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ACRISL

# Toolkits for children and practitioners

Advancing **Child  
Rights**  
Strategic  
Litigation 



# Operationalising 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

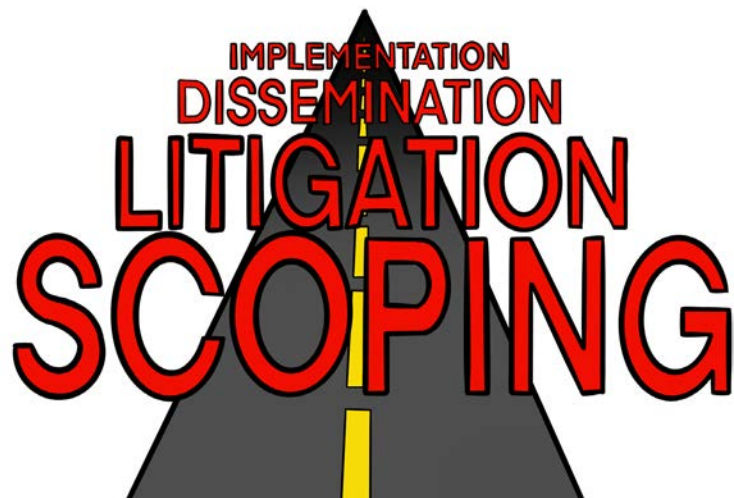
**This is a series of 4 toolkits about child rights strategic litigation.**

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 2: it is focused on operationalising 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.

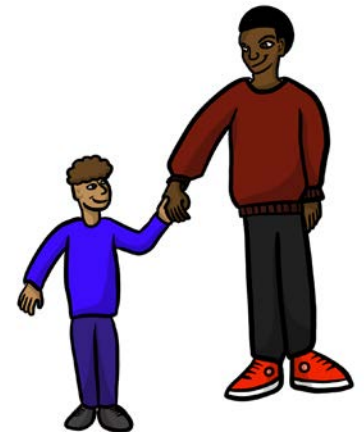
The CYP told us that it was important for them to be able to use the law as a tool to make change in the world. However, they made clear that there were barriers to them doing that, which included a lack of knowledge, awareness and tools.

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>

# Some words that might be used in litigation and what we mean by them

## AMICUS CURIAE

'Friend of the court' in Latin. Someone (or some organisation) who is not the claimant or the defendant but has some additional or relevant information to add to the litigation.

## CLAIMANT / LITIGANT

A person (or organisation) who brings the case to court.

## CLIENT

The person or people the lawyer represents.

## CONFIDENTIALITY

Lawyers are not allowed to tell anyone any information given to them by their clients, unless the client gives them permission to do so.

## DECISION-MAKER

The person or people making the decisions in a case. They will often be judges.

## DEFENDANT

A person (or organisation or government institution) who is defending the case that has been brought.

## FORUM

The place where the litigation is taking place – for example, in front of a specific court. There are higher courts that cases can go to if they are won or lost in front of a lower court.

## HEARING

A meeting to collect facts about an incident or a problem.

## INTERVENER

Similar to an Amicus Curiae, a party in the case who is not the claimant or the defendant but has some additional or relevant information to add to the litigation.

## JUDGMENT

The decision of the court.

## LAWYER

A person who is able to argue a case in court. Some cases don't need lawyers but most are likely to do so.

## LEGAL PROCEEDINGS

Actions taken to resolve an argument in court.

## LEGAL STRATEGY

Planning focused on how a case will be presented to or argued in court.

## LEGALLY BINDING

A decision that must be obeyed.

## LITIGATION

A legal case that is either going to the court(s) or is actually before the court(s).

## OTHER SIDE

The opposite side in a lawsuit.

## OUTCOME

What happens at the conclusion of a case.

## PARTIES

These include the claimant and the defendant. They may also include interveners or Amicus Curiae.

## REMEDIES

Solutions to the problem that the lawyer will ask for. Decision-makers might decide on different remedies.



