

Ombudsperson for Children in South Africa

An independent institution to protect the rights of all children



Report on the Round Table Discussion 31 October 2013

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Acknowledgements

Molo Songololo board expresses sincere gratitude and thanks to:

Molo Songololo staff for their hard work, passion and commitment which resulted in a very successful national Round Table Discussion on the establishment of an OMBUDSPERSON FOR CHILDREN (OC) in South Africa held on 31 October 2013. Debora Mobilyn and Ronnie Ngalo who project-managed the Young People's Forum and Round Table Discussion.

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Our special guests who presented their organisational responses at the Round Table Discussion: Aida Girma (UNICEF - South African Representative), Zane Dangor (Department of Social Development), Dr Rose September (Department of Women, Children and People with Disabilities), and Melanie Dugmore (South African Human Rights Commission).

Our special expert guests Mwiba Mwemba (Zambian Human Rights Commission: Office of the Commissioner for Children) and Ismail Bawamia (Mauritian Ombudsperson for Children) – for providing insight into their respective country experiences in the setting up of an Ombudsperson for Children, its benefits to children, government and society and its challenges.

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(Ilitha Labantu), Pritima Osman (Department of Justice and Constitutional Development) and Ronel Van Zyl (South African Law Reform Commission.).

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PROTECTING THE RIGHTS OF ALL CHILDREN

Molo Songololo is a registered non-profit organisation (NPO) that strives to advance the rights, care, development, protection and participation of children through awareness, advocacy, education, training and provision of services. Our vision is for all children to enjoy their rights, and for their rights to be respected in a free, safe and caring environment and society.

looking out for children

accountability for and with children

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"My wish is that the government make lives easier for children and to better our world."

Tina Gogela

16 years old, Lentegeur High School, Mitchell's Plain



"An Ombudsperson for Children (OC) is an independent institution which defends children's rights and acts as a champion. The ombudsperson promotes children's rights and views."

Kyle Abrahams

16 years old, Simunye Secondary School, Delft



Foreword

Matilda Vantura

Chairperson of the Molo Songololo Board



Molo Songololo is delighted to present the final report: OMBUDSPERSON FOR CHILDREN in South Africa of the Round Table Discussion held on 31 October 2013 at the Centre for the Book in Cape Town. We are privileged to have learnt from those who have walked this path before us. We thank Aida Girma (UNICEF: the South

African Representative), Ismail Bawamia (an Investigator at the Ombudsperson's Office in Mauritius) and Mwiba Mwemba (Programme Officer from the Office of the Commissioner for Children: Zambian Human Rights Commission).

Thank you to all partners, supporters and participating organisations, who travelled long distances to attend the Round Table Discussion. This serves to remind us how important our work with children is. We are grateful that all the children received special permission to attend and participate in this historical event. The children have spoken about what they want for their future. We salute them for their honesty.

We have listened and will do everything in our power to make their dreams a reality in their lifetime. I am confident that the Round Table discussion yielded solutions and strategies on how to tackle the establishment of an independent and autonomous Ombudsperson for Children in South Africa.

Ms Aida Girma

UNICEF SA-Representative



Children are citizens and need equal protection, but with a difference. Children must have a mechanism that is for them, works with them and has their interest's central to its operations. It must actively promote the views of children, making sure that children are heard and have the direct involvement of children in its governance. Lastly, it must at all times promote the best interests of children and promote an understanding and awareness of child rights.

In view of South Africa's rich history and prominent role in the child rights arena, to encourage the Government of South Africa to ratify the Optional Protocol to the CRC on a Communications Procedure. This will assert South Africa's leadership role in child rights and also set an example for other countries on the African continent to follow. Today is the milestone in an important process to advocate and gain momentum for the establishment of an independent and autonomous Ombudsperson for Children that will give true meaning to the principle of Children First! South Africa's children deserve nothing less.

UNICEF is glad to be part of this process and will walk this journey with you. On behalf of UNICEF, I would like to reiterate our support to ensuring that every child in South Africa reaches his or her full potential.

Introduction

In South Africa the idea for an **INDEPENDENT AUTHORITY** to promote, protect, monitor and report on children's rights and wellbeing was discussed in the late 1980's (**National Child Rights Committee**) and early 1990s (The **International Summit on the Rights of Children in South Africa**, the **Constitutional Reform Process**, 1992–1994 and subsequent **Child Law Reform Process** which started in 1996).

The **Draft Children's Bill 2002** included provisions for the appointment of a **CHILDREN'S PROTECTOR**.

It stated that the Minister must appoint a person as the **CHILDREN'S PROTECTOR** that functions separately from the Department and is a public entity for the purpose of the Public Finance Management Act.

The Constitution of the Western Cape and the Kwazulu Natal Governments obligates the Provincial Legislatures and Premiers to establish a Commissioner for Children with power to monitor, investigate, research, educate, lobby, advise and report on matters pertaining to children. It further provides provincial legislation to set out duties, powers and functions of the Commissioner.

Thus, the discussion and call for the establishment of an independent monitoring instrument to promote, protect, investigate and report on the rights of children in South Africa is not a new one. Molo Songololo has been part of these discussions since the late 1980s.

In January 2013, Molo Songololo initiated another process to create dialogue and intervention for the establishment of an **OMBUDSPERSON FOR CHILDREN** in South Africa. The first steps involved a rapid assessment and consultation on the need and merit for an **OMBUDSPERSON FOR CHILDREN**. The research report conducted by Catherine Franks and Patric Solomons provides an analysis of the need for a **NATIONAL INDEPENDENT OMBUDSPERSON FOR CHILDREN** in South Africa. The report also reflects the views of key child rights NGO role-players, children and young people themselves. The conceptual report was released in April 2013 and is available on Molo Songololo's website.

Subsequent consultations with key child rights role-players indicated that there is a need for a national dialogue with government and non-governmental role-players resulted in the hosting of a Round Table Discussion on 31 October 2013 which brought together various experts and role-players from different government departments, civil society organisation, UNICEF and young people to:

- **Establish the merit of and need for an INDEPENDENT AUTHORITY to promote and monitor children**
- **Examine international experience and best practice models, institutional and financing arrangements**
- **Identify the NATURE, SCOPE, POWERS and BENEFITS for children, government and society**
- **Make recommendations for intervention**

This report reflects on the Round Table Discussion held and presents a conceptual understanding of what an **OMBUDSPERSON FOR CHILDREN** including the Round Table **DISCUSSION STATEMENT** which was endorsed by the various partners.



accountability for and with children



looking out for children



Section 1

A: Round Table Discussion

The Round Table Discussion was held on the eve of **INTERNATIONAL CHILDREN'S DAY**, 31 October 2013. Molo Songololo Board chairperson, Matilda Vantura welcomed the participants and representatives of various government departments, NGOs, human rights institutions, UN agencies and children/young people who, despite the last rains of spring in Cape Town, made their way across the City. They included:

- 116 people signed the register
- 37 children and young people of the 116 participants: 62 represented 39 NPO's, NGO's and CBO's
- 1 represented 4 national and 5 provincial government departments
- 1 represented a Chapter 9 institution
- 3 represented UNICEF
- 2 expert guests (1 from Mauritian and 1 from Zambian Ombudspersons for Children Offices).

