



Factsheet: The Child Justice System in South Africa – children in conflict with the law¹

What is a child justice system and why do we have one?

A child justice system is a separate justice procedure for children in conflict with the law that is not the same for adults. The Child Justice Act 75 of 2008 creates this system.

South Africa has a separate justice system for children in conflict with law, because it acknowledges that the justice system, as applied to adults, do not cater for the needs of children. The justice system for adults will cause trauma for children. South Africa also acknowledges that it is easier to rehabilitate children than it is to rehabilitate adults. An efficient justice system that embeds elements of rehabilitation is crucial to ensure that any criminal activity of children is addressed.

South Africa also ratified the United Nations Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child. Both these two treaties require of South Africa to create a separate justice system for children in conflict with the law.

What are the different age provisions contained within the Child Justice Act?

In terms of the Child Justice Act, children below the age of 10 years old cannot legally commit offences. Children below the age of 10 years who have been found to commit offences will be referred for special counselling, but will not be prosecuted.

¹ This topical guide was prepared for PAN: Children by Lorenzo Wakefield (Consortium on Crime and Violence Prevention).

The Act says that children between the ages of 10 and 14 years, at the time of commission of an alleged offence, are presumed not have the necessary mental capacity to commit an offence. The state must prove beyond a reasonable doubt that the child did have criminal capacity to secure a conviction. Children in this age category may undergo an assessment by a psychiatrist or a psychologist (on request by the court, prosecutor or defence attorney) and such professional will make the recommendation about a child's criminal capacity.

Children above the age of 14 years are presumed to know the difference between right and wrong and act in accordance with that distinction, unless it is proved that they have a mental or intellectual disability that would impair their mental capacity.

The Child Justice Act also states that children below the age of 14 years cannot be detained in or sentenced to prison. It does this in order to protect very young children from the confines of strict security measures, such as prison and police cells.

Are there any challenges in implementing the child justice system?

As with any system, there are always challenges. Some challenges can be fixed on the ground (for examples in the courts and police stations). However, some challenges need to be fixed by government officials working in national and provincial government headquarters. Some of these challenges are as follows:

- The Department of Justice and Correctional Services and all the other implementing departments do not collect statistics in the same manner. For example, the police count the number of charges brought against children. The Department of Social Development, on the other hand, counts the number of children that they assessed. One child can have more than one charge brought against him/ her. This would mean that the statistics that they do collect are not accurate, as the Department of Social Development reports on the number of children assessed and the police reports on the number of charges brought. This needs to be addressed, as statistics are important for research and budget purposes.

- The minimum age of criminal capacity is still not in line with international law requirements. Currently in South Africa this age is 10 years, while the international requirement is 12 years. In terms of the Act, Parliament has to amend this age before 1 April 2015.
- The human resource and budgetary allocations needed to ensure that the justice system for children is efficient and runs smoothly is still inadequate. Before the Bill was passed into an Act, studies were done as to what the new justice system for children would cost. This included cost in relation to personnel. Treasury has not given sufficient funds towards the implementation of the Act and it is recommended that international development organisations should also invest in order to strengthen the child justice system.

There are many other challenges as well. Various experts have documented these. These challenges must be addressed to ensure an efficient justice system for children in conflict with the law.

Where can I find more information about the child justice system?

You can find more information online at: www.childjustice.org.za or <http://www.justice.gov.za/vg/childjustice.html> or www.centreforchildlaw.co.za or www.nicro.org.za or www.khulisaservices.co.za or www.legal-aid.co.za.

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