# Overview of involvement in litigation

Legal proceedings are complicated – for lawyers, for other adults, but especially for children. It's important that children are kept informed of legal deadlines and decisions, allowing them to participate in decision-making around litigation.

Legal tactics can change fast, depending on many factors including:

- How the other side argues the case
- The judge (the person who makes the decisions)
- The court (the forum)
- New cases that come along

Lawyers working on strategic litigation for children can act as guides to help children navigate the legal system.

If the lawyers aren't able to do this work themselves, they can work to build relationships with partners who can do it with/for them.

**Legal tactics are like poker...**

You might want to keep your cards close to your chest.

You might want to call their bluff.

You might have a winning hand...



**...You might need to adapt your case accordingly!**

# We think there are 4 different strands of work that can help ensure children's involvement in strategic litigation

We will explain these in more detail below.

Children and adults can work together to identify the actions they will undertake, in their litigation, to ensure **support**, **participation**, **expression** and **empowerment**.

Support



Participation



Expression



Empowerment





# Professionals can support children to have a better understanding of:

1. How cases can be taken
2. The progress of the case
3. The particular arguments that the lawyers are going to make



By doing this, litigators can help to ensure that children are playing an active role in the legal case and that the children feel a part of the team.

Some ways lawyers can do this is by:

1. Providing the children with an understanding of the legal process (key steps in bringing a particular legal action)
2. Providing the children with an understanding of the reason why a case is being argued in a certain way or in a certain court
3. Learning from each other: children may be experts on the facts that may have been misinterpreted or misunderstood by the legal process. Lawyers are reminded to allow children the opportunity to explain any factual discrepancies or errors.

 **Litigators should ask the children involved in their litigation: what would help the children's understanding of the litigation?**

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# Support

Lawyers have two things children do not:

- Legal education
- Legal experience

Professionals working with children on litigation (e.g., lawyers or youth workers) should provide support by creating a non-judgemental, safe space where children feel comfortable and secure

It is important that professionals build children's understanding by clearly explaining:

- The legal system and what to expect, in a way that is understandable
- The problems with the legal system and the potential risks related to a win or a loss

Everybody working with children on litigation must ensure that the children are not exposed to psychological/emotional distress or (re)trauma throughout the process. Often, the case is about the children's actual experience – lawyers should keep this in mind when managing and arguing a case.

**Psychological or emotional distress** is a changing landscape. Professionals should allow children to change their mind as the case develops - or as the children do - and support children to change how they put their experience into the public space.

## A Safe Space =

A place or environment in which a person or category of people can feel confident that they will not be exposed to discrimination, criticism, harassment, or any other emotional or physical harm\*



 **Litigators should ask the children involved in the litigation what would make the children feel comfortable and secure.**

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\*Source: Diverse Educators, 'Our DEI Glossary'

# Participation

Participation of children in strategic litigation can be empowering and rewarding. It is also crucial in terms of ensuring children enjoy their right to express their views and have those views given due weight in litigation in line with Article 12(1) of the UNCRC. A child's participation must be meaningful, not tokenistic, symbolic or surface-level.

Once the lawyer is clear that the child would like to participate, they must enable the child's participation in the different stages that we have identified as making up child rights strategic litigation:

- The scoping, planning and design of child rights strategic litigation
- Operationalising child rights strategic litigation
- Follow-up to child rights strategic litigation (including dissemination and implementation)
- Extra-legal advocacy (communications, the media and campaigning)



## Tokenism

By tokenistic we mean that participation is done for performative purposes, it is perfunctory rather than meaningful. We think meaningful participation should be the aim and something professionals should continuously keep working towards

# Expression

Professionals working with children on strategic litigation must ensure the children are able to express themselves:

- **Freely** (without feeling under pressure or at risk of judgement)
- **Anonymously** (if they would like)
- **Safely**
- **Confidently**



SAFE SPACE

UNDERSTANDING

## Funders

Funders of child rights strategic litigation should be made aware of the additional support required to make children's involvement in litigation possible

Appropriate language is important – legal jargon and shorthand can be inaccessible.