The theme for the dialogues was:

Looking out for children: Accountability for and with children!

Andre Viviers, UNICEF South Africa



Andre Viviers acted as the programme director held a tight rein on the allocated time for each speaker to present their insights, analysis, statements of commitment and recommended considerations for the establishment of an autonomous and independent Ombudsperson for Children. He provided opportunities for participants to engage and comment from the floor and especially afforded children and young people to express their views. He also helped Molo Songololo develop the theme for the Round Table Discussion.

South Africa's commitment towards children!

Patric Solomons, Director for Molo Songololo



Patric Solomons gave an historical overview of Molo Songololo's work over 30 years and South Africa's response and failure to promote and protect children's rights. He illustrated how the development of the child rights framework in South Africa mirrors the on-going dialogue for an OMBUDSPERSON FOR CHILDREN in South Africa. He emphasised how, during this period, many Ombudspersons for Children have been set up in many other countries; and highlighted South Africa's international obligation to establish an independent monitoring mechanism to advocate, protect and report on the rights of the child.

Aida Girma, UNICEF South African Representative



Aida Girma said that: "it is imperative that children have a mechanism that is for them, works for them and has their interest central to its operations... In view of South Africa's rich history and prominent role in the child rights arena, to encourage the Government of South Africa to ratify the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure. This will assert South Africa's leadership role in child rights and also set an example for other countries on the African continent to follow – South Africa's children deserve nothing less. UNICEF is glad to be part of this process and will walk the journey with you".

Holding government accountable

Rose September, Director of the Department of Women, Children and People with Disabilities

Rose September participated “with the reservation of a final opinion to afford the sector and all other stakeholders with optimum opportunities for dialogue, debate and engagement, especially children”. Her overview drew on how civil society organisations have continually held the torch for child rights and the extent to which government has taken on the baton.



Zane Dangor, Special Advisor to the Minister for the Department of Social Development

Zane Dangor started off by asking the question: “How do we hold government accountable, if it [Ombudsperson for Children] is not an independent institution? Is the option to strengthen the Human Rights Commission? Many of the institutions are currently geared to dealing with the issues as they affect adults, not the 40% of our population [which are children]. Do we need to establish an additional Chapter 9 Institution? This will require an act of Parliament and a two-thirds agreement within Parliament. Is it possible to amend the Children’s Act to make provision for a Children’s Protector within that legislation? Do we amend existing legislation, if we look at the provision in Chapter 22 and look at the concerns raised this morning; a lot of those issues which were taken out are in line with what people already raised.”



Melanie Dugmore, South African Human Rights Commission

Melanie Dugmore emphasized the need for government to be held accountable for the abuse of and failure to protect the rights of the children. She reminded the audience that it took up to 10 years to promulgate the new Children’s Act and noted that we cannot afford to wait that long for the Ombudsperson for Children to be set up. She highlighted various examples of how children’s rights are being violated and how an Ombudsperson for Children can help to protect children.



Nkosekhaya Lala, Western Cape Government

Nkosekhaya Lala stated that the Western Cape and KwaZulu-Natal have their own provincial Constitution, which in the case of the Western Cape Government made provision for a Commissioner for Children. He said: “The Western Cape Government, however, has proposed a constitutional amendment to the section that it is establishing ... the Commissioner for Children, so as to make the establishment of [this body] optional, not instructive [at provincial level]. That process is still pending, and I do understand that there are organisations that had made representations in that regard, and they were even called for oral hearings.” He said that the WCG is in full support of an Ombudsperson for Children at a National level, as a coordinating body, and he offered research support to set this up.



Concluding observations

Despite increased efforts and resources employed by the South African government and civil society to address inequality, disparities, poverty, hunger, depravation in health, education, social services and care and protection of our children; our results and impact remain poor. Speakers conceded that an OMBUDSPERSON FOR CHILDREN will help government and civil society to strengthen the national and provincial child rights framework and help to:

- Promote the rights of the child to children, government and civil society
- Monitor government’s implementation of the child rights programme
- Ensure that children’s interests and opinions are heard and considered
- Investigate and report on children’s wellbeing
- Identify key challenges and make recommendations to protect the rights of all children

The Round Table noted that South Africa has an obligation to ratify the Optional Protocol to the Convention on the Rights of the Child on Communication Procedure; and commit and implement the recommendation to establish INDEPENDENT HUMAN RIGHTS MONITORING MECHANISMS FOR CHILDREN.

Child participation: direct involvement of children

UNICEF SA-Representative, Ms Irma Girda further stated that an independent monitoring mechanism must “actively promote the views of children making sure that children are heard and have the direct involvement of children in its governance”.

Molo Songololo’s research indicates that children’s active participation is one of the key features of an OMBUDSPERSON FOR CHILDREN; that the needs, interests, views and opinions of children are central and should be given due consideration. Children participate in decision-making processes and advise the Ombudsperson. Children also make complaints which must be investigated. Molo Songololo consulted with children and young people and established a Young People’s Forum aimed to involve children directly in the dialogue on the need for an Ombudsperson for Children in South Africa. Thirty-seven learners from different schools and communities (Atlantis, Athlone, Delft, Khayelitsha, Mitchell’s Plain, Philippi and Nyanga) participated in the Round Table Discussion. They met for 4 consecutive Saturdays at different schools in different communities to discuss the challenges they face, learn about what an Ombudsperson is; and prepare their input for the Round Table Discussion.

The young people spoke confidently and expressed freely to the adult participants the many hardships they and other children face in their communities. They told their stories about abuse and violations at schools, in their homes and their communities where they witnessed their friends and family members in situations that violate both their dignity and self-worth. They stated that children and young people experience human rights abuses every day. This is their daily reality.

The audience was visibly moved and agreed wholeheartedly with the concluding statement:

“We really need an OC because our future is being destroyed. I want the government and organisations to work together to set up the OC”

Raghamat Davids, 15 years old, Lentegeur High School, Mitchell’s Plain

Rushana Jafta, a 16 year old learner from Peakview High School in Athlone stated the following: “Children’s rights are being violated and they just don’t know that their rights are being violated. They are being all happy about it, but they don’t know the real reason behind everything. Things they are experiencing in my community are gangsterism, peer pressure at schools, drug abuse, substance abuse, prostitution is taking place as well, and teenage pregnancies, drop-outs... Something is wrong... The government and NGOs in South Africa, they should get an OC for SA. The OC that they are going to elect should be someone that is trustworthy, that is going to protect the rights of all children because children from 17 and below cannot vote in government, so we need the OC in South Africa to speak out for young children that are being abused and about their rights that are being violated so that their voices can also be heard.”



