

## CHAPTER 24

### MONITORING THE IMPLEMENTATION OF THE NEW CHILD CARE LEGISLATION

#### 24.1 Introduction

Whether children enjoy the full protection of their rights needs to be determined through monitoring. Monitoring, in general, is a continuous follow-up of the activities of government, non-governmental organisations (NGOs) and other child related structures to ensure the effective implementation of the CRC and child welfare legislation. For effective monitoring, a sound monitoring structure is needed. The kind of structure a country will adopt will depend on its own domestic situation.

This Chapter commences by examining international mechanisms that monitor the protection of children's rights. An overview is then given of mechanisms in other countries that monitor the protection of children's rights. Monitoring mechanisms in the form of legislation and mechanisms that currently exist in South Africa at national, provincial and local level are also outlined. Finally, recommendations for monitoring the implementation of the new child care legislation are made.

#### 24.2 International child's rights monitoring mechanisms

The protection of children in South Africa is an international concern. South Africa is a signatory to various international instruments relating to children. Chief among these are the CRC and the African Children Charter.

For the purpose of examining the progress made by State Parties in achieving the realisation of the obligations undertaken in the CRC, a Committee on the Rights of the Child was established.<sup>1</sup> The Committee monitors the implementation of the rights protected in the Convention. This is done through a system of reports, through the Secretary General of the United Nations, on the measures adopted which give effect to the rights recognised in the CRC and on the progress made in the enjoyment of those rights.<sup>2</sup> A report for the country concerned must be submitted within two years of the entry into force of the CRC and thereafter every five years. The report must indicate factors and difficulties, if any, affecting the degree of fulfilment

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<sup>1</sup> Article 43(1) of the Convention.

<sup>2</sup> Article 44(1) of the Convention.

of the obligations under the CRC. The Committee may request from a State Party further information relevant to the implementation of the CRC.

South Africa submitted its first report in terms of the CRC in November 1997. The National Children's Rights Committee (NCRC) prepared the NGO report.

In terms of the African Children Charter, an African Committee of Experts on the Rights of the Child is to be established within the Organisation of African Unity to promote and protect the rights and welfare of the child.<sup>3</sup> A function of this Committee would be to monitor the implementation of and ensure protection of the rights enshrined in the African Charter.<sup>4</sup> One of the ways in which the Committee is to fulfil this monitoring function is by considering reports by State Parties on the measures adopted to give effect to the provisions of the Charter and on the progress made in the enjoyment of these rights. State Parties would be obliged to submit a report within two years of the entry into force of the Charter for the State Party concerned, and thereafter, every three years.<sup>5</sup> The report must contain sufficient information on the implementation of the Charter in the relevant country and must indicate factors and difficulties, if any, affecting the fulfilment of the obligations contained in the Charter. Unlike the CRC, the African Children Charter specifically provides for the receiving of communications, from 'any person, group or non-governmental organization recognized by the Organisation of African Unity, by Member States or the United Nations' relating to any matter covered by the Charter. In addition, the Committee may resort to any appropriate method of investigating any matter falling within the ambit of the Charter.<sup>6</sup>

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<sup>3</sup> Article 32 of the Charter.

<sup>4</sup> Article 42(b) of the Charter.

<sup>5</sup> Article 43(1) of the Charter.

<sup>6</sup> Article 45(1) of the Charter.

Several international agencies are actively involved in the child care field in South Africa.<sup>7</sup> Their input, together with a vociferous press and the commitment of and lobbying by a strong NGO and CBO (community-based organisation) community, also play an important role in monitoring the implementation and effectiveness of internationally accepted measures to protect and safeguard children in South Africa. These mechanisms also encourage South Africa to adhere to its international commitments in terms of the aforementioned international instruments.

### **24.3 Comparative systems in other countries**

In order to protect the rights of children, a number of countries have made efforts to establish structures for the monitoring of children's rights. These structures are discussed below.

#### **24.3.1 Monitoring of children's rights by the Office of the Children's Commissioner or Ombudsman**

##### **24.3.1.1 Norway**

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<sup>7</sup> Such as UNICEF, Save the Children, Rädde Barnen, etc.

The Norwegian Ombudsman<sup>8</sup> was created by the Ombudsman for Children Act, 1981, with a wide mandate to promote the interests of children in society and to monitor the development of conditions under which children grow up. As the body acting on behalf of children, the ombudsman cannot be left out of any issue concerning children. The ombudsman is responsible for ensuring that legislation relating to the protection of children's interests has the necessary strength to let their voices be heard and also that sufficient information concerning children's rights is given to the public and private sectors. The ombudsman has the right of access to documentation, at the disposal of public authorities, affecting children and the right of access to public institutions. The ombudsman, however, cannot intervene in individual conflicts between a child and his or her guardians or between guardians and cannot become involve in cases already being handled by courts. The ombudsman, however, may criticise the grounds for court rulings once the courts have completed their case.

#### 24.3.1.2 **Sweden**

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UNICEF 'Ombudwork for Children'(1997) **Innocenti Digest** (1) 4; See also MG Flekkoy **A Voice for Children: Speaking Out as Their Ombudsman** (1991) London: Jessica Kingsley Publishers.

The Swedish Ombudsman<sup>9</sup> for Children was established in 1993 under the Act to Establish the Office of the Children's Ombudsman. The main task of the ombudsman is to safeguard the rights and interests of children and young people and to ensure that Sweden lives up to its commitments under the CRC. Other important tasks of the ombudsman are to represent children and young people in the course of public debate, to participate in public debates, to shape opinion on important issues and to influence the attitudes of politicians, decision-makers and the general public on issues concerning children and young people. The ombudsman has the power to classify as secret any information received concerning the situation of a particular individual. In order to effect greater conformity between the CRC and Swedish law, the Office of the Ombudsman makes recommendations for changes in legislation that relates to children. For its effectiveness, the ombudsman tries, as far as possible, to obtain children and young people's views on issues that concern them through questionnaires, letters, via the telephone as well as the Internet. The ombudsman also presents an annual report to the Swedish Parliament in which areas are highlighted where it is felt that Sweden does not live up to the CRC. Similar to the position in Norway, the Swedish ombudsman cannot intervene in individual cases. The Swedish ombudsman can, however, propose amendments to existing laws in the light of an individual case.

#### 24.3.1.3 **Iceland**

In Iceland the Ombudsman for Children<sup>10</sup> was established in 1995 by the Children's Ombudsman Act 83 of 1994, with the task of 'improving the children's lot, as well as safeguarding their interests, needs and rights'. It is also within the ombudsman's power to investigate organisations or individuals that have acted in a way that undermines the rights, needs and interests of children. The ombudsman functions independently from the executive, but is required to report annually to the prime minister.

#### 24.3.1.4 **New Zealand**

The New Zealand Office of Commissioner for Children was created by the Children, Young

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<sup>9</sup> The information can be accessed at [www.bo.se/barnombudsmannen/chom.html](http://www.bo.se/barnombudsmannen/chom.html). See also UNICEF (1997) **Innocenti Digest** (1) 4;; M G Flekkoy (1991) 204; S Ek 'Can we make reality of children's rights? NGO Monitoring in Sweden' in E Verhellen **Monitoring Children's Rights** (1996) Netherlands:Kluwer Law International Publishers.

