



CENTRE FOR
CHILD LAW



**CENTRE FOR HUMAN RIGHTS & CENTRE FOR CHILD LAW
CALL ON THE GOVERNMENT OF SOUTH AFRICA TO
“LEAVE NO CHILD BEHIND”**

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On 16 June 2018, Africa commemorates the Day of the African Child 2018 under the theme “Leave No Child Behind for Africa’s Development”. This year’s theme aims to target children who are not benefitting from Africa’s growth and development. African countries are challenged to ensure that children are at the centre and not left behind in the drive towards sustainable economic development. This day is commemorated in memory of the Soweto student uprising, that began on June 16 1976, when students marched in protest against the poor quality of education they received and demanded to be taught in their own languages.

The Centre for Human Rights (CHR) and the Centre for Child Law (CCL), both based at the University of Pretoria, encourage South Africa to use this opportunity to reflect on whether it is rising to challenge to leave no child behind. South Africa’s child rights legal framework is one of the most progressive and respected in Africa and the world.

The South African Bill of Rights sets out rights and freedoms that are applicable to both children and adults. The Bill of Rights also provides additional protections for children in what is referred to as “the children’s rights clause”. The children’s rights clause states that children have the right to a name and nationality; basic nutrition, shelter, basic health care services and social services; to be protected from maltreatment, neglect, abuse or degradation; and so much more. South Africa developed a Children’s Act that aims to give effect to the rights of children to family care, parental care or appropriate alternative care; social services; protection from maltreatment, neglect, abuse or degradation and the best interests of the child as of paramount importance in matters concerning the child. Lastly, South Africa has also developed the Child Justice Act that establishes a criminal justice system for children who are in conflict with the law. The High Court has had this to say about the Child Justice Act:



“It introduced a comprehensive system of dealing with child offenders and children coming into conflict with the law that represents a decisive break with the traditional criminal justice system. The traditional pillars of punishment, retribution and deterrence are replaced with continued emphasis on the need to gain understanding of a child caught up in behaviour transgressing the law by assessing her or his personality, determining whether the child is in need of care, and correcting errant actions as far as possible by diversion, community-based programmes, the application of restorative-justice processes and reintegration of the child into the community.”¹

The South African child rights legal framework is developed and improved with the aim of viewing each child in South Africa as an individual with rights accrued to him or her as a human being. This is in line with international standards set out in the United Nations Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child.

South Africa has made commendable strides in implementing this legal framework. Children in need of care and protection are dealt with by Children’s Courts that are given a wide range of powers to cater to individual needs of children. Children in conflict with the law are tried by Child Justice Courts which are conducted in a manner based on constitutional principles of best interests of the child, dignity, equality and privacy. Children in situations of poverty are assisted through the provision of cash grants that facilitate access to food and clothing to children. Children are provided with free health care services and free access to basic education.

However, despite the above advances that have been taken, a lot remains to be done to ensure that children are at centre stage and participate in the drive towards sustainable economic development. Recent events highlight the need to do more to ensure that children in South Africa are beneficiaries of constitutionally promised rights and freedoms.

¹ *S v CKM and Others* 2013 (2) SACR 303 (GNP) at para 7.



Children's right to protest is an important avenue for children to assert their rights and express their views on issues that affect them; especially if they are not of the voting age. Recently this right was violated in the most concerning way when Police used live ammunition on a group of protesting learners.² The learners sought to draw attention to the lack of teachers at their school. They engaged in this protest after attempting to engage with the school and the Department. The CHR and CCL call on the South African government to take steps to address this alarming incident and to create safe and enabling spaces in which children are able to express their views and not fear that they will be met with violence and indifference.

Children with disabilities in South Africa continue to be amongst the most vulnerable children in South Africa. Children with disabilities experience a number of harsh realities in their daily lives: in 2017 it was reported that more than a quarter of the 110 000 out-of-school children are children with disabilities; a 2017 report on child abuse cases confirmed that children with disabilities are twice as likely to be victims of sexual abuse as their non-disabled peers. An advocacy brief produced by the Centre for Child Law³ highlights a number of risks faced by children with disabilities; government responsibilities not yet fulfilled; and reform required to bring about change. The brief highlights a number of systemic failures that negatively affect the dignity & equality rights of children with disabilities. The CHR and CCL call on the South African government to adopt a sense of urgency and provide funding, engage in accurate data collection, invest in adequate planning and monitoring & evaluation of the implementation of policies relating to children with disabilities. Children with disabilities need to be placed high on the political agenda.

"Another child dies in a pit latrine" was a headline, in March 2018 edition of a newspaper, that caught the attention of all concerned about the state of children in South Africa.⁴ Children in South Africa's rural areas face many hurdles in their attempts

² News24, "Police used live ammunition on protesting pupils, admits Gauteng community safety MEC", 6 June 2018 <<https://www.news24.com/SouthAfrica/News/police-used-live-ammunition-on-protesting-pupils-admits-gauteng-community-safety-mec-20180606>>.

³ Advocacy Brief: Advancing the Rights of Children with Disabilities <<http://centreforchildlaw.co.za/publications>>.

⁴ Mail & Guardian, "Another child dies in a pit latrine", 16 to 23 March 2018 <<https://mg.co.za/article/2018-03-16-00-another-child-dies-in-a-pit-latrine>>.



to go to school and access their constitutionally guaranteed right to a basic education. One of these hurdles is lack of proper sanitation in schools. It is reported that in the Eastern Cape Province alone, about 60% of the more than 3000 schools in the province, do not have proper sanitation.⁵ More than 9000 schools across South Africa have pit latrines. This lack of proper sanitation has resulted in deaths of learners who fell into the latrines. It is also reported that children have experienced health problems due to the unhealthy and unhygienic pit latrines. The CHR and CCL call on the South African government to accelerate and provide necessary resources to plans and projects in place to fix this untenable situation.

The above harsh realities that children in South Africa experience, and others not mentioned here, are all barriers that impede children's full participation in the drive towards sustainable economic development. They point to the brutality of children's rights violations that need to be addressed through smarter planning, resource allocation, implementation and prioritisation of children's issues. The Day of the African Child, if used as a moment of honest reflection, represents a starting point for change, an inspiring moment of what we are supposed to do in terms of children's rights.

Ends.

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⁵ Health-E News, "EC schools need billions to replace pit latrines", 7 June 2018 <<https://www.health-e.org.za/2018/06/07/ec-schools-need-billions-to-replace-pit-latrines/>>.