Keeping an eye on children

Representatives from various partner organisations presented their views and argument for an OMBUDSPERSON FOR CHILDREN in South Africa and why it is imperative that the rights and interests of children are permanently kept high on the national agenda in South Africa.

Ultimately, everyone agreed that there is a dire need for an independent and autonomous institution that monitors progress concerning the implementation of the rights of the child; and a body that respects children and on whom they can depend on to promote and protect their rights. Panellists included:

Pritima Osman,
Department of Justice and Constitutional Development

Ronel Van Zyl, South African Law Reform Council)

Both **Pritima Osman** and **Ronel Van Zyl** not only provided the background of the journey of the Children's Act, but also the options that were available with caution support with a vision of the rigour required in the process forward to establish an OC.

Patricia Vuka, DICAG

Patricia Vuka represented the disabled children and noted the media headline: "A Nation's Shame" which shared the statistics of current status of Children's Rights violation. She said that "it was a sad day for me to read about the number of children that have been murdered since 2012. The stark realization of these facts and the emerging feelings of deep disappointment left a bitter taste in my mouth... Ultimately we are in full support of the Ombudsperson for Children."

Kevishinee Pillay, Child Rights Centre

Kevishinee Pillay offered its full support and proposed that the campaign moves forward to maximize efforts, continue sustained dialogue and ensure purpose and commitment to the establishment of the Ombudsperson for Children.

Lois Law, The Catholic Bishops Conference

Lois Law in their support to an Independent and autonomous Ombudsperson for Children, noted the urgency of the matter at hand: "It should always be remembered that a delay in the life of a child is a very long time and help may be too late! At this point in our history the 'born frees' have yet to experience the inalienable rights guaranteed them in terms of the constitution. Our efforts thus far have fallen short and an Ombudsperson for Children would do much to remedy this failure. The complete autonomy of an Ombudsperson must be assured. This position requires such independence and can only become effective if that is guaranteed."

Vuyani Ntanjana, The Nelson Mandela's Children's Fund

Vuyani Ntanjana noted the imperative of putting children first and respecting children. What stood out about what he said is the observation of how society behaves which shows the extent of the problems and the root causes of the same. He shared that project they have initiated with the University of the Western Cape - to harmonise the legislation with regards to children, which should go a long way to supporting this campaign.

Tholakele Solomon, World Vision

Tholakele Solomon's input was centred by the words of Nelson Mandela: "There can be no keener revelation of a society's soul than the way in which it treats its children." While they noted all the aspects that all other speakers shared, they said: "The OC must be a politically neutral individual, to ensure there is no favouritism."





Niresh Ramklass, Child Welfare Cape Town

Niresh Ramklass asked how many people actually hit their children? He asked, what is wrong with our democracy? His point was that we have to practice what we preach: if we are to campaign for the promotion and protection of children we must start with where we are at. He highlighted the absolute need for an adequately resourced structure with the capacity to investigate and deal with the unprecedented violation of children's rights. He supports the establishment of an OC that can help to promote the rights and protection of children and hold government and society accountable



Sindiswa Moyo, Ilitha Labantu

Sindiswa Moyo emphasised the voices of the children, for whom we need to work together. She noted while it may seem that the Department for Women, Children and People with Disabilities may be doing the work of promoting children and their rights, the Ombudsperson needs to be independent of government structures.

Concluding observations

In essence, the panellist reflected on the on-going advances made to implement and realise the rights of children, remaining concern highlighting key challenges and failure to protect vulnerable children; and the need to strengthen accountability for and with children. It is also in response to what children want:

"I want the government to sit down and talk about how they going to put the Ombudsperson idea into play in schools." **Jamie-Lee Jacobs, 17 years old, Peakview Secondary School in Bridgetown, Athlone.**

They also noted that the South African Chapter 9 and Public Sector institutions aim to protect the rights of both adults and children. Yet, the institutions structures, laws, policies and procedures fail to take the views of children into account and make provision to prioritise children and hold government accountable. Children are particularly vulnerable because they do not have the vote and their development state makes them more susceptible to human rights violations.

However, caution has been signalled that the OC will not work if it does not have a legal constitutional mandate, sufficient resources (financial, staff, infrastructure and power), if its status is lower than other Chapter 9 institutions, like the South African Human Rights Commission, and if it is not integrated into the 'mainstream' human rights fold.

Children, youth and adult participants agreed on the following:

- Children are central to the workings of and OC
- Awareness and education on the role, function and workings of and OC is needed
- Government have a responsibility and international obligation to set up a national monitoring instrument for children that is autonomous and independent
- Provincial governments of KwaZulu Natal and Western Cape have a constitutional obligation to establish provincial OCs
- There is a need to mobilise a broad national support to advocate for a national OC
- There is a need to mobilise support to lobby KwaZulu Natal & Western Cape to fulfil their constitutional mandates and obligations to establish Commissioners for Children.
- Need research on the best suitable OC model for South Africa
- Engage key government departments and parliaments on OC

B: International Practice Country Models

Section 1

The two country models were presented at the Round Table discussion and gave the inspired hope to participants that the establishment of a national independent Ombudsperson for Children in South Africa is not only possible, but by all accounts probable. Our special expert guest speakers were from the Office of the Commissioner for Children - Zambia Human Rights Commission and the Mauritian Ombudsperson for Children's Office.

They shared the legislative framework, the structure, procedures and the methodologies, and punctuated their presentations with anecdotal stories of how things really work on both operational level and political levels. Key to the presentations was the absolute need for the OC to work within an ethical foundation that aims to harness partnerships with the non-profit organisations and government in order to sow public confidence and objective collegiality that is crucial for peer accountability. Both presentations highlighted the importance of having child participation and for the voices of children to be central to everything that the OC do: raising awareness to ensure that children know their rights and can assert them unashamedly, supporting them throughout all processes and following up with all cases so that each and every one of them is dealt with fairly.

The Mauritian model

Ismail Bawamia is an investigator in the Mauritian Ombudsperson for Children's Office stated that in Mauritius, the Ombudsperson is governed by the Ombudsperson for Children's Act (2003), which is based on the Norwegian model. It was voted in Parliament in October 2003 and came into effect on 20 November 2003. The first Ombudsperson was appointed on 10 December 2003 and took an oath on 11 December of the same year.



According to the Act, the president of the Republic appoints the Ombudsperson after consultation with the Prime Minister, the Leader of the Opposition, the Minister and such other persons, as he considers appropriate.

The OC shall submit a report of its activities during the preceding year to the President of the Republic not later than 30 September in each year. The OC may at any other time submit a special report on any matter which, in his or her opinion, is of such urgency or importance that it should not be delayed until submission of the annual report to the President. The President shall cause every report sent to him to be laid before the National Assembly within one month of its submission.

