



"IT IS NOT  
ENOUGH TO BE  
COMPASSIONATE,  
WE MUST ACT" -  
THE DALAI LAMA





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The **One Child a Year Campaign**, targeted at securing legal representation for children in need was started on 18 June 2014. This booklet has been produced to mark the one-year anniversary of the project.

The theme of 2015's Child Protection Week, *"Working Together to Protect Children"* causes us to reflect on what role attorneys and advocates can play to protect South Africa's children.

Former President Nelson Mandela committed South Africa to the pursuit of the purposes defined in the World Declaration on the Survival, Protection and Development of Children, approved by the United Nations on 30 September 1990. These purposes include having the knowledge and means to protect the lives and diminish the suffering of children, promoting the full development of their human potential and making them aware of their

needs, rights and opportunities. These commitments resulted in the UN Convention on the Rights of the Child, which provides opportunities for the universal recognition of the welfare of children and their rights.

As a result, South Africa became signatory to a number of substantial international treaties and mechanisms involving children, offering protection and support across international borders. Several crucial sections of legislation, aiming to protect the rights of children, were enacted locally and internationally.

## The Children's Act

Notably, the most significant local development was the Children's Act (38 of 2005). This was enacted to give effect to children's rights as set out by the Constitution of South Africa, which also places an obligation on the state to promote, protect and fulfill these rights. As the preamble to the

Children's Act clearly states, the protection of children's rights leads to a corresponding improvement in communities, families and society as a whole because, as with human rights, children's rights cannot be realised in isolation or in a vacuum. In turn, a society must provide a safe and secure environment for children to thrive in all spheres of life, including providing them with opportunities to participate in and be heard in matters affecting them. We believe former President Nelson Mandela reflected on this reciprocal duty by stating:

**"THERE CAN BE NO KEENER REVELATION OF A SOCIETY'S SOUL THAN THE WAY IN WHICH IT TREATS ITS CHILDREN."**



IN 2010+2011  
THERE WERE  
50 000  
CRIMES AGAINST  
CHILDREN IN SOUTH AFRICA  
(SAPS)

## WHAT ARE WE DOING TO CREATE A SAFE AND SECURE ENVIRONMENT FOR OUR CHILDREN?

So how do we treat our children? What are we doing to create a safe and secure environment for them? Sadly, according to a fairly recent report by UNICEF, South Africa ranks extremely high internationally for reported incidents of sexual violence, with incidents of violence against children being common.<sup>1</sup> Grave challenges exist in obtaining reliable, accurate and recent information on all forms of abuse and/or violence against children. Primarily, abuse and/or violence is not readily

<sup>1</sup>DSD, DWCPD and UNICEF. 2012. Violence Against Children in South Africa. Pretoria: Department of Social Development/Department of Women, Children and People with Disabilities/UNICEF. Available online at UNICEF – Website: <http://www.unicef.org/southafrica>.

reported; secondly, it frequently occurs in the home, which does not make it detectable and, thirdly, children are vulnerable, dependent and often unaware of their rights. Lastly, children are often fearful of reporting incidents of abuse and/or violence or, in many situations, simply unable to do so. The problem is further exacerbated by incomplete or incompetent record keeping by state departments and other service providers, notably the police.

The 2010/11 statistics from the South African Police Service (SAPS) record 50 000 crimes against children for 2010/11. More than half of all reported crimes against children were sexual in nature. According to the report, 61% of the children who endured sexual offences were under the age of 15 years and about 29% were between 0 and 10 years of age.<sup>2</sup> A more recent

<sup>2</sup>South African Police Service. Crime Report 2010/2011. Available online at <http://www.pmg.org.za/files/docs/110908crimestats2011.pdf>



crime report, released by the SAPS for the period April 2013 to March 2014, records 38 618 cases of neglect and ill treatment of children. A staggering 62 649 cases involving sexual offences were recorded for 2013/14 alone, but unfortunately this does not provide a breakdown of the actual numbers involving minors. It mentions rape as being the dominant crime in this category and confirms that “a large proportion of [these] victims are children”, attributing “neglect or poor custodianship of children” as one of the “main contributors to this crime” but does not provide actual numbers.<sup>3</sup>

Although the statistics are reason for concern, many incidents of abuse and/or violence still go unreported because children are so vulnerable. We find that where incidents are reported, state and private structures that should offer protection, security, and/or speedy justice, instead fail, and often do not provide the desired results or outcome. Often these processes expose the child victims further, subjecting them to secondary trauma while leaving their basic needs unmet. The **One Child** project by ProBono.Org aims to address these gaps.

<sup>3</sup> South African Police Service. Annual Report. An Analysis of the National Crime Statistics. Available online at [http://www.saps.gov.za/about/stratframework/annual\\_report/2013\\_2014/crime\\_statreport\\_2014\\_part1.pdf](http://www.saps.gov.za/about/stratframework/annual_report/2013_2014/crime_statreport_2014_part1.pdf).



