

**KEEP IT
CONSTITUTIONAL**



Episode 11

CHILDREN'S RIGHTS

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The Keep It Constitutional campaign is a 20-part series brought to you by the Foundation for Human Rights. The campaign aims to provide South Africans – particularly learners – with an introduction to the Constitution and its contents. The campaign consists of animated episodes, audio episodes, and lesson plans.

For more information visit www.keepitconstitutional.co.za.

The lesson plan is designed to assist educators and group leaders lead an introductory session on the Constitution. Educators can follow the lesson plan word-for-word, but may improvise as desired.



Episode 11: Children

Time required	45 minutes
Learning objectives	<ul style="list-style-type: none">• The Constitution gives all children in South Africa – everyone under the age of 18 – a range of special rights.• The rights that children have include the right to a name and nationality, to parental care, to food and to basic medical services.• In every case concerning a child, the best interests of a child need to be protected. This means that in every case, all relevant issues regarding the child need to be considered to ensure that the child is protected.
Resources	<ul style="list-style-type: none">• Keep It Constitutional animation series: Episode 11 OR Keep It Constitutional radio series: Episode 11• Handouts 1 and 2, attached at the end of this lesson plan



Introduction

Time required 2 minutes

Educator:

There are certain groups that our Constitution gives extra protection to – and this includes children, a group defined in law as everyone under the age of 18.

Why? Why do you think children have special rights?

ADVICE TO EDUCATORS

Allow learners to respond.

Answers should cover the fact that children need special protection as they are at a stage in life when long term consequences can arise from not having important things to help development – like food, water or education. The law tries to help children by preventing them being manipulated, and so are not allowed to make all of the decisions that affect their lives. So, even children who are mature or near the age of 18 don't necessarily have the same rights as people over 18.

Educator:

So, what exactly does the Constitution tell us about children's rights?



PLAY VIDEO/RADIO EPISODE 11

Time required 5 minutes



GROUP DISCUSSION

Time required 32 minutes

Educator:

So, the Constitution has a series of rights specifically for children, at section 28.

These rights have been included in the Constitution because, if they are upheld, they will help children to fulfil their potential.

ADVICE TO EDUCATORS

Divide the learners into groups.

In their groups, ask the learners to read through section 28 (distributed as Handout 1), and have them discuss why they think each part section 28 was included in the Constitution. For example, why is it an important that children have the right to a name and nationality?

Try to encourage the learners to think of why each part of the right was considered important? If necessary, prompt them to think about what the consequences of that right not being protected would be.

Allow the groups 10 minutes to discuss each part of the right, then allow 1-2 minutes for each part of section 28 (1) (a) – section 28 (1)(1) to be discussed as a class discussion.

Information that might assist you in helping the learners to understand why each part of the right is important:

- Having a nationality is important because it is through having a nationality – that is, being a national of a state, like a citizen – enables people to access political and social rights. Although people who aren't nationals may have some rights in another country, they will usually have the most rights in their country of nationality.
- The right to a name is linked to the registration of a birth. It is through a child being registered that they better able to access the services, like education, and protections offered by a state, including protection against exploitation, child-trafficking, child labour.



- Hundreds of thousands of children in South Africa are being raised in foster care because, for any number of reasons, parental care is not available for them. But some children remain without alternative care – in 2017, there were nearly 60 000 children in South Africa living in child-headed households. You could ask the learners to try to imagine the difficulties that such households face, and how important it is for the State to find ways to support children in such situations.
- Children in South Africa remain at risk of underdevelopment because of hunger – in 2016, 27% of South Africa’s children under 5 years old were found to have had their growth stunted through malnutrition.
- A 2017 survey showed that over 50% of children in South Africa between the ages of 7 and 17 were involved in work, and over 7% of these children were doing work that was prohibited by labour laws.
- Many thousands of children, both boys and girls, around the world, are forced to fight in wars as soldiers. Recent reports found child soldiers in 17 countries, with nearly 30 000 children involved in military action.

Educator:

So, you might have noticed that the Constitution says that the ‘best interests of the child’ need to be considered in every matter. But the Constitution doesn’t actually tell us what we need to consider when we think of the best interests of a child. The Children’s Act does though! The Children’s Act is an important law that was passed by Parliament and came into force in 2005. It has a number of aims, including to give effect to the constitutional rights that children have, to ensure that the government is fulfilling its obligations to children and ensuring that children can develop psychologically, intellectually, emotionally and socially. The Children’s Act is also designed to help ensure that children are protected from harm, and those children who need care and protection from the State receive it.

So, what does the Children’s Act tell us about ‘the best interests of the child’?

ADVICE TO EDUCATORS

Give the learners Handout 2 – section 7 of the Children’s Act.

Allow the groups 7 minutes to discuss, and another 3–4 minutes for reporting back.



CASE DISCUSSION

Time required 5 minutes

Educator:

A case where the best interests of the child was a really important consideration was the case of *S v M*, heard by the Constitutional Court in 2007. The name of the case is *S* – which stands for the State – *v M*. The *M* is used so that the people involved can remain anonymous.

