

## BEST PRACTICE BRIEF:

## THE ROLE OF THE OMBUDSMAN IN

# Protecting and Promoting the Rights of Children and Young People

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### INTRODUCTION

**Drawing on research conducted by the African Ombudsman Research Centre (AORC), this best practice brief focuses on the role of the Ombudsman in protecting the rights of children and young people on the African Continent, emphasising the important connection between good governance and children's rights.**

The Ombudsman is an independent, high-level or senior public officer appointed to protect members of the public gratuitously against improper actions of Government and the public service. The office is provided for by the Constitution or by action of the Legislature or Parliament, and receives complaints from aggrieved persons claiming maladministration. Most Ombudsman also investigate government actions and decisions without waiting for a complaint to be made to them. In addition, they have the power to mediate, conciliate and negotiate with a view to resolving grievances or disputes against the State. When an Ombudsman investigates a complaint, they can either find in favour or against the person who has complained, and can accordingly recommend redress or some form of compensation. A number of African Ombudsman have dual or multiple mandates, meaning that they deal with complaints of corruption and/or human rights abuses too.

One of the principle mandates of an Ombudsman is to protect the most vulnerable in any society and to give the voiceless a channel through which to address injustice. It is, therefore, fitting that children and young people should be at the forefront of the Ombudsman's attention. This is especially so on the African Continent where 60% of the region's

1.25 billion people are under 25 and this figure is expected to increase by almost 20% in the coming decade.<sup>1</sup> Known as the *demographic dividend*, this youthful population could be a powerful force for economic, social and political change but it must be nurtured, developed and protected first.

This is where the Ombudsman comes into the picture; the Ombudsman can protect and promote children's rights through their generalised Ombudsman mandate, or through a separate specialised Children's Ombudsman office. Many European countries have such specialised offices. On the African Continent, it is more common for national Ombudsman or national human rights institutions to have a special department or unit within their office responsible for vulnerable populations, including children and youth. For example:

- The Ombudsman of Namibia has a Children's Advocate (est. 2015) responsible for protecting children's rights
- The Ombudsman of Sudan has a sub-department for women and children within its Human Rights Department
- The Ethiopian Institution of the Ombudsman has a special Children and Women Affairs Ombudsman

There are also other types of institutions with similar mandates. These vary from country to country. Uganda, for example, has the National Council for Children (NCC), established in 1994 by the Ministry of Labour, Gender and Social Development, with the responsibility of coordinating and monitoring the implementation of child rights programmes and policies.<sup>2</sup> In Zimbabwe, the Children's Act of 1972 made provision for the establishment of a Child Welfare Council, which is independent of government, and is tasked with overseeing the welfare of

This Policy brief has been produced by The African Ombudsman Research Centre (AORC), which is an institution of the African Ombudsman and Mediators Association (AOMA). The aim of the Centre is to serve as a focal point for Ombudsman offices in Africa, by coordinating their activities and supporting them with the provision of information, research and training to enhance good governance in Africa. The Centre is located at Howard College Campus (University of KwaZulu-Natal) and welcomes all students and scholars interested in our work to get in touch. AOMA is a body that brings together Ombudsman and Mediators from across the continent to pursue issues of common interest in the area of the rule of law, good governance and integrity in state affairs.



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African Ombudsman and Mediators Association  
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children in the country<sup>3</sup>, although complaints relating to the protection of children and their rights are also investigated by the Zimbabwe Human Rights Commission (ZHRC).

As is the case with Zimbabwe, countries may have more than one institution that deals with the protection and rights of children. In the countries where the Ombudsman and NHRIs are tasked with this mandate, they might share these responsibilities between themselves as well as with other institutions.