There are 6 functions that may proceed along the following sequence for the Ombudsperson for Children:

Conduct investigation either upon complaint or own motion

Make proposals to act as a mediator to resolve any dispute relating to children

Advise ministers by making proposals which may have arisen during investigations

Advise public bodies by compiling a report to such person or authority

Sensitise children, parents and the public in general, on child rights

Monitoring and alerting the government whenever the services for children are not being delivered, law review, assessing practices, review policies on matters related to children.

Committing an offence

A person shall commit an offence where he or she:

- Fails to attend before the OC
- Refuses to take the oath before the OC
- Wilfully refuses to furnish any information or to produce any document, record, file or exhibit
- Refuses to answer to the best of his knowledge any question lawfully put to him by the OC
- Knowingly gives the OC false or misleading evidence
- Insults the OC in any sitting
- Wilfully interrupts the proceedings during an investigation

The following matters apply within the judicial system:

- OC and the court: The OC shall not investigate in any case which is pending before any court but may refer the child involved in such a case to the Child Protection Services for advice, assistance or counselling.
- Protection of witness: No statement made in good faith by any person to the OC in the course of an investigation shall subject the maker of the statement to, or be used against him in, any civil or criminal proceedings.
- Immunity from legal proceedings: No liability, civil or criminal, shall lie against the OC or any member of her staff, in respect of anything which is done or purported to be done, in good faith under this Act or in respect of the publication of any report, proceedings or other matter under the Act.

The Zambian model

Mwiba Mwemba, the Programmes Officer in the Office of the Commissioner for Children, Zambia Human Rights Commission provided valuable insight into the nature, features, powers and duties of the Zambian OMBUDSPERSON FOR CHILDREN.

The Zambian Human Rights Commission (ZHRC) is a national human rights institution with a broader mandate of monitoring, promoting and protecting human rights. After it started working in 1997, it set up a thematic committee to promote and protect children's rights, using the Commission's enabling legislation. However it soon realised that this was not enough to give children's rights the priority it deserved.

The OCC's legal mandate is contained in the Human Rights Commission Act No. 39 of 1996. In 2007, the Zambia Human Rights Commission signed a Memorandum of Understanding (MoU) with Save the Children Zambia, to create the Office of the Commissioner for Children using the model of Children's Ombudsperson.

A new office was set up so that the Commissioner for Children could effectively execute its mandate. The President appoints all seven Commissioners, who constitute the Zambia Human Rights Commission. The Commissioner for Children is focused on the effective promotion and protection of children's rights, using a child-centred approach in all its work.



What are the challenges that the OCC faces?

- Delayed implementation of the OCC's recommendations by relevant authorities. Follow-up visits are used as a solution to engage authorities.
- Some members of the public do not understand or appreciate the role of the Commission and the OCC. This is often mistaken for policing.
- The conservative attitudes, religious, traditional and/or institutionalised bad practices within the country impede the promotion and implementation of children's rights.
- Limited number of staff in the OCC. The solution will come with the restructuring of the Commission and the OCC will have a defined establishment.
- Information management and record keeping: And establish a database for the OCC.
- Inadequate transport resulting in delayed programme implementation.

What are the lessons that can be learnt from the Zambian experience?

- Experience has shown that when children's rights are left to programme departments within the Commission, they are usually overshadowed by other activities and not given the priority or urgency they deserve.
- The opportunity to prioritise children's rights therefore came with the establishment of the partnership between the Commission and Save the Children by creating the OCC.
- From experience Zambia has learnt and appreciated that in the area of children's rights "independent national human rights institutions are by their very nature well placed to transform the rhetoric of international instruments into practical reality at the local level".
- This is based on the understanding that because an independent national human rights institution is national and more neutral in nature:

It can accommodate the challenges posed by local conditions and cultures (respecting ethnic, cultural, religious and linguistic diversity) in implementing internationally agreed child rights principles; and that The national institution can provide constructive and well informed criticism from within – a source of advice and warning which is often more easily accepted than criticism from outside sources.
- Effective operation of such an office requires support from Government, Commissioners, management and other stakeholders.
- It also needs availability of resources, both human and financial, for effective programme implementation.
- Active engagement of Government at all levels (Legislature, Executive and the Judiciary) is indispensable.
- Establishing partnerships with both international and local CSO's is a necessary tool.
- Using influential people in society (MPs, Judges, Ministers, PS, traditional leaders, the clergy, well known and respected artists etc.) easily win support from the public and help eradicate conservative traditional, religious, institutional and attitudinal barriers that compromise the dignity of children.
- Learning from international and regional best practices are important in the establishment of such an office and if performance is to meet the expectations of the general the public.
- Effective programme implementation requires enough planning to avoid programme failure and being wasteful of the limited and much needed resources.
- Other partners who mean well and show their willingness to supplement the efforts made by partners like Save the Children and UNICEF should be welcome.

Section 1

C: Round table Discussion Statement

Recalling our commitment to the rights of all children to survival, development, protection and participation as specified in the Convention on the Rights of the Child, the African Charter on the Rights and Welfare of the Child, and the Constitution of the Republic of South Africa,

Recalling the Convention on the Elimination of All forms of Discrimination against Women and the Convention on the Rights of Persons with Disabilities, that is intrinsically linked to the realisation of child rights,

Re-affirming that child rights are central to the human rights agenda in the country and require the highest level of commitment from all Organs of State, Traditional Leaders, Religious Leaders, Academia, Civil Society, Business and Multi-lateral Partners,

Acknowledging that the rights of all children are based on the principles of universality, non-discrimination, indivisibility and participation,

Recognising that significant progress has been made in the country towards the realisation of the rights of children,

We conclude that children in South Africa have the right to an independent and autonomous Ombudsperson with the sole responsibility and mandate to promote and protect their rights as safeguarded in the South African Constitution, the African Charter on the Rights and Welfare of the Child, the United Nations Convention on the Rights of the Child and domestic legislation.

An Ombudsperson for Children must be independent and governed by an Act of Parliament that safeguards its autonomy and prescribes its mandate. An Ombudsperson for Children in South Africa:

- Must be accessible to all children
- Promote children's rights in society and in public policy, law and practice
- Ensure the effective, meaningful and ethical participation of children in its governance and further ensure that children have their voices heard in all matters affecting them and access to information related to their rights and the work of the Ombudsperson
- Consult with children and represent their views and opinions in government and society
- Promote and protect the principle of the best interest of the child in all spheres of government and society
- Monitor progress made to implement the rights of the child
- Conduct research and report on the wellbeing of children
- The Ombudsperson should be able to receive complaints about child rights violations, either individually or collectively. These complaints may be submitted by children themselves or on behalf of children according to established procedures that includes investigations, responses to complaints and ability to institute remedy or refer as appropriate and empowered by law

The creation of such an authority has been promoted by the United Nations Committee on the Rights of the Child as part of the child rights monitoring framework that state parties, including South Africa, have to implement.