<sup>10</sup> UNICEF (1997) **Innocenti Digest** (1) 4-5.

Persons and Their Families Act 1989.<sup>11</sup> The Commissioner is assigned the following functions in terms of the Act:<sup>12</sup>

- to investigate any decision or recommendation made, or any act done or omitted under the Act in respect of any child or young person;
- to monitor and assess the policies and practices of the Department of Welfare, and of any other person, body or organisation exercising or performing any function, duty or power conferred or imposed by or under the Act, in relation to the exercise or performance of any function, duty or power conferred or imposed by or under the Act;
- to encourage the development, within the Department of Welfare, of policies and services designed to promote the welfare of children and young persons;
- to undertake and promote research into any matter relating to the welfare of children and young persons;
- to inquire generally into, and report on any matter, including any enactment or law, or any practice or procedure, relating to the welfare of children and young persons;
- to receive and invite representations from members of the public on any matter relating to the welfare of children and young persons;
- to increase public awareness of matters relating to the welfare of children and young persons;
- to advise, on the Commissioner's own initiative or at the request of the Minister, the Minister on any matter relating to the administration of the Act; and
- to keep under review, and make recommendations on, the operation of the Act.

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<sup>11</sup> The Act can be accessed at [www.knowledge-basket.co.nz/gpprint/acts/public/text/1989/an/024.html](http://www.knowledge-basket.co.nz/gpprint/acts/public/text/1989/an/024.html)

<sup>12</sup> Section 411(1) of the Act .

The Commissioner, however, has no authority to investigate any decision or recommendation made by, or any act or omission of, any court.<sup>13</sup> The Commissioner further has all such powers as are reasonably necessary to enable him or her to carry out its functions.<sup>14</sup>

21.3.1.5 **Michigan(USA)**

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<sup>13</sup> Section 411(2) of the Act.

<sup>14</sup> Section 412 of the Act.

In the State of Michigan, the Office of the Children’s Ombudsman was created by Act No. 204 of the Public Acts of 1994.<sup>15</sup> The ombudsman, inter alia, has to investigate administrative acts<sup>16</sup> alleged to be contrary to law or rule or contrary to policy of the Department of Social Services or child placing agency,<sup>17</sup> hold informal hearings and request that individuals appear before the ombudsman and give testimony or produce documentation or other evidence that the ombudsman considers relevant to a matter under investigation,<sup>18</sup> and make recommendations to the Governor and the legislature concerning the need for protective services, adoption or foster care legislation.<sup>19</sup>

#### 24.3.1.6 **British Columbia (Canada)**

In British Columbia, Canada, the Children’s Commission was created by the Children’s Commission Act of 1997.<sup>20</sup> This Act establishes a range of responsibilities to ensure that key aspects of the child serving facilities of government are monitored, the quality of their work assessed and reported on publicly. The Children’s Commission monitors the child and family serving facilities of government through -<sup>21</sup>

- collecting information about the deaths of all children and investigating the death of any child if the Commission considers that an investigation is necessary to determine the adequacy of services to children or to examine public health or policy matters. This allows the Commission to make recommendations for changes that could help children in similar situations;
- collecting information about critical injuries sustained by children while receiving designated services,<sup>22</sup> investigating such injuries and recommending changes aimed at

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<sup>15</sup> The Act can be accessed at [www.state.mi.us/dmb/ombudsman/PA204.html](http://www.state.mi.us/dmb/ombudsman/PA204.html)

<sup>16</sup> The Act defines an administrative act as including an action, omission, decision, recommendation, practice, or other procedure of the Department of Social Services, an adoption attorney or child placing agency with respect to a particular child related to adoption, foster care or protective services.

<sup>17</sup> Section 6(a) of the Act.

<sup>18</sup> Section 6(d) of the Act.

<sup>19</sup> Section 6(e) of the Act.

<sup>20</sup> The Act can be accessed at [www.childservices.gov.bc.ca](http://www.childservices.gov.bc.ca)

<sup>21</sup> Section 4 of the Act.

<sup>22</sup> A service or program that is provided by a ministry or agency of government, provided in a facility or class of facility licensed or regulated under an Act or authorised or funded under an Act.



- better protecting these children;
- setting standards to be complied with by prescribed ministries or agencies of the government to help ensure that their internal review processes are responsive to complaints about decisions concerning the provision of designated services to children;
- monitoring whether the above-mentioned ministries and agencies are meeting the set standards;
- reviewing and resolving complaints (made under section 10 of the Act) about-
  - breaches of the rights of children in care, and
  - decisions concerning the provision of designated services to children;
- in relation to plans of care for children in the continuing custody of a director<sup>23</sup>-
  - monitoring whether the standards set by the director for those plans are being met;
  - identifying any of those plans that, in the commission's opinion, need to be reviewed by the director; and
  - conducting random audits of those plans;
- at the request of a minister of the government or on the commissioner's own initiative, conducting special investigations and preparing special reports concerning matters affecting children;
- collecting data about, and conducting or encouraging research into matters relevant to services for children;
- the Commission has a right to any information in the custody of a director or of a public body which is necessary to enable the Commission to perform its duties under the Act and such director or public body must disclose that information to the commission at the request of the Children's Commissioner;
- the Children's Commissioner must present the following to the Minister:
  - an annual report on the work of the Commission (this report must be laid before the Legislative Assembly as soon as possible);
  - reports or summaries of reports made by the Commission on-
    - the Commission's findings and recommendations concerning children's deaths or critical injuries;
    - any responses made by ministries or agencies; and
    - any report prepared for the minister or presented to any other minister.

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<sup>23</sup>

A director designated under the Child, Family and Community Service Act.

#### 24.3.1.7 **Austria**

In Austria<sup>24</sup> a national Children's Ombudsman was established in 1991 within the Ministry of Environment, Youth and Family. The ombudsman does not advocate for the rights of any individual child, but promotes and defends children's rights collectively within the framework of judicial and administrative procedure. The ombudsman also monitors government accountability in respect of children and responds to proposed legislation. Apart from an ombudsman at national level, provincial Children's Ombudsmen were also created through child welfare legislation, specifically, through the Youth Welfare Act of 1989. Unlike the ombudsman at national level, it is within the mandate of the provincial ombudsmen to deal with the child on an individual basis. Their mandate also includes the provision of counselling and individual support to children and to those legally responsible for them in all matters relating to the interest and rights of young people, the promotion of public awareness about child related issues and the CRC, the monitoring of legal provisions and decrees concerning children and adolescents and the making of recommendations where necessary. Although all of them are government institutions, they have a provincial constitutional privilege, which frees them from political interference. The mandate of the provincial children's ombudsmen seems to differ from province to province - some, for example, have the power to object to the results of judicial proceedings while others may not.

The national ombudsman also collaborates with the provincial ombudsmen for children and with other public and private youth welfare institutions.

Finally, both the national ombudsman and provincial ombudsmen have to submit annual reports. The national ombudsman is accountable to the Ministry of Environment, Youth and Family and has to submit an annual report which is published. The provincial ombudsmen submit annual reports to their respective governments.

