

“Friends of the court allowed to give evidence” – Con Court

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The Constitutional Court handed down judgment in favour of friends of the court today, unanimously ruling that High Court Rule 16A was broad enough to allow *amici* (friends of the court) to present evidence.

Justice Khampepe found that “...Rule 16A does not prohibit the introduction of evidence by an *amicus curiae* in a High Court” and that in each case the decision to allow an *amicus* to give evidence, and the extent of the evidence allowed to be offered, remains within the discretion of the court (which must make its decision based on the interests of justice).

The Legal Resources Centre (LRC) acted for the Children’s Institute of the University of Cape Town in this matter. The Institute applied to give evidence as a friend of the court in a High Court case on whether children in the care of relatives were in need of care and protection and therefore eligible for foster child grants. The case was an appeal against a decision of the Krugersdorp Magistrate’s court which had found that child SS was not in need of care and protection and therefore not eligible for a foster child grant.

The Children’s Institute sought to introduce statistical and other expert evidence to assist the court to make a decision that was in the best interests of all the children who would be affected by the outcome of the appeal. These children included the 1.1 million orphans in the care of relatives who were in need of social grants and hundreds of thousands of other children who had been abused or neglected and who were in need of protection services from social workers and the courts. However, its application to introduce this evidence was denied by the South Gauteng High Court on the basis that the High Court rules did not permit friends of the court to introduce evidence and they were therefore restricted to making only legal arguments without any facts.

Paula Proudlock, Child Rights Programme Manager of the Children’s Institute is delighted with the decision. “*The research that the Institute conducts puts it in a position to produce evidence that can be of invaluable assistance to the courts in making decisions that impact on the rights of children. In this judgment, the Constitutional Court*

acknowledges that amici are often in a better position to produce high quality evidence than the main parties in a case, and this should be encouraged so as to advance the rights of vulnerable groups like children”, she said.

Justice Khampepe said that Rule 16A was "specifically intended to facilitate the role of amici in promoting and protecting the public interest. In these cases, amici play an important role, first, by ensuring that courts consider a wide range of options and are well informed; and second, by increasing access to the courts by creating space for interested non-parties to provide input on important public interest matters, particularly those relating to constitutional issues. ...Courts adjudicating constitutional issues, in particular those relating to vulnerable groups like children, should be slow to refuse to receive evidence that may assist them in arriving at a just outcome".

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The LRC is an independent, non-profit, public interest law clinic, which uses law as an instrument of justice to provide legal services for the vulnerable.

The Children's Institute is a unit of the University of Cape Town that conducts research, advocacy and education aimed at realising children's rights.