

Promoting Children's Rights in South Africa:

FAST FACTS – UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD (UNCRC)



PARLIAMENT
OF THE REPUBLIC OF SOUTH AFRICA

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What is the Convention on the Rights of the Child?

The United Nations Convention on the Rights of the Child (commonly abbreviated as the CRC or UNCRC) is a human rights treaty which sets out the civil, political, economic, social, health and cultural rights of children. The CRC consists of 54 articles that set out children's rights and how governments should work together to make them available to all children.

It was adopted and opened for signature, ratification and agreement by resolution no 44/25 of the General Assembly (GA) of the United Nations (UN) on the 20th November 1989. The UNCRC entered into force on the 2nd September 1990, in accordance with article 49, which means that Governments that ratify this convention are bound to it by international law. To this end Governments are required to provide progress reports to the United Nations Committee on the Rights of the Child with regards to the implementation of the Convention in their country.

When did South Africa get involved?

The CRC became the first legally binding international convention to affirm human rights for all children. South Africa signed the Convention in 1993 and ratified it on the 16th June 1995. It was the first international treaty that the incoming South African democratic government ratified.

What are the aims of the Convention?

Besides setting out the civil, political, economic, social and cultural rights of children, the Convention also reaffirms the fact that children, because of their vulnerability, require the following:

- The need for legal and other protection of the child before and after birth;
- The importance of respect for the cultural values of the child's community;
- Children need special care and protection;
- Special emphasis is placed on the primary caring and protective responsibility of the family; and
- The important role of international cooperation in securing children's rights.

The CRC includes the protection of children from abuse and neglect and interventions required to investigate and prevent child abuse. It obliges signatory states to provide separate legal representation for a child in any judicial dispute concerning their care and asks that the child's views be heard in such cases.

The Convention forbids capital punishment for children.

Under the CRC, governments are also required to meet children's basic needs and help them reach their full potential. Ratifying states must act in the best interests of the child.

Central to this is the recognition that every child has basic fundamental rights. These include the right to:

- Life, survival and development;
- Protection from violence, abuse or neglect;
- An education that enables children to fulfil their potential;
- Be raised by, or have a relationship with, both parents even if they are separated;
- Express their opinions and be listened to.
- Have their privacy protected, and
- Their lives are not subject to excessive interference.

In 2000, two optional protocols were added to the CRC. One asks governments to ensure children under the age of 18 are not forcibly recruited into their armed forces. The second calls on states to forbid child prostitution, pornography and the sale of children into slavery. A third optional protocol was added in 2011, which enables children whose rights have been violated to complain directly to the UN Committee on the Rights of the Child.

Summary of CRC Provisions¹

ARTICLE	DESCRIPTION	
PART I: Substantive Provisions		
1	Definition of a child	A child is recognized as a person under 18, unless national laws recognize the age of majority earlier.
2	Non-discrimination	All rights apply to all children without exception. It is the State's obligation to protect children from any form of discrimination and to take positive action to promote their rights.
3	Best interests of the child	All actions concerning the child shall take full account of his or her best interests. The State shall provide the child with adequate care when parents, or others charged with that responsibility, fail to do so.
4	Implementation of rights	The State must do all it can to implement the rights contained in the Convention.
5	Parental guidance and the child's evolving capacities	The State must respect the rights and responsibilities of parents and the extended family to provide guidance for the child which is appropriate to her or his evolving capacities.
6	Survival and development	Every child has the inherent right to life, and the State has an obligation to ensure the child's survival and development.
7	Name and nationality	The child has the right to a name at birth. The child also has the right to acquire a nationality and, as far as possible, to know his or her parents and be cared for by them.
8	Preservation of identity	The State has an obligation to protect, and if necessary, re-establish basic aspects of the child's identity. This includes name, nationality and family ties.
9	Separation from parents	The child has a right to live with his or her parents unless this is deemed to be incompatible with the child's best interests. The child also has the right to maintain contact with both parents if separated from one or both.
10	Family reunification	Children and their parents have the right to leave any country and to enter their own for purposes of reunion or the maintenance of the child-parent relationship.
11	Illicit transfer and non-return	The State has an obligation to prevent and remedy the kidnapping or retention of children abroad by a parent or third party.
12	The child's opinion	The child has the right to express his or her opinion freely and to have that opinion taken into account in any matter or procedure affecting the child.
13-15	Freedom of : • expression • thought, conscience and religion • association	The child has the right to express his or her views, obtain information, make ideas or information known, regardless of frontiers. The State shall respect the child's right to freedom of thought, conscience and religion, subject to appropriate parental guidance. Children have a right to meet with others, and to join or form associations.
16	Protection of privacy	Children have the right to protection from interference with privacy, family, home and correspondence, and from libel or slander.
17	Access to appropriate information	The State shall ensure the accessibility to children of information and material from a diversity of sources, and it shall encourage the mass media to disseminate information which is of social and cultural benefit to the child, and take steps to protect him or her from harmful materials.

