

CHILD PARTICIPATION

The Constitution gives everyone including children general rights and freedoms aimed at enabling and encouraging all South Africans to express their views and to have a say in decisions affecting their life. Although there is no express provision in the Constitution directed at a right of children to participate in all matters affecting them section 28(1)(h) ensures children's participation in matters affecting them through the right to legal representation.

Express rights of participation can however be found in international laws binding on South Africa such as the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child. In terms of these treaties children are encouraged to participate in matters affecting them if they have the mental capacity to voice their views and demands that those views are taken into account depending on the age and maturity of the child.

Now the Children's Act incorporates the international recognition of children's right to participate by expressly giving children a right to participate and express their views in an appropriate manner in any matter which concerns the child. They can do so if their age, maturity and mental development enable them to express their views. It must be noted that although a child's age is one of the determining factors for whether that child is able to participate in a matter, age is not a determining factor for recognising a child's right to participate in the matter in the first place. When they are capable of expressing their views and they choose to do so then their views must be considered.

In addition to the specific child participation provision in section 10 of the Act there are also other provisions where the child's right to express their views are protected in the Act, for example people who have parental rights and responsibilities in respect of a child must first consider the child's views and

wishes before making any major decisions involving the child, this applies also when a parenting plan or parental rights agreement is being drawn up. Another example is that when a child is to be removed from one alternative care facility to another then a social worker must first consult with the child considering the child's age, maturity and stage of development.

What is meant by participation?

Child participation not only entails the child directly voicing his or her views but also refers to the child's participation in proceedings affecting him or her through a legal representative. So when a child is required to be consulted first then the child will participate by giving his or her views in the matter.

What is meant by having the child's views considered?

It means that although the child's views are not the overriding factor in a particular matter, there is a positive obligation to listen to the child's views and to take them into account.

It is important that legal practitioners dealing with contact and care cases ensure that parents are fully aware and understand that the child(ren) affected in the matter have a right to participate in the matter and that their views and wishes must be taken into account.

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