



**Commissioner
for Children**

15 August 2022

For Attention: Mr Llewellyn Brown
The Committee Secretary
Portfolio Committee on Education

By email: belabill02@parliament.gov.za

Dear Sir

Western Cape Commissioner for Children and Child Government Monitors submission on the Basic Laws Amendment Bill [B2-2022]

I, Christina Nomdo, the Western Cape Commissioner for Children (WCCC), assisted by Ambrose Nathan Philips (a mentor in my Office) to tender this submission on the Basic Education Laws Amendment Bill [B2-2022] (hereinafter the BELA Bill), in partnership with the Child Government Monitors (hereinafter referred to as monitors) in my Office. See articulation of the mandate on the WCCC website:

https://www.westerncape.gov.za/childrens-commissioner/files/atoms/files/Commissioner%20Mandate_AdultVersion.pdf

On 1 June 2020, when I commenced my tenure as the Commissioner for Children, I established child participation strategies that would hear directly from children their inputs for governance. There are four strategies that I have employed: namely Consultations with Children, Community Child Rights Workshops, Child Government Monitors forum, and most recently Government Budget Monitoring. The Child Government Monitors engage directly with the Commissioner. See a report on the



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composition and aims of the Child Government Monitors: <https://www.westerncape.gov.za/childrens-commissioner/news/child-government-monitors-report>

The engagement with monitors is facilitated primarily via online methods such as WhatsApp chat, Email and Facebook messenger and includes children in urban and rural areas as well as children living with their parents and those in state care. As a result, children have been able to discuss the matters they believe to be most important when reforming the education laws. Their inputs were analysed in relation to pertinent clauses in the BELA Bill [B2-2022] and makes proposals for law reform. Therefore, this submission sets out the main issues the Child Government Monitors want to address and reframes or proposes sentiments on clauses for the Amendment Bill. Child Government Monitors are named in the submission as they and their parents want to affirm their role as child human rights defenders and have provided full consent. The Community Child Rights Workshops conducted in the West Coast, Hessequa, Bitou, Prince Albert and Beaufort West Municipalities gave children the opportunity to express their views on education. They created posters to communicate these views with adult decision makers. See the following reports for examples of the posters:

<https://www.westerncape.gov.za/childrens-commissioner/news/child-rights-community-workshop-report-2020>

<https://www.westerncape.gov.za/childrens-commissioner/news/community-child-rights-workshops-hessequa-municipality-2021>

The first Children's Consultation in 2021, conducted by my Office, focussed on #learninginCOVIDtimes: <https://www.westerncape.gov.za/childrens-commissioner/news/learning-covid-times-report>.

This submission will draw from the inputs of Child Government Monitors and the submissions by children in Community Child Rights Workshops.

The Child Government Monitors would appreciate the opportunity to make an oral submission during the public hearings process. I will act as a liaison between the Portfolio Committee of Education and



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the Child Government Monitors. I can be contacted via email: childrens.commissioner@wccc.gov.za
and WhatsApp: 083 776 7067.

I wish to avail myself to the Committee to support the development of a child-friendly process for all children, who made submissions, to be heard in the public hearings process.

Sincerely

Christina Nomdo

Western Cape Commissioner for Children



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Introduction

Children's right to participate in decisions affecting their lives forms one of the pillars of a child rights approach framed in international and domestic laws¹. Thus, children's rights to protection from harm, provision of services for wellbeing and participation in decision making must be promoted and protected by the primary duty bearers of child rights. Parents and legal guardians are primary duty bearers, and the government of the Republic of South Africa are secondary duty bearers to deliver on child rights².

This submission focusses on the issue of *rights respecting schools*. Child Government Monitors have drawn from their lived realities to share with us recommendations on the way government can provide educational contexts for children which are rights respecting. In the same way, children in Community Child Rights Workshops have shared their views on improvements in the education system with the Commissioner. She has compiled reports of all the data and will draw from these reports and data to substantiate this submission.

The children and the Commissioner make recommendations in relation to:

- Parents' role in their child's education;
- Allowing alcohol to be sold on the school property;
- The principle of non-discrimination; and
- Understandings of discipline at schools.

