

Children's socio-economic rights in focus at international congress

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The [Fourth World Congress on Family Law and Children's Rights](#) marked the 15th anniversary of the adoption of the United Nations Convention on the Rights of the Child (CRC). Delegates from around the world presented papers aimed at critically reviewing member states' compliance with the CRC, with a particular focus on the Millennium Development Goals.

Reflecting on the challenges of securing children's rights, South African Constitutional Court Judge, Yvonne Mokgoro, emphasised the need for states to use the CRC to secure children's access to basic socio-economic rights. As the reality is that millions of children globally are routinely denied their basic rights to health, education and nutrition, Judge Mokgoro stressed that it is "critical that we review the rights of children not only in the narrow view as children having claims against their family, but as children having claims against society and the State".

When children and their families find themselves in circumstances where their basic socio-economic rights are not being met by the State, the CRC and the South African Constitution are the tools that they can use to claim redress in court. In this regard Judge Mokgoro praised the role of non-governmental organisations (NGOs) in advancing socio-economic rights jurisprudence by bringing public interest class actions to the courts, and also by bringing additional evidence and legal opinion to the courts' attention by acting as friends of the courts (*amicus curiae*). "Efficacy of legal orders is very important. With the assistance of children's rights NGOs and community-based organisations who have practical experience of children's rights, lawyers are better equipped to put forward to the court remedies that will benefit these children."

Judge Mokgoro however cautioned that litigation should be the last resort and emphasised that it is important that member states should develop policies and laws that are in compliance with international and constitutional human rights obligations to children. She said that the "fulfilment of socio-economic rights requires vast social programmes, appropriate agencies with appropriate resources, appropriately trained officials, and appropriate relationships with the community. It is legislation, not the courts, where the major emphasis should lie". Her call for a focus on legislation comes at a time when South Africa is busy debating the Children's Bill in Parliament – the law aimed at providing a legal framework to reduce child abuse and neglect and to provide care and protection for children made vulnerable by high levels of HIV/AIDS, poverty and violence.

The strong focus on children's socio-economic rights at the Congress is indicative of a growing global recognition of the urgent need to give real substance to these basic rights. South Africa is considered internationally as one of the world's pioneers with regards to socio-economic rights. The country has one of the most progressive Bills of Rights in the world, recognising the importance and inter-dependence of civil, political and socio-economic rights. We have a pioneering Constitutional Court with a mandate to review policy and law to ensure that it adheres to constitutional rights. The *Grootboom* and *Treatment Action Campaign* judgements of this court have been lauded worldwide as unique examples of how socio-economic rights can be championed by the courts and realised in a developing country with many competing demands on the national fiscus. However, while South Africa is leading in these areas, the daily reality for the nation's children shows that much work is still to be done to realise their rights.

In closing the congress, Prof. Geraldine Van Beuren from the University of Cape Town's Department of Law, questioned why the CRC has led to improvements in civil and political rights but not in socio-economic rights. In addressing this question she put forward various theories as to why children's socio-economic rights are still not prioritised by the international community, governments and lawyers. She stressed that, as long as socio-economic rights are considered discretionary social welfare benefits rather than legal entitlements, we are in effect playing dice with many children's lives. She encouraged lawyers to apply their legal imagination to using the law and the courts to take children out of poverty.

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The Children's Institute, University of Cape Town, aims to contribute to policies, laws and interventions, that promote equality and realise the rights and improve the conditions of all children in South Africa, through research, advocacy, education and technical support.