Various discussions in South Africa related to the Constitutional Development and Child Law Reform Process and Child Rights Development Framework explored the establishment of an independent statutory authority to monitor and promote the rights and wellbeing of children took place over the last twenty years. Research by UNICEF highlights the benefits of an OC for children, society and government.

Following on the Round Table Discussion on an OMBUDSPERSON FOR CHILDREN the following immediate action and response are proposed:

- Disseminate Round Table Discussion Report to all participants and key role-players
- Establish a forum to coordinate a national response advocating for an Ombudsperson for Children in South Africa
- Lobby Parliament to host a public hearing on South Africa's international obligations in relation to Ombudsperson for Children
- Request that the DoJ & CD mandate the SALRC to revisit previous proposals and further investigate the legal, institutional and financing implications of an independent statutory Ombudsperson for Children in South Africa
- Engage with government departments, non-governmental organisations and children & young people to promote the call for an Ombudsperson for Children on national level
- Conduct research, share information, and network with existing Ombudspersons for Children on the possible nature, scope and powers of an Ombudsperson for Children in South Africa

Held in Cape Town on 31 October 2013.





**"The Ombuds
for us children must go
to Government and say what
the problems are that we have
in our community and say what is
happening, and how the government
must sort out the problems and
help children and youth."**

Terrence Chitongo
14 years, Catholic Welfare
Organisation, Khayelitsha

**"I want the
Ombudsperson to
help prevent people from
hurting and abusing children
and stop parents from hitting
their children."**

Ziyanda Wagana
15 years, Simunye High
School

**"They
must report
to government and
social organisations and
monitor government."**


Shamima Haoust
14 years, Atlantis
Secondary School

**"The protector
of children must find
out about the problems
and troubles of children and
help our organisations and
government support and help
children."**

Luvo Makhaphela
16 years, Bulumko High
School

**"The protector
for children must care
about us children and young
people and make sure that our
rights are respected and that
we are treated well. Children are
abused and raped by fathers and
men in our communities."**

Ziyanda Mda
15 years, Oscar Mpeta High
School



**"The
Ombudsperon for us
children must work with
children, listen to our views and
our ideas to make sure we are
treated better and that we can be
educated and enjoy our rights."**

Sibahle Bongoza
16 years, Lentegeur High School

**"The protector
of children must do
research in the community
and find the children who
don't have families and build
shelter for them."**

Anelisa Neku
12 years from Welwitschia
Primary School

**"Children
must decide who the
Ombudsperson will be. it
must be someone we know
and respect."**

Siviwe Mtalana
15 years, Simunye High
School

**"I want the
Ombudsperson to come
to our areas and see how
bad it is for children. We don't
have enough food to eat because
our parents are poor and have
no jobs."**

Bayanda Gomani
16 years, Zola High School

**"He or she
must fight for the
rights of children and
the protection of children
in our poor areas."**

Bronwyn Davids
15 years, Atlantis High
School

Section 2

Conceptual Understanding

The following section pulls together the conceptual views, opinions and understanding of the Round Table Discussion participants pulled together from recorded notes and tapes. This section will help the reader to develop an understanding of what an OMBUDSPERSON FOR CHILDREN is; its purpose, functions, features, powers and duties, etc.

How do we define an OMBUDSPERSON FOR CHILDREN (OC)?

"An Ombudsman for Children is an independent institution which defends Children's Rights and acts as a champion. The Ombudsman promotes children's rights and views."

Kyle Abrahams, 16 years old, Simunye Secondary School, Delft

"An OC is someone that's trustworthy and reliable."

Rushana Jaffha, 16 years old, Peakview Secondary School, Athlone

"The OC would stand up for the rights of children, which is being violated everyday as we speak."

Michaela Williams, 16 years old, Lentegeur School, Mitchell's Plain

"Government and NGOs should listen to children's views and ideas."

Kyle Abrahams, Simunye Secondary, 17 years old, Delft

"My wish is that the government make lives easier for children and to better our world."

Tina Gogela, 16 years old, Lentegeur Secondary, Mitchell's Plain

"Independence is fundamental for its success and its ability to carry out its mandate."

Irma Girda, SA Representative, UNICEF

What are the features of an OMBUDSPERSON FOR CHILDREN?

- There is an identifiable individual 'ombudsman' or representative for children
- The OC should be a high profile individual that children can relate to
- The OC will have the right to report separately on the state of children's human rights
- The powers of the OC should be broad and cover all children
- The OC will create a culture of peer accountability with all government departments because they cannot always accept direct criticism
- The OC must be a politically neutral individual above party politics, to ensure there is no favouritism, and respected as such
- The OC should have the necessary profile, power and duties to protect the rights of all children



What role does an OC play?

- Ensure that children's issues are explicitly reflected and budgeted for in the IDPs of the Local Municipalities and the National Development Plan
- Ensure that NGOs that address the issues of children are funded and government plays the coordination and supervisory role
- Create a significant local mechanism to deal with complaints that is in line with spirit of the Optional Protocol to encourage government to create and improve services, mechanisms and support for children in the country
- Ensure that models and approaches that are developed by government, NGOs and other players become common practice and rolled out throughout the country for the benefit of children

Why must an OC be independent and autonomous?

- The complete autonomy and independence of an OC must be assured and guaranteed
- The right person should be appointed through an independent process
- To ensure the independence and autonomy, the OC must employ staff, obtain services, acquire/dispose of movable property, rent immovable property, operate bank accounts, invest money, take out insurance, institute/defend legal action, perform legal acts, delegate powers and duties.
- There should be enough of the right staff to pick up on children's issues and mainstreaming matters, e.g. Sign language needs to be accessible to all children, not only disabled children
- The OC must be guaranteed a distinct and sufficient budget allocated to do its work for children
- When the OC is accountable they will build trust and legitimacy to protect its independence

What involvement will children have with an OC?

- Children must have access to the OC
- The OC must be accessible to children
- Children must participate in the work of the Ombudsperson
- Children must have their voices heard in all matters affecting them
- Children must have access to information related to their rights and the work of the Ombudsperson.



How will the OC deal with complaints of children?

