

RESEARCH STUDY

SOUTH AFRICA CALLS FOR A CHILDREN'S COMMISSIONER

Children's deaths in South Africa – the pressure for
the country to act has increased



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Since the start of the year, more than 60 children have been murdered, in the Western Cape alone. The reality is that South Africa's children face numerous challenges resulting from widespread poverty and inequality. These challenges include neglect and abuse, child-headed households; orphans and vulnerable children; the inequality of the education system; inadequate housing; widespread hunger; limited access to basic services; HIV/Aids; and inadequate child health care. Two-thirds of South African children live in poverty.

Since the demise of apartheid in 1994, legislation has been passed and policies formulated to address these challenges faced by children. The Bill of Rights sets out the rights of children – to education, shelter, health and protection from abuse and maltreatment, among others. A number of laws pertaining to the rights of children have also been passed. These include the Children's Act (2005); the Children's Amendment Bill (2006); the Prevention of Family Violence Act (1993); the South African Schools Act (1996); the Child Justice Act (2008); the Domestic Violence Act (1998); and most recently, the National Integrated ECD Policy (2015).

Despite this, it is clear that as a country, we are not effective in protecting and advancing the rights of children. To address these challenges, stakeholders in the children's sector are unanimous that a Children's Commissioner is necessary, and that we urgently need to explore the role, scope and powers of such an office. In September this year, the Draft Western Cape Commissioner for Children Bill 2017 was gazetted. The Bill is currently under review

with non-profit organisations (NGOs) and stakeholders in the sector submitting comments for the improvement of the Bill, where a central concern is the lack of independence afforded to the Commissioner in the Bill. The Centre for Early Childhood Development is part of a committee who are drafting a joint NGO submission on the Western Cape Commissioner for Children Bill.

The need to establish a Children's Commissioner has been voiced for a number of years. This is driven by the fact that despite the legislation intended to protect children, the situation is dire and necessitates an independent position, such as a Children's Commissioner tasked with protecting children's rights and well-being.

Recent research conducted by ten Social Development Honours students suggests that there are five key roles which a Children's Commissioner could play. The central role involves safeguarding and promoting children's interests through promoting their rights and welfare. The second is reviewing and monitoring the operation of complaints procedures, which includes examining the operations and arrangements for resolving complaints in order to establish whether or not they are effective in protecting and promoting children's rights and welfare.

These operations may involve representing the views of children or offering guidance about their rights. Investigating complaints is the third role of an ombudsperson for children. This involves examining the type of cases presented. The specific circumstances under which an examination may be undertaken, and the procedure that the Children's Commissioner should follow, should be specified in legislation.

The fourth role is assisting children who are using complaints procedures. The final role is reviewing the effect on children of the exercise of functions by public bodies, which involves evaluating the effect of any legislation on children that is either in effect or proposed.

A Children's Commissioner would require independence, authority and power, and would be capable of fulfilling responsibilities only if such independence was stipulated in our constitution.

In the South African context, the Children's Commissioner should be a Chapter Nine institution, accountable to the National Assembly. To be successful, the office should have the power to fulfil its role, including the capacity to retrieve relevant information for cases from specific persons when necessary, and to enforce the examination of witnesses.

The movement to establish a Children's Commissioner in South Africa is not new. During the drafting of the Children's Act, the Law Reform Commission considered such a position. However, until recently, it was not included

as the “protections afforded children in these drafts were considered adequate” (Parliamentary Liaison Office, 2014). Due to the slow and limited implementation of the current Children’s Act, and the subsequent absence of services for children in crisis, the desire to implement a Children’s Commissioner has returned to the agenda.

An additional challenge is that if insufficient resources were allocated to this office, this would result in limited effectiveness, thus the office of the ombudsperson for children should be equipped with an adequate number of qualified staff who possess a thorough knowledge of the children’s rights environment.

For a Children’s Commissioner to be effective in a South African context, there should be sufficient resources, staff and mechanisms in place that ensure accessibility for all children and their families.

The jurisdiction of a Children’s Commissioner should include all children residing in South Africa, regardless of their nationality, and all children should be able to lodge complaints. Accessibility should be through established provincial offices and also through a toll-free line.

Link to research report: [‘Children’s Commissioner Research Study’](#)



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