### **A BRIEF HISTORY OF THE CHILDREN'S OMBUDSMAN MODEL**

A Children's Ombudsman, also sometimes known as a Commissioner for children, protects and promotes the rights and interests of children in society.<sup>4</sup> The First Children's Ombudsman was established in Norway 1981. However, it

was really following the 1989 UN Convention on the Rights of the Child (CRC) that these institutions began to emerge. This was because once governments became signatory countries to the Convention, they took on responsibility for establishing independent institutions to protect children's rights in their own countries in order to ensure effective implementation in the Convention.<sup>5</sup> In the early 1990s, UNICEF promoted the concept heavily and encouraged all countries to establish their own Ombudsman for children.<sup>6</sup>

A Children's Ombudsman needs to possess the same characteristics as a national, federal or sectoral Ombudsman to be effective. It must:

- Be an independent institution established by law
- Be based on a defined concept and criteria
- Be given a clear mandate and powers

## **PROFILE OF THE THE MAURITIUS OMBUDSPERSON FOR CHILDREN**

The Mauritius Ombudsperson for Children, which represents and defends the rights of children in Mauritius and the neighbouring islands of Rodrigues and Agalega, is the first of its kind in Africa. Drawing inspiration from the original Norwegian model, The Mauritius Ombudsperson for Children was established by the Ombudsperson for Children Act (OCA No. 41 of 2003). This came into force on 20 November 2003 on Universal Children's Day. The Ombudsperson for Children's Office (OCO) of Mauritius was established in the same year. The current incumbent, Hon. Rita Venkatasawmy, has been in the post since 2015.

The main objectives of the Office are to ensure that the rights, needs and interests of children are given full consideration by public bodies, private authorities, individuals and associations, to promote child rights and best interests of children, and to ensure compliance with the Convention on the Rights of the Child.

This is done through the Office's investigative and advisory functions. As stipulated in Sections 6 and 7 of the OCA, the Mauritius Ombudsperson for Children Office has the authority to initiate an investigation whenever the Ombudsperson for Children considers that there is, has been or is likely to be, a violation of the rights of a child. This includes incidents of child labour. Cases can relate to the situation of children in the family, in schools and in all other institutions, (such as hospitals, residential care, police detention centres, rehabilitation and correctional youth centres) covering private and public bodies, as well as cases of abandoned or street children.

Complaints can be made by and on behalf of children by parents, family members, adults working with children, or any adult who is concerned about the violations of a child's rights.

The Ombudsman also has a mandate to monitor and evaluate the position of children in public and private institutions such as hospitals, residential placement facilities and shelters, and to provide the government and private bodies with advice and recommendations regarding services to, safety standards and the rights of children in these facilities, ensuring that they comply with certain norms. Furthermore, the Ombudsman may take such steps as necessary to ensure that children under the care of, or supervision of, a public body are treated fairly, properly and adequately.

This mandate extends to making proposals to the Minister on legislation, policies and practices regarding the above, and advising the Minister on the establishment of mechanisms to afford children the ability to express themselves freely according to their age and maturity, especially on all matters concerning their individual or collective rights, as well as encouraging partnerships among parents, schools and all other stakeholders committed to the promotion of children's rights.

The jurisdiction of the Office applies to children who are citizens of Mauritius, as well as those living abroad, and children of other nationalities who reside in the country.

- Be funded in a way that secures its independence, and have a staff that is well qualified and can operate freely
- Be accountable to parliament and/or government
- Operate with full transparency<sup>7</sup>

## INTERNATIONAL FRAMEWORKS

There are a number of International frameworks setting out guidelines for the protection of children and the promotion of their rights. These include:

### **The United Nations Convention on the Rights of the Child (CRC) 1989**

Adopted by the United Nations General Assembly in 1989, this international treaty on childhood is widely acclaimed as a landmark achievement for human rights, recognising the roles of children as social, economic, political, civil and cultural actors. The Convention guarantees and sets minimum standards for protecting the rights of children in all capacities, and 'has become the most widely ratified human rights treaty in history and has helped transform children's lives around the world'.<sup>9</sup>

Of particular significance to the Ombudsman is Article 3 of the Convention, which emphasises that 'the best interest of the child shall be a primary consideration' in all actions concerning children undertaken by 'administrative authorities'.

