

## What is this all about

This information booklet describes how some laws affect the rights of children. The aim of the booklet is to provide some important background to laws that affect children and to provide practical suggestions on how children can access the justice and legal system with as little trauma as possible to their emotional and physical well-being. This booklet also tries to explain to children what their rights are. This booklet is the beginning of a series that will look in more detail at the different Justice issues affecting children.

## Dedicated to the Youth of South Africa

Words and language can be difficult to understand, especially legal language. This booklet tries to make the words and language a little more understandable but you may still need help when reading this. A dictionary can help but it is better to work in a group with two or more people. Understanding can be much easier when you share ideas and thoughts with other people. In a group you can read and discuss the information together. There may already be groups in your area or community that work with children. Why don't you visit or join one of them and suggest they use this information booklet to discuss with you some of the legal issues that affect children?

### Something to think about:

*Working in groups can help you participate fully in activities.  
What other positive things do you think that group work may be helpful for?*

### The information in this booklet is divided into the following topics:

- What are laws and where are they made?
- Section 28 of the Bill of Rights
- The United Nations Convention on the Rights of the Child
- The Department of Justice
- What is corporal punishment?
- What should children know about child justice?
- What should children do if they are the victims of sexual abuse?
- What should children know about maintenance?
- What should children remember when they go to court?
- Who is the Family Advocate?
- Children's Rights and Responsibilities

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## What are laws and where are they made?

The purpose of laws is to maintain order in society by providing certain rules to ensure that every citizen lives in harmony with every other citizen in a safe environment. National law is made in Parliament. In South Africa the Constitution is the highest law of the land. The Constitution contains values and principles that must be respected and obeyed by all people. These values and principles are found in the Bill of Rights which forms part of the Constitution. The Bill of Rights is a very important part of the Constitution. It must be protected and respected by the State and all its people. The Constitution also describes how the Government is to be elected, what its powers are and what rights, freedoms and duties all citizens have.

### Something to think about

*Three Levels of Government  
In South Africa there are three levels of Government. These are:*

- *National Government*
- *Provincial Government*
- *Local Government*

*If national laws are made in Parliament, where do you think local laws are made?  
Give examples of national and local laws.*

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## Section 28 of the Bill of Rights

Section 28 of the Bill of Rights refers specifically to the rights of children. It says:

- A child means a person who is under the age of 18 years.
- Every child has the right to be named and cared for by the family.
- No child should be allowed to do work that will harm the child's health and well-being.
- A child may only be detained as a last resort, and only for a short while. Children under the age of 18 years should be kept separately from adults in detention.
- Children have the right to shelter, to health care and to be properly fed.

The function of the Constitutional Court, the highest court in our country, is to ensure that laws are not in conflict with the rules or standards as set out in the Constitution.

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## The United Nations Convention on the Rights of the Child

### International Law

An example of an international law is the United Nations Convention on the Rights of the Child. This international law requires Governments all over the world who accept it to ensure that children are protected. The Government of the Republic of South Africa ratified the Convention on the Rights of the Child on 16 June 1995. June 16 has been declared Youth Day in South Africa and is also celebrated as the Day of the African Child all over Africa.

### Why is June 16 so special in South Africa's history?

#### Something to think about

*What does it mean to ratify the Convention on the Rights of the Child?*

*This means that the Government now has the responsibility to ensure that the rights set out in the Convention are protected and put into practice. To do this the Government, together with community organisations and other groups, has put together a National Plan of Action for Children (NPA) in South Africa. The NPA is an important document because it says that all Government Departments are responsible for taking action to protect children's rights.*

*Example of a new child-friendly law*

*In South Africa until 1993, up to 30 000 young people convicted of crimes were whipped or beaten each year. But in 1995 the Constitutional Court declared whipping unconstitutional. Physical punishment is not allowed in schools and will soon be made illegal in the child care system.*

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## The Department of Justice

The Department of Justice is an important organ of Government. One of its functions is to make sure that South African laws are carried out effectively.

