Child Rights Strategic Litigation

KEY PRINCIPLES FOR CLIMATE JUSTICE LITIGATION

Advancing Child Rights Strategic Litigation

A. Nolan, A. Skelton & K. Ozah, 'Child Rights Strategic Litigation: Key Principles for Climate Justice Litigation' (ACRiSL, 2023)

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This publication was written by Aoife Nolan (University of Nottingham Human Rights Law Centre), Ann Skelton and Karabo Ozah (both of the Centre for Child Law, University of Pretoria). Thanks are owed to ACRiSL project advisors and colleagues Lucy Maxwell and Leo Ratledge, whose comments and insights were invaluable.

For more information on the ACRiSL project and to join the ACRiSL Network, please see www.acrisl.org.

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INTRODUCTION

Child rights strategic litigation (CRSL) is litigation that seeks to bring about positive legal and/or social change in terms of children's enjoyment of their rights. Recent years have seen a huge increase in CRSL related to climate justice being brought at the national, regional and international levels.

These Key Principles for climate justice litigators working on CRSL emerge from the Advancing Child Rights Strategic Litigation (ACRiSL) Project. This is a three-year global research collaboration bringing together partners from advocacy and academia to work on child rights strategic litigation. The Key Principles draw on interviews and engagements with climate justice litigators across four continents, as well as a number of public ACRiSL Network events at which children and young people with lived experience of CRSL, litigators and other CRSL actors working in the climate justice sphere shared their experiences.

The Key Principles seek to show how child rights are being, and can be, integrated into climate justice strategic litigation practice.

The Key Principles focus on four key stages of child right strategic litigation decision-making:

- the **scoping, planning and design** of litigation;
- the **operationalisation** of litigation,
- **follow-up** to litigation, including implementation and dissemination, and
- **extra-legal advocacy** (political advocacy and other campaigning, media work and communications).

The ACRiSL project approaches child rights under the UN Convention on the Rights of Child as a framework to inform and assess the inputs, outputs, processes and outcomes of child rights strategic litigation. It does so in line with the view that **children's rights set out in the Convention can and should play a role with regard to shaping and informing litigation practice, including in the climate justice area.** It proceeds from the assumption that CRSL efforts that aim to advance children's rights through legal and/or social change but are themselves inconsistent with children's rights in terms of how they are operationalised weaken the legitimacy of those efforts, as well as their internal coherence and capacity to contribute to children's rights achievement in practice.

Climate justice work is an important site of both opportunity and risk for child rights-consistent strategic litigation.

Despite the growing focus on children and their rights in climate justice litigation efforts, many litigators working in this area are not child rights (or even human rights) specialists. Nor are they used to working with children in the way that litigators working in other areas of CRSL are (for example, child justice). Furthermore, argumentation in climate justice cases is highly specialised and frequently very technical. These factors create a risk that the child-adult power differential which is an underlying feature of any CRSL effort will be reinforced, leading to adult-dominated agenda-setting and decision-making in relation to climate justice litigation that is not consistent with children's rights and agency. The high-stakes nature and publicity associated with climate justice litigation, in addition to children's anxiety about climate harms, can expose children involved in such litigation to particular risks. These need to be offset by targeted strategies and ensuring optimal support for children throughout the litigation and associated extra-legal advocacy.

These Key Principles for Climate Justice Litigation emerge from the ACRiSL research report on Advancing Child Rights-Consistent Strategic Litigation Practice, which led to the identification of Key Principles on Child Rights-Consistent Strategic Litigation Practice. In rendering those earlier Key Principles more specific and illustrative for those bringing CRSL in the climate justice sphere, it is the Project's hope that that they will assist climate justice litigators who wish to put children's rights at the heart of their practice.

SCOPING, PLANNING AND DESIGN OF CLIMATE JUSTICE CRSL

Key principles that should be borne in mind by lawyers and other CRSL actors when carrying out work around the scoping, planning and design of climate justice CRSL

Choice of thematic areas and long-term strategic planning are relevant to child rights-consistent practice because they ensure a child rights perspective is dominant over time.