#### 24.3.2 **Monitoring of children's rights by NGOs**

##### 24.3.2.1 **Sweden**

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<sup>24</sup> UNICEF (1997) *Innocenti Digest* (1) 5, 14.

The NGO Child Convention Group in Sweden<sup>25</sup> monitors the implementation of the Convention from an NGO perspective. This is done by questioning representatives of the Swedish government on the implementation and monitoring of the CRC in Sweden. Questions contained in a report are sent annually to the responsible ministries to elicit individual statements and responses to the questions. Based on these 'annual hearings', the NGO Child Convention Group will then, apart from the government's report to the UN, submit a supplementary report to the UN Committee on the Rights of the Child.<sup>26</sup>

Apart from the NGO Child Convention Group in Sweden, a group named Rädde Barnen<sup>27</sup> meets on a regular basis with the Swedish Network of Parliamentarians for Children's Rights to discuss matters relating to children. Rädde Barnen follows the debates in Parliament. Although it cannot pose questions, it can discuss issues with MP's and propose concerns to raise. Rädde Barnen also publishes a newsletter regularly containing the latest news on children's issues in Parliament.

#### 24.3.2.2 Philippines

An NGO Coalition was established in 1993 in the Philippines,<sup>28</sup> specifically to monitor the implementation of the CRC in the Philippines. This Coalition is composed of all the major networks of child-focussed NGOs and other international and local child-focussed NGOs. The Coalition consists of a Working and Organisational Committee. The Working Committee is tasked to do research on the situation of children and apart from the government's report, also to submit a separate report, reflecting the concerns of the Coalition, to the UN Committee. The Coalition's first report to the UN Committee was submitted in 1994. The Organisational Committee is tasked to broaden the membership of the Coalition and to promote public awareness of the Coalition.

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<sup>25</sup> S Ek 'Can we make reality of children's rights? NGO Monitoring in Sweden' in E Verhellen **Monitoring Children's Rights** (1996).

<sup>26</sup> The National Children's Rights Committee (NCRC), an umbrella body of some NGO groups in South Africa, has submitted an NGO report in 1998 to the Committee on the Rights of the Child in which areas where it was felt that South Africa does not live up to the CRC were identified. This is also a method of determining whether government's report to the UN accurately reflects the reality about South African children.

<sup>27</sup> A Swedish non-governmental organisation, also active in South Africa.

<sup>28</sup> N Sancho 'Monitoring the Implementation of the UN Convention on the Rights of the Child: The Experience of Philippine NGOs' in E Verhellen **Monitoring Children's Rights** (1996).

One of the immediate results of the submission of the NGO report was that the government requested the Coalition for comments on the criteria for selection of the NGO representatives in the Council for the Welfare of Children. A challenge for the Coalition is, however, to remain independent so that it can be free to serve as a watchdog while being a partner of the government agencies in order to influence policy-making and monitoring processes of children's programmes.

### 21.3.3 Other child's rights monitoring mechanisms

#### 24.3.3.1 England and Wales

In England and Wales the Secretary of State has certain supervisory functions and responsibilities. In terms of section 80(1) of the Children Act 1989, the Secretary of State<sup>29</sup> may cause an inspection from time to time in children's homes and basically any premises at which a child is living, whether the child is being cared for by a local or health authority, adoption agency or other institution. The Secretary of State may also cause an inquiry to be held into any matter connected with the functions of the social services committee of a local authority or of a voluntary association, in so far as those functions relate to children, the functions of an adoption agency, registered children's home or voluntary home, residential care home, nursing home or mental nursing home, as far as it provides accommodation for children, a home provided by the Secretary of State and the detention of a child under section 53 of the Children and Young Persons Act of 33.<sup>30</sup>

If the Secretary of State finds that any local authority has failed, without reasonable excuse, to comply with any of the duties imposed on it by or under the Children Act, he or she may make an order declaring that authority to be in default with respect to a particular duty.<sup>31</sup> Such an order may contain directions for the purpose of ensuring that the duty is complied with within a period specified in the order. Any such directions will, on the application of the Secretary of

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<sup>29</sup> A Secretary of State, being a member of the Cabinet, occupies one of the highest positions in British Government.

<sup>30</sup> Section 81(1) of the Act.

<sup>31</sup> Section 84(1) of the Act.

State, be enforceable by *mandamus*.<sup>32</sup>

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<sup>32</sup> Section 84(4) of the Act; *Mandamus* is a mandatory order requiring the performance of an act or duty.

Local authorities are obliged to supply the Secretary of State with such information as he or she may require in respect of the performance by the local authority of all or any of their functions in terms of the Children Act, the Children and Young Persons Act of 1933, and two particular sections of the English and Scottish mental health legislation.<sup>33</sup> In addition, local authorities are obliged to submit to the Secretary of State such information as he or she may require in connection with the accommodation of children in a residential care home, nursing home or mental nursing home, and the children in relation to whom the local authority has exercised those functions.<sup>34</sup> Voluntary organisations are also obliged to supply such information in respect of children accommodated by them or on their behalf as the Secretary of State may direct.<sup>35</sup> The Secretary of State may also direct the clerk of each magistrate's court to supply such particulars as he or she may require in respect of proceedings of the court relating to children.<sup>36</sup> The Secretary of State annually submits a consolidated and classified abstract of the information so supplied to Parliament.

#### 24.3.3.2 **Uganda**

In Uganda, it is the general duty of every local government council from village to district level to safeguard and promote the welfare of children within its area.<sup>37</sup> Every local government council has to designate one of its members to be responsible for the welfare of children. This person is referred to as the Secretary for Children's Affairs.<sup>38</sup> In particular, it is the duty of every local government council (and therefore the duty of the Secretary for Children's Affairs) to mediate in any situation where the rights of a child are infringed and especially with regard to the protection of a child, the child's right to succeed to the property of his or her parents, and the duty to maintain a child.<sup>39</sup> Each local government council is also obliged to keep a register of disabled children within its area of jurisdiction and to give disabled children the necessary assistance, to provide assistance and accommodation for any child in need, and to make every effort to trace

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<sup>33</sup> Section 116 of the Mental Health Act of 1983 and section 10 of the Mental Health (Scotland) Act 1984 (in so far as it relates to children for whom local authorities have responsibility).

<sup>34</sup> Section 83(3) of the Act.

<sup>35</sup> Section 83(4) of the Act.

<sup>36</sup> Section 83(5) of the Act.

<sup>37</sup> Section 11(1)(a) of the Children Statute 6 of 1996.

<sup>38</sup> Section 11(1)(b) of the Children Statute 6 of 1996.

<sup>39</sup> Section 11(3) of the Children Statute 6 of 1996.

the parents or guardians of any lost or abandoned child.

#### 24.3.3.3 **Ghana**

In terms of the Children's Act, 1998 of Ghana, District Assemblies have the duty to protect the welfare and promote the rights of children.<sup>40</sup> The Act further provides that the Social Welfare and Community Development Department of a District Assembly (hereafter 'the Department') must investigate cases of contravention of children's rights.<sup>41</sup> If the Department has reasonable grounds to suspect child abuse or a need for care and protection, it must direct a probation officer or social welfare officer accompanied by the police to enter and search the premises where the child is kept to investigate.<sup>42</sup> If it is determined that the child has been abused or is in need of immediate care and protection, the Department must authorise the removal of the child to a place of safety for a period of not more than seven days.<sup>43</sup> The child must then be brought before a Family Tribunal before the expiry of the seven-day period for an order to be made.<sup>44</sup>

The Department also has a duty to monitor children's homes within its district.<sup>45</sup> The Minister for Social Welfare may also authorise the inspection of a children's home by the Department at any

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<sup>40</sup> Section 16 (1) of the Act.

