

Using international law to realise children's socio-economic rights in South Africa

Solange Rosa, Child Rights Programme

South Africa has extremely high rates of poverty amongst children: an estimated 60-75% of the country's children live in poverty. In addition, children are negatively affected by high rates of HIV-infection and the related deaths of their caregivers. This places millions of children in South Africa in highly vulnerable situations.

The United Nations Convention on the Rights of the Child (CRC) integrates civil and political rights with social, economic and cultural rights. All these rights are relevant to children living in poverty, but some rights are more directly relevant than others. For instance, Article 27 of the Convention deals with the right to an adequate standard of living, and Article 24 addresses the right to health care.

Since ratifying the Convention in June 1995, the government has been legally bound to implement the rights contained in the CRC. The design of children's socio-economic rights in the Constitution was also influenced by the CRC. The interests of South Africa's children are thus protected by strong provisions in the Constitution and via our obligations under the CRC.

International human rights treaties have had an extensive impact on human rights in South Africa, as the legal system has largely been transformed to reflect the norms expressed in the treaties. However, several commentators have noted that, while the norms contained in the treaties have had a significant influence, the mechanisms for their enforcement – reporting and individual complaints – have so far had a negligible impact.

In addition, an analysis of South African court cases that affected children's rights over the past 10 years indicates that, while the courts do refer to the CRC, the general comments of the Committee on the Rights of the Child and other pertinent writings on the CRC have not yet been referred to in the judgements of these courts. The reason for this is largely due to a lack of knowledge of the CRC and its jurisprudence amongst the judiciary and the legal profession in general.

It is believed that the CRC, and the comments of its Committee, can be used more effectively to realise the socio-economic rights of South African children living in poverty. The following are therefore recommended to make the CRC more useful in the courts:

- Judicial training (of magistrates and judges) on the CRC and its jurisprudence.
- Lawyers should as far as possible incorporate the relevant provisions of the CRC and its jurisprudence in their oral and written arguments to the courts.
- Judges should investigate the international children's rights law relevant to a particular case before them.
- Expert children's rights organisations should submit arguments to the courts as amici (friends of the court) to bring about a greater awareness of the CRC and to assist the Court to interpret the CRC.

In relation to the United Nations Committee on the Rights of the Child and its supervisory mechanisms, it is recommended that:

- the Committee regularly produces more general comments as guidelines for the interpretation and implementation of CRC provisions;
- the Committee clarifies the minimum core content of all social and economic rights;
- the reports and recommendations on specific countries should be distilled to formulate these general comments; and
- an individual complaints mechanism for the CRC be put in place to deal with the lack of enforcement of the CRC by countries, and to provide further useful and enlightening jurisprudence on the provisions in the CRC.

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