



An Ombudsperson for Children

*'Working towards an Ombudsperson for Children in South Africa is an important step forward for the country's child rights agenda.'*¹

1. Introduction

Over the past years, and very tragically in the past few months, we have become increasingly aware of the magnitude of crimes committed against children in our country. We have also been confronted with the horrifying reality that many of these crimes have been perpetrated by those assumed to be trustworthy – at schools or churches, in the home and in the communities where children live. These are some of the signs of our time. Among the many interventions that have been proposed in the present crisis of child care is the idea of an Ombudsperson for Children.

Briefly, an Ombudsperson can be defined as a public official who acts as an impartial intermediary between the public and government or bureaucracy; an investigator of citizens' complaints.¹ Public Protector Thuli Madonsela has commented that "These institutions serve as buffers between states and citizens. They are the conscience of states and a voice for the ordinary people".²

The idea of a special Ombudsperson for children was first mooted during consultations by the Law Reform Commission on early drafts of the Children's Act. In the event, it was left out of later drafts as the protections afforded children in these drafts were considered adequate. However, the slow implementation of the Children's Act has meant that all too frequently children have little recourse to assistance in times of difficulty and crisis, and the notion of an Ombudsperson is once again on the agenda. This briefing paper is based on a presentation made by the CPLO to a

roundtable discussion on the subject held in 31st October 2013.

2. Church Teaching on Protecting the Rights of Children

The 1983 Vatican Charter of Rights of the Family asserted that "special attention must be devoted to the children by developing a profound esteem for their personal dignity, and a great respect and generous concern for their rights. This is true for every child [...] it is by fostering and exercising a tender and strong concern for every child that comes into this world, that the Church fulfils a fundamental mission".³

When the United Nations Organization proclaimed 1979 the *Year of the Child*, Pope John Paul II addressed the UN General Assembly saying:

"I wish to express the joy that we all find in children, the springtime of life, and the anticipation of the future history of each of our present earthly homelands. No country on earth, no political system can think of its own future otherwise than through the image of these new generations that will receive from their parents the manifold heritage of values, duties and aspirations of the nation to which they belong and of the whole human family....and wish for all the children of the world a better future in which respect for human rights will become a complete reality throughout the third millennium, which is drawing near".⁴

Church teaching is clear that the rights of children must be legally protected within a juridical system, and the psycho-social values of childhood need to be promoted in such a way that they are recognised by all. In confirmation of this, the Vatican ratified the UN Convention on the Rights of the Child in 1990.

3. The Gaps

We have excellent legislation dealing with issues that affect children – particularly the Children’s Act and the Child Justice Act – but it has proved difficult to implement the provisions thereof. Three departments share primary responsibility for making sure these laws work: the Departments of Social Development; Justice and Constitutional Development; and Women, Children and Persons with Disability, and it is to be expected that there will be a degree of fragmentation. Also, since their mandates are very broad, there will be some overlap between them. A dedicated Ombudsperson for Children would do much to address these structural weaknesses. Furthermore, an Ombudsperson would be invaluable in advising government on the impact of any proposed legislation on children.

It is noteworthy that many of the Chapter 9 Institutions, which are charged with the strengthening our democracy, have been beset with difficulties and have struggled to find their feet and to grapple with the parameters of their particular mandate. None of these institutions has an especial duty towards children, in spite of the primacy given to the rights of children articulated in the Constitution. In addition, the Chapter 9 Institutions are accountable to the National Assembly. The African Ombudsman Association, on the other hand, states that an Ombudsperson may not be appointed by a legislature; the office of an Ombudsperson must be independent and publicly perceived as such.

At this point, accountability structures, funding, and operating procedures are in the process of discussion and consultation. The roundtable discussion provided an opportunity for representatives from various stakeholders to consider and discuss tentative proposals, and it is hoped that this will be a catalyst for further discussions and for the formulation of more concrete proposals.

4. The Little Ones

Jesus uses his most gentle words for children and his most severe for those who do harm to children.⁵ He forcefully warned against giving scandal to children: "Whoever causes one of these little ones who believe in me to sin, it would be better for him to have a great millstone fastened round his neck and to be drowned in the depth of the sea" (Mt 18:6).

Jesus urged the disciples to become ‘children’ again. When they tried to turn away the little ones who were pressing in upon him, he said indignantly: "Let the children come to me, do not hinder them; for to such belongs the Kingdom of God. Truly, I say to you, whoever does not receive the Kingdom of God like a child shall not enter it" (Mk 10:14-15). In this passage Jesus challenged traditional perceptions about the place and role of children in society. Adults can, and need to, learn from children.

