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Toolkits for children and practitioners

Advancing **Child
Rights**
Strategic Litigation 



Follow-up to 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

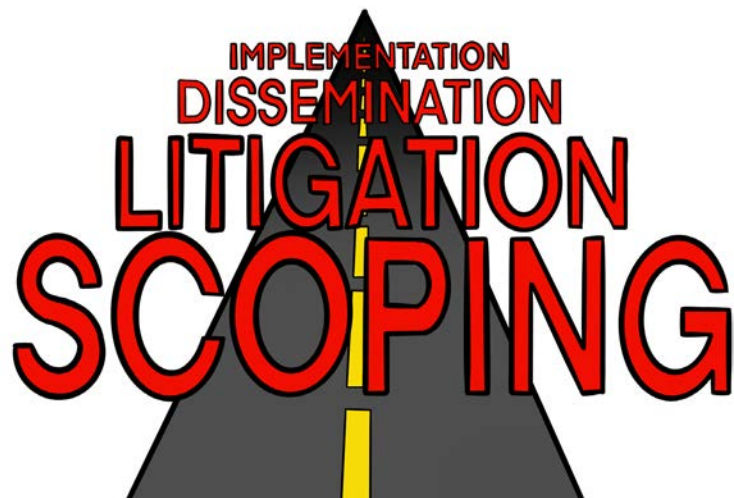
This is a series of 4 toolkits about child rights strategic litigation.

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.acrsl.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 3: it is focused on the follow-up to 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

 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

Some words that might be used in the follow-up to litigation and what we mean by them

CONCEDE

To agree to something that you didn't agree to at the start of the case.

DISSEMINATION

Spreading something widely, like information on a legal decision or a change in the law.

IMPLEMENTATION

The steps required to put a decision in effect. For example, a court decision might not mean a change in law straight away: legislation itself might need to be changed so someone needs to talk to the government about doing that.

PARTIAL SUCCESS

This happens where numerous legal issues are raised but the ultimate decision reflects partial success – only a certain number of the legal issues were found in your favour.

UNLAWFUL

Something that is not allowed or permitted by law.