<sup>41</sup> Section 16 (2) of the Act.

<sup>42</sup> Section 19 (1) of the Act.

<sup>43</sup> Section 19 (3) of the Act.

<sup>44</sup> Section 19 (4) of the Act.

<sup>45</sup> Section 106 of the Act.

time to ensure that the home is being maintained at the required standard.<sup>46</sup> The Department is also responsible for inspecting the premises, books, accounts and other records of a day-care centre at least once in ever six months. If the inspection reveals that the day-care centre is not being managed efficiently in the best interest of the children, the Department must suspend the permit and the owner or operator must be ordered to make good any default within a stipulated time. Failing to do so, the permit must be cancelled.<sup>47</sup>

#### 24.3.3.4 **Namibia**

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<sup>46</sup> Section 108 of the Act.

<sup>47</sup> Section 116 of the Act.



In terms of the Namibian draft Child Care and Protection Act of 1996, a Child Welfare Advisory Council is to be established.<sup>48</sup> The Council is to consist of 13 members of whom at least five should be women. The various Ministries<sup>49</sup> are to be represented on the Council. Three members of the Council must be appointed from nominations received from NGOs committed to children's issues, while another three members are to be appointed from amongst individuals in the community at large with a demonstrated interest in children's issues.<sup>50</sup> The respective Ministers are obliged to consult with the Council in proposing any repeal or amendment of any provision of the draft Child Care and Protection Act, the regulations promulgated in terms of the Act or any other law that would affect the Act.<sup>51</sup> These Ministers also have to submit reports, at least annually, to the Council on the preventative programmes adopted and implemented by their ministries and the results thereof. The reports by the respective Ministries are to be tabled in the National Assembly.

The Council has the following duties:<sup>52</sup>

- to consult with the Ministries on any proposed measure to repeal or amend any provision of the Act;
- to consult with the Ministries on any proposed measure to promulgate or amend any regulations implementing the Act;
- to receive, review, comment on, and, if necessary, act in response to a report prepared by a particular Ministry;
- to design and propose to the appropriate Ministers such programmes of prevention, protection or care as the council deems necessary for the best interests of children;
- to investigate and report to the relevant Minister any complaint about programmes or services that the Council may receive and make recommendations to such Minister on measures to remedy such complaint;
- to study and investigate the implementation of the Act and other laws related to it for the purpose of making such recommendations for improvement to the Ministers as the Council deems necessary for the best interests of children; and

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48 Section 8 of the Act.

49 Those responsible for Health and Social Services, Justice, Youth and Sport, Regional and Local Government and Housing, Education and Culture, and Home Affairs.

50 Section 10(2) of the Act.

51 Section 5 of the Act.

52 Section 9(2) of the Act.

to monitor the implementation of the CRC .

With regard to the inspection of child care facilities, section 69 of the Namibian draft Child Care and Protection Act states as follows:

(1)(a) Social workers shall inspect facilities used as places of safety, children's homes, and educational or vocational training centres as frequently as determined necessary by the Minister of Health and Social Services, or the Child Welfare Advisory Council, but in no case less frequently than once a year, to determine whether the best interests of the children or young persons staying there are being met.

(b) Subject to the direction of the Minister, a Commissioner, or the Council, social workers exercising their duties under this section may enter a facility to inspect its books and documents, or the children or young persons accommodated there.

(2) The powers conferred upon social workers by subsection (1) may be exercised by any Commissioner of Child Welfare within his or her district, and a Commissioner may appoint a police officer or justice of the peace to exercise such powers.

(3) A written report of any inspection undertaken by a social worker or other authorised person pursuant to subsection (1) or (2) shall be submitted to the Minister, any Commissioner who may have ordered such an inspection in terms of subsection (1)(a), and the Council as soon as possible after conclusion of the inspection.

(4) If the Minister has reasonable grounds to believe that a facility or placement is detrimental to a particular child who has been received and placed there, the Minister may, by an order in writing, direct a social worker or Commissioner of Child Welfare to visit the child, inspect the situation, and report back to the Minister on the child's circumstances.

#### 24.3.3.5 Kenya

In terms of the Children Bill, 1998,<sup>53</sup> of Kenya a National Council of Children's Services is to be established. The purpose and object for which the Council is to be established are 'to exercise general supervision and control over the planning, financing and co-ordination of child welfare activities and to advise government on all aspects thereof'.<sup>54</sup>

The Children Bill, 1998, also provides for the appointment of a Director of Children's Services, Deputy Directors of Children's Services, such number of senior children's officers, children's officers and other officers as may be necessary for the purposes of the Act. The Director has to safeguard the welfare of children and should in particular, assist in the establishment,

<sup>53</sup> The Bill has not yet been introduced.

<sup>54</sup> Clause 29(1) of the Bill.

promotion, co-ordination and supervision of services and facilities designed to advance the well being of children and their families.<sup>55</sup>

The Director has to perform, *inter alia*, the following functions.<sup>56</sup>

- supervise children's officers and co-ordinate and regulate their work in the provision of children's welfare services;
- secure the conduct of investigations on cases of hardship affecting children throughout the country;
- make such enquiries and investigations and provide such reports and assessments as may be required by any court of competent jurisdiction for the determination of any matter before a court or for the enforcement of any order made by a court under the Act;
- safeguard the welfare of any child or children placed into care, by virtue of a care order or an interim order;
- supervise all children's rehabilitation centres, children's homes and safeguard and promote the welfare of any children admitted therein;
- provide to the quarterly reports on the state of children's rehabilitation centres, children's homes and remand homes; and
- safeguard the welfare of children in foster care.

#### 24.3.3.6 **New South Wales (Australia)**

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<sup>55</sup> Clause 35(1) of the Bill.

<sup>56</sup> Clause 35(2) of the Bill.

In New South Wales, Australia, the Children (Care and Protection) Act of 1987 provides for Children Review Panels and Boards of Review. The function of a Board of Review is to consider applications for the review of a child who has been in care for a period of three months or more.<sup>57</sup> A child in care is defined as a child who is in custody pursuant to a temporary care arrangement; a child who is residing in a residential child care centre; a child who is being fostered; a child who is in the custody of a person pursuant to a children's court order in force under section 72(1)(c)(ii) of the Act; or a child who is a ward or protected person.<sup>58</sup> An application for review may be made by the child, the person responsible for the child, a foster parent, by any person with a sufficient interest in the welfare of the child, or by the Minister or Director-General.<sup>59</sup> The Board of Review must review such aspects of the welfare, status, progress and circumstances of the child as are referred to in the request, having particular regard to any arrangements that exist to encourage continuing contact between the child and the child's parents, and make a written report informing the Minister as to the results of the review.<sup>60</sup>

The New South Wales legislation also makes provision for a Child Death Review Team. This inter-departmental team<sup>61</sup> has the following functions:<sup>62</sup>

- to formulate recommendations as to policies and practices to be implemented by government and private agencies and by the community for the prevention or reduction of child deaths, and for that purpose:
  - to identify, and undertake a detailed review of information concerning deaths of children that are due to abuse or neglect or that occurs in suspicious circumstances or in circumstances of a kind prescribed by the regulations;
  - to maintain a register of child deaths occurring in New South Wales after a date prescribed by the regulations, classifying such deaths according to cause,

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<sup>57</sup> Section 100(1) of the Act.