The CRC is complemented by two optional protocols adopted in 2000. The First Optional Protocol restricts the involvement of children in military conflicts, and the Second Optional Protocol prohibits the sale of children, child prostitution and child pornography.

### **The African Charter on the Rights and Welfare of the Child (ACRWC) 1990**

The ACRWC was adopted by Organisation of African Unity (OAU) in 1990 and entered into force in 1999. Like the United Nations Convention on the Rights of the Child (CRC), the Charter is a comprehensive instrument that sets out rights and defines universal principles and norms for the status of children.<sup>10</sup>

### **The Paris Commitments 2007**

The Paris Commitments, which protect children from unlawful recruitment or use by armed forces or armed groups, and the Paris principles and guidelines on children associated with armed forces or armed groups, were adopted at the international conference 'Free children from war' in Paris, February 2007. They jointly consolidate global humanitarian knowledge and experience in working to prevent recruitment, protect children, support their release from armed forces or armed groups and reintegrate them into civilian life.<sup>11</sup>

## DEFINING CHILDHOOD AND YOUTH

In biological terms, a child is a human being between the stage of birth and puberty. In legal terms, a child refers to a minor – a person younger than the age of majority. In most countries, the age of majority is 18 years, but in some countries, such as Indonesia and Saudi Arabia, it is as young as 15, while in others it can be up to 21 years, such as in the United States.

Youth, in contrast, is a more fluid and socially constructed term. According to the United Nations, youth is best understood as a period of transition from the dependence of childhood to adulthood's independence. A 'youth', therefore, is often referred to a person between the ages of leaving compulsory education, and finding their first job. For statistical purposes, the UN defines youth as those persons between the ages of 15 and 24 years old. In countries with high levels of youth unemployment, however, such as South Africa, this category might require redefinition. The African Youth Charter (2006), for example, defines the category of youth as those between the ages of 15-35.

### **The African Youth Charter 2006**

Adopted by the African Union in Gambia in 2006, this Charter creates a legally binding framework for governments to develop supportive policies and programmes for young people, and serves to fast-track the implementation of such policies and programmes. It outlines the rights, freedoms and responsibilities of young people, as well as the duties that must be performed by signatory states, to advance their rights. These fall within the four main themes of youth participation, education and skills development, sustainable livelihoods, and health and well-being. Emphasis is placed on youth participation in government, with the Charter specifying that signatory States guarantee youth participation in parliament and other decision-making processes, develop and implement comprehensive and coherent national youth policies, mainstream youth issues and establish a national youth coordinating mechanism.<sup>12</sup>

## HOW DOES THE OMBUDSMAN PROTECT CHILDREN AND ENSURE THEIR RIGHTS?

Children's Ombudsman, like General Ombuds institutions, work to protect children and young people through their investigative, monitoring, advisory and mediation functions. These include:

### Investigative

- Investigating complaints made by children or on behalf of children about anything related to specific childcare and protection legislation
- Initiating own motion investigations of systemic maladministration or human rights violations in relation to children and young people

### Monitoring

- Monitoring and assessing the treatment of children in public and private institutions such as hospitals, residential placement facilities, juvenile detention centres and street children shelters to ensure that children under the care of a public or private body are treated fairly, properly and adequately
- Monitoring the implementation of international agreements and conventions relating to child protection and children's rights such as the UN's CRC
- Monitoring the implementation of national legislation and policy in relation to child protection and children's rights

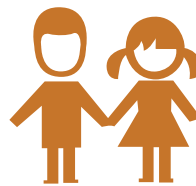
### Case Study: Ombudsman of Malawi

A recent investigative report, produced by the Ombudsman of Malawi, illustrates the role that the Ombudsman can play in protecting and promoting children's rights through holding the government accountable on the basis of its legislative and policy commitments. The report, *Abandoned on the Streets: A Report on an Investigation into Allegations of Neglect and Act of Bias in the Discharge of Duty by City and District Councils in Regards to Children Living and or Working in the Streets* (2019), was the outcome of an investigation into allegations of neglect, and an act of bias in the discharge of duty by City and District Councils over the manner in which they had been executing their functions under the Malawian Constitution, and the 2010 Child Care Protection and Justice Act, with regard to the management of street children.