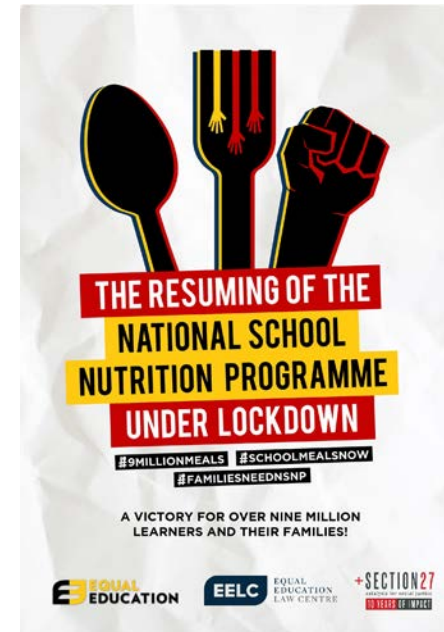
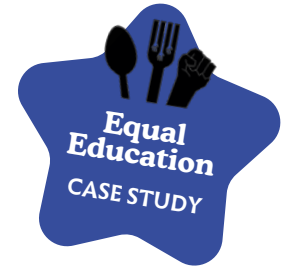
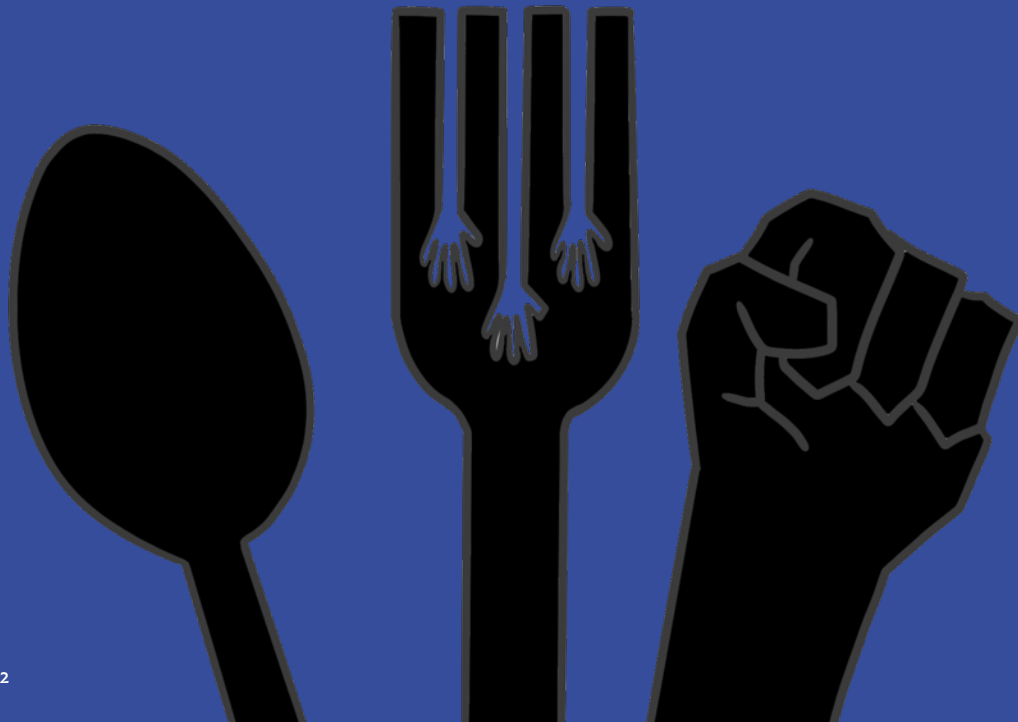


What things need to be done as a follow-up to child rights strategic litigation

- Step 1** Informing children when the court is going to make decisions
- Step 2** Informing children what those decisions are
- Step 3** Explaining the consequences of the decisions made by the court to children involved in litigation
- Step 4** Explaining to children the possibility of next steps following the decision
- Step 5** Bear in mind that children may require additional support following the conclusion of the legal case.
- Step 6** Children should be invited to be involved in follow-up activities to the litigation, when deciding how to and who to spread the information to about the outcomes of the litigation (dissemination) and what actions should be taken to ensure the decision results in change (implementation)

CASE STUDY

Equal Education South Africa National School Nutrition Programme



In March 2020, South African schools closed due to Coronavirus. The National School Nutrition Programme (NSNP) was the government programme providing at least one nutritious meal to all learners in primary and secondary schools. In June 2020, Equal Education began legal action to get the government to roll out NSNP to all learners who usually receive school meals, arguing that the failure to provide NSNP while schools were closed had had a severe impact on them. Judgment was given in July 2020 saying that '[p]rovision of basic nutrition is inextricably linked to the fulfilment of basic education'. Then came the work of monitoring the rollout of the programme and ongoing work. This included a return to court to complain about the failure to fulfil constitutional duties and non-compliance with court's verdict.

Dissemination and Implementation



Dissemination

Dissemination means spreading knowledge of something widely, for example a legal decision or a change in the law.

For example, in the **Equal Education** litigation for continued access to nutritious meals, the Western Cape region committed to providing meals to all learners once the case was commenced. The case then continued against schools from other provinces. Equal Education said they would monitor and publish the national and provincial reports on the National School Nutrition Programme so they were widely available.

When the regions failed to report their progress, Equal Education continued disseminating, releasing press releases about the Provinces' failures to report on the rollout of NSNP. Eventually they took the Department of Basic Education back to court in June 2021.



Implementation

Implementation means the steps required to put a decision of the court into effect.