The topic is introduced, monitors views and inputs from Community Child Right Workshops are presented and their recommendations are listed. Proposed sentiments for redrafting clauses of the law are tabulated. In conclusion, the key messages of the submission are reiterated.

¹ United Nations Convention on the Rights of the Child, African Charter for the Rights and Welfare of the Children, Constitution of the Republic of South Africa

² See Children's Act 38 of 2005, s18 The role of parents specifically is articulated in the articles that give expression to child rights in these international laws and domestic law. Ratifying these international laws binds the government to ensure children's rights are protected and promoted. When parents as primary duty bearers cannot or will not fulfill their children's rights, the government is obliged to fulfill this role.



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Parents' role in their child's education

Parents are the primary duty bearers to realise children's rights. Thus, parents play an important role in ensuring their children apply to a school, get accepted and are provided with good quality learning, teaching and schooling. In this section, the submission deals with parents' ability to ensure compulsory attendance of their children.

Natalie (17 years) recognises the role of parents in education but decries their criminalisation for not ensuring compulsory attendance by their children, she says:

"In my mening is 12 maande bietjie drasties. Ten opsigte van skool is die the over se verantwoordelikheid om hul kinder/s in die skool te sit. Maar as die kind nie skool wil gaan nie is hulle hande afgekap want die wet se jy mag nie raak aan a kind nie." (In my view, 12 months (imprisonment) is a bit drastic. Parents are responsible to make sure their children attend school. However, if a child does not want to attend school, their hands are tied as the law says you may not touch (beat) children.)

Whereas parents have a responsibility to ensure children attend school, children also have agency in this process. Natalie is concerned about how parents can force their children to go to school if they do not want to do so. She even reflects that in the past parents forced their children by beating them, but this is not a viable option anymore. Instead of violating their rights to bodily integrity and dignity by beating children, it is important to understand what **factors are pushing children out of schools**.

Children are ambivalent about whether parents should be jailed for a year for not sending their children to school. John-Lee (14 years) is cognisant that other factors may be at play, he notes:

"I think that 12 months is a lot. Because sometimes there are certain circumstances that prevent parents from being able to send their child to school. I think these should be taken into consideration if it so happens a parent ends up in court."

Therefore, if we criminalise parents, we need to understand the reasons for their action or inaction as well as the consequences criminalisation will have on the family. Ruan (14 years) says:

"Ek sal nie graag my ouers in die tronk wil sien nie, om rede, wie gaan vir my sorg in daardie 12 maande periode. Mense gaan my bespot as hulle hoor van my ouers wat in die tronk is omdat hulle may nie skool toe gestuur het nie." (I do not really want to see my parents go to jail because who will look after me during those 12 months that they are in jail. People will mock me if they hear my parents are in jail because they did not ensure I attended school.)



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On the other hand, Ruan (14 years) also reflects on the parental duty to realise children's education rights, he notes:

"Ek voel dat my ouers moet ook die vonnis kry omdat hulle my opvoeding van my afgesteel het. Nou kan e kook nie my drome beruik nie, en dit is hulle skuld." (I feel my parents should face consequences (if I do not attend school) because they stole my education from me. Now I cannot attain my dreams and it is their fault).

Matthew (17 years) acknowledged that parents may be part of the reason that children do not attend school, he notes:

"Could be the trauma they experience at home because of their parents that use drugs and abuse alcohol, maybe they need to support themselves."

He points out that parents may also be struggling with their own issues of addiction which would require more of a rehabilitation intervention than imprisonment.

Children understand the value of education and the role their parents should play in helping them realise this right. However, they understand the complexities underpinning access to and attendance at school. So, they reflect that criminalising parents for factors that may be out of their control is not in the best interest of the child. As the monitors note, there are many ramifications to be considered. A more appropriate response to encouraging compulsory attendance is to eliminate all barriers to learning as envisaged in White Paper 6. Our proposal for the law reform process is tabulated below:

Clause in BELA Bill [B2-2022]	WCCC and CGM view
<p><i>Criminalising parents for child's non-attendance</i> 2. Section 3 of the South African Schools Act, 1996, is hereby amended— (b) by the substitution for subsection (6) of the following subsection: "(6) Subject to <i>this Act</i> and any other applicable law— (a) any <i>parent</i> who, without just cause and after a written notice from the <i>Head of Department</i>, fails to comply with subsection (1), is guilty of an offence and liable, on conviction, to a fine or to imprisonment for a period not exceeding [six] 12 months, or to both a fine and such imprisonment; or</p>	<p>Disagree with criminalising parents</p>

The recommendation from the Commissioner and monitors is not to criminalise parents for learner non-attendance.