S v M

In this case, a mother of 3 children was convicted of a financial crime and was sentenced to 8 months in prison. She was unhappy about being convicted to serve time in prison, partly because she was worried about who would look after her children. She asked the Constitutional Court to consider her case. The Constitutional Court held that it was important for all relevant factors to be considered, which would include the kind of crime committed and the interests of the children. The Constitutional Court said that more harm would be caused by placing her in prison, including the fact that the best interests of the children would not be protected.

The reason that we are highlighting this case is because it shows how important the interests of children are. Although their mother had committed a crime, the Constitutional Court thought that the damage to the children outweighed the need to place her in prison. It is important to note that she wasn't let off – if she committed another offence, she would have to serve time in prison, she had to perform community service, and she had to repay the people she had committed fraud against.

¹ 2008 (3) SA 232 (CC).



CONCLUSION

Time required 1 minute

Educator:

Children are independent entities, but the Constitution recognises that they are also dependent on others for ensuring that they have the right environment to develop in. Although this is often provided by the parents or guardians, sometimes it will be necessary for the State to assist – whether by helping provide access to necessities like food, water or healthcare, or by providing adequate alternative care, through children’s homes or foster care.

The Constitution recognises that we, as a society, need to look after the younger members of this society. If we don’t do so adequately, the consequences for the future of our country are ominous.



HANDOUT 1

Section 28 of the Constitution of the Republic of South Africa

- (1) Every child has the right—
- (a) to a name and a nationality from birth;
 - (b) to family care or parental care, or to appropriate alternative care when removed from the family environment;
 - (c) to basic nutrition, shelter, basic health care services and social services;
 - (d) to be protected from maltreatment, neglect, abuse or degradation;
 - (e) to be protected from exploitative labour practices;
 - (f) not to be required or permitted to perform work or provide services that—
 - (i) are inappropriate for a person of that child's age; or
 - (ii) place at risk the child's well-being, education, physical or mental health or spiritual, moral or social development;
 - (g) not to be detained except as a measure of last resort, in which case, in addition to the rights a child enjoys under sections 12 and 35, the child may be detained only for the shortest appropriate period of time, and has the right to be—
 - (i) kept separately from detained persons over the age of 18 years; and
 - (ii) treated in a manner, and kept in conditions, that take account of the child's age;
 - (h) to have a legal practitioner assigned to the child by the state, and at state expense, in civil proceedings affecting the child, if substantial injustice would otherwise result; and
 - (i) not to be used directly in armed conflict, and to be protected in times of armed conflict.
- (2) A child's best interests are of paramount importance in every matter concerning the child.
- (3) In this section "child" means a person under the age of 18 years.



HANDOUT 2

Section 7 of the Constitution of the Republic of South Africa

(1) Whenever a provision of this Act requires the best interests of the child standard to be applied, the following factors must be taken into consideration where relevant, namely-

- (a) the nature of the personal relationship between-
 - (i) the child and the parents, or any specific parent; and
 - (ii) the child and any other care-giver or person relevant in those circumstances;
- (b) the attitude of the parents, or any specific parent, towards-
 - (i) the child; and
 - (ii) the exercise of parental responsibilities and rights in respect of the child;
- (c) the capacity of the parents, or any specific parent, or of any other care-giver or person, to provide for the needs of the child, including emotional and intellectual needs;
- (d) the likely effect on the child of any change in the child's circumstances, including the likely effect on the child of any separation from-
 - (i) both or either of the parents; or
 - (ii) any brother or sister or other child, or any other care-giver or person, with whom the child has been living;
- (e) the practical difficulty and expense of a child having contact with the parents, or any specific parent, and whether that difficulty or expense will substantially affect the child's right to maintain personal relations and direct contact with the parents, or any specific parent, on a regular basis;
- (f) the need for the child-
 - (i) to remain in the care of his or her parent, family and extended family; and
 - (ii) to maintain a connection with his or her family, extended family, culture or tradition;
- (g) the child's-
 - (i) age, maturity and stage of development;
 - (ii) gender;
 - (iii) background; and
 - (iv) any other relevant characteristics of the child;
- (h) the child's physical and emotional security and his or her intellectual, emotional, social and cultural development;



- (i) any disability that a child may have;
- (j) any chronic illness from which a child may suffer;
- (k) the need for a child to be brought up within a stable family environment and, where this is not possible, in an environment resembling as closely as possible a caring family environment;
- (l) the need to protect the child from any physical or psychological harm that may be caused by-
 - (i) subjecting the child to maltreatment, abuse, neglect, exploitation or degradation or exposing the child to violence or exploitation or other harmful behaviour; or
 - (ii) exposing the child to maltreatment, abuse, degradation, ill-treatment, violence or harmful behaviour towards another person;
- (m) any family violence involving the child or a family member of the child; and
- (n) which action or decision would avoid or minimise further legal or administrative proceedings in relation to the child.'