The investigation found maladministration at a national level – within the Ministry of Gender, Children, Disability, and Social Welfare – as well as at municipal levels within the city councils and all district councils of Blantyre, Lilongwe, Mzuzu and Zomba.

Malawi did have a policy in place for the period 2014-2018, setting out guidelines for the management of street children, known as the National Strategy on Children Living & Working in the Street (NSCLWS). The investigation found, however, that this policy had never been implemented: as the Ministry

## The African Charter on the Rights and Welfare



Article 3

Every child should be a in this Charter, regardless of colour, sex, language, national and social origin

ARTICLE 4

If children can voice their opinions, then those opinions should be heard and taken into consideration during legal and administrative proceedings

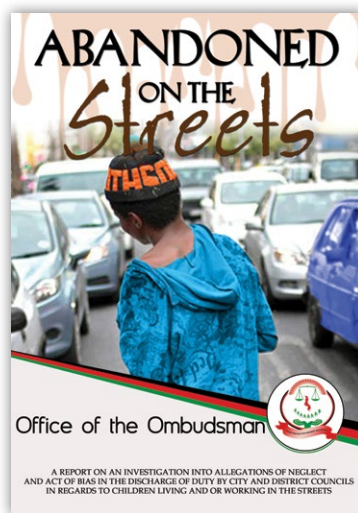
Article 9

Right to freedom of thought, conscience and religion



Article 10

Right to develop talents and abilities



Malawi Ombudsman's systemic report on maladministration in the protection and management of street children, 2019.



# Convention on the Rights of the Child 1990

Every child should be allowed to enjoy the rights and freedoms

without discrimination on the basis of his or her race, ethnic group, religion, political or other opinion, sex, origin, fortune, birth or other status

## Article 7 Ability to express his or her opinions freely

### Article 9

Right to privacy



### Article 11



Right to an education, to develop his or her personality, talents and mental and physical abilities to their fullest potential

### Article 12

Right to an education, to develop his or her personality, talents and mental and physical abilities to their fullest potential

### Article 13

Every child who is mentally or physically disabled has the right to special protection

### Article 14

Right to enjoy the best attainable state of physical, mental and spiritual health

### Article 15

Protection economic exploitation



### Article 16

Children should be protected from all forms of torture, inhuman or degrading treatment

### Article 22

Children should not be recruited as soldiers

### Article 23



Refugee Children should receive appropriate protection and humanitarian assistance

responsible had failed in its duty to popularise and implement this policy, rendering it completely ineffective. Furthermore, once the timeframe of the policy had lapsed – it had not been replaced with another. This left the stakeholders at municipal level without any guidelines on matters to do with children living and working on the streets. This was maladministration.

In response to this, local government structures such as the District Social Welfare Offices (DSWOs) who were responsible for welfare matters in the municipality had simply ignored activities to do with children living and working on the streets in favour of other social welfare activities, even though the vulnerability of these children was higher. In so doing, the Ombudsman determined that these DSWOs had acted with bias, which constituted another form of maladministration.

The Ombudsman also found through its investigation that the staff of the DSWOs were not doing their jobs properly. For example, when children living and/or working on the streets were found in conflict with the law, and had to appear in court, DSWO staff were often not available to represent them, despite this being one of their obligations. Staff were also claiming a Daily Subsistence Allowance when they were not entitled to one. In this respect, the Ombudsman found that 'The City and District councils have substantially failed to live up to their obligations under the Act thereby making a mockery of the law itself and increasing the vulnerability of children living and working in the streets.'