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Allowing alcohol to be sold on school property

Alcohol use and abuse as well as the consequences thereof are very well understood by the children. They were vehement in their views that alcohol should not be allowed to be sold on school property. They are afraid this might lead to underage alcohol consumption and a general culture of the acceptance of alcohol as part of the school culture. Saadiq (17 years) said about the availability of alcohol at schools:

"Onder geen omstandighede nie" (Under no circumstances).

Lilitha (13 years) adds:

"Alcohol should not be sold at school and shouldn't be an option, it shouldn't even be considered, whether for fundraiser or if the school will benefit from the amount of money they will make, it shouldn't be an option."

John-Lee (14 years) expresses his concern that children may be able to access the alcohol, he notes:

"Wouldn't learners be at the dance and get hold of the alcohol, some way or another?"

Thus, the children are very concerned about alcohol availability on school property. Our proposal for the law reform process is tabulated below:

Clause in BELA Bill [B2-2022]	WCCC and CGM view
<p>Amendment of section 8A of Act 84 of 1996, as inserted by section 7 of Act 31 of 2007</p> <p>8. Section 8A of the South African Schools Act, 1996, is hereby amended—</p> <p><i>(b)</i> No person may bring <i>liquor</i> onto <i>public school</i> premises, or have <i>liquor</i> in his or her possession, or consume or sell <i>liquor</i> on <i>public school</i> premises, or during any <i>public school activity</i>.</p> <p><i>(c)</i> Notwithstanding the prohibition contemplated in paragraph <i>(b)</i>—</p> <p><i>(i)</i> the <i>Head of Department</i> may, upon application from the <i>governing body</i> to supplement the resources of the <i>school</i>, permit the possession, consumption or sale of <i>liquor</i> during any <i>school activity</i>, whether it is held on or away from the <i>school's</i> premises; and</p>	<p>Disagree with the permissive culture of alcohol use on school premises is enabled in law.</p>



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(ii) the *governing body* of a *public school* may, upon receipt of an application from any person and in consultation with the *Head of Department*, permit the possession, consumption or sale of *liquor* during any private or religious function held on the *school's* premises: Provided that such possession, consumption or sale may not take place during *school* hours: Provided further that the *governing body* of a *public school*, in consultation with the *Head of Department*, may attach certain restrictions to the granting of such permission.

(d) The permission contemplated in paragraph (c) relates to—

(i) fund-raising activities of the *school* by the *governing body*;

(ii) the letting of the *school's* premises to members of the community for private functions, church services and the like, in order to augment the *school* fund;

(iii) functions held for the staff of the *school*; and

(iv) instances where staff members live on *school* premises in living quarters provided by the *school*: Provided that the *governing body* of the *public school*, in consultation with the *Head of Department*, may attach to the possession and consumption of *liquor* in the living quarters of staff members, such restrictions over and above those contemplated in paragraph (c).

We recommend not creating a more accepting and permissive climate for alcohol use at schools.

The principle of non-discrimination

Non-discrimination is a strong underpinning value of a child rights approach. There are many facets of a school context and operations that may lead to discrimination and exclusion of some persons. Sometimes this is codified and other times it is reflected in the culture of the school. Rights respecting schools should aim to eliminate discriminatory codes, practices, and cultures. In this section, the submission deals with the development of language policies.



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Language policy is fundamental in schools for inclusion and should not be used as a factor for discriminating against learners.³ Liyanda (16 years) agrees that language is important in education, she says:

"Language helps in understanding the work and being able to educate yourself as most work material is in a certain language".