## ONE CHILD A YEAR AIMS AND OBJECTIVES

The intention of the **One Child** project is not only to secure legal representation for children in need but also to get attorneys and/or advocates to oversee and monitor the entire court process, ensuring that a case is properly finalised, benefitting the child. This means that attorneys and advocates should not only represent children in court but also monitor the non-legal participants who are tasked by law to watch over these children, for instance social workers, psychologists, child protection organisations, case managers, foster parents and family members. This will ensure that children are placed in safe environments, with proper support structures that nurture and safeguard these children, minimising or even

eradicating secondary trauma.

ProBono.Org is a legal clearinghouse with law clinic status. Legal or court matters are not taken on directly by staff members but referred to private law firms, mediators and/or advocates on a pro bono basis. ProBono.Org consults with clients, screens cases and assesses merits before referrals are made and plays an active role in realising access to justice to those most in need.

In providing this service to deserving communities and individuals for the past nine years, ProBono.Org recognises the need for children to obtain legal representation. Many of our children's courts are dealing with vast numbers of cases involving children in high-risk situations, with little or no support from state or other private institutions. These cases range from neglect, abuse,



abandonment and trafficking, to the removal of children from unsafe or violent conflict situations. A recent case we dealt with involved a 19-day-old baby who ended up in ICU after suffering a brain haemorrhage in a car accident. Police on the scene confirmed that the baby was not secured or strapped in a baby seat and the mother was driving under the influence of alcohol. The baby was removed from the mother's care.

## Representing the child

Sadly, this horrific case is not an exception. ProBono.Org often deals with cases of children being neglected, placed back in extremely abusive or violent situations, repeatedly being raped or sexually exploited (due to a lack of prosecution) and in many cases abandoned to fend for themselves (without any proper support or alternative placement).

From the project's inception on 18 June 2014 it has become increasingly clear that legal representatives are needed for children and play an invaluable role in finalising cases and/or accelerating the progress in others. The legal representative in the Children's Court can function as a protector, an upholder of rights, a mouthpiece, a mediator, and a custodian of the child's affairs, often a voice of reason amidst conflict and opposing sides. Above all, this legal representative upholds the child's best interests in all matters affecting the child.

The role of a legal representative in the criminal justice system (where child victims are involved) is more complex. In terms of the common law, the legal representative assists the police investigation and subsequent prosecution, where possible. However, the role of a watching brief lawyer also involves advising the child victim, his/her guardians (or

custodians) and supporting them during the judicial process.

**ABOUT 50 CASES INVOLVING CHILDREN HAVE BEEN REFERRED TO PROBONO.ORG SINCE LAST YEAR, WITH THE NUMBER OF REFERRALS GROWING DAILY. THE CASES INVOLVE CURATORSHIP, PHYSICAL AND/OR SEXUAL ABUSE, MAINTENANCE, PROTECTION, CARE, AND/OR ACCESS APPLICATIONS, AND HIGH CONFLICT FAMILY SITUATIONS. OUR OFFICES NEED VOLUNTEER ATTORNEYS AND ADVOCATES TO TAKE ON MATTERS INVOLVING CHILDREN.**

In this regard, we regularly facilitate seminars and training sessions (aimed at attorneys, advocates, social workers and counsellors) to reflect on Child Protection Week, the project thus far, to create awareness about the plight of children and to secure volunteers for this kind of work.



IN THE VAST MAJORITY OF CASES WHERE SEXUAL ABUSE IS PERPETRATED AGAINST CHILDREN, THE PERPETRATOR IS A MEMBER OF THE FAMILY, OR A PERSON KNOWN TO THE CHILD.

## CASE STUDIES

These are just a few examples of cases we have taken on and referred to lawyers since the project's inception.

### 1. The child representative as protector and upholder of rights

#### The four cousins

In the vast majority of cases where sexual abuse is perpetrated against children, the perpetrator is a member of the family, or a person known to the child. A consequence of this is that the perpetrator may remain present in the lives of children, creating on-going emotional instability and trauma. In July 2014, ProBono.Org appointed an attorney for four young children, all cousins, who were allegedly sexually abused by their uncle. Criminal charges were laid against the uncle but these charges have yet to

culminate in a conviction. The uncle was released on bail.

Most of the activity in this matter revolved around protecting the children from coming into contact with their uncle while he was out on bail.

This man was threatening the children and the family, and there was a need to offer protection. Fortunately we found a pro bono attorney who was able to serve two protection orders on the man to ensure he was kept away from these four child complainants.

Family dynamics are always complex, and one has to be astute to understand how best to protect children. In this case the protection orders were not enough. The mother of the accused (who happened to also be the grandmother of one of the children) applied for access to one of the little boys. The pro bono legal representative was able to read into the complex web of relationships in this family. He knew that if this

application were granted it would allow the accused to intimidate and harm this little boy. He saw to it that the application was opposed and subsequently dismissed by the court.

