

EVERY Child MATTERS



Advocate Veerash Srikison says giving children their own court promotes their voice in our society

South Africa produced one of the most evolved pieces of legislation when it ratified the Children's Act 38 of 2005. This Act gave detailed effect to the best interests of the child principle found in the Constitution of South Africa and opened up a responsibility for the wellbeing of children from all spheres within the Republic.

One such sphere is the court system and the right for children to have access to justice without fear of intimidation. We know that as adults the formal setting of a courtroom, with the presence of strangers and court officials, is a daunting atmosphere. How then can we expect minor children to maintain their composure in a hearing in such a setting relating to them?

Fortunately the drafters of this Act created Chapter 4, which provides for the setting up of Children's Courts, where children feel comfortable and safe during a judicial process. It states in section 42(8) (a) of the Act, that children's court hearings must, 'as far as is practicable, be held in a room which is furnished and designed in a

manner aimed at putting children at ease'.

Section 42 goes further to incorporate the child's active participation in these proceedings, rendering the child's voice vital to the outcome of the hearing, while at the same time protecting the child from undue influence. All proceedings are conducted in a closed court. The child is not in the court, but in a separate room and video communication is used between the court and the child.

A child has a right to a legal representative; if one is unaffordable then a legal aid lawyer will be appointed. A social worker will also assist the child in investigating his or her case or to be an intermediary where necessary.

To make the Children's Court easily accessible, the Act states that every Magistrate's Court in South Africa is a Children's Court, creating almost 737 children's courts in the country. To determine which court is the right one to go to, you can choose a court that is nearest to where the child, or his or her family lives.

The Children's Court will hear matters relating to:

- The protection and wellbeing of a child.
- The care of, or contact with a child (previously known as custody and access).
- A parenting agreement, if not part of a divorce.
- Paternity of a child.
- The provision of ECD development services for special or pre-schooling.

- Prevention or early intervention services.
- Maltreatment, abuse, neglect, degradation or exploitation of a child, except criminal cases in this regard.
- The temporary safe care of a child.
- The adoption of a child, including an inter-country adoption.
- Alternative care or temporary safe care for a child, including a child- and youth-care centre or a partial-care facility.
- Any other matter relating to the care, protection or wellbeing of a child provided for in this Act.

Where the court takes into account the vulnerability of the child, their ability to participate, power relationships within the family and the nature of the allegations made, and believes that a lay forum such as mediation will assist the family to attempt to reach settlement outside of the courtroom, it may refer the matter to mediation before making an order.

It must be noted that the parent of a child need not necessarily be the person who brings a child-related matter to the children's court. The Act allows for anyone acting in the interests of the child to approach the court, further promoting that, as a society, we keep a vigilant eye on the wellbeing of our children and to hold ourselves responsible to report any violations that do not serve the best interests of all our children. M&P