¹ Abrahams, K. and Matthews, T. 2011. Child Rights Manual: Handbook for Parliamentarians. Cape Town: Parliament of the Republic of South Africa

18	Parental responsibilities	Parents have joint primary responsibility for raising the child, and the State shall support them in this. The State shall provide appropriate assistance to parents in child-raising.
19	Protection from abuse and neglect	The State shall protect the child from all forms of maltreatment by parents or others responsible for the care of the child and establish appropriate social programmes for the prevention of abuse and the treatment of victims.
20	Protection of a child without family	The State is obliged to provide special protection for a child deprived of the family environment and to ensure that appropriate alternative family care or institutional placement is available in such cases. Efforts to meet this obligation shall pay due regard to the child's cultural background.
21	Adoption	In countries where adoption is recognized and/or allowed, it shall only be carried out in the best interests of the child, and then only with the authorization of competent authorities, and safeguards for the child.
22	Refugee children	Special protection shall be granted to a refugee child or to a child seeking refugee status. It is the State's obligation to co-operate with competent organizations which provide such protection and assistance.
23	Disabled children	A disabled child has the right to special care, education and training to help him or her enjoy a full and decent life in dignity and achieve the greatest degree of self-reliance and social integration possible.
24	Health and health services	The child has a right to the highest standard of health and medical care attainable. States shall place special emphasis on the provision of primary and preventive health care, public health education and the reduction of infant mortality. They shall encourage international cooperation in this regard and strive to see that no child is deprived of access to effective health services.
25	Periodic review of placement	A child who is placed by the State for reasons of care, protection or treatment is entitled to have that placement evaluated regularly.
26	Social security	The child has the right to benefit from social security including social insurance.
27	Standard of living	Every child has the right to a standard of living adequate for his or her physical, mental, spiritual, moral and social development. Parents have the primary responsibility to ensure that the child has an adequate standard of living. The State's duty is to ensure that this responsibility can be fulfilled, and is. State responsibility can include material assistance to parents and their children.
28	Education	The child has a right to education, and the State's duty is to ensure that primary education is free and compulsory, to encourage different forms of secondary education accessible to every child and to make higher education available to all on the basis of capacity. School discipline shall be consistent with the child's rights and dignity. The State shall engage in international co-operation to implement this right.
29	Aims of education	Education shall aim at developing the child's personality, talents and mental and physical abilities to the fullest extent. Education shall prepare the child for an active adult life in a free society and foster respect for the child's parents, his or her own cultural identity, language and values, and for the cultural background and values of others.
30	Children of minorities or indigenous populations	Children of minority communities and indigenous populations have the right to enjoy their own culture and to practise their own religion and language.
31	Leisure, recreation and cultural activities	The child has the right to leisure, play and participation in cultural and artistic activities.

32	Child labour	The child has the right to be protected from work that threatens his or her health, education or development. The State shall set minimum ages for employment and regulate working conditions.
33	Drug abuse	Children have the right to protection from the use of narcotic and psychotropic drugs, and from being involved in their production or distribution.
34	Sexual exploitation	The State shall protect children from sexual exploitation and abuse, including prostitution and involvement in pornography.
35	Sale, trafficking and abduction	It is the State's obligation to make every effort to prevent the sale, trafficking and abduction of children.
36	Other forms of exploitation of liberty	The child has the right to protection from all forms of exploitation prejudicial to any aspects of the child's welfare not covered in articles 32, 33, 34 and 35.
37	Torture and deprivation	No child shall be subjected to torture, cruel treatment or punishment, unlawful arrest or deprivation of liberty. Both capital punishment and life imprisonment without the possibility of release are prohibited for offences committed by persons below 18 years. Any child deprived of liberty shall be separated from adults unless it is considered in the child's best interests not to do so. A child who is detained shall have legal and other assistance as well as contact with the family.
38	Armed conflicts	States Parties shall take all feasible measures to ensure that children under 15 years of age have no direct part in hostilities. No child below 15 shall be recruited into the armed forces. States shall also ensure the protection and care of children who are affected by armed conflict as described in relevant international law.
39	Rehabilitative care	The State has an obligation to ensure that child victims of armed conflicts, torture, neglect, maltreatment or exploitation receive appropriate treatment for their recovery and social reintegration.
40	Administration of juvenile justice	A child in conflict with the law has the right to treatment which promotes the child's sense of dignity and worth, takes the child's age into account and aims at his or her reintegration into society. The child is entitled to basic guarantees as well as legal or other assistance for his or her defence. Judicial proceedings and institutional placements shall be avoided wherever possible.
41	Respect for higher standards	Wherever standards set in applicable national and international law relevant to the rights of the child that are higher than those in this Convention, the higher standard shall always apply.

What are some of the laws that Parliament has passed in support of the aims of the Convention?

The South African Constitution defines 'children' as persons below the age of 18.

- Section 28 of the South African Constitution, identifies the needs of, and mechanisms to cater for, the interests of children. The provision guarantees specific children's rights.
- Section 29(1)(a) of the Constitution, makes provision for the right to basic education.
- The Children's Act 38 of 2005 as primary domestic law aimed at giving effect to children's rights.
- The Sexual Offences Act No. 32 of 2007 includes protection from a wide range of sexual offences that commonly occur against children.
- Child Justice Act 75 of 2008 establishes a separate justice system for children in conflict with the law
- Social Assistance Amendment Act 2004 provides access to social grants to children until the age of 18.

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