To redress these wrongs, the Ombudsman of Malawi recommended that the Ministry should involve all stakeholders and take various measures to develop a more comprehensive and coordinated plan of action for the protection and management of street children. The Ombudsman's report also made various recommendations for DSWOs to put in place systems to ensure that: a) social welfare workers are always available when needed for court appearances and b) to prevent social welfare workers from making illegitimate Daily Subsistence Allowance claims.<sup>13</sup>

#### Advisory

- Offering advice and recommendations to governments and private bodies regarding services, safety standards and the rights of children in all facilities mentioned above, ensuring that they comply with certain norms
- Advising the Minister on the establishment of mechanisms to afford children the ability to express themselves freely, according to their age and maturity, especially on all matters concerning their individual or collective rights
- Recommending policy and legislative changes to better promote and protect the interests of children. Some countries give their Children's Ombudsman the power to bring court cases on behalf of children. They use this power for influential 'test' cases aimed at changing legislation, policy or state practice

- Advocating for the domestication of international law concerning the rights of children into national law

### **Case Study: Commission for Human Rights and Administrative Justice Ghana**

The Ombudsman institution of Ghana, the Commission for Human Rights and Administrative Justice (CHRAJ), has played a positive role in helping to promote children's right to education, through presenting recommendations and advice to government on practical strategies to keep children in school and prevent dropouts. In doing so, CHRAJ has assisted the government with the implementation and domestication of the United Nations International Covenant on Economic, Social and Cultural Rights (1976), which confers the right to free basic education.

To support the implementation of this Convention, CHRAJ first sought the input of relevant stakeholders, developing this into a list of recommendations, which it then took to Parliament. The Ghanaian Government responded positively to these, using them as a basis for instituting the following interventions to try and ensure that children have access to and remain in school; setting a cap on school fees, providing free meals through a feeding programme, providing free uniforms and sandals and ensuring access to sanitary products for girl children, especially in poor and rural areas. The CHRAJ reports that these interventions have increased enrolment in schools.

The CHRAJ has also submitted recommendations to the Parliament for domestication of the CRC and the Convention against all forms of Discrimination Against Women (CEDAW). The government, in turn, has enacted national laws to incorporate the principles based in these conventions.

### **Mediation**

Ombudsman can also support the rights of children and young people through their mediation function. The Mauritius Ombudsperson for Children, offers some examples of the role the institution can play as a mediator in cases of family disputes. 'The Ombudsperson for Children (OC) has, over the past year, acted as mediator in many instances of parental separation,' she stated, 'where the parent who had legal custody of the child did not respect the other parent's right to visit the child.' The UNCRC states that the child has the 'right to express [their] views clearly', without manipulation or influence of others.

## **BEST PRACTICE RECOMMENDATIONS**

### **1. Reaching children and young people and ensuring the accessibility of the institution**

The Ombudsman can enjoy the top level infrastructure and abundant resources for investigating complaints that relate to the rights of children and young people, but unless children and the stakeholders who work with them are aware of the Ombudsman as a avenue for redress, this will have little impact. It is, therefore, imperative that the Ombudsman reach out to young people and children and also ensure that the institution is accessible and approachable to them.

Strategies to achieve this include:

- Regular school visits: This approach has been successfully adopted by The Mauritius Ombudsperson for Children as well and the Ombudsman of Namibia.
- Effective use of the media, for example:
  - The Ethiopian Institution of the Ombudsman has its own in-house studio to produce TV and radio shows to educate the public about their rights and the role of the EIO. Shows could be specially developed or adapted to reach children and young people.
  - With regard to printed material, Ombudsman might want to consider the development of information pamphlets or brochures about the institution adapted for younger readers. The key here is for these to be readable for the lay person and presented in a user-friendly and easy-to-read format. Materials intended for children must be simple, colourful and stimulating. Key documents should also be presented in accessible formats (e.g. audio, large font, sign language, Braille, etc.) and in different languages to overcome disabilities and linguistic barriers. For example, the The Mauritius Ombudsperson for Children has produced a beautifully illustrated children's book that teaches children about disability and rights.
  - When it comes to social media, the Ombudsman needs to ensure that their website platform is accessible and understandable for a younger audience. Is the complaints process easy to follow? Following the same principles, posts on Facebook, Instagram and Twitter could also be designed to appeal to a younger audience.
- Ensuring that the Office of the Ombudsman is physically accessible: This means ensuring that the address of the Office is easily available, that the institution is well signposted, that there is disability access, and that the public can walk in to make complaints.

