

South Africa

National Child Protection Legislation

National Legislation

- South African Constitution
Source: <http://www.gov.za/documents/constitution-republic-south-africa-1996>
- Consolidated Children's Act, 2010 (originally Children's Act No. 38 of 2005)
Source: <http://www.justice.gov.za/legislation/acts/2005-038%20childrensact.pdf>
- Consolidated Regulations pertaining to the Children's Act, 2005
Source:
https://www.westerncape.gov.za/text/2010/12/childrens.act.final_regulations26_jan_2010.pdf
- Consolidated Forms in terms of the Regulations under the Children's Act, 2005
Source: http://www.justice.gov.za/forms/form_cj.html
- Regulations relating to Children's Courts and International Child Abduction, 2010
Source:
http://www.justice.gov.za/legislation/notices/2010/20100331_GG33067_NoticeR250-childrensact.pdf
- Child Justice Act No. 75, 2008
Source: http://www.justice.gov.za/legislation/acts/2008-075_childjustice.pdf
- Regulations Relating to Child Justice, 2010
Source: http://www.polity.org.za/attachment.php?aa_id=27072
- Criminal Law (sexual offences and related matters) Amendment Act 32, 2007
Source:
https://www.saps.gov.za/resource_centre/acts/downloads/sexual_offences/sexual_offences_act32_2007_eng.pdf
- National Instruction on Sexual Offences, 2008
Source:
https://www.saps.gov.za/resource_centre/acts/downloads/sexual_offences/ni/ni0308e.pdf
- Criminal Law (sexual offences and related matters) Regulations, 2008
Source: http://www.justice.gov.za/legislation/notices/2008/20080522-gg31076_561_pg3-62.pdf
- Births and Deaths Registration Act 51 of 1992, current version of 2014
Source: <http://www.legislation.act.gov.au/a/2014-8/20140426-57511/pdf/2014-8.pdf>
- Regulations on the Registration of Births and Deaths, 2014
Source: <https://www.gov.im/lib/docs/registries/civil/registrationofbirthsanddeaths1.pdf>

- Domestic Violence Act No 116 of 1998
Source: http://www1.chr.up.ac.za/undp/domestic/docs/legislation_18.pdf
- Prevention of Family Violence Act No. 133 of 1993
Source: https://www.acts.co.za/prevention-of-family-violence-act-1993/prevention_of_family_violence
- The South African Schools Act No. 84 of 1996
Source: <https://www.gdeadmissions.gov.za/Content/Files/SchoolsAct.pdf>
- The Abolition of Corporal Punishment Act No. 33 of 1997
Source: http://saflii.org/za/legis/num_act/aocpa1997347.pdf
- The Basic Conditions of Employment Act No. 75 of 1997
Source: <http://www.labour.gov.za/DOL/downloads/legislation/acts/basic-conditions-of-employment/Amended%20Act%20-%20Basic%20Conditions%20of%20Employment.pdf>
- Integrated Social Crime Prevention Strategy, 2011
Source: <http://www.gov.za/documents/integrated-social-crime-prevention-strategy>
- Green Paper on Families, 2011
Source: http://www.gov.za/sites/www.gov.za/files/34692_gen756a_0.pdf
- The Social Assistance Act 13 of 2004
Source: http://www.gov.za/sites/www.gov.za/files/a13-04_0.pdf
- The National Health Act 61 of 2003
Source: http://www.chr.up.ac.za/undp/domestic/docs/legislation_55.pdf
- Integrated National Disability Strategy (1997)
Source: <http://www.independentliving.org/docs3/sa1997wp.pdf>

a) Age of Consent¹

<p>Children incapable of consenting to sex</p>	<p>Below 12 Any adult or another child having sex (penetrative or non-penetrative) with a child under this age is committing the crime of rape or sexual violation.</p> <p>Note: The defences which can be raised in the case of ‘statutory rape’ (see below) cannot be used in the case of rape or sexual assault. However, if the accused is a child below the age of 10 years (the age of criminal capacity) then the child cannot be prosecuted. If the accused is a child between the ages of 10 and 14, the child can be prosecuted but the prosecution bears an onus to prove that they do have criminal capacity.</p>	<p>Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007. Section 57 read with sections 1(2) and 1(3)(d)(iv).</p>
<p>Children capable but not mature enough to consent to sex</p>	<p>12 to 16 According to the Criminal Law Amendment Act it is an offence for an adult or another child to have sex with or to sexually violate (non-penetrative acts) a child who is between 12 and 16 years, even with that child’s consent.</p> <p>It is however a defence to such a charge if the accused was deceived by the child into believing that the child was above 16.</p> <p>If two children between 12 and 16 years engage in penetrative sex with each other, they must both be charged under the Act with ‘statutory rape’. However, to prevent unnecessary and frivolous prosecutions of children, the decision to prosecute the children must be authorised by the National Director of Public Prosecutions.</p> <p>If two children between 12 and 16 years engage in non-penetrative sexual acts with each other, they must both be charged under the Act with ‘statutory sexual violation’. To prevent unnecessary and frivolous prosecutions of children, the decision to prosecute the children must be authorised by the relevant provincial Director of Public Prosecutions. In addition, it is a defence to argue that both the accused were children with an age difference of not more than two years between them at the time of the offence.</p>	<p>Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007. Sections 15 and 16 read with section 1(1)(b) and section 56(2).</p>
<p>Children capable of consenting to sex</p>	<p>16</p>	<p>Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007. Section 1(1)(b).</p>

¹ Children’s Institute, UNIVERSITY OF CAPE TOWN & CENTRE FOR CHILD LAW, UNIVERSITY OF PRETORIA, *Legal guide to age thresholds for children*, 2008.

b) Age of Criminal Responsibility²

No Criminal Capacity	Below 10 A child who commits an offence while under the age of 10 years does not have criminal capacity and cannot be prosecuted for that offence. It is referred to a probation officer instead.	Child Justice Act 2008
Rebuttable presumption that the child lacks Criminal Capacity	10 to 14 The prosecutor has the possibility to charge a child older than 10 but younger than 14. In that case, the State must prove beyond reasonable doubt the capacity of the child to appreciate the difference between right and wrong at the time of the commission of an alleged offence and to act in accordance with that appreciation.	Child Justice Act 2008
Criminal Capacity	14 and older	Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007. Section 1(1)(b).

c) Age of Marriage³

Civil law marriage	18 (without parental consent) Girls under 18 but older than 15 need their parents' consent to get married. If they are under the age of 15 , they also need the consent of the Minister of Home Affairs. Boys under 18 need their parents' consent as well as the consent of the Minister of Home Affairs to get married.	The Marriage Act 25 of 1961.
Customary law marriage	18 (without parental consent) Children under 18 need their parents' consent to get married. If they are under the age of 18 the Minister of Home Affairs or an officer in the public service authorized by the Minister may also give permission for the marriage. Note: Unlike the Marriage Act, no distinction is made between boys and girls.	Recognition of Customary Marriages Act 120 of 1998. Section 3.
Civil Union	18	Civil Union Act 17 of 2006.

² *Id.*

³ *Id.*