<sup>58</sup> Section 97(b) of the Act.

<sup>59</sup> Section 100(3)(a) of the Act.

<sup>60</sup> Section 100(6) of the Act.

<sup>61</sup> The team is to include representatives of the Child Protection Council, the Department of Community Services, the Department of Health, the Police Service, the Department of School Education, the Attorney-General's Department, and the Office of the Coroner.

<sup>62</sup> Section 103(1) of the Act.

- demographic criteria or other factors prescribed by the regulations;
- to analyse data accumulated with respect to the causes of child deaths reviewed or registered, and to identify patterns and trends relating to those deaths;
- to identify areas requiring further research by the team or other agencies; and
- to undertake such research or other projects as the Minister may require concerning the causes of child death.

Government agencies are obliged to provide the team with full and unrestricted access to records that are under their control.<sup>63</sup> Access includes the right to inspect and, on request, to be provided with copies of any such record.

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<sup>63</sup> Section 104(1) of the Act.

The team annually submits a report to the Minister involved.<sup>64</sup> The report is tabled in Parliament, as though it were the annual report of a statutory body. In addition, the team publishes at least once each year, for the information of the public, a report consisting of data collected and information relating to child deaths that occurred in the State during the period covered by the report.<sup>65</sup> In each of the reports, the team is to provide details on the extent to which its previous recommendations have been accepted and may comment on the extent to which those recommendations have been implemented in practice.<sup>66</sup>

## 24.4 **Child's rights monitoring mechanisms in South Africa**

### 24.4.1 **Legislation**

#### 24.4.1.1 **The Constitution of the Republic of South Africa<sup>67</sup>**

Section 28 of the Constitution guarantees certain children's rights. Should these fundamental rights be infringed or threatened, a competent court may be approached for appropriate relief, which may include a declaration of rights. To approach the courts is often a lengthy and costly exercise and may not be the best way of ensuring immediate protection of children's rights.

#### 24.4.1.2 **The Child Care Act 74 of 1983**

There are limited examples of what can be termed 'monitoring mechanisms' in the Child Care Act, usually with reference to single issues affecting children. The Act, for example, provides for the registration and classification of children's homes and places of care,<sup>68</sup> the inspection of children's homes and places of care,<sup>69</sup> and the cancellation or surrender of certificates of registration.<sup>70</sup> In addition, the Regulations to the Act provide for files and registers to be kept by

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<sup>64</sup> Section 105(1) of the Act.

<sup>65</sup> Section 105(5) of the Act.

<sup>66</sup> Section 105(6) of the Act.

<sup>67</sup> Act 108 of 1996.

<sup>68</sup> Section 30 of the Act.

<sup>69</sup> Section 31 of the Act.

<sup>70</sup> Section 32 of the Act.

children's homes, shelters, places of safety, and places of care.<sup>71</sup> Non-compliance with any of the provisions of the Act is followed by criminal sanction.<sup>72</sup> The Courts and the relevant Department therefore play a very important role in monitoring the conduct of office bearers in accordance with the Act and Regulations.

#### 24.4.2 **National Government**

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<sup>71</sup> See, for instance, regulations 33, 33A, 33B, 34, and 34A.

<sup>72</sup> Section 58 provides that any person convicted of an offence under any provision of this Act for which no punishment is specially provided for, is liable to a fine not exceeding R4 000 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

In South Africa, the National Programme of Action (NPA)<sup>73</sup> is the instrument by which the government commits itself to enhance the survival, protection and development of millions of children. It is a mechanism for identifying all plans for children developed by government departments, non-governmental organisations (NGOs) and other child related structures, and for ensuring that all these plans converge in the framework provided by the CRC. In order to give effect to this commitment, government created a number of mechanisms. These include the appointment of the Inter-Ministerial Core Group (IMCG) to oversee the process of the NPA. A National Programme of Action Steering Committee (NPASC) has also been established within government which is the executive instrument for overseeing the identification of plans, implementation and co-ordination of all role-players in order to ensure compliance with the obligations of the CRC. The NPASC annually submits progress reports to Cabinet or whenever required. These reports reflect the progress made at national and provincial level and provide an opportunity to identify shortcomings and to develop plans to overcome them.<sup>74</sup>

In 1996, the NPA established a Data Collection and Monitoring Task Group (MTG), for the particular purpose of monitoring the implementation of the CRC and the African Children Charter. The NPA envisages as its main objectives and aims of monitoring children's rights to be the following:

- To collect and analyse data to monitor the progress of the impact of the NPA in the implementation of children's rights.
- To develop a systematic and sustainable statistical information system for the collation of information, statistics and data on the national conditions of children.
- In developing a systematic and sustainable statistical information system for monitoring children's rights that, this can also serve as inputs for NPA national reports, for fulfilling

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<sup>73</sup> The NPA process is coordinated by the Office on the Rights of the Child, the Presidency.

<sup>74</sup> **Initial country report of South Africa on the Convention on the Rights of the Child**, November 1997.



reporting obligations, for evaluating exercises and as a tool for advocacy, policy and programme development for children.

Within this framework the MTGs broad vision for developing a systematic and sustainable statistical information system for monitoring children's rights is a data-based approach. The strategy is to use data to monitor the situation of children in South Africa.<sup>75</sup>

Provincial Plans of Action (PPAs) are in place in all nine provinces. Similar to the NPA, the PPAs also have formal monitoring systems which are largely based on data collection. These monitoring systems are used to monitor the government's implementation of the CRC.<sup>76</sup> Statistics South Africa plans to conduct workshops in three provinces. UNICEF as part of the NPASC and MTG will be facilitating these workshops. At these workshops, the PPAs will be presented with the current vision of data collection and monitoring of the MTG. These workshops will also focus on what the needs are and what systems exist for the monitoring of children's rights at provincial level.<sup>77</sup>

Apart from the MTG, there are also other monitoring mechanisms at national level, which include, inter alia, the Parliamentary Joint Monitoring Committee on Children, Youth and Persons with Disabilities, the South African Human Rights Commission, the Commission for Gender Equality and the National Youth Commission. The effectiveness of these mechanisms in monitoring the rights of the child is discussed below.

**(a) South African Human Rights Commission**

In terms of section 184(1)(c) of the Constitution, the South African Human Rights Commission (SAHRC) must monitor and assess the observance of human rights in South Africa. A Committee on the Rights of the Child<sup>78</sup> has been established within the SAHRC. This Committee

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<sup>75</sup> The information can be accessed at [http://www.statssa.gov.za/RelatedInverseSites/Children%20Internet\\_ne.../Homepage.htm](http://www.statssa.gov.za/RelatedInverseSites/Children%20Internet_ne.../Homepage.htm)

<sup>76</sup> Personal communication with Mrs Crystal Theron, Office on the Rights of the Child, the Presidency, on 14 August 2001.