While reaching out should encompass promoting awareness of the institution itself, it must also include promoting education and awareness among children and young people about their rights in general, including their right to Education, Health and Safety among other State services. This is an area where the Ethiopian Institution of the Ombudsman (EIO) is leading the way. Working together with other stakeholders, the EIO has been establishing and supporting Children's Parliaments with a view to building a democratic culture and allowing children's voices to be heard. At the end of 2017, 70 of these were operating in Ethiopia.

## **2. Listening to children and young people and learning from them**

Through their input and experience, children and young people have a valuable contribution to make in terms of helping government understand how services, infrastructure and policy could be improved and developed to better meet their needs and to protect their rights. This right to express their views freely is, in fact, one of the rights conferred on children by the Convention on the Rights of the Child.

Ombudsman institutions must work together with their stakeholders and partners to create platforms where children and young people can express views and grievances. The EIO's Children's Parliaments offer a best practice example of how this can be done.

When it comes to investigations brought about through individual complaints, as well as systemic investigations, it is once again imperative that children's opinions and experiences be sought and integrated into recommendations. Equally, in cases of mediation such as custody battles between parents involved in divorce, the views and opinions of children must be heard and acknowledged.

## **3. Treating children and young people with equality and respect**

Listening to children and young people, and acknowledging the importance of their participation in decisions affecting their lives, implies treating them equally and with respect. These are requisites for the right to dignity, which is enshrined in both the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child.

## **4. Holding governments to account in terms of their policy and legislative commitments to protecting children and young people, and espousing their rights**

The Ombudsman of Malawi's systemic investigation 'Abandoned on the Streets' shows how the institution

can do this at both national and municipal levels by exposing maladministration in terms of the obligations and duties of the State towards the management and protection of children living and working on the streets. The practical recommendations put forward in the Report have put pressure on the municipalities and Ministry implicated, to take various measures to ensure that systems are put in place to prevent a reoccurrence of such maladministration in future.

## **5. Working towards the domestication of international laws concerning the rights of children into national law**

The case study of Ghana's Commission for Human Rights and Administrative Justice (CHRAJ), illustrates how the Ombudsman can support the government in the implementation of international human rights treaties and conventions, such as CRC, CEDAW and the Covenant on Economic, Social and Cultural Rights, through offering advice and recommendations on how to change and develop national policy and legislation to support and facilitate the realisation of the rights conferred by such treaties. In this case, CHRAJ's recommendations assisted the Ghanaian government to change its educational policy – incorporating a number of interventions to encourage parents to keep their children in school – in support of the International Covenant on Economic, Social and Cultural Rights (1976), which confers the right to free basic education.

## **6. Establishing good channels of communication, including systems of referral with other institutions and stakeholders that work with children and young people**

A general Ombudsman institution may not have the mandate to investigate a particular case relating to a violation of the rights of a child or young person. Equally an NGO might be picking up and monitoring such cases of abuse that are occurring systematically but lack the resources to take the matter further. That is why it is imperative that stakeholders and institutions that work with children and young people, such as Human Rights Commissions, NGOs and government departments such as Social Welfare, Health and Education, establish good channels of communication, including systems of referral with each other.

Repeated patterns of abuse can be detected across institutions and reduce the chances of children falling through the cracks between institutions.

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