The court declared that **Equal Education** must have access to the data about the provision and rollout of NSNP, with progress reports every 15 days. Equal Education monitored the reports and gave feedback on areas of concern. From March 2021, officials failed to submit reports or extend adequate provision to all affected children.

Equal Education took the Department of Basic Education back to court in June 2021 to get the Department to ensure that it submitted progress reports as the Court had ordered. The Department of Basic Education proposed a settlement which then included timeframes for implementation of the program. The Department also committed to submitting monthly reports providing updates on the implementation of the plans.



Dissemination includes things such as....

- Partnering with others to raise awareness, gather support, and share information.
- Creating platforms to disseminate information to others.
- Creating legal guides and/or trainings about what the law now means.

How does dissemination differ from communication?

Communication is sometimes defined as the act of transmitting information - for instance, from one person or place to another.

Dissemination is a specific form of communication. Dissemination is focused on making sure people who need to know about a court decision know about it and know what changes are required by that decision.

 **Add your own ideas here**

Dissemination – The story of the case, the story of the problem

When it comes to dissemination, children should be consulted about how they, their case, their story, and the court decision should be presented to external audiences (including in publicity materials).

External audiences might include: government officials, civil society partners, the general public, and funders. The story of the case might change or stay the same depending on the audience.

(For more detailed information about how to share your story with different groups, see Toolkit 4 on Extra-legal Advocacy).

Audience

Think about the Court decision and how you might want to emphasize different parts to different audiences and how you might do that. How would you explain what the decision means to:

- Government officials?
- Lawyers working in the area that the case falls within?
- Impacted children?
- General Public?

Adults working with children on strategic litigation could help children think about

1. How to tell the story

2. How to include children's wishes and feelings in the telling of the story

3. How to include children's voices

4. How the story might differ for different audiences

What might happen if dissemination isn't done properly

- Lawyers and those supporting other children may not know what they can ask for or are entitled to
- Decision-makers (such as politicians or authorities) may not be aware of the changes that the court decision has made and how these should be dealt with
- Without full and proper dissemination, children who should benefit from the decision (or their carers) may not know about it



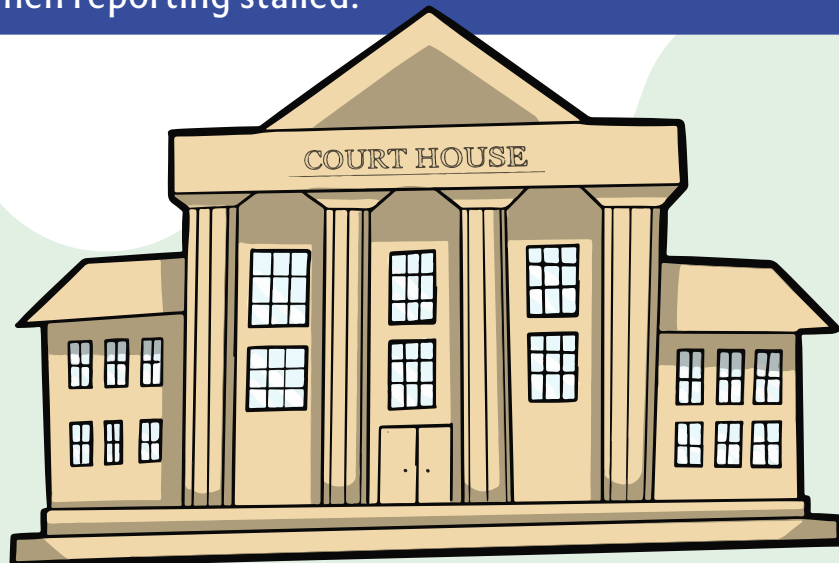
Implementation

Bear in mind, the hard work can often begin after case is over – to follow up and to make sure the changes that the court have said should take place do actually take place.

Be prepared for a large number of inquiries, especially if a case has had significant media attention.