Some of the things the Department of Justice is looking at are to:

- ensure that children are not neglected or abused
- protect children from all forms of abuse and sexual exploitation, including sexual abuse
- protect children from using and dealing in narcotic drugs and alcohol
- promote a justice system that is sensitive towards children
- raise awareness amongst the public and children about the rights of children
- keep children away from the criminal courts
- protect children and women against violence

#### Something to think about

*What are some of the things you think the Department of Justice should look at as far as children are concerned?*

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## What is corporal punishment?

Corporal punishment is the use of physical force to cause pain or discomfort. Corporal punishment used to take the form of not more than seven strokes with a cane. For example, if a male person under the age of 21 was found guilty of an offence, he might have received corporal punishment. In the past physical punishment was used on both adults and children in the prisons. Today it is unlawful to sentence children to corporal punishment.

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## Legal change

### What do we mean when we talk about legal change?

Legal change takes place when old laws are replaced by new laws.

For example: Corporal Punishment, see example below:

Section 12(e) of the Constitution says that everyone has the right not to be treated or punished in a cruel, inhuman or bad way. Because of Section 12(e), the question arose whether physical punishment should be allowed in our society. The Constitutional Court, which is the highest court in the land, was approached to decide in this matter.

During 1995 the Constitutional Court decided that corporal punishment was against the Constitution and human rights. (This was decided in a case called *S v Williams and Others*, 1995.) This means that the Government and society would not be allowed to impose corporal punishment on anybody anymore.

### Old laws permitting corporal punishment

After the decision of the Constitutional Court, the Department of Justice prepared a law to abolish corporal punishment. This piece of legislation is called the Abolition of Corporal Punishment Act, 1997. This means that no person in South Africa may receive corporal punishment if that person is found guilty of an offence.

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## Corporal punishment in schools

Corporal punishment was previously used as a form of punishment for school pupils. The Department of Education decided to do away with corporal punishment in schools because it was in conflict with the Constitution. This law is called the South African Schools Act, 1996.

### Something to think about

*The physical punishment of children does not only take place in the prison system. It can also take place in the home. This can sometimes be a form of abuse. Although physical punishment is illegal, children at some schools are still being hit. This is against the law.*

*Why do you think physical punishment or physical abuse of children is wrong? Is punishment necessary? What other forms of punishment can replace physical punishment? Discuss.*

*"All children have the right to freedom from corporal punishment at school, from the police and in prisons and at home..."*

*Children's Charter of South Africa, 1992*

The Department of Education has provided schools with a set of guidelines that look at different forms of punishment other than physical punishment. The purpose of these guidelines is to create a more effective and friendly environment for learning.

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## What should children know about child justice?

### What is child justice?

Children, like adults, are expected to obey the law. When a child under the age of 18 years commits a crime, such as damaging any person's property, hurting or injuring someone else, or taking sweets from a shop without paying for them, then he or she has broken the law.

### Many things can happen to such a child:

- he or she may have to go to court, where the magistrate may order him or her to pay a fine
- or to repair or pay for the damage done
- or he or she may be seen by a welfare officer who will decide whether the child should go to court

In serious cases, such as when the child may have killed or robbed someone, using a firearm, the child may even go to prison. Today, even where the crime is not very serious, many children still go to prison.

The Government believes that it is not good for young children to go to prison. New plans are being made to deal with children who are in trouble with the law. In many other countries, and also in our own, the rights of children have become very important, and Governments all over the world now realise that children should be treated differently from adults. Children can, for example, be influenced by adults to commit crimes, and it is then not fair to them to receive the same punishment.

### **Something to think about**

*What do you think is a serious crime?*

*What do you think is not a serious crime?*

*What should happen to children who are involved in serious crimes?*

*Do you think children should go to prison?*

The Government and community organisations are trying to find other ways of supporting children in trouble with the law. For instance, instead of sending a child to court for having stolen sweets, he or she may have to go to a welfare officer who will find out why the child did something wrong. That welfare officer may then recommend that the child not be sent to court, but attend some programme where the child can receive support. This is called diversion. Of course, not all children will be able to avoid going to court. That will depend on how serious the crime is, or on how many times the child has done something wrong in the past.