Litigators should ensure that a short-term litigation strategy does not do harm to longer-term or more holistic approaches to children's rights. Existing litigation efforts make clear that climate justice litigators are likely to emphasise the particular vulnerability of children to climate harms and children's exclusion from political decision-making on climate change in their legal arguments. However, it is important that any such argumentation should not undermine children's agency and/or reinforce inaccurate disempowering conceptions of children as objects of protection rather than active bearers of rights. A long- term child rights-consistent approach requires being precise about the nature and extent of children's vulnerability as well as the specific rights-harms they face, based on the best available science.

Where a decision is taken not to involve children in a particular case, this should be decided following an assessment of the risks and benefits to children's rights.

There is a growing-tendency to talk about 'child-led' or 'youth-led' litigation. Although some child clients may self-select to be litigants in CRSL, the study found cases where children bring a case to adult CRSL practitioners to be rare. Client selection in CRSL may be organic (arising naturally from pre-existing professional relationships, connections or networks) or may be deliberate (where a client is sought whose situation exemplifies the cause of action). Children may also emerge as a key group for the purposes of the litigation within a broader group of contemplated litigants (for example, a local community). One CRSL practitioner observed that an organisation in the process of developing work on climate change was linked to a group of children who were expressing their concerns about the impact of climate change by someone who had a relationship with both parties.[1] This introduction resulted in a climate change litigation case, with the children acting as clients. In another climate justice case examined by the study, lawyers actively reached out to a network of children who were involved in climate strikes to see if they wished to become involved in the litigation as complainants. These examples illustrate some of the very different ways in which child litigants may be identified.

The study found that litigators sometimes make a conscious decision not to litigate on behalf of specific children or groups of children, and instead select clients over 18 years of age or institutional entities as litigants. A range of reasons were cited for this practice. Some were pragmatic – such as wanting to avoid settlement offers, the risk of children becoming adults as the case progresses, or the desire not to be bound to the particular set of contextual facts that a specific litigant brings. Other litigators made decisions based on concerns about children's privacy and safety, recognising that the high-profile and political nature of climate justice cases may raise the stakes in this regard.

In order to be child rights-consistent, decisions to select certain clients, or to decide not to do so, should be based on a balancing of potential child litigants' right to privacy and their best interests with their right to be heard. The study noted that efforts to overcome standing in climate change cases may result in particular groups of children who may not necessarily be at the greatest risk of harm from climate change being selected as clients (for example, urban children or children with existing connections to litigators or climate justice work). Such practice may not be consistent with children's right to non-discrimination and litigators must exert particular care in this regard.

Where there are children involved in a case, they should be engaged in identifying the rights issue(s) to be litigated in the case, the goals to be pursued by the litigation, and in the whole strategic planning of litigation.

It is important to place child litigants at the centre of the scoping, planning and design of cases, and not to view children as an 'add on' to a pre-existing plan or design. The involvement of child litigants in a case should occur from the earliest possible moment.

Children who get involved in climate justice litigation should have an appropriate awareness of the issue prior to the case. One set of litigators interviewed in this study realised when developing the case that, "young people would be the best people to take it forward for evidentiary, forensic reasons, but also because they would be keen to take it on and would be good spokespeople for it and could own it".[2]

Nevertheless, the decision to involve children as the litigants was not part of their strategy until a fairly advanced stage of the scoping, planning and design of the case. The legal team then reached out to a group of children involved in climate advocacy, and went through a process of individual meetings to establish each child's level of interest and capacity to understand the litigation and the issues underpinning it.

> We had a little chart of the kind of things that we considered ... climate change issues, the impacts, understanding of the case, understanding of the risks with the case, percentage of time of the young person speaking as opposed to their parents in the conversation, the attitude of the adults, were they interposing, were they supportive, impression of who is driving involvement, parent or child. Because we were quite conscious of not having – we wanted it to be that young person.[3]

One significant opportunity afforded to climate justice litigators in terms of child rights-consistent practice is the growing familiarity of some children with law and litigation as tools for advancing climate justice. Furthermore, young adults such as law students can work to provide 'intergenerational bridging' between adult litigators and child litigants. This opens up increasing possibilities for collaborative work between lawyers and children and young people in terms of co-designing litigation.

Relatedly, parents and carers will often be important support persons for children in the context of CRSL. Indeed, when it comes to younger children, the involvement of parents/carers is generally necessary and desirable, with parents potentially serving as the key articulators of their children's claims. However, to be child rights-consistent, strategic litigation decision-making must focus squarely on the rights, interests and views of children, rather than those of adult parents or carers.

