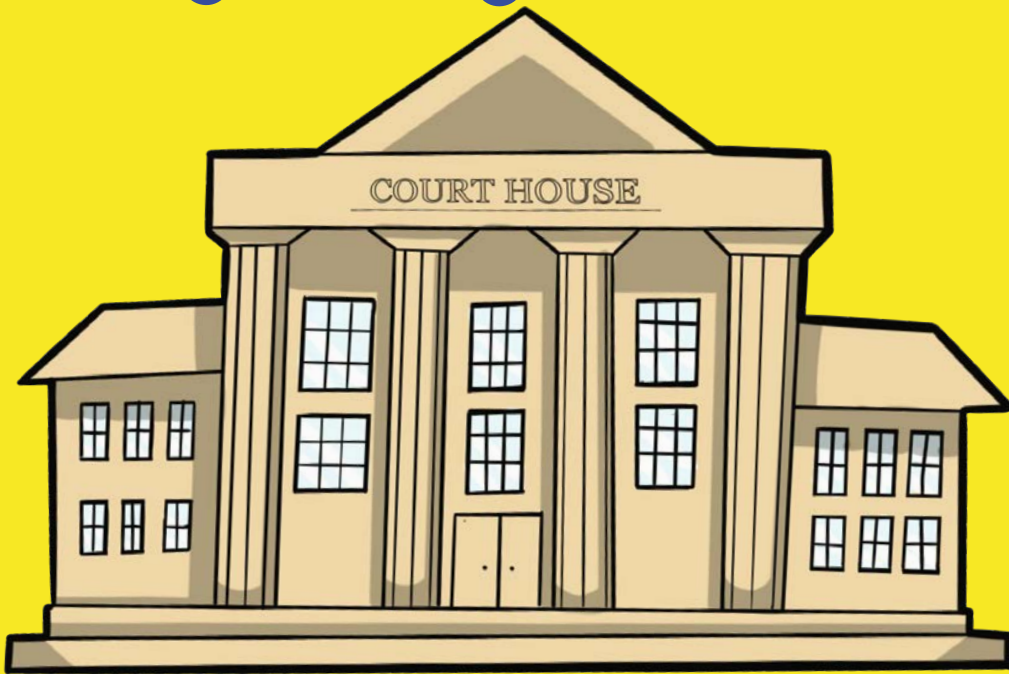










# Why go to court?



 Why do you think that bringing a case is 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?





**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**

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 **News articles**

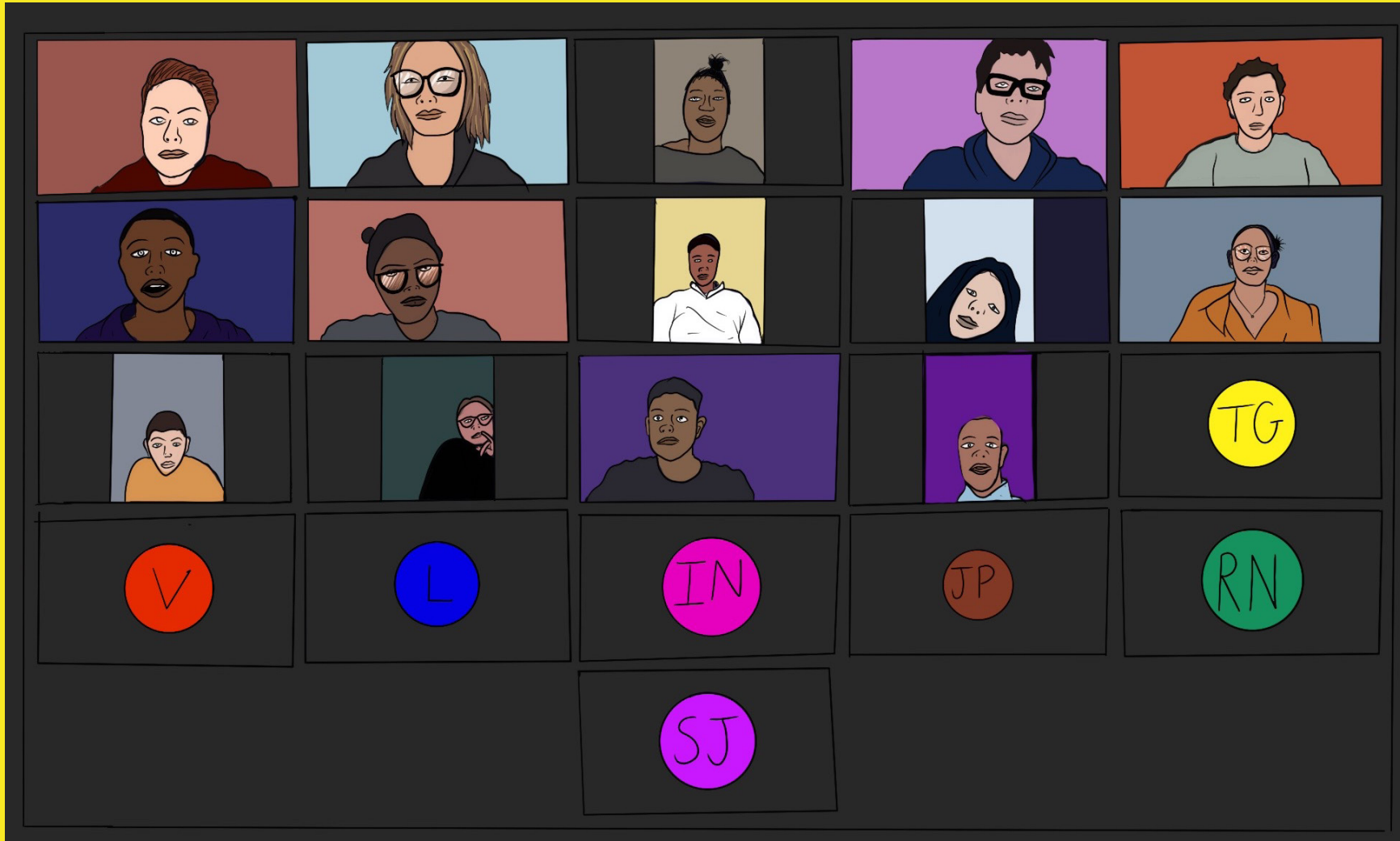
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 **Podcasts**

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## Thank you:

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With particular thanks to Jacob Stephenson Nairn for his illustrations. More of his work can be found at Instagram [@mysftsart](https://www.instagram.com/mysftsart) or on YouTube [@mysftsart279](https://www.youtube.com/mysftsart279)





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