This reminds us of the importance of children’s participation in formulating policies and programmes which concern them.⁶ Children know what they need; what they often lack is someone to listen and advocate on their behalf. Often there is no one to turn to for advice, protection or meaningful assistance.

Where government is concerned, effective intervention should involve a number of departments including Education, Health, and Social Development, as well as Justice and Constitutional Development. However, the intersectoral nature of much of the legislation regarding children makes successful implementation of policies difficult and effectively prejudices the rights of children. Here again, an Ombudsperson with cross-cutting powers ought to make a considerable impact on the problem.

5. The Agency of Youth

The children’s rights organisation Molo Songololo invited young people from various schools across the Cape Peninsula to speak at the roundtable, and their words were very moving, passionate and challenging. These young people appealed to adults to vote with their interests in mind, as they are not yet able to do so and therefore are unable to influence public policy; they realise that they do not as yet have a ‘voice’ to articulate their needs. They spoke of their everyday experiences of gang

violence and crime, and of the impact of substance abuse on their communities and homes. The eloquence of these young people is a reminder of what Robert Kennedy called the 'agency of youth':

*"Our answer is the world's hope; it is to rely on youth... This world demands the qualities of youth; not a time of life but a state of mind, a temper of the will, a quality of the imagination, a predominance of courage over timidity, of the appetite for adventure over the love of ease. It is a revolutionary world we live in..."*⁷

We neglect this agency at our peril and its loss would be incalculable. The Office of the Ombudsperson would do much to foster this agency and to provide an avenue for young people to engage in public policy pertaining to children.

6. The Office of the Ombudsperson: Capacity Building

It is clear that children need an Ombudsperson with the resources and staff to address their issues adequately. The Public Protector, by way of example, has 20 offices around the country, which greatly contributes to its accessibility. It is critical that an ombudsperson must be accessible to children. Commenting on the office of the Ombudsperson in Namibia, the UN Committee on the Rights of the Child expressed concern regarding its capacity in terms of resources, limited staff, and inadequate resources. It noted that staff had not received any specific training on children's rights, which called into question the ability of the Office to monitor and respond to violations of these rights. These are huge challenges but they can be overcome with creative thinking and a pooling of resources.⁸

It should always be remembered that any delay in dealing with harm to a child may mean that eventual help comes too late. At this point in our history the 'born frees' have yet to enjoy fully the 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. However, this position requires full independence and can only become effective if this is guaranteed.

Furthermore, the findings of the Ombudsperson must be respected and the interventions recommended must be honoured.

The role of such an Ombudsperson would not be to become involved in lengthy litigation, but to remedy the problem as soon as possible. This office should be above party politics and respected as such. The Ombudsperson must be able to draw attention to socio-economic conditions without entering a political minefield. Of course, it would be simplistic to assume that interventions by an Ombudsperson would always be welcomed. The Irish Ombudsperson for Children points out that "government departments cannot always accept what is often seen as a direct criticism. But if public opinion is clearly in favour of a real change, a democratic government cannot remain in a defensive position".⁹ Parties of all persuasions should give priority to the care and respect of our children and not see it as an opportunity to score political points.

7. Conclusion

Concluding his announcement of the convocation of the Second Vatican Council, Pope John XXIII spoke of children. He told the throngs of people assembled in the moonlit St Peter's Square, "when you head home, find your children and hug them ...and when you find them with tears to dry, give them a good word. Give anyone who suffers a word of comfort especially in our times of sadness and bitterness and then, all together, may we always come alive".¹⁰

In Ethiopia, those charged with problem solving are traditionally referred to as the 'Keepers of Peoples Tears'. This serves as a poignant reminder that it is our collective responsibility and duty to prevent the tears of our children, to keep them safe and to give them a tomorrow that is bright with possibilities.

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¹ The Free Dictionary

² Launch of the African Ombudsperson Research Centre, 16th March 2011.

³ The Vatican Charter on the Rights on the Family, 1983.

⁴ Pope John Paul II, Address to the UN General Assembly, 2nd October 1979.

⁶ Pope John Paul II reminded those present at the World Summit on Children that when the Apostles were arguing about who was the greatest, Jesus called a child to come to his side, and said to them, "Whoever receives this child in my name, receives me; and whoever receives me receives him who sent me" (Luke 9:47-48).

⁶ The importance of Child Participation is also highlighted in the Children's Act, 2005.

⁷ Speech by Robert Kennedy delivered in Jameson Hall, UCT, NUSAS Affirmation Day, 6th June 1966,

⁸ Children's Rights Information Network, 2012.

⁹ The Office of the Irish Ombudsperson, <http://www.oco.ie/>

¹⁰ The 'Moonlight Speech', 11th October 1962.

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