Children should be provided with the information necessary to understand and weigh up the opportunities/risks involved in litigation, from the outset.

Climate justice litigators provided multiple examples of good practice in terms of steps taken to ensure that child litigants "understood what they were signing onto" and that there were risks involved in litigation, including the risks of negative public perceptions and that involvement in litigation often requires a significant time commitment. Such good practice included providing children with accessible information, and engaging in discussions about what to expect in the process of litigation. A child involved in climate justice litigation described their positive experience in the way that their legal team made special efforts to explain what the case was about: "[s]ome of us were confused about some of the language used, but the lawyers broke it down for us".[4]

CRSL litigators should ensure that their litigation work is always in children's best interests (which also requires explanations to children, and consideration of their views).

A litigator interviewed for the study stressed that the advantage of a rights-based approach was that it moved past a protectionist "very much top-down patronising approach towards children".[5] Considering children's best interests in the context of climate justice litigation requires litigators to ensure that planning is carried out to mitigate any possible negative effects of litigation on child litigants and their rights.

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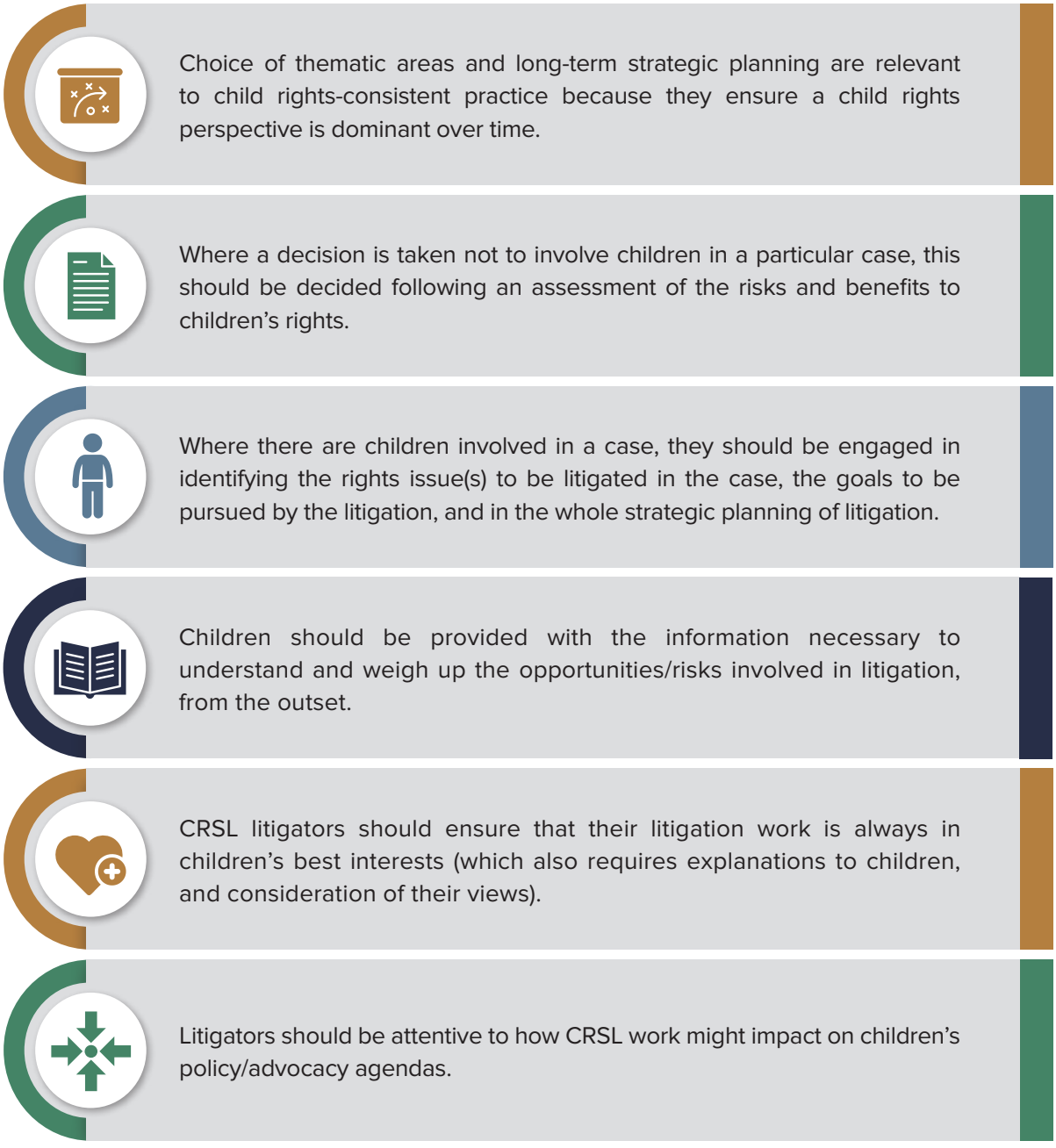
Litigators should be attentive to how CRSL work might impact on children's policy/advocacy agendas.