<sup>77</sup> Personal communication with Ms Sharmla Rama, Chairperson of the Data Collection and Monitoring Task Group (MTG), on 10 August 2001.

<sup>78</sup> This committee was established in terms of section 5 of the Human Rights Commission Act 54 of 1994. On completion of the duties and functions assigned to the committee by the HRC, this committee must submit a report thereon to the Commission.

inter alia has to:<sup>79</sup>

- advise the SAHRC on children's rights issues and on strategic planning for implementing the protection and promotion of the rights of the child;
- ensure that violations of the rights of the child are investigated and dealt with as expeditiously as possible;
- ensure that both the public and private sectors promote respect for children's rights;
- promote child rights education and advocacy;
- advise the SAHRC on monitoring of child rights, including the development of performance indicators and the identification of barriers to the implementation of the NPA and the CRC.
- provide support to the NPASC and other child rights initiatives;
- advise and assist the SAHRC in the promotion and protection of the rights of the child; and
- study the SAHRC Conference report and plan of action as it pertains to the rights of the child and advise the SAHRC on its role in implementing the recommendations made.

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Accessed at [www.sahrc.org.za/sahrc/committees.html](http://www.sahrc.org.za/sahrc/committees.html) on 99/01/26.

The SAHRC still has not established monitoring mechanisms at any level of government. The SAHRC is currently in a process of identifying the activities of the various departments and organisations at the different spheres of government in relation to the situation of children, and also the shortcomings at each level of government. It is therefore also important for the SAHRC to identify where most of the resources are allocated. In so doing, the SAHRC will then be able to identify areas where government support is most needed. The SAHRC also intends to conduct workshops with children from all provinces, to inform them about the nature of the SAHRC and to identify other issues that should be addressed. Consultations will also be held with a variety of organisations to determine ways in which the SAHRC can successfully link up with them in order to better protect children. In so doing, the SAHRC aims to establish linkages with both empowered and underpowered organisations. The SAHRC is also envisaging researching the monitoring of the rights of children in other countries, within the limitation of resources available to them. The SAHRC is hopeful that after such process, it will be in a much better position to identify the monitoring mechanisms that should be established at the different spheres of government.<sup>80</sup> When and how the SAHRC will achieve all this, is still to be seen. The SAHRC, however, has an important role to play in assisting with the monitoring of the implementation of the new child care legislation.

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Personal communication with Ms. Mabusela, deputy chair SAHRC on 99/02/10.

The SAHRC has established provincial offices in the Northern Province (Pietersburg), KwaZulu-Natal (Durban), Eastern Cape (Port Elizabeth) and Western Cape. These provincial offices have a general mandate concerning human rights issues, and presumably are also concerned with the monitoring of children's rights.<sup>81</sup>

(b) **Parliamentary Joint Monitoring Committee on Children, Youth and Persons with Disabilities**

A Parliamentary Joint Monitoring Committee (JMC) on Children, Youth and Persons with disabilities was established in October 1999. The JMC consists of 17 Assembly members and 9 Council members. The function of the JMC is to monitor and evaluate progress with regard to the improvement in the quality of the life and status of children, youth and disabled persons in South Africa, with special reference to the Government's commitments in respect of any applicable international instruments and to duties and responsibilities in respect of any applicable legislation. Further, the JMC will have an input in proposed legislation which have an impact on the lives of children and the disabled. The JMC may make recommendations to both or either of the houses of parliament, or any joint or house committee on any matter arising from its functions. The JMC may also influence the legislative process by participating in joint sittings with relevant portfolio committees when bills relating to children are being discussed, amended and passed.<sup>82</sup> It seems that the functions of the JMC will overlap with those of other committees, such as Education and Health, which are concern with the welfare of children. However, the JMC will play a more monitoring and evaluating role.

(c) **Commission for Gender Equality**

In terms of section 187(2) of the Constitution, the Commission for Gender Equality (CGE) has the power to monitor, investigate, research, educate, lobby, advise and report on issues concerning gender equality. Unfortunately, there seems to be no evidence of the development of systems and indicators for monitoring gender equality, particularly pertaining to the girl child. Any role that the CGE can fulfill in this regard, will certainly contribute to the improvement of the status of South African children.

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<sup>81</sup> Ibid.

<sup>82</sup> Gilbert and Proudlock 'Keeping an eye on the government' **ChildrenFirst** December/January 2001 Vol 4 No.34.

**(d) National Youth Commission**

In terms of the National Youth Commission Act<sup>83</sup> a National Youth Commission (NYC) was established, *inter alia*, to co-ordinate and develop an integrated national youth policy; to develop an integrated national youth development plan; to develop principles and guidelines and make recommendations to the government regarding such principles and guidelines, for the implementation of an integrated national youth policy; and to 'co-ordinate, direct and monitor the implementation of such principles and guidelines as a matter of priority'.<sup>84</sup>

To meet these objectives, the NYC is empowered, in consultation with the government, to prioritise the allocation of resources to youth affairs; to report, on a quarterly basis, to the President on its activities; to evaluate any Act of Parliament or any law proposed by Parliament or any other legislature, affecting or likely to affect the implementation of the integrated national youth policy and to make recommendations to Parliament or such other legislature with regard thereto; to recommend to Parliament or any other legislature the adoption of new legislation which would promote the implementation of an integrated national youth policy; and monitor and review the compliance with international instruments, acceded to or ratified by South Africa, relating to the objects of the NYC.<sup>85</sup> However, the NYC can do no more than make recommendations.

The NYC is obliged to 'monitor and review policies and practices of ... organs of state at any level; ... statutory bodies or functionaries; ... public bodies and authorities, and ... any other persons, bodies or institutions, with regard to youth matters, and may make any recommendation that the Commission deems necessary'.<sup>86</sup>

It should, however, be pointed out that the National Youth Commission Act focusses on the youth of South Africa. 'Youth' is defined in the Act as any 'person between the ages of 14 and 35 years'.<sup>87</sup> In terms of this definition all children below the age of 14 years are automatically excluded from the Commission's terms of reference. This unfortunately leaves a gap regarding

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<sup>83</sup> 19 of 1996.

<sup>84</sup> Sections 3(a) - (d) of the National Youth Commission Act, 1996.

<sup>85</sup> Sections 8(1)(iv), (ix), (xii), (xiii) and (xiv) of the National Youth Commission Act, 1996.

<sup>86</sup> Section 8(1)(x) of the National Youth Commission Act, 1996.

<sup>87</sup> Section 1(vi) of the National Youth Commission Act, 1996.

the monitoring of issues facing children below the age of 14 years in South Africa.