This may be overcome by:

- Working in an **intergenerational** way
- Appointing a child to identify language problems and confusion
- Working with speech and language therapists to act as a communication bridge between lawyers and children
- Considering working with an art therapist who could help children understand the process and express their views through visual art
- Counsellors may assist if the issue being litigated is traumatic

These are suggestions, not an exhaustive list!

## Intergenerational practice

"Intergenerational practice aims to bring people together in purposeful, mutually beneficial activities which promote greater understanding and respect between generations and contribute to building more cohesive communities. Intergenerational practice is inclusive, building on the positive resources that the young and older persons have to offer each other and those around them."

(Source: Generations Working Together, 'Intergenerational Practice', [generationsworkingtogether.org/about/intergenerational-practice](http://generationsworkingtogether.org/about/intergenerational-practice))



# One possible way of bridging the communication gap between children and lawyers:

Having a youth representative/spokesperson to provide accessible, age-appropriate explanations for children, to ask any questions of the lawyers that the group may have, and to update on actions being undertaken.

A child's spokesperson/representative can support the group by:

- Collecting the questions of the children and putting them to the legal team
- Agreeing on response timeframes and ways of answering those questions
- Holding the lawyers to account for communicating in the agreed timeframes and methods
- Asking for an explanation of potential outcomes, wins or losses, to help manage expectations

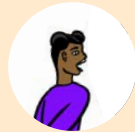


# Empowerment

Litigation may go on for a long time. As children develop in terms of their legal understanding, communication and reasoning skills, their views towards strategic litigation may change.

As children develop and they become more informed and empowered, their views should carry greater weight in decision-making about the litigation.

Children should be able to ask for a representative or guardian to support them through the litigation until they feel they no longer need them.



For example, lawyers should make clear to children that they have the ability to halt the litigation if they wish.

## Tips for Practitioners

1. Listen to the children or their spokespeople
2. Gauge their level of understanding
3. Ask for what you have said to be repeated back in the children's own words in order to listen for any misunderstanding
4. Give advice in line with the child's level of understanding
5. Be agile – adapt your communication in line with the needs/age/maturity of the children you're working with
6. Take advice from speech and language therapists, if needed

Lawyers and children can make an agreement to make clear what the arrangements between them will be.

## An example of a draft agreement between children and their lawyers:

We, the lawyers in the case of

\_\_\_\_\_ agree that:

1. We will answer any questions that the children may have:  
Within \_\_\_ days  
In writing/in person (attendance at the meeting)/by video call
2. \_\_\_\_\_ will act as the spokesperson and send us questions
3. If there are matters that are confidential, and not all children can be told about all the evidence, we will explain this clearly in our answers
4. Any written answers we give will be dated, as the information we give may change over time as the case develops
5. Any answers in writing will not be shared outside of the group setting and are not legally binding – they are a guide to the ongoing litigation

Remember a lawyer is employed by their clients. If their clients are the children, then the children are able to sack the lawyer if they don't do their job properly.

An agreement between the group of children and the lawyers is not intended to be legally binding but can be used as an agreed foundation that everyone works from

# Grid tool

A tool to ensure support, participation, empowerment, and expression opportunities for children in litigation.

In each quadrant, identify **four** actions lawyers and other adults involved in strategic litigation can take to enhance a young person's engagement in litigation.



## Support

1.

2.

3.

4.

1.

2.

3.

4.

## Expression

## Participation

1.

2.

3.

4.

1.

2.

3.

4.