Where children have been self-organising – for example, in the context of climate strikes, protests or other climate action – litigation may run alongside those other activities. It is important that children be informed from the outset of the possibility of losing a case, and in planning how litigation setbacks can be integrated into parallel advocacy agendas and work. A loss in climate justice litigation may risk undermining progress being advanced by child or youth movements in the political sphere. It is therefore important that litigators should consider and discuss with the children whether pursuing such litigation will ultimately support their longer-term goals.



OPERATIONALISATON OF CLIMATE JUSTICE CRSL

Key principles that should be borne in mind by lawyers and other CRSL actors when carrying out work around the operationalisaton of climate justice CRSL

Where children are directly involved in the case, they should be involved in the process of agenda-setting and characterisation of the case, with due regard to their privacy and physical and psychological wellbeing.

Strategic litigation of children's rights entails agenda-setting. In the planning of any case, there may be a range of angles or lines of argumentation, selection of different children's rights to focus on or decisions to be made about the characterisation of the case. If CRSL is to be child rights-consistent, children should be involved and participate in decision-making about these different issues, not just lawyers, civil society actors or other adults working on the litigation. In climate justice cases, such characterisation can be important for protecting children from negative perceptions. During the course of litigation, the task of characterisation continues, as the media picks up on issues. One useful way of ensuring that characterisation operates to protect children is to issue guidelines for the media focusing on what the case is about ('children working to safeguard the environment for future generations') – and what is it not about ('pesky left-wing kids seeking to undermine vital local employer').

(For discussion of how the issue of negative press and public response to litigation might be managed see 'Extra-legal Advocacy in Climate Justice CRSL').

Lawyers and others working with children on CRSL should engage with and effectively communicate with those children throughout the process, including through the use of language and communication technologies that are user-friendly for children.

Child litigants are likely to be unfamiliar with the jargon and terminology used by litigators. Former child litigants outlined effective measures of communication between children and lawyers such as the breaking down of information, the provision of summaries, and the regular recapping of information. Several climate justice litigators outlined their efforts in this regard, including explaining in clear language as much as possible about each step of the legal process to the children they were working with. When it came to potentially complex legal documentation, one example of good practice was the creation of accessible explanations aimed at children of legal documents designed for adults.

Climate justice litigators interviewed for the study demonstrated adaptability in the ways that they communicated with children. Technologies such as Whatsapp, Signal, Zoom and Teams were used to communicate clearly and speedily with children, thereby providing them with information as and when they needed it. One former child litigant said that the members of their movement were spread across the country so the use of technology helped to keep everyone informed, with the lawyers "sending live updates from court".[6]

A practitioner highlighted the central role that Signal played in their case:

Because we realised very early on that group emails were just not going to work. It's not an effective mode of communication for a 15-year-old. It's still necessary to send certain documents, confirm instructions, and complete other formalities through email, but as far as keeping everyone abreast with what was going on, it just wasn't going to work. And so we started doing as much as possible over [encrypted] text. Which really forces you to be brief as well, which I think is good. And it also forces you to talk in language that is less formal. It's the kind of language that the kids are used to talking in every day. You know, they're not sending emails but they are texting all day. So, we kind of just adopted that. And it allows them to ask simultaneous questions, and allows us introduce legal concepts to them in a way they'll understand. You can also use humour a little bit more, it's a bit more dynamic. And you could also attach documents to a Signal chat as well.[7]

Remedies should be in line with the views and interests of the children affected, and children should be involved in the development of remedies as far as possible.