#### 24.4.3 Provincial Government

At provincial level, the Western Cape and KwaZulu-Natal have taken the initiative by providing for the establishment of offices of Commissioners for Children. In the Western Cape this was done through a provision in the Constitution of the Western Cape Act 1 of 1998.<sup>88</sup> In terms of this provision, the duties of the Commissioner will include 'protecting and promoting the interests of children in the Western Cape, in particular as regards ... health services, ... education, ... welfare services, ... recreation and amenities, ... and sport'. The powers and duties of the Commissioner are spelt out in section 79 of the Constitution, and include monitoring, investigating, researching, educating, lobbying, advising, and reporting on matters pertaining to children within the sphere of provincial competency. A draft Bill on the Commissioner for Children in the Western Cape is to be submitted on 24 October 2001 to the Western Cape Department of Social Development for consideration.<sup>89</sup>

In KwaZulu-Natal the KwaZulu-Natal Provincial Office of the Commissioner for Children Bill provides for the establishment of the KwaZulu-Natal Commissioner for Children.<sup>90</sup> In terms of the Bill, the Commissioner must:<sup>91</sup>

- conduct and develop information programmes to foster public understanding of the Bill, the Bill of Rights in the Constitution, the CRC, and the role and activities of the Commission;
- maintain close liaison with institutions similar to the Commission to foster common policies and practices and to promote co-operation concerning the handling of complaints in cases of overlapping jurisdictions;
- maintain close liaison with Commissioners of Child Welfare to facilitate the effective administration of juvenile justice;
- maintain close liaison with the Police Service to combat crimes against children and to foster co-operation at all levels in this regard;
- evaluate and make recommendations to the provincial Parliament or other legislatures

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<sup>88</sup> Section 78 of the Constitution of the Western Cape Act 1 of 1998.

<sup>89</sup> Personal communication with Ms Carol Johnston from the legal division of the Provincial Administration of the Western Cape on 23 October 2001.

<sup>90</sup> Clause 1 of the Bill.

<sup>91</sup> Clause 12(1) of the Bill.

concerning any Act of that Parliament, any system of personal and family law custom, any system of indigenous law, custom or practice; or any other law affecting or likely to affect laws that pertain to the child; and

· monitor the compliance with international instruments acceded to or ratified by South Africa.

In addition, the Commission may consider recommendations, suggestions and requests concerning the fundamental rights that pertain to a child; recommend to the provincial Parliament or any other legislature the adoption of new legislation which would promote the best interests of the child; and conduct research to further the objects of the Commission.<sup>92</sup> The Commission can also, by mediation, conciliation and negotiation, endeavour to resolve any dispute or to rectify any act or omission emanating from or constituting a violation of any fundamental right of a child.<sup>93</sup>

The Bill further provides for extensive powers of investigation,<sup>94</sup> the search and seizure of premises and the attachment and removal of articles.<sup>95</sup>

There was, however, some controversy over the KwaZulu-Natal Commissioner for Children Bill. Opposition against the Bill seemed much stronger than general acceptance. Some of the criticism against the Bill were that it had not been debated across the sectors that deal with child protection, and that it provided for child protection structures that had no clear function and no accountability. Consequently, this Bill was withdrawn by the KwaZulu-Natal Parliament.<sup>96</sup>

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<sup>92</sup> Clause 12(2) of the Bill.

<sup>93</sup> Clause 13 of the Bill.

<sup>94</sup> Clause 14 of the Bill.

<sup>95</sup> Clause 15 of the Bill.

<sup>96</sup> Personal communication with Ms Joan van Niekerk on 17 August 2001.

#### 24.4.4 Local Government

The welfare development division of the Department of Social Development, in terms of regulation 30(4) to the Child Care Act, after every two years inspects children's homes, places of care and shelters to ascertain whether these facilities are still complying with set standards. Incidental inspections on receipt of complaints are also conducted. Albeit these inspections are the responsibility of Department of Social Development, other departments such as the Departments of Health and Education are also assisting with the inspections. If it is found that a facility is not complying with set standards, the Department of Social Development (development division) will set a prescribe period within which such facility should remedy the situation. If the management of such facility, after the expiration of the said period, remains in default with respect to particular duties, recommendations will be made to the legal division of the Department of Social Development that such facility be closed.

#### 24.5 Evaluation and recommendations

The existing monitoring mechanisms in South Africa, in comparison to those in other countries, are still in their embryo stages. In order to promote the protection of children's rights, an effective monitoring structure is needed. There is also a dire need to create a child-focussed monitoring mechanism. **The Commission thus recommends the establishment of a body to be called the 'Office of the Children's Protector'**. Unlike similar structures in the countries discussed above which monitor the protection of children's rights in general, the proposed Office of the Children's Protector should only be concerned with the monitoring of the implementation of the new child care legislation.<sup>97</sup> **The Commission further recommends that the Office of the Children's Protector should operate independently from the Department of Social Development.** If independent, it would effectively act as a watchdog over the activities of those responsible for the implementation of the new child care legislation, and would be in a position to criticise government when necessary and to act without fear of political interference. The Chapter on Residential Care recommends that an independent structure such as the proposed Office of the Children's Protector should be appointed by the Minister from nominations received for a 5-year period. Further, that such independent structure should prepare an annual report

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See, for instance, the report on the monitoring of the Domestic Violence Act by Penny Parenzee, Lillian Artz and Kelly Moulton **Monitoring the Implementation of the Domestic Violence Act, First Research Report 2000 - 2001**, Institute for Criminology, UCT, 2001.



for tabling in Parliament.<sup>98</sup> **This report should also indicate difficulties, if any, hampering the proper implementation of the new children's statute.**

The Office of the Children's Protector should consist of people with specialist knowledge in the field of child care. Candidates should be screened on the basis of their education, training, experience and their potential for developing the skills necessary to carry out their responsibilities. A few members of the Office of the Children's Protector should be legally trained. This is important as it will always be necessary to consider whether legal or other action should be taken whenever a contravention of children's rights occur.

**The Office of the Children's Protector may -**

- **establish such offices as it may consider necessary to enable it to exercise its powers and to perform its functions assigned to it by the new children's statute, and**
- **appoint such staff as may be reasonably necessary to assist with the work incidental to the performance of its functions.**

**The Commission recommends that the Office of the Children's Protector should, *inter alia*, have the following powers and functions:**

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<sup>98</sup> See 19.10.4 above.

**The Office of the Children's Protector should receive, investigate<sup>99</sup> and resolve complaints relating to any matter falling within the ambit of the new children's statute, or direct such complaints to the relevant authorities if these are better placed to deal with such complaints.** A child who is being abused or any person on behalf of such child, should be able to approach the Office of the Children's Protector for help. This, however, should not mean that a complaint cannot be laid with other institutions such as the proposed Commissioner for children in the Western Cape or the SAHRC. A complainant can first exhaust all other avenues before deciding to approach the Office of the Children's Protector, but should not be compelled to follow such procedure.

It is important that the Office of the Children's Protector assists in individual cases involving violations of children's rights.<sup>100</sup> **The Office of the Children's Protector should therefore have the power to take legal action, if necessary, on behalf of a child where it is not possible for the child or anybody legally responsible for the child to do so.**

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<sup>99</sup> In Iceland, the Ombudsman for Children has the power to investigate organisations or individuals that have acted in a way that undermines the rights, needs and interests of children.

<sup>100</sup> See also the position in Austria at 21.3.1.7 above.