### **Something to talk about**

*The Government and community organisations are working on a plan to create a new child justice system that will be child and human rights-friendly and must always take into account the best interests of the child.*

If a child has broken the law:

- The Constitution says that the child has the right not to be detained except as a last resort and that such a child may be detained only for the shortest period of time. The Constitution also says that the child must be kept separately from detained persons over the age of 18 years and must be treated in a manner that takes into account his or her age.
- the Constitution says that this child has the right to have a lawyer who must be provided by the Government at its expense.

### **Something to think about**

*You can also get involved in making suggestions to the Department of Justice and the South African Law Commission on these new plans.*

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## **What should children do if they are the victims of sexual abuse?**

### **What is sexual abuse?**

Sometimes people might want to:

- touch your private parts
- ask you to touch their private parts
- show you pictures of people doing things like that.

What must you do if you are the victim of sexual abuse?

- Do not hide
- Do not keep quiet

- Tell somebody about it

**You are not to blame if it happens to you or to others!**

**The most important thing to do is not to keep quiet. Tell somebody you trust and break the chain of silence.**

Do not keep your abuse a secret even if the abuser promises you sweets or money or threatens to hurt you if you tell. Do not keep it a secret even if the abuser is in your family.

There will always be someone to talk to and help. You do not have to give your name unless you want to.

**Remember most children who are abused are abused by family members or close relatives.**

### **Who is an abuser?**

- You may know an abuser
- He or she may be older than you
- He or she may be nice to you
- He or she may even be your mom, dad, uncle or neighbour

**Remember it is OK to be scared!**

It is a frightening experience to be sexually abused, but you are not alone and lots of people care for and love you. There are people who understand why you are scared and can help you if you speak out.

**Remember it is not your fault!**

It is not your fault that you are being sexually abused. People are not allowed to do these things to you even if it is somebody you know. You have not asked for it or led that person on. It is their fault, not yours.

**If you do not know anybody you can trust, phone:**

**Child line on the toll-free number 0800 055555 or the Police at 10111**

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### **What should children know about maintenance?**

#### **What is maintenance?**

Every child has the right to basic needs such as:

- food
- shelter
- clothing
- medical care
- schooling

Children are entitled to these basic needs from their parents or relatives. This support given by the parents or relatives is called maintenance. Parents or relatives maintain children directly when the child lives with them. Parents or relatives maintain children indirectly when the child lives with someone else, by paying maintenance, or money to support the child and provide his or her basic needs.

#### **Who has a duty to maintain?**

The law requires a child to be supported or maintained by:

- his or her parents, whether married, living together, separated or divorced, including parents who have adopted the child;
- his or her grandparents, if the child's parents were married to each other;
- the Government if the child's parents or other family members cannot do so.

This legal duty is called "the duty to maintain" or "the duty to support".

### **Something to think about**

*Did you know that both parents have the responsibility to take care of their child even if they are not married to each other or are living apart from each other. The parents must share this duty. Where there are no parents to take care of the child, then other family members such as grandparents, aunts, uncles or brothers and sisters are responsible for the child's needs.*

*Who is responsible for your basic needs?*

### **What can you do if you do not receive support?**

- If a person, such as a parent, does not provide the basic needs of a child, a complaint can be made against that person at the maintenance court or at a community organisation
- The complaint is usually made on behalf of the child by a grown-up person, such as the person with whom the child stays
- The maintenance court will call all the people who are responsible for the child (usually the parents of the child) to appear before it
- The magistrate of the maintenance court will then try to find out how much each person is supposed to contribute to the cost of bringing up the child and how much each person can afford
- If the magistrate is satisfied with the answers, he or she will order the person who has not provided for the needs of the child to pay a certain amount of money to the person with whom the child stays. This money must then be used to pay for the cost of bringing up the child.
- If the court finds that the person does not do as he or she was told by the court, he or she will be committing a crime
- He or she may be sent to court again where the magistrate can order him or her to pay a fine or even to go to jail

The Government and community organisations have realised that there are many problems with the law relating to the care of children. New plans are therefore being made to make it easier for the person who must look after a child to get the money needed for that purpose for the person who is under a legal duty to take care of that child. These plans have to do with the way the maintenance court works, for instance what to do with a person who does not appear before the court or does not do what he or she is told by the magistrate.