Strategic litigators tend to focus on remedy at an early stage in the development of a case. However, few litigators interviewed for the study were able to give examples of how children had been involved with development or remedies. Former child litigants who had been involved in remedy-setting in other areas of CRSL showed an astute awareness of the 'narrowness' of a particular remedy set by the court, and described activities of the litigants that were taken to mitigate that. Others knew from the outset that a particular legal remedy could not change the law but they saw the remedy as part of the broader outcomes they were aiming for in their campaign. It is clear from the study that litigation practice is likely to be more child rights-consistent when there is an effort to develop remedies together with children.

Children should be made aware of possible outcomes and what those outcomes might mean in advance of judicial decisions so as to manage their expectations.

A child rights consistent approach to CRSL requires management of the expectations of children involved in the litigation process. This includes explaining to the children how the litigation process works and how long it will take to get a result from the court. The aim of the case and the prospects of success also need to be delineated. Relatedly, it is necessary to keep in touch with children by updating them regularly as the case progresses, and listening to and taking account of their views about different aspects of it.

One climate justice litigator had this to say about managing expectations:

> From the beginning, we did tell them that we're probably going to lose. And they weren't that much concerned about that. They wanted to fight to be heard. So, when we lost the first level, they were pretty much aware that this was a possibility and that it wasn't the end, which we confirmed when we explained that yes, we're going ahead … They were like, "yes. It's sad, but let's go".[8]

An insight from the project research is that children can cope with disappointment if they are well prepared for it and that this can be achieved if they are fully informed about the range of possible outcomes from the outset and are kept informed throughout the litigation.

Settlement of cases should be done in a manner that considers the best interests of the child and in consultation with the children affected.

Many practitioners interviewed for the study spoke about the strategic risks and benefits of settlement. They were less able to articulate the extent to which they sought the views of children in the process of settlement, although there was evidence that they do consider the impact of settlement on the children they represent, and in this manner are applying a best interests approach. However, it should be borne in mind by litigators that decision-making around settlement should integrate the views of the child.

Children should be supported throughout the litigation process, including to call a halt to the litigation at any point that they wish to.

Litigation is a long term process and the stresses of being involved in climate justice cases with high levels of publicity can be exhausting. This can be difficult for both lawyers and children. As one litigator involved in environmental litigation explained it: "I mean, for me, it's a challenge every day to have the plaintiff involved because they are doing another life. And also, they have a lot of school tasks".[9] Strategic litigators working with children should factor this in, and ensure that cases are set up so that losing a particular client from a case will not render the matter moot.

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It is important to provide support to children in climate justice cases, which are often high-profile matters which continue over an extended period of time. Emotional and/or psychological support is particularly important in this context. A litigator involved in climate change litigation provided this example of good practice:

> We have been working in the climate movement for a number of years, and [climate grief and stress] affect a lot of people in the movement and it causes a lot of burnout for those working in the space. So, we engaged with a group who work specifically [on climate resilience], experienced psychologists who have thought a lot about climate anxiety, have done sessions on climate anxiety and grief, and have come up with ways to help people to do this work in a more sustainable way. So, we set the kids up with them to offer one on-one sessions whenever they wanted it. And then we also organised group counselling sessions which focused on capacity building, team building, grief and stress management, and whatever else came up, and invited all of the litigants.[10]

If litigation is protracted, as children grow older and become more mature, their views in relation to the litigation should be accorded increasing weight.

Child rights-consistency requires planning for the long haul and being prepared for the fact that children will grow older, and may move into adulthood, before a case is concluded. This requires a firm understanding on the part of those working on climate justice cases of how child rights rest on the concept of children's evolving capacities. This includes developing a plan for managing the involvement – and, where necessary, the departure – of child clients as they grow older and more mature.

Where children are directly involved in the case, they should be involved in the process of agenda-setting and characterisation of the case, with due regard to their privacy and physical and psychological wellbeing.

Lawyers and others working with children on CRSL should engage with and effectively communicate with those children throughout the process, including through the use of language and communication technologies that are user-friendly for children.

Remedies should be in line with the views and interests of the children affected, and children should be involved in the development of remedies as far as possible.

Children should be made aware of possible outcomes and what those outcomes might mean in advance of judicial decisions so as to manage their expectations.

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Children should be supported throughout the litigation process, including to call a halt to the litigation at any point that they wish to.

If litigation is protracted, as children grow older and become more mature, their views in relation to the litigation should be accorded increasing weight.