- Complaints can be submitted either individually or as a group
- Complaints can be submitted by children themselves or on behalf of children
- There would be established child-centred procedures responding to complaints and investigations that are sensitive to children
- The OC would be empowered by law to institute remedy or refer appropriately
- Recommendations would be respected and the findings and/ or interventions honoured to remedy the problem as soon as possible
- Recommendations and advice must be made to the appropriate authority to act judicially in relation to practices, policies and legislations pertaining to children

If one follows Chapter 22 of the draft Children's Bill as proposed by South African Law Reform Commission (SALRC), complaints would be dealt with in the following manner:

- Must consider complaints lodged by any person about any matter concerning the implementation of the Children's Act
- May conduct an investigation
- May take any steps necessary to resolve the complaint
- May refer the complaint to any appropriate authority, including the child and family court registrar (children's court)
- Must investigate any report on the death of a child at a childcare facility, death of child in alternative care or the death of child at a drop-in centre.
- May routinely or on receipt of a complaint or a report on the death of a child (see above) inspect any child and youth care centre, partial care facility or drop-in centre whether registered or not.
- May inspect any other premises to which a complaint or report refers.
- The Children's Protector may authorise any other person to carry out reports referred to above.
- The Director-General, a provincial head of department or a municipality must furnish the Children's Protector with information in their possession as the Children's Protector may request for the purpose of an investigation or inspection.
- The Children's Protector must compile a report after completion of investigation or inspection.



After investigations, the OC should report and provide recommendations to:

- The Minister for Social Development, the MEC for Social Development in the province or the municipality concerned;
- The Child and Family Court registrar (Children's court), if action is needed in terms of Chapter 11 (child in need of care and protection);
- The Director of Public Prosecutions, if the investigation or inspection revealed suspected criminal conduct.

Who will the OC monitor and why?

Some clear international guiding principles from the United Nations Convention on the Rights of the Child's General Comment No 2:

- It should be guided by international human rights and child rights instruments
- It should monitor all public and private authorities
- It should have the highest level of government support
- It should be accessible to all children, including the most vulnerable and marginalised, and have access to children in care or in detention
- It should actively promote the views of children, making sure that children are heard and have the direct involvement of children in its governance
- It must, at all times promote the best interests of children, and an understanding and awareness of child rights.

If one follows the South African Human Rights Commissions functions, then the OC will:

- Report to Parliament on all matters and issues that relate to children
- Draft submissions on all legislation that relates to children
- Draft submissions on all reports (international, national, provincial and local) that relate to children
- Complaints Handling Process
- Investigation Process and Powers
- Hearings
- Litigation
- Resolution of Complaints: Findings/Recommendations; Alternative Dispute Resolution Mechanisms

To whom will the OC report?

The Ombudsperson for Children's Rights should be a nationally coordinated effort where the OC operates at a national level, and if needs be, functions along the lines of chapter 9 institutions (with provincial or regional representations). This instrument becomes even more urgent with the highest reported cases of abuse, neglect, and killings of children in the country.

The Children's Protector should be established as a public entity and therefore comply with the PFMA in all its dealings.

Initially, funding should be appropriated by Parliament on the vote of the Department of Social Development, while donations and other voluntary payments may be made to the Children's Protector with the approval of the Minister.

Income may also be derived from proceeds of investments.

Section 3

Why does South Africa need an OC?

The needs and interests of children

The children and youth who attended the Molo Songololo Child/Youth Forums prepared over a four-week period. These are excerpts from what they had prepared, wrote and expressed at the Round Table discussion.

Siviwe Mtolana, 17 years old, Simunye High School, Delft South:

"The government should promote the children by informing the police station to make sure that the communities are looked after so that children can live safe and enjoy their rights."

"My name is **Tina Gogela. I am 16 years old. I live in Mitchell's Plain** with my mother and father. I am in grade 10. and attend Lentegeur Senior Secondary School. I took part in the Children's Forum that Molo Songololo hosted every Saturday for children and young people from different schools and communities. We learnt about the OC; what it is, what it does, and why it is important for children and young people.

Where I live children and young people experience various problems such as:

- Home: Children don't have a meal at night, abusive parents, chased out of their homes and raped, gangsterism and physical abuse
- Abuse at school: Peer pressure and being bullied to do the wrong things, bullying and being bullied, poor education, dirty classes and toilets and chased out of classes, drug abuse and bullying, peer pressure and bullying
- Community: Being focused on drugs, drug abuse and pregnancy, substance abuse, rape, alcohol abuse and robbed, rape, teenage pregnancy and drug abuse, Gangsterism and drug abuse
- General: teenage pregnancies and gangsterism, rape, bullied, drugs, alcohol, mental and physical abuse, prostitution, teenage pregnancies and substance abuse."

Jamie Lee Jacobs, 16 years old, Peak View Secondary School, Bridgetown:

"The OC must speak up when we are afraid to speak out against our rights that are being abused. The OC must stand up for children when they are scared, listen when children raise their thoughts to the OC and start a programme with police to drive in the school areas to make sure that children get safely to school."

Raghat Davids, 15 years old, Lentegeur Secondary School, Mitchells Plain:

"Government need to go out and see how children live. My wish is that our human dignity is not being taken away, especially the female's human dignity."

"An Ombudsperson is a hero, a champion, kind, honest person, with support staff, trustworthy, who listens to children's views and ideas and someone we can look up to."

Asenathi Skweyiya, 12 year old from Khayelitsha

Our international obligations

The General Assembly of the United Nations adopted a resolution (A/RES/65/207) in 2011 on the important role that an independent and autonomous OMBUDSPERSON plays in the promotion and protection of human rights.

Principles relating to the Status of National Institutions (the so-called Paris Principles) adopted by General Assembly resolution 48/134 of 20 December 1993. It provides amongst others for a human rights based approach, independence, monitoring of public authorities, accessibility and monitoring of human rights, amongst others.

The third Optional Protocol to Convention on the Rights of Children, i.e. the Optional Protocol on a communications procedure (adopted by General Assembly in 2011 and is open for signature since 28 February 2012).

At the World Summit for Children in 1990 world leaders committed: "We ourselves make a solemn commitment to give high priority to the rights of the children."

The United Nations Committee on the rights of the child adopted the General Comment in 2002: "Every state needs an independent human rights institution with responsibility for promoting and protecting children's rights. The committee's principal concern is that the institution, whatever its form, should be able independently and effectively, to monitor, promote and protect children's rights."

The Government of South Africa should ratify the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure. This will assert South Africa's leadership role in child rights and also set an example for other countries on the African continent to follow.

The Government of South Africa should submit reports to the Convention on Rights of the Child:

- Second and Third Country report not submitted.
- Fourth Country report was due 15 June 2012.

Here are the norms, standards and values required to guide, inform and formulate responses to children, child offenders and vulnerable children who need to be cared for and protected:

- The United Nations Convention on the Rights of the Child (CRC);
- The African Charter on the Rights and Welfare of the Child (ACRWC);
- United Nations Rules for the Protection of Children Deprived of their Liberty (the Riyadh Rules);
- United Nations Standard Minimum Rules for the Administration of Child Justice (the Beijing Rules);
- The UN Committee on the Rights of the Child General Comment No 10 on Child Justice; and the
- UNICEF Indicators for Children
- Geneva Declaration on the Rights of the Child
- United Nations Declaration on the Rights of the Child
- Universal Declaration of Human Rights



United Nations



African Union

Our laws and commitment to children

The rights of the child, as set out in Chapter 2 (Bill of Rights), section 28 of the Constitution. Section 28 outlines, in detail, the rights that are accorded to children. Section 7, sub-section 2, enjoins the state to respect, protect, promote and fulfil all the rights, as expressed in the Bill of Rights.