In the Equal Education NSNP case, the organisation had to keep track of the reporting by the government that the court had required them to do. The organisations suggested changes and took the Department of Education back to court again when reporting stalled.

Equal
Education
CASE STUDY



Implementation plan

The form that implementation can take will be different depending upon the decision of the court.

Depending upon the particular decision, the children (and the lawyers/other professionals who support them) will need to design an implementation plan (see Implementation Plan/Strategy below) that people can use as a guide to begin the implementation work.

The court's decision might mean you have had:

- Complete success
- Partial success
- Particular findings
- A loss but change in public opinion
- A loss but change in government opinion
- A loss but a step in the right direction
- A win but government resistance
- Something you were not expecting at all
- No engagement with the issue (for example, where the court says this case is not a matter for them)



Broader campaigning for implementing the court decision

- a) Campaigning can be important when it comes to implementing a legal decision (For more detailed information about campaigning, see the Toolkit 4 on Extra-legal Advocacy)
- b) Campaigning can be done in conjunction with partners such as other civil society groups. Sometimes litigators might be seen as confrontational so another organisation might be better at a softer approach or a partnership/coalition might be more effective. (It is important to swallow your ego and really reflect on what is likely to get the best outcome for the affected children)
- c) What if government response doesn't go far enough? What if the court's decision is ignored? You will need to decide what your next steps are: how do you want to take it forward?

Follow-up to legal cases

In some instances, if the change that you are seeking doesn't happen, you might need to take follow-up cases to force the issue and make sure the change happens.

If there has been media coverage and new inquiries, other people might need or want to take follow-up cases.



Key principles

Key principles that should be borne in mind by people working on the follow-up to child rights strategic litigation:

UNDERSTAND

Lawyers and others working with children on strategic litigation must make sure that the children fully understand the judgments/rulings/decisions made.



INVOLVE

Children should be invited to be involved in follow-up activities to judgments/rulings/decisions.



INFORM

Children must be informed of subsequent developments following the judgment/ruling/decision.



SUPPORT

Ongoing support must be provided to children where necessary following the conclusion of the litigation, particularly where that litigation is unsuccessful or only partially successful.




Dissemination Review – sharing a decision

Description

Give a brief description of what the decision/update/outcome you are seeking to spread information about is.

How and when the information was disseminated

List of actions taken to disseminate so far and when you took them (e.g., added to newsletter).

 **What we hoped to achieve by disseminating**
Why we are looking to circulate this information more widely.

Short review of dissemination steps so far

- Fact sheets**
- Child-friendly materials**
- Social media**
Summary of where the information was shared, when and any data re: engagement
- Newsletters**
Summary of when the information was shared and what the open rate was like
- Other coverage**
 - Include other places where this decision was covered where we did not specifically reach out to share information (e.g., written press, social media from accounts with significant audience)
 - Journals/law reviews/academic research/textbooks/training materials



Some ways of ensuring and keeping track of dissemination



Organisations

Organisation and key contact	Date sent	Response	Any resulting exposure (e.g., links to 3rd party blogs)

Individuals

Name	Date sent	Response	Any resulting exposure (e.g., links to 3rd party blogs)

Publications

Publication and author (digital or print? Include links)	Date Published	Details of information given in publication

Implementation Plan/Strategy

Implementation plan

Goal of implementation	Resourcing (organisations working on issue)	Date work begins	Steps taken	Date change is made