FOLLOW-UP TO CLIMATE JUSTICE CRSL, INCLUDING IMPLEMENTATION

Key principles that should be borne in mind by lawyers and other CRSL actors when working on follow-up to climate justice CRSL, including implementation

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

Informing and explaining case outcomes to children involved in the litigation process is a crucial aspect of a child rights-consistent approach to climate justice litigation. If the case has a positive outcome, providing information is necessary to ensure that children fully understand the decision, and (should they choose to) communicate the essence of it to others, including through the media. As climate justice litigation outcomes often form part of a broader campaign or advocacy process for young people, it is important for children to have the opportunity to think through how a judgment or ruling impacts on that broader work.

Examples of good practice in this context include providing a careful 'line by line' explanation in simple, clear language by lawyers of a court's decision. Information on court rulings can also be provided in accessible forms such as child-friendly versions of summaries of decisions. Relatedly, it is vital that children should be provided with an opportunity to ask questions about the decision and to express their views (whether of pleasure or disappointment).

In the case of a loss or where a court order is not what was hoped for, it is particularly important that time is taken to sit with children and to explain the decision, its implications and the next possible lines of action. (This links back to the issue of managing expectations discussed in 'Operationalisation of Climate Justice CRSL'). The study findings showed that where child litigants have an incomplete understanding of the content and outcomes of a losing case, this may compound disappointment and mean that they are poorly placed to recognise 'silver linings' emerging from the case. They may also inadvertently share misinformation with others. This kind of engagement with children on the part of lawyers and others involved in climate justice litigation can also help children to understand that their participation in a case has made a difference that can be built on moving forwards.

The study identified climate justice cases that were partially lost but in which there was a strategic victory that would benefit other children or lay the basis for future legal and social change. In such instances, lawyers should take account of the views of the children directly involved in the litigation when turning their focus to the work that is needed to move forward broader strategic aims.

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

In some climate justice cases, child involvement in follow-up has been expressly provided for as part of the orders granted by the courts.[11] However, where this is not the case, it is still vital that litigators make sure that children are kept up to speed in terms of developments post-decision. This includes situations where there have been changes in law, policy or practice resulting from the decision – or where the ruling has not led to any meaningful change. Keeping children informed will require ongoing contact and engagement with children involved in litigation following the decision. While some lawyers may not have the capacity to do this, they should ensure that others working with children undertake this responsibility and channel the necessary information to them. Partnerships with child rights organisations can be very useful in this regard.

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

When litigation fails or is only partially successful, there may be a need to provide ongoing support for children who were involved in the litigation, with litigators noting that the kind of support that children will need depends on the age and maturity of the child at that particular moment. In some instances, this will require concrete steps to prevent potential negative consequences of the outcome, such as reprisals towards children or their families – something that can be a particular risk in the climate justice context given the political and social controversy that may surround such cases. The study also made clear the important role that investing in and supporting a movement involving children and young people beyond the actual judicial process can play in terms of ensuring that children are supported after the ruling.

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

Where a case has been won, important post-decision follow-up activities include implementation and dissemination of the decision. Should they choose to, children can play a key role in relation to both.

There are examples of CRSL where children who were part of the litigation have played a role in civil society monitoring of the implementation of the outcome of cases. Given the role that children already play in climate change monitoring in different contexts (for instance, in monitoring weather patterns, air quality and the implementation of climate plans), there is clear scope for further involving children in monitoring implementation in at least some climate justice cases, including through collaboration with civil society partners and child/youth climate groups.

Children have also played an important role in sharing information about climate justice CRSL cases, advocating for and seeking to exert pressure on decision-makers. This has been a feature of both losing and winning cases before the courts. Social media and media engagement have been key vehicles for such. However, as made clear in 'Extra-legal Advocacy in Climate Justice CRSL', such work needs to be supported with care.

EXTRA-LEGAL ADVOCACY IN CLIMATE JUSTICE CRSL

Political advocacy and other campaigning, media work and communications

Key principles that should be borne in mind by lawyers and other CRSL actors when working on extra-legal advocacy (political advocacy and other campaigning, media work and communications)

Children's right to privacy should be respected at all times, which means the representations of practitioners to the court should take account of the child's right to privacy and seek to prevent reporting of the child's name or image or identity, unless the child specifically wants to be identified.

