

Advancing Child Rights- consistent Child Rights Strategic litigation

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Contextualising the research

- Child rights strategic litigation: **‘litigation that seeks to bring about positive legal and/or social change in terms of children’s enjoyment of their rights’**
- CRSL increasingly being brought in different legal contexts globally – significant **geographical expansion!**
- Last 30 years has seen a (non-linear!) shift from:
 - civil and political rights > include economic and social rights > children as agents for their own change
- **Growing range of actors involved in CRSL**
 - Law clinics, individual practitioners, NGOs, INGOs, NHRIs, lawyers associations...

A quick snapshot of reasons for the rise in CRSL

- Numerous potential reasons for increase in CRSL:
 - Growing profile of child rights in IHRL and domestic human rights law advocacy and litigation work
 - Increasing understanding of the particular rights issues faced by children as a group now and in future
 - Legal argumentation opportunities
 - Potential of child-specific rights protections – including those afforded by the **UNCRC!**
 - Litigant profile opportunities
 - Public sympathy and support invoked by children as a social group
 - Desire to support and advance the agendas of children themselves
 - The catalysing effect of OP3-CRC...

Advancing Child Rights-Consistent Practice

- In CRSL, child rights have primarily **played an ‘outward-facing’ role**: they have been treated by practitioners and others involved in planning and implementing strategic litigation **as a schema that should constrain or mandate the actions of external decision-makers** that are the targets of the strategic litigation.
- [ACRiSL](#) focuses on child rights under the **UNCRC as a framework to inform and assess the inputs, outputs, processes and outcomes of child rights strategic litigation**
- [ACRiSL](#) works on the basis that **UNCRC rights can and should play a role** with regard to **shaping and informing litigation practice**

It’s about turning the ‘rights lens’ inwards!

Challenges and Opportunities for Child Rights-Consistent CRSL Practice

- Challenges:
 - UN Committee on the Rights of the Child silence
 - Profile of **litigators**
 - Litigators are not necessarily HR specialists
 - Litigators are not necessarily CR specialists or practitioners used to working with children
 - The highly technical nature of some CRSL argumentation (e.g., climate justice)
 - The resource/time/other demands associated with such practice
 - Power differentials between lawyers and child clients (exacerbated by race/ethnicity, class and other lines of inequality (Nolan 2011; Wexler 1970; Appell 2006 & 2008))

Challenges and Opportunities for Child Rights-Consistent CRSL Practice

- Opportunities
 - Existing body of child rights-consistent practice (even if these haven't been conceptualised in rights terms)
 - Evidence of impressive 'up-skilling' (or desire for such) on the part of litigators – especially with regard to incorporating children's view/participation into their work
 - Existence of strong child/youth movements make children drivers/true collaborators in litigation
 - Existence of funding (in some areas)

What CRC rights are relevant to child rights-consistent CRSL?

- Article **12(1)** (right of children to express their views and for those views to be given due weight)
- Article **13** (right to freedom of expression)
- Article **17** (right to information)
- Article **5** (evolving capacities)
- Article **2** (non-discrimination)
- Article **3(1)** (best interests)
- Article **6** (right to survival and development)
- Article **19** (right to protection from all forms of injury or abuse, negligent treatment, maltreatment or exploitation)
- Article **36** (right to protection from all other forms of exploitation)
- Article **39** (right to physical and psychological recovery and social reintegration of child victims)
- Article **4** (implementation of rights)

• **ACRiSL 2022/Nolan & Skelton 2022**

Key Stages of Climate Justice CRSL Decision-making that Rights Should Inform/Shape

1. The scoping, planning and design of strategic litigation
2. The operationalisation of strategic litigation
3. Follow-up to strategic litigation, including implementation and broader dissemination
4. Extra-legal advocacy and media work

Where Do We Need to Go from Here?

- Advocates: Be prepared to start small and embrace partnerships
- Practitioners need to consider implications of UNCRC rights for practice
- Ensuring that child-consistent CRSL *practice* looks beyond best interests and participation
- Share information and experience on child rights-consistent CRSL practice (join the ACRiSL [network!](#))
- In the context of OP3-CRC
 - The complexities of interactions between international and local partners working on collaborative CRSL
- Read the report due out in September 2022!!!

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