### **Something to think about**

*Did you know that it is your right as a child to receive support and the adult's duty and responsibility to give you support?*

*What do you do with someone who ignores what the court says? What kind of support should you receive as a child? What do you understand by basic needs?*

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## **What should children remember when they go to court?**

### **What is a court?**

A court is a place where differences are settled. Differences can take many forms. In criminal cases, the difference is between the State and an accused person. In civil cases, it is between two parties. The differences are brought to court so that an independent person (the judge or magistrate) can find out the truth and make a decision after hearing both sides of the story.

### **When do children go to court?**

- when a crime has been committed (for example stealing)
- in the case of abuse when a child has to give evidence as a victim

- in maintenance cases
- in divorce cases
- as a witness

### **What is a Children's Court?**

A children's court is a special court which deals with issues affecting children. A children's court takes care of children who are in need of care. It does not deal with criminal cases.

### **What you must remember if you go to court:**

- When you are charged with a crime
- You have the right to remain silent
- You have the right to say you don't understand and to ask questions
- You are innocent until proven guilty
- You can take your own lawyer with you to court
- You have the right to ask the court for a lawyer that they will pay for

Remember that if the court decides that you should be detained, you have the right to ask for your release into the care of your parents, guardians or caregiver or you may ask to be given bail.

What is bail?

Bail is an amount of money that is set by the court and that you have to pay for your release while you are waiting to appear before the court again.

- **When somebody else has done something wrong to you and you are asked to tell the court what happened**
  1. Tell the court exactly what happened in your own time
  2. You have the right to speak to the judge or magistrate alone. This means that you do not have to be in the same room as the person who has done the wrong to you
  3. Do not be afraid
  4. You can speak in your own language
- **If you go to a Children's Court:**
  1. You have the right to tell the court what you think
  2. You can take your own lawyer with you to court
  3. You have the right to ask the court for a lawyer that they will pay for
  4. Your 'best interests' are the most important aspect the court must consider in all matters affecting you
- **Remember it is OK to be scared**

In the old days courts were scary places for many people, even adults. Today nobody needs to be scared to go to court as the courts are there to protect your rights.

### **Something to think about**

*At what age do you think it is OK to bring a child to court?  
What do you think courts should look like?*

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### **Who is the Family Advocate?**

- The Family Advocate is a person who protects the rights of children if their parents get divorced. The Family Advocate also protects the child in cases of access, custody and maintenance. "Custody" is an order made by the court which says who is responsible for the child's basic needs. If parents separate and the child lives with one parent, the other parent is granted the right to visit the child. This right is decided by the court and is called "access".

- The Family Advocate represents or acts on behalf of the child and assists the court by making recommendations based on the child's 'best interests'.
- The law that gives the Family Advocate authority to perform this function is called the Mediation in Certain Divorce Matters Act, 1987.
- According to South African divorce law, the Court needs to be satisfied first that the parents divorcing have made the best possible arrangements for their children.
- A divorce cannot be finalised until proper arrangements have been made for the care of the children. This means that the Family Advocate, together with the Family Counsellor, will carefully investigate the case.
- The Family Advocate actively encourages both the parents to come to an agreement regarding matters concerning the children.
- It is important to remember that a child can also take an active part in these discussions. It is your right.

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### What does "human rights" mean, anyway?