While children are sometimes identified as named complainants in climate justice case, this is certainly not always the case. Although many children involved in climate justice litigation are happy to be the 'faces' of the litigation, it cannot be assumed that this will be the case. Unless it is clearly established that children have made an informed, express decision that they wish to be identified (and hence potentially be the subject of media and public attention), then litigators should seek to ensure the child's privacy by preventing reporting of the child's name or image or identity. This can be done, for instance, through seeking anonymity for their clients and/or orders barring the media from hearings.

CRSL practitioners should be attentive to the risks of harmful media attention, ensure that children are aware of what such risks are, and must act to mitigate them to the greatest extent possible.

Given the divergent interests at play in climate justice litigation, there can be a significant risk of media attention that is harmful to children. Even where media attention is positive, it may be intrusive and place demands (time, emotional or capacity) on children. However, negative media attention is undoubtedly more directly harmful. One practitioner stressed that climate justice was very divisive in the national context, that different media outlets treated the issue very differently, and "that there can be a lot of vitriol out there", and that this was something that had to be built into plans around media work related to the litigation.[12] The study further demonstrated that the potential harm posed to children as a result of media attention will not necessarily only result from hostile media reporting (i.e., work on the part of journalists) but can also arise indirectly through children reading responses to media stories, whether comments on articles or on social media.

Adults working with children on litigation should advise children to monitor their social media profiles carefully so as to protect themselves from trolling or from anything on their profiles that might be used against them.

The study interviewed a number of climate justice litigators who had sought to be gatekeepers and to stand between the media and child clients. One litigator commented that, even with those efforts, "[t]here's always issues of critical media, trolling and the like".[13] The study made clear that where litigators do not have media expertise, partnerships are crucial for developing that expertise, with some climate justice practitioners collaborating with external actors (both national and international) with more extensive media or communications experience.

In addition to being aware of the risks of harmful media attention themselves, to ensure their practice is child rights-consistent, litigators should make sure that the children they engage with are aware of what such risks are. This includes the near-permanence of information once it is on the internet. One former child litigant (who had received media training) flagged that "from the perspective of the media, and as well as the public actually, a lot of the responses we got were quite negative. And I know for a lot of the litigants as well as for myself it was quite shocking as well as disappointing to see people doing that and sending private messages to our litigants" or "badmouthing some of us or talking about us in a way we never really thought would come from this. And that as 16-year-olds we never thought that anyone would do in a public media place really".[14]

Adults working with children on litigation should advise children to monitor their social media profiles carefully, so as to protect themselves from trolling or from anything on their profiles that might be used against them. Where children are going to use social media to share their story or talk about the case, it is valuable to support them in developing social media guidelines (for example, on when they will tag others in photos or how they will refer to them in tweets).

One example of good practice in preventing harmful media attention is the use of pseudonyms in media work (for example, in interviews or articles or other outputs produced by or with children for the media). Another is the use of anonymised case studies that can be circulated to and used by the media.

Where media forms part of CRSL-related advocacy, children should be provided with the support and training needed to engage with the media effectively (should they choose to do so).

A key finding of the project is that 'forewarned is forearmed' when it comes to media work. Practitioners and young people previously involved in CRSL stressed the importance of support for children where CRSL is intended, or is likely, to attract media attention.

The study found that a range of different strategies were employed by litigators in order to ensure that child litigants and other children associated with climate justice CRSL were equipped to deal with media attention, with a strong emphasis on training for children. Such training was often delivered by journalists or communications experts. A positive finding was that several litigators spoke about the availability of climate change media expertise that they and their clients could take advantage of: interviewees spoke of children (and those supporting them) benefitting from the growing number of youth advocacy trainings in different jurisdictions in the climate justice context.

Where children involved in a case have appointed child/youth 'spokespersons' to play the leading role in engaging with the media, these spokespersons should receive particularly intense training and support.

Messaging apps such as Signal and WhatsApp can play an important role in media-related advocacy efforts involving children. Climate justice litigators have used Signal or WhatsApp to communicate around media advocacy with children involved in litigation. The adeptness of messaging apps and the opportunities they afford for quick and easy communication is very useful in the context of media engagement where there can be a need for answers very quickly.

It is important to bear in mind that children's views on whether they wish to engage directly with the media may change over time, with their enthusiasm for doing so either increasing or decreasing. As such, it is crucial that children are afforded with opportunities to change their approach in terms of media work and supported around such decision-making as the case goes on.