The National South African Legislation, applicable to children's matters are:

- The Constitution of the Republic of South African (108 of 1996)
- Criminal Procedure Act (51 of 1977)
- Children's Act (38 of 2005)
- Children's Amendment Act (41 of 2007)
- Criminal Law Amendment (Sexual Offences and Related Matters) Act (32 of 2007)
- Child Care Amendment Act (96 of 1996 and 13 of 1999)
- Recognition of Customary Marriages Act (120 of 1998)
- Correctional Services Act (111 of 1998)
- Maintenance Act (99 of 1998)
- National Education Policy Act (27 of 1996)
- South African Schools Act (84 of 1996)
- Probation Services Amendment Act (B18d 2002)
- Child Justice Act No 75 of 2008
- The Domestic Violence Act 116 of 1998
- The Births and Deaths Registration Act 51 of 1992

The Western Cape Government, in terms of the Western Cape Constitution (1996), has a mandate to establish a Commissioner for Children. This Commissioner should be established as, and with the powers/ mandates of the Chapter 9 institutions, as outlined in Act 108, Chapter 9, section 79 to monitor, investigate, research, educate, lobby, advise and report on matters pertaining to children.


The KwaZulu-Natal Government is also obligated by the provincial constitution of the province to provide for the establishment of and the powers, function and duties of a provincial Commissioner for Children

There are over 100 pieces of legislation and policies that relate to children in South Africa. The Nelson Mandela Children's Fund is working with the University of the Western Cape to harmonise these instruments.

Why is an OC important?

The OC is important because:

- Section 28 of the South African Constitution promulgates the Rights of children
- Existing Chapter 9 institutions - Public Protector; SA Human Rights Commission; Commission for Gender Equality – does not deal with children in a child-centred or child sensitive manner
- The broader scope of and more protection of children are not afforded by the Children's Act
- The rights of children to approach the court and to be heard is not adhered to
- Sections 4 and 5 of the Children's Act in terms of implementation is noted
- Children's courts need to be given extended powers
- Protecting and promoting the rights of children is a specific function and competency of the national and provincial government
- Department of Social Development, with the monitoring done by the Department of Women, Children and People with Disabilities do not hold other government departments accountable for children's rights abuse or violations
- The proliferation of legislation and institutions does not necessarily solve existing problems of proper implementation and service delivery for children.



STOP CHILD TRAFFICKING

**child prostitution & pornography
child labour & domestic work,
the selling of children
& other exploitative
practises**

Section 4

How do we go about setting up of an OC?

Where are we at with regard to service and access delivery for children?

All government departments and Chapter 9 Institutions are responsible for protecting the rights of children. The South African Human Rights Commission (SAHRC) has focused strategically on access and promoting respect for children's rights in focus areas like that of Health, Education, Home Affairs and Social Development. South Africa has a strong independent judiciary and provisions for legal aid for children and laws that focus on children and legal expertise to draw from. The Office of the Public Protector has 20 offices around the country, which makes it highly accessible to the public.

However, in combination, these institutions do not address the everyday issues regarding the violation of children rights in South Africa by using a child-centred approach or strategy that effectively and efficiently mainstreams children's rights, unequivocally, through resource and/ or infrastructure allocation, advocacy, institutional support, monitoring and evaluation, and reporting.

We therefore conclude that:

- None of these institutions have a special duty toward children in spite of the primary attention given to the rights of children as articulated in the Constitution.
- Children's development state makes them particularly vulnerable to human rights violations
- Children's opinions are rarely taken into account
- Because children cannot vote, they cannot play a meaningful role in political processes
- Children encounter significant problems in using the judicial system to protect their rights or see remedies for violations for their rights and access to organisations that may protect their rights is generally limited
- Children's issues get lost in adults' agendas
- Children do not identify with adult institutions
- Procedures and mechanisms are not child sensitive

Research and investigate a suitable model for SA

It is the intention of this campaign to conduct research, share information, and network with existing OCs on the possible nature, scope and powers of an OC in South Africa. The independence and autonomy of the Ombudsperson for Children can be ensured if the establishment of an Ombudsperson for Children is created through a special Act of Parliament not linked to a specific line department within the Executive Branch of Government (similar to SAHRC Act). If an Ombudsperson is established through child welfare legislation, there is a risk of narrowing its scope and excluding some groups of children. In this way, Parliament plays a key role in overseeing the work of Ombudsperson for Children and ensuring its independence.



We should investigate what it would mean to re-introduce Chapter 22 of the draft Children's Bill as proposed by South African Law Reform Commission with regard to the following:

Appointment and functions:

- Children's Protector is appointed by the Minister of Social Development, following the appointment procedure by Parliamentary Committees (period of 5 years, may be reappointed)
- Functions separately from the Department of Social Development
- A public entity for purposes of the PFMA
- Must without fear, favour or prejudice monitor the implementation of the Children's Act by organs of state, persons and NGOs involved in the protection and well-being of children.

Child Protector's qualifications:

- South African citizen
- Fit and proper person to hold office of OC
- Have appropriate qualifications/experience in the protection and well-being of children

Persons disqualified from becoming/remaining Children's Protector:

- Member of Parliament, a provincial legislature or a municipal council
- A person who has been removed from office

Establish a national Ombudsperson for Children forum

It is proposed that a national coordinating forum be established to facilitate for the following interventions:

- Advocate for the establishment of an OC
- Analyse good practices across different countries of how OCs function
- Engage with government, non-governmental organisations and children and young people to promote the OC
- Lobby parliament to host a public hearing
- Request that the Department of Justice and Constitutional Development mandate the South African Reform Commission to revisit previous proposals and further investigate the legal, institutional and financing of an independent statutory OC
- Ensure that a phone line provides a form of contact for children
- Ensure that, in setting up the OC, a complaints procedures and advocacy services will be locally based
- The OC should help harmonise the local legislation children's issues with International laws of children so they are explicitly reflected and budgeted for in the IDPs of the Local Municipalities and the National Development Plan (NDP)
- Consider different scenarios and possibilities for South Africa
- Consider what would it cost to set up of an OC in terms of budget, staff members, resources
- Refer to the Nelson Mandela Children's Fund (NMCF) research on harmonising legislation:
- What existing institutions and mechanisms fulfil what functions?
- What are the overlaps?
- What are the options?
- Extent to which this will strengthen or weaken UNRC Optional Protocol on communications
- Remember that proliferation of legislation and institutions will not necessarily solve existing problems: proper implementation and service delivery should be addressed

Appendix

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Children / Youth Participants