## Empowerment

## Examples

**Support** = adult supporters

**Participation** = lawyers and children have monthly meetings to update on the litigation

**Expression** = children write their questions in a Whatsapp chat, lawyers respond.

**Empower** = children push back on the way they are represented, lawyers change the narrative.





**The law can be hard to understand.  
Think of creative ways that lawyers  
might be able to use to make the litigation  
more understandable to children:**

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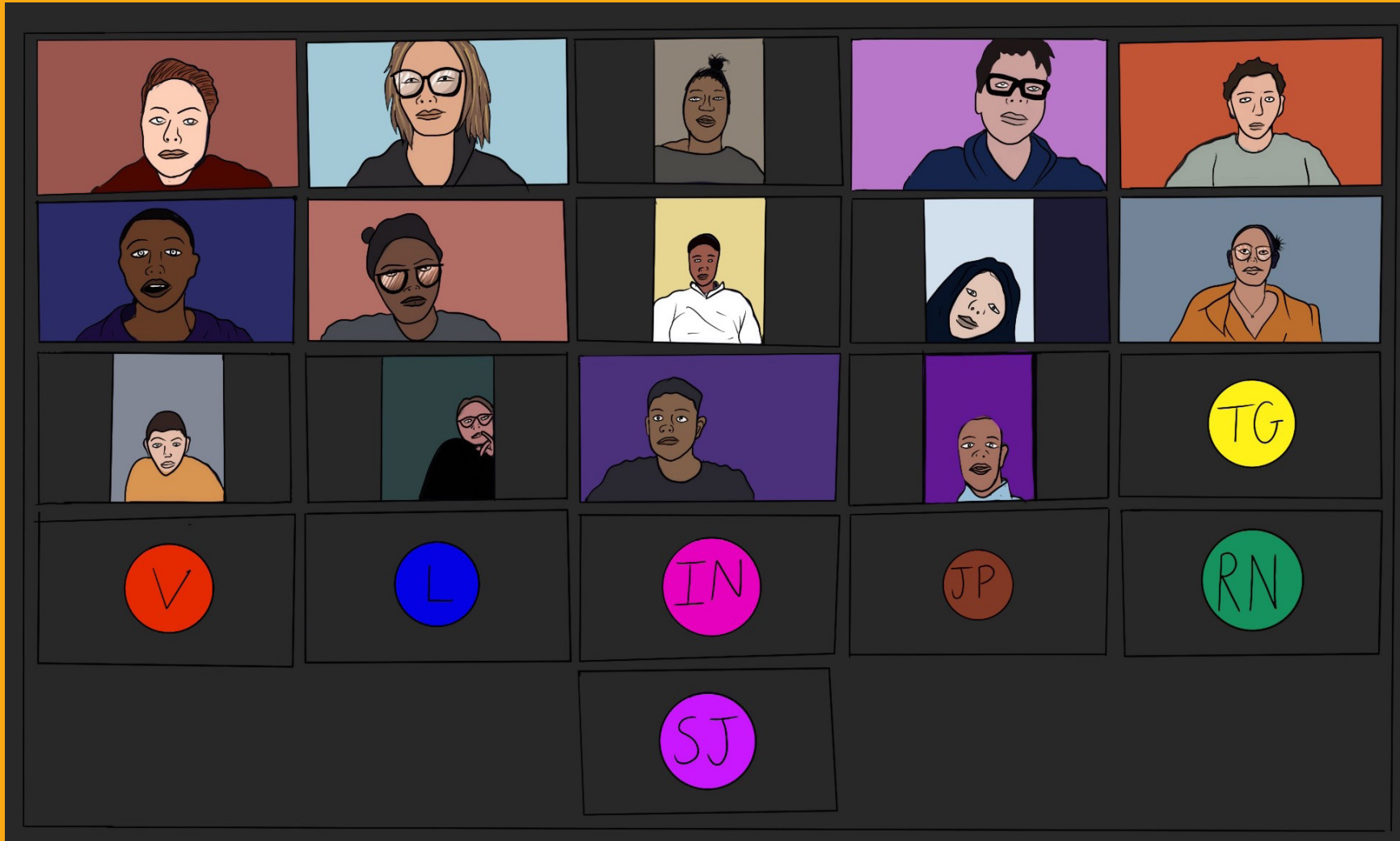
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## Thank you:

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

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 Scarlett 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](http://www.acrisl.org)

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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# Toolkits for children and practitioners



University of Nottingham  
Human Rights Law Centre