Beyond training, climate justice litigators interviewed for the study have developed a series of resources to support children in media work. These include a simple set of key points or messages in the form of a one or two-page document or a Google doc where the children could add any questions they thought of or questions that they had received on which they wanted more detail to enable them to answer effectively. Other examples of good practice include cooperative work with children on producing key messages and on how to deal with difficult questions. The identification of key messages serves to support children in their efforts to communicate confidently and effectively around climate justice litigation.

Children's views about how they/their cases should be presented to external audiences (including in publicity materials) should be given effect to by CRSL practitioners. This will involve working to ensure that partners/fundraisers/ funders accord proper respect to children's views in their work around the CRSL.

The audiences for climate justice litigation efforts are multiple. They include political representatives, children and young people, civil society, fundraisers and funders. Child rights-consistent practice means that children's views must play a very significant role in decision-making about how their stories are presented to all of these audiences – with children able to object and prevent messaging about themselves and their stories with which they disagree. This applies to situations where fundraisers or funders are enthusiastic about forms of messaging that are contrary to the preferences of the children.

Again, an example of good practice in terms of ensuring effective child rights-consistent practice is to agree on a set of shared messages to be used when engaging with different external audiences or that can be shared with partners seeking to amplify the litigation and related efforts. This can also serve to prevent the real risk of a breakdown in trust between children and litigators that might result from children perceiving themselves as side-lined or exploited in communications around the case.

Other examples of good practice include the efforts of some climate justice litigators (directly or through media expert partners) to support children in producing opinion pieces or editorials aimed at the media – whether under their own name or anonymously. Again, this enabled children to exert control of 'storytelling' around the case – and their own story in particular.

Children's right to privacy should be respected at all times, which means the representations of practitioners to the court should take account of the child's right to privacy and seek to prevent reporting of the child's name or image or identity, unless the child specifically wants to be identified.

CRSL practitioners should be attentive to the risks of harmful media attention, ensure that children are aware of what such risks are, and must act to mitigate them to the greatest extent possible.

Where media forms part of CRSL-related advocacy, children should be provided with the support and training needed to engage with the media effectively (should they choose to do so).

Children's views about how they/their cases should be presented to external audiences (including in publicity materials) should be given effect to by CRSL practitioners. This will involve working to ensure that partners/fundraisers/ funders accord proper respect to children's views in their work around the CRSL.

ENDNOTES

1 EUP5 (5 July 2021).

2 OCP2 (30 November 2021).

3 OCP 2 (30 November 2021).

4 Bella Burgemeister, youth litigant, on their litigation before the Australian courts focused on coal mine licensing (Presentation at ACRiSL 'Third Network Event: Engaging with Children and Young People in Child Rights Strategic Litigation', 5 April 2022.

5 EUP7 (9 June 2021).

6 Bella Burgemeister, youth litigant, on their litigation before the Australian courts focused on coal mine licensing (Presentation at ACRiSL 'Third Network Event: Engaging with Children and Young People in Child Rights Strategic Litigation', 5 April 2022.

7 OCP2 (30 November 2021).

8 AMP6 (8 February 2022).

9 AMP2 (30 November 2021).

10 OCP2 (30 November 2021).

11 See, e.g., the orders granted by the Colombian Supreme Court of Justice in STC 4360-2018 ('Future Generations v Ministry of the Environment & Ors'), which mandated the 'active participation' of the child litigants in the development of an action plan to counteract the rate of deforestation in the Amazon and an 'intergenerational pact for the life of the Colombian Amazon'.

12 Jack McLean, Equity Generation Lawyers, on litigation before the Australian courts focused on coal mine licensing (Presentation at ACRiSL 'Third Network Event: Engaging with Children and Young People in Child Rights Strategic Litigation', 5 April 2022).

13 Jack McLean, Equity Generation Lawyers, on litigation before the Australian courts focused on coal mine licensing (Presentation at ACRiSL 'Third Network Event: Engaging with Children and Young People in Child Rights Strategic Litigation', 5 April 2022).

14 Bella Burgemeister, youth litigant, on their litigation before the Australian courts focused on coal mine licensing (Presentation at ACRiSL 'Third Network Event: Engaging with Children and Young People in Child Rights Strategic Litigation', 5 April 2022.

Advancing Child Rights Strategic Litigation

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