



Promoting the Right to Education  
for Children with Disabilities

fact sheet 1

# INTERNATIONAL, CONSTITUTIONAL AND LEGAL FRAMEWORK FOR THE RIGHT TO EDUCATION FOR CHILDREN WITH DISABILITIES

## International Framework

There are three main international and regional treaties that South Africa has ratified which entrench the Right to Education for Children with Disabilities.

These are:

- The United Nations Convention on the Rights of the Child (CRC)
- The African Charter on the Rights and Welfare of the Child (ACRWC)
- The Convention on the Rights of Persons with Disabilities (CRPD)

### The United Nations Convention on the Rights of the Child (CRC)

- Article 23(1) places an obligation on States to ensure the dignity, promote the self-reliance and facilitate a child with a disability's active participation in society.
- Article 23(2) places a duty on States to ensure that proper care and assistance is given to children with disabilities.
- Article 23(3) requires that every child with a disability has effective access to and receives education, among other duties in relation to education.

### The African Charter on the Rights and Welfare of the Child (ACRWC)

- This treaty addresses children under the undignified term of "handicapped children". The need to change this inappropriate and offensive terminology has been brought to the attention of the African Union.
- Article 13(1) requires that States ensure the dignity, promote the self-reliance and facilitate a child with a disability's active participation in society.
- Article 13(2) places a duty on States, to where possible; provide training and preparation for employment to ensure that a child is fully integrated in society.
- Article 13(3) requires that States make public places accessible for children with disabilities
- The ACRWC does not mention education specifically, like the CRC does.

### The Convention on the Rights of Persons with Disabilities (CRPD)

- Article 24 of the CRPD comprehensively deals with the right to education for persons with disabilities.
- This article requires that education for persons with disabilities be of an inclusive nature.
- Article 24(2) requires of the government to:
  - not exclude children with disabilities from primary and secondary education on the basis of their disability;
  - Provide reasonable accommodation for individuals; and
  - Provide support to persons with disabilities within the general education system.
- Article 24(3) requires of the government to facilitate the learning of Braille and sign language in the education system.
- This would mean that teachers who understand Braille and sign language should be employed and teachers that do not understand it should be trained to understand it, as per article 24(4).
- Article 24(5) requires of the government to provide access for persons with disabilities to tertiary education and vocational training.

All South African children, including children with disabilities, have the right to basic education under national and international law



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An education system that promotes the full participation and inclusion of children with disabilities maximises their personal development and enables their ongoing participation and inclusion in society.

## Constitutional and Legislative Framework

### The Constitution of the Republic of South Africa

- The Constitution is the supreme law of South Africa.
- In section 28(2) the Constitution guarantees that the best interest of children should be upheld in all matters concerning children.
- Section 29 regulates the right to education.
  - Section 29(1)(a) guarantees everyone the right to basic education. This includes children with disabilities.
  - Section 29(1)(b) further stipulates that everyone has a right to access further and tertiary education.

### The National Education Policy Act

- This Act regulates the drafting, monitoring and evaluation of education policies.
- Section 4(d) requires the Department of Education to adopt a policy to 'ensure that no person is denied the opportunity to receive an education to the maximum of his or her ability as a result of physical disability'.
- This policy was adopted in the form of White Paper 6: *Special needs education, building and inclusive education and training system*.

### South African Schools Act

- This is the principal piece of legislation that governs the education system in South Africa.
- This Act makes it compulsory for every learner to attend school up to age of 15 years or ninth grade, whichever comes first.
- In terms of this Act, the Minister of Education had to designate a separate age for compulsory school attendance for children at so called 'special schools'. This has not been done yet.
- Section 5(1) of this Act stipulates that a public school must admit learners without unfairly discriminating in any way.
- Section 5(6) of the Act places a duty on both the head of the education department and the principal of a school to consider the 'rights and wishes' of parents of children with special education needs.

### Case Law

- In a recent judgment by the Western Cape High Court (Western Cape Forum for Intellectual Disabilities v The government of the Western Cape and the government of South Africa), the court had to deal with interpreting the right to education for children with intellectual disabilities.
- The High Court found that no provision for children with severe and profound intellectual disabilities was provided for in relation to attending special schools.
- The High Court also found that there was no reasonable and justifiable basis for the infringement of the right to basic education for children with severe and profound intellectual disabilities.
- The High Court ordered that the government take reasonable measures (which also include interim steps) to realise the right to basic education for children with severe and profound intellectual disabilities.