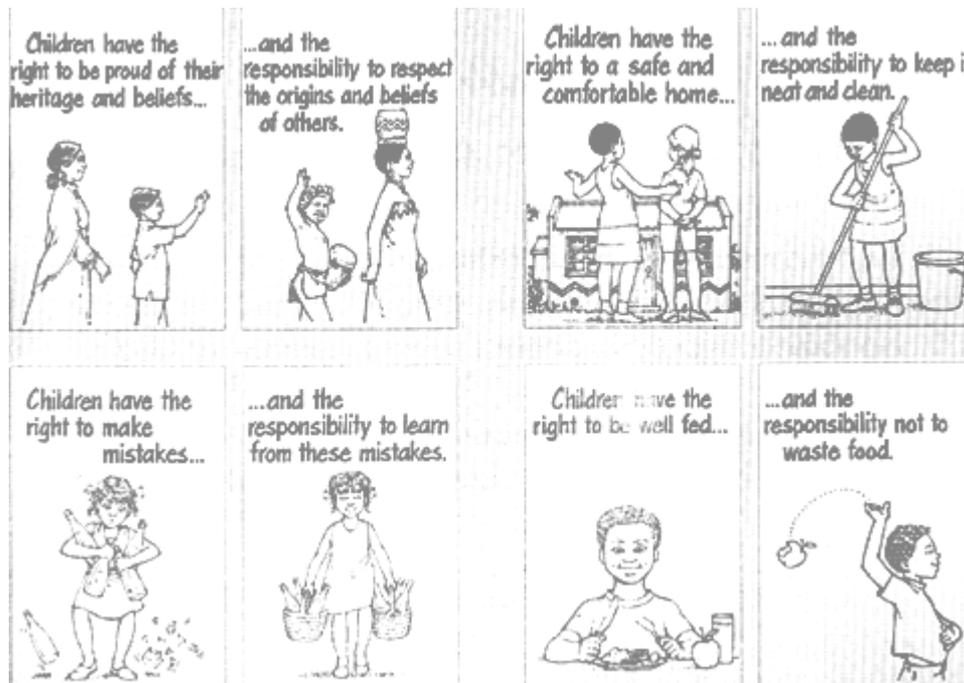
#### "Human rights" means lots of things

- people have to treat you fairly!
- people have to treat you well!
- kids have rights, too!
- nobody may hurt you!
- we are all equal

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### Children's rights and responsibilities





## All human rights for all!

### Something to think, talk or rap about

Read the extracts on human rights and children's rights and responsibilities on page .... to ..... and then use it to rap about human rights or make up your rap poem or song.

What do you understand by human rights and children's rights?

Why are rights so important in South Africa today?

### Action list

- Take part in activities involving children's rights
- Ensure the participation of parents, caregivers, and girl-children in all these activities
- Speak out and report all cases of physical and sexual abuse
- Write to and visit the Offices of Members of Parliament or local councillors in your area
- Participate in information and awareness campaigns on children's rights
- Suggest topics on children's legal rights to your school teacher and discussion groups
- Write stories and poems and make dramas about children's rights
- Work together in community organisations and other groups to share information on children's rights
- Mobilise and take action in your community about the issues of child abuse and child labour by organising marches and writing to your newspapers and the broadcast media which include radio and television
- Parents must make sure that they register the birth of all their children or children in their care.

### Organisations to contact

- Child line  
**Toll-free number: 0800 055555**
- Police Emergency Number  
**Telephone: 10111**
- Child Protection Unit in your area
- Department of Justice  
**Telephone: (012) 315 1111**

- South African Law Commission  
**Telephone: (012) 322 6440**
- National Institute for Public Law and Research (NIPILAR)  
**Telephone: (012) 328 5901**
- National Youth Commission  
**Telephone: (012) 325 3702**
- South African Human Rights Commission  
**Telephone: (011) 484 8300**
- Resources aimed at the Prevention of Child Abuse and Neglect (RAPCAN)  
**Telephone: (021) 448 9034/5/6/7**
- Department of Welfare  
**Telephone: (012) 312 7500**
- Department of Education  
**Telephone: (012) 312 5911**
- National Children's Rights Committee (NCRC)  
**Telephone: (011) 807 7474/5/6**
- Commission on Gender Equality  
**Telephone: (011) 403 7182**
- United Nations Children's Fund (UNICEF)  
**Telephone: (012) 338 5000**

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Our new Constitution has, for the first time in our history, ensured that the needs, aspirations and dreams of our children are recognised. The challenge now is for the Department of Justice to make this a reality. For you as children it is very important that you know and understand how the law protects your rights. The more you learn about the law, the better you will be in a position to help your friends, relatives, family, and most important, yourselves. This booklet is the first of a series that will assist you in understanding your rights and responsibilities and will also help you to make very important decisions.

Dr A M Omar Dr M E Tshabalala-Msimang  
Minister of Justice Deputy Minister of Justice

**If you have any contribution to this booklet, please write to us at the address below:**

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