Name	School	Age	Area	Grade
Shahima Haoust	Atlantis Secondary School	16	Atlantis	10
Gretchen Chansen	Atlantis Secondary School	15	Atlantis	10
Jaundre Lendoor	Atlantis Secondary School	17	Atlantis	10
Thomas Aston	Proteus High School	16	Atlantis	10
Austin Meyer	Saxon Sea Secondary School	16	Atlantis	10
Jerachley Parson	Atlantis Secondary School	16	Atlantis	10
Anelisa Neku	Welwitshia Primary School	12	Delft	7
Kyle Abrahams	Simunye High Secondary School	16	Delft	8
Siviwe Mtalana	Simunye High School	16	Delft	10
Athenkosi Diela	Simunye Secondary School	17	Delft	11
Rhaeza Dollie	Peak View Secondary School	17	Athlone	11
Rushana Jaftha	Peak View Secondary School	16	Athlone	10
Jamie-Lee Jacobs	Peak view Secondary School	16	Mitchell's Plain	10
Micheala Williams	Lenteguer Secondary School	16	Mitchell's Plain	10
Ragmat Davids	Lenteguer Secondary School	16	Mitchell's Plain	10
Micheala Goliath	Lenteguer Secondary School	16	Mitchell's Plain	10
Jade Van Der Ventel	Lenteguer Secondary School	15	Mitchell's Plain	10
Denwin September	Lenteguer Secondary School	14	Mitchell's Plain	9
Litha Panci	Sinethemba High School	16	Phillipi	10
Sibongile Mahlangeni	Sinethemba High School	17	Phillipi	10
Yamkela James	Sinethemba High School	16	Delft	10
Nomampondomise Mtsotso	Sinethemba High School	15	Nyanga	10
Ziyanda Wagana	Sinethemba High School	15	Khayelitsha	10
Bongi Jijana	Lentegeur High School	16	Phillipi	10
Tina Gogela	Lentegeur High School	15	Mitchell's Plain	10
Bronwyn Davids	Atlantis High School	15	Atlantis	10
Nomfundo Tsengiwe	Masibambisane High School	16	Delft South	11
Sibahle Bongoza	Lentegeur High School	16	Phillipi	10
Fuzile Sivuyise	Zola High School	17	Mandalay	10
Bayanda Gomani	Zola High School	16	Kwezi Park	10
Pheliswa Conjwa	Masibambisane High School	16	Delft South	10
Sinethemba Mqwazi	Zola High School	17	Khayelitsha	10
Maureen Mahlangu	Lentegeur High	16	Nyanga	10
Mandla Damane	Sinethemba High School	18	Phillipi	12
Ziyanda Mda	Osca Mpeta High School	16	KTC – Gugulethu	10
Akhona Constable	Oscar Mpeta High School	16	KTC – Gugulethu	10
Luvo Makhaphela	Bulumko High School	18	Samora – Phillipi	11
Asenathi Skweyiya	Catholic Welfare Organisation -	12	Khayelitsha	6
Terence Chitongo	Catholic Welfare Organisation	14	Khayelitsha	8

South African Law Reform Commission: The Children's Bill 2002

CHAPTER 22: CHILDREN'S PROTECTOR

Part 1: Appointment, status and function

Section 318: Appointment of Children's Protector

(1) The Minister must appoint a person as the Children's Protector.

(2) The Children's Protector –

- (a) functions separately from the Department; and
- (b) is a public entity for the purpose of the Public Finance Management Act.

Section 319: Function

The Children's Protector must without fear, favour or prejudice monitor the implementation of this Act by –

- (a) organs of state in all spheres of government; and
- (b) persons and non-governmental organisations involved in the protection and well-being of children.

Section 320: Qualifications

Section 321: Appointment procedure

Section 322: Term of office and conditions of appointment

Section 323: Removal from office

Section 324: Filling of vacancy

Part 2: Powers and duties

Sections 325: Complaints and reports

Section 326: Inspection of child and youth care centres, partial care facilities, shelters, drop-in centres and other premises

Section 327: Access to information

Section 328: Reports after investigations and inspections

Section 329: General powers

The Children's Protector may –

- (a) appoint staff, subject to section 333;
- (b) obtain, by agreement, the services of any person, including an organ of state, for the performance of a specific act, task or assignment;

(c) acquire or dispose of any right in or to movable property, or hire any immovable property;

(d) open and operate its own bank accounts;

(e) invest any of its money, subject to the Public Finance Management Act;

(f) insure itself against –

(i) any loss, damage or risk;

(ii) any liability it may incur in the application of this Act;

(g) institute or defend any legal action; or

(h) perform legal acts, including acts in association with or on behalf of any other person or organ of state.

Section 330: Annual report:

The Children's Protector must annually compile a report on his or her activities and submit the report to Parliament and each provincial legislature.

Part 3: Administration

Section 331: Office of the Children's Protector

There is an Office of the Children's Protector consisting of –

(a) the Children's Protector;

(b) the Deputy Children's Protector, appointed in terms of section 332;

(c) staff, appointed in terms of section 333; and

(d) persons seconded to the Office in terms of section 334.

Section 332: Deputy Children's Protector

Section 333: Employment of staff

Section 334: Secondment of persons to Office of Children's Protector

Section 335: Delegation of powers and duties

Section 336: Funding

Section 337: Financial accountability

Provincial Constitutional Institutions

Despite constitutional obligation, both the KwaZulu-Natal and Western Cape legislatures and premiers failed to establish provincial Commissioners for Children. Their respective provincial constitutions make the following provisions:

CONSTITUTION OF THE WESTERN CAPE GOVERNMENT, 1998 CHAPTER 9: OTHER CONSTITUTIONAL INSTITUTIONS

Establishment of and principles governing Commissioner for Children

Section 78. (1) There is a provincial Commissioner for Children.

(2) The Commissioner must assist the Western Cape government in protecting and promoting the interests of children in the Western Cape, in particular as regards –

- (a) health services;
- (b) education;
- (c) welfare services;
- (d) recreation and amenities; and
- (e) sport.

Powers and duties

Section 79. (1) The Commissioner has the power as regulated in provincial legislation to monitor, investigate, research, educate, lobby, advise and report on, matters pertaining to children.

(2) The Commissioner –

- (a) must report annually to the Provincial Parliament on the measures taken by the Western Cape government to protect and promote the interests of children in the Western Cape; and
- (b) may report to the Provincial Parliament at any other time.

Appointment and removal

Section 80. The Commissioner is appointed and removed by the Premier on the recommendation by the Provincial Parliament

CONSTITUTION OF KWAZULU-NATAL, 2005 CHAPTER 6: CONSTITUTIONAL INSTITUTIONS

Commissioner for Children

Section 53. A provincial Act may provide for the establishment of, and the powers, functions and duties of a provincial Commissioner for Children.





MOLO SONGOLOLO