The Chapter on Residential Care recommends that the DQA process as being currently tested by the Department of Social Development be used as a monitoring mechanism for the care of children in residential care.<sup>101</sup> **The proposed cluster foster care schemes as a residential care option for children in need of care should also be subjected to the DQA process.**<sup>102</sup> **The Commission further recommends that the Office of the Children’s Protector may, on receiving of a complaint, authorise an inspection of a residential care facility in order to -**

- **inspect whether that facility is complying with set minimum standards and may make such enquiries as he or she may deem necessary;**
- **inspect and make copies of any books or documents kept on the premises;**
- **seize any document or any other thing on the premises which in his or her opinion may be relevant to the investigation concerned;**
- **observe and interview any child in the facility, or caused such child to be examined by a medical officer, psychologist or psychiatrist.**

**If it is found that a facility does not comply with set minimum standards, the Office of the Children’s Protector must inform the Director-General of the Department of Social Development who should take the necessary action to ensure that the facility comply with set minimum standards.**<sup>103</sup>

Residential care facilities for children with disabilities such as the blind, the deaf, the dumb and mentally retarded children might need different monitoring approaches. When inspecting these facilities, outside expertise should be obtained to assist with the inspection. For example, when inspecting facilities for the deaf, an organisation such as DEAFSA can be approach. DEAFSA can, for example, provide sign language interpreters if any deaf child need to be interviewed.

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<sup>101</sup> See chapter 19 at 19.10.4 above.

<sup>102</sup> See chapter 17 at 17.3.1 above.

<sup>103</sup> See also chapter 19 at 19.10.1

- **It is also recommended that commissioners of child welfare must at least once a year inspect all child and youth care centres in their area of jurisdiction, and must submit a report after any such visit to the Director-General of the Department of Social Development.<sup>104</sup>**
  
- The Chapter on Children in Need of Special Protection makes recommendations with which a drop-in centre<sup>105</sup> and outreach programme<sup>106</sup> for children living on the streets should comply before registering as a drop-in centre or outreach programme.<sup>107</sup> As these are non-residential, there is no need to comply with residential care minimum standards, but it is important to monitor whether drop-in centres and outreach programmes do comply with set minimum standards. **The Commission therefore recommends that the management of a drop-in centre and an outreach programme should submit a report to the Office of the Children’s Protector on their work. The Office of the Children’s Protector should also conduct on a random basis inspections in drop-in centres to ensure that they comply with minimum standards.**
  
- The Chapter on Early Childhood Development recommends that the provincial Departments of Social Development and Education should be accorded the power to

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104 See also chapter 19 at 19.8.3.2 above.

105 A non-residential facility which on a regular basis provides basic services and programmes for street children.

106 Aims to refer vulnerable children to appropriate resources through a process of befriending, counselling and providing some material assistance in disadvantaged communities.

107 See chapter 13 at 13.7.5 above.

inspect and monitor ECD services.<sup>108</sup> The Commission further recommends that the adequacy and appropriateness of care provided at partial care facilities should be monitored by the Department of Social Development.<sup>109</sup> **The Office of the Children’s Protector may also conduct periodical inspections in partial care facilities and may monitor ECD services.**

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108 See 15.8 above.

109 See 15.7 above.

The Chapter on Children: The International Dimensions recommends that the Department of Home Affairs, as the government agency under whose authority undocumented immigrants are detained, should take primary responsibility to ensure compliance with minimum standards in order to ensure the well-being of children who are detained with their parents at detention centres.<sup>110</sup> **The Office of the Children's Protector may, on its own accord or on receiving of a complaint, inspect any immigrant detention centre for the purpose of ensuring the adequate protection of children in that centre.**

A child in foster care's progress and condition should be monitored as frequently as the child's age and circumstances require.<sup>111</sup> As monitoring of children in foster care is usually conducted by social workers, the Office of the Children's Protector should only play an overseeing role to ensure that these children's progress are monitored on a regular basis. However, due to the lack of resources, social workers find it difficult to frequently visit children in foster care. Proper resourcing on ground level is thus essential to ensure effective service delivery. **The Commission thus recommends that the new child care legislation should stipulate that each provincial Department of Social Development should annually count the children in out-of-home care in its province, and should ensure that measures are taken for the provisioning for children in out-of-home care.**

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110 See 22.4.5 above.

111 See also 17.8.4 above where it is recommended that supervision services should not be required for certain children in foster care.

- Investigating the deaths of and serious injuries to children in care is an important element of monitoring the quality of services to children in care. In terms of section 42(1) of the Child Care Act every dentist, medical practitioner, nurse or social worker who examines, attends or deals with any child in circumstances giving rise to the suspicion that the child has been ill-treated or injured is obliged to notify the Director-General (DG). In practice if it is found that the death of a child was negligently or intentionally caused, criminal prosecution will usually follow. With regard to children in alternative care, there is no obligation to notify the DG of deaths of children that are due to abuse, neglect or that occur in suspicious circumstances. **It is therefore recommended that, similar to the Child Death Review Team of New South Wales (Australia)<sup>112</sup> the Office of the Children's Protector should be informed of the death of all children in alternative care in order to consider whether an investigation is necessary to determine the adequacy and quality of services to children.**
  
- **The Office of the Children's Protector should have the power to hold accountable any person or organisation that fails to implement or contravenes any provision of the new child care legislation.** For example, if a border official fails, without reasonable excuse, to refer an unaccompanied or separated child asylum seeker as a child in need of care to social services,<sup>113</sup> the official should be liable in his or her personal capacity too, e.g. a fine or suspension.
  
- **Similar to the position in Norway,<sup>114</sup> the Office of the Children's Protector should have the right of access to documentation affecting children at the disposal of any department or organisation to enable it to perform its functions.**
  
- **Similar to the position in Michigan(USA),<sup>115</sup> a procedure should be developed in terms of which the Office of the Children's Protector could summons any person to appear before it and to give testimony or produce documentation which might be relevant to an investigation.**

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112 See 24.3.3.6 above.

113 See 22.4.5 above.

114 See 24.3.1.1 above. See also the position in British Columbia at 24.3.1.6 above.

115 See 24.3.1.5 above.

- The Office of the Children’s Protector should increase public awareness of its existence and also disseminate sufficient information about the operation of the new child care legislation to the public.
  
- For effective implementation of the new child care legislation, it is essential that the Office of the Children’s Protector work in collaboration with the relevant departments, organisations or processes concerned with child welfare. **The Commission therefore recommends that the Office of the Children’s Protector should maintain close liaison with authorities, organisations, bodies and processes concerned with child welfare in order to foster common practices and to promote cooperation in cases of overlapping jurisdiction.** This will avoid a duplication of efforts and thereby maximising available resources.
  
- The Commission has recommended in Chapter 23 above that the Child and Family Court must be accorded a monitoring power to do a follow-up on a case which it heard earlier.<sup>116</sup> There is therefore no need to consider the issue of monitoring by the courts in this Chapter.

**The Commission further recommends that -**

- **It should be a criminal offence for any person who interferes with or hinder any person, authorised by the Office of the Children’s Protector, in the exercise or performance of his or her powers and functions.**
  
- **The Department of Health should inspect circumcision schools to ensure that these schools comply with required health standards.**<sup>117</sup>

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<sup>116</sup> See 23.10.6 above.

<sup>117</sup> See 10.2.8.4 and 10.2.11 above for a more detailed discussion on harmful cultural practices.