Briefing Government

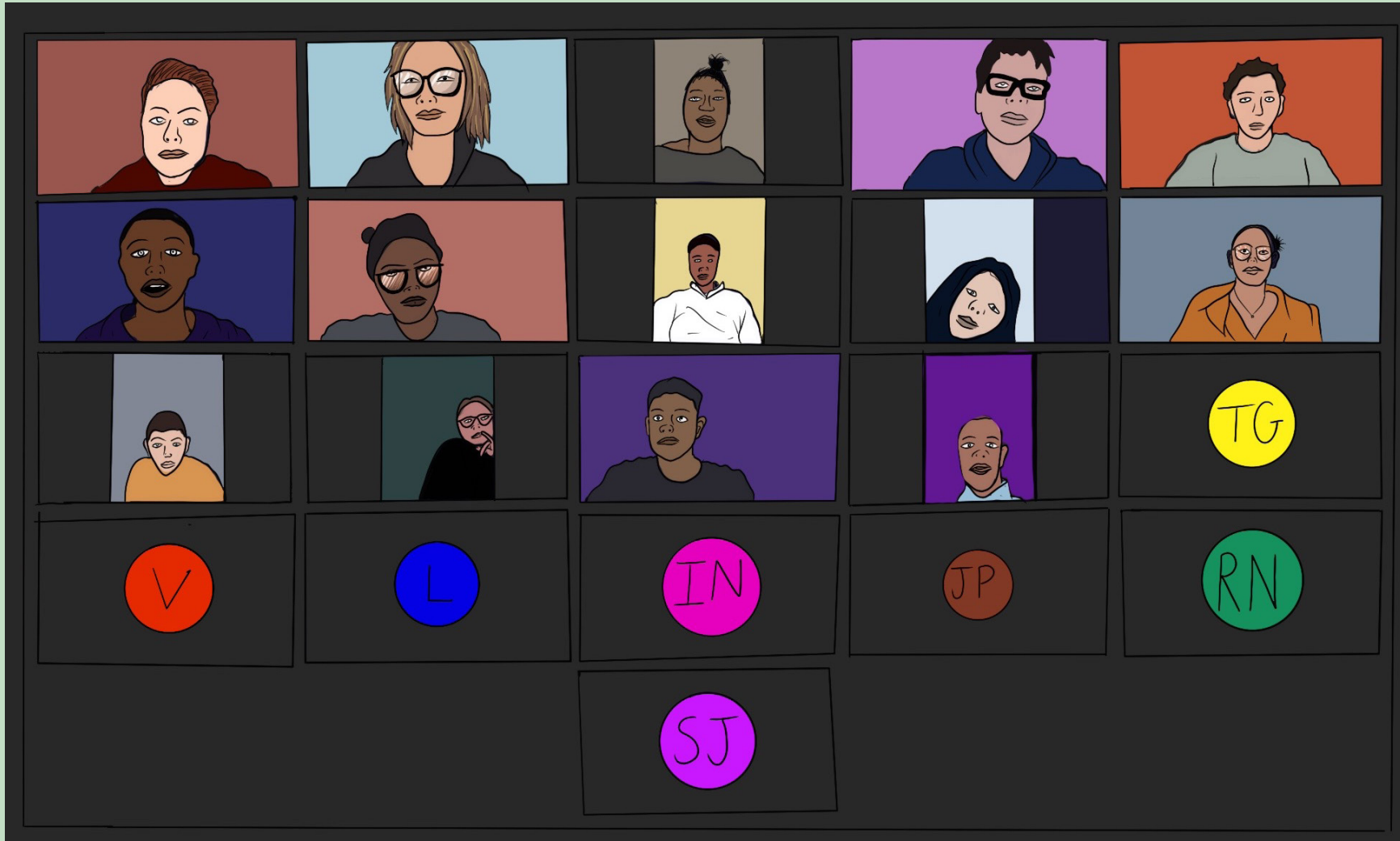
Government decision-maker	Date briefed	Response	Follow-up

Joint Media Statement by Equal Education

"We will be evaluating the revised plans put forward by the DBE and provincial education departments to ensure successful rollout of the NSNP. In the spirit of cooperation and with the shared interest of putting learners first, we will continue to diligently monitor and analyse the progress reports submitted by the education departments, to ensure that the rights of learners to basic nutrition, basic education and equality are upheld."

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Thank you:

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Toolkits for children and practitioners



University of Nottingham
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