The attorney is continuing his watching brief in this matter with the focus on protecting the children and assisting the criminal prosecution to proceed.

### 2. The child legal representative as mouthpiece

#### The case of J

This case, as with the situation above, and most child abuse cases, concerned the violation of a young teenage girl J, only 12 years of age, by someone she should have been able to trust, and a person she knew well - her stepfather, M. The child became aware that her stepfather was making video recordings of her while she was



IN THESE KINDS OF MATTERS IT IS OFTEN COMMON FOR THE CHILD VICTIM, CHILD WITNESS AND HIS OR HER FAMILY MEMBERS TO BE INTIMIDATED AND THREATENED BY THE ACCUSED. IT IS THEREFORE IMPERATIVE FOR THE CHILD TO BE REPRESENTED.

in her bedroom dressing for school every morning. She became frightened of living in the same house as him and, on her own, approached the Children's Court early in August 2014 for assistance. This is itself is an unusual and a brave step for a child to take.

She needed an attorney to assist her to apply for a protection order against her stepfather. The court removed J from her mother's care and placed her with her grandparents and her biological father while the situation was being resolved.

ProBono.Org secured an attorney, and with his support an interim protection order was granted against J's stepfather on 26 August 2014.

J's mother subsequently obtained a divorce from the man, and he was asked to move out of the family home. J was reunited with her mother, and on 12 December 2014 the court found this young girl to be secure and no longer in need of care and protection.

### The case of T

In February 2015, ProBono.Org appointed a watching brief attorney for T, a ten-year-old boy from the East Rand. His paternal grandparents, and possibly other members of his family, allegedly sexually abused him in a church over a period of years.

The accused and relevant family members were arrested and charged with sexual assault, but were granted bail. Like the case referred to above, the granting of bail to alleged perpetrators frequently offers no protection to children. There were complaints from the family that the accused threatened the child. As a result T was moved to a new school and the acts of intimidation ceased.

The preliminary trial hearing was set for May 2015 but the state is still trying to procure evidence, resulting in a postponement. It is feared that without new and compelling evidence, the chances of convicting

the accused family members are slim.

In these kinds of matters it is often common for the child victim, child witness and his or her family members to be intimidated and threatened by the accused. It is therefore imperative for the child to be represented. If the child victim or his family members receive further threats, or the possibility of further victimisation resurfaces, the legal representative is in a position to take steps to prevent this.

### 3. The child representative as the voice of reason

#### The case of P

P is a little boy of five, referred to ProBono.Org by the Children's Court because of the acrimonious relationship between his parents and allegations of sexual abuse by the parents against each other.

Furthermore, the parents each had a number of criminal cases pending against them and seemed unstable in their approach to each other, adversely affecting P's wellbeing. There was no conclusive evidence of sexual abuse, despite various allegations, but the court requested an investigation to establish whether P was in need of care and protection (in terms of Section 150 of the Children's Act) to afford him legal safekeeping.

The vicious conflict between a father and mother, when their relationship has broken down, can be unsettling and traumatising for a child. Parents, who ought to have the child's best interests at heart, are so intent on hurting and undermining one another that they do as much, if not more, damage to their own children.

At the first hearing in this case, the court indicated that it was considering placing P in foster care because of his parents' behaviour and acrimonious relationship. A pro bono attorney was appointed for P in order to assist the court to decide if this would be best for him.

Before this matter was heard in the Children's Court, the High Court had appointed a case manager to determine and investigate the number



**THE VICIOUS CONFLICT BETWEEN A FATHER AND MOTHER, WHEN THEIR RELATIONSHIP HAS BROKEN DOWN, CAN BE UNSETTLING AND TRAUMATISING FOR A CHILD.**

of disputes and conflicts surrounding the child. The presence of this case manager proved invaluable as the pro bono attorney relied greatly on her views, experience and assessments in deciding whether or not P should be placed in foster care.

## Resolution

The pro bono attorney recommended that the child not be placed in foster care and the Court handed the matter back to the case manager, requesting that she monitor the child's situation.

In this particular matter there was a real need for P to be represented, as neither of his parents could objectively decide on what was best for him and the court was in dire need of guidance on the issue. The attorney served as a voice of reason, elaborating on the best interests of P in conjunction with

the other experts in this matter.

The project is gaining momentum and we hope that it encourages more attorneys and advocates assisting children to have their constitutional rights to health, dignity, protection and safety recognised as envisioned by former President Nelson Mandela. Only then will our society "be measured by the happiness and welfare of the children, ... the most vulnerable citizens in any society and the greatest of our treasures", giving effect to the World Declaration on the Survival, Protection and Development of Children (Nelson Mandela, Nobel Peace Prize Lecture, 1993).

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