Thus, language policies should be cognisant of this fundamental value of inclusion and non-discrimination. Vimbai (16 years) provides guidance on the choice of language for a particular school in a particular area, she notes:

"Schools should set language policies based on their location and the most spoken language."

It is important to take the predominant language into account when setting language policies. If there is a significant number of learners who speak a different first language in a community, this should also be catered for.

Language has become such an important and contentious issue in our society, and we may in fact be promoting language nationalism with legal instruments that preference one language over another. Instead, we should understand that we are part of a global society with the need to communicate broadly with others, not only building capacity in our own South African languages. A child government monitor reflected this in their comment about language policies, he opined:

"I think we should only have our (South African) languages spoken in schools. But if the learner only speaks French, then it is up to the parents to make the necessary arrangements for the child to be taught any of the languages spoken in SA."

This view communicates that we have drawn the line for language inclusion too narrowly for our context. We must also appreciate the needs of learners emanating from Francophone countries. How do we include them without placing any undue burdens on their parents? Why must they, for example, be conversant in Afrikaans? Could they not write a French examination that demonstrates their true competence and diversity?

This type of nationalism can even extend to having a different accent when speaking English. Vimbai (16 years) says:

³ ENCA Education Department takes school to court over language policy - <https://youtu.be/zy0QpLSIBFI>



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*"A friend of mine said he dropped out of school because he felt left out. **He is from Zimbabwe and he has a deep Zimbabwean accent when speaking.** He often got bullied because of that."
(emphasis from source)*

Therefore, children understand that language is integral to child development. It is a tool for communication, but it is also a factor of identity. From a rights perspective, language is viewed as a core aspect of identity and how we can practice our freedom of expression. Language inclusivity can help us move forward towards a more rights respecting culture in schools. Our proposal for the law reform process is tabulated below:

Clause in BELA Bill [B2-2022]	WCCC and CGM view
<p>5. Section 6 of the South African Schools Act, 1996, is hereby amended— (a) by the substitution for subsection (2) of the following subsection: “(2) The <i>governing body</i> of a <i>public school</i> may, subject to subsection (13), determine the language policy of the <i>school</i> subject to the <i>Constitution, this Act</i> and any applicable provincial law: Provided that the language policy of a <i>public school</i> must be limited to one or more of the official languages of the Republic as provided in section 6(1) of the <i>Constitution.</i>”;</p>	<p>Disagree with School Governing Body setting language policies. This should be set by the Head of Department taking the community demographic into account. Language policies should not be used to exclude learners living close to the school.</p>

The Commissioner and monitors recommend a more inclusive orientation when language policies are developed and that a higher authority decide on these policies, to guard against discriminatory practices.

Understandings of discipline at schools

International law promotes that “parents, in a manner consistent with the evolving capacities of the child, (provide) appropriate **direction and guidance** in the exercise by the child of the (ir) rights.”⁴ Children benefit from direction and guidance from adults in all aspects of their lives. Therefore, instead of using harsh reprimands when attempting to instil discipline in children, a human rights approach would promote mutual respect and to uplift the dignity rights of children. So, the law steers us towards the fact that discipline should be applied from a child rights approach in schools. In this

⁴ United Nations Convention on the Rights of the Child, Article 5



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section, the submission addresses the issues of corporal punishment, codes of conduct, and principals' methods of dealing with concerning behaviour.

Corporal punishment was abolished in schools with the South African Schools Act in 1996.⁵ The BELA Bill aims to define corporal punishment in schools. It does this by providing examples of behaviour that would be considered corporal punishment. The problem with providing examples or a list is that it will never be exhaustive, thus leaving room for violators to escape on technicality because their type of corporal punishment administered, did not form part of the list. The Commissioner would recommend a broader framing of the definition instead.

Even though corporal punishment has been abolished, the Commissioner has heard from children across the province, that corporal punishment by educators and principals is still practiced today. A learner in the West Coast workshop with the Commissioner said:

"Slaan kry moet end kry! (Being beaten must stop!)"⁶

Therefore, it is no surprise that children want violators of this law to be punished, John-Lee (14 years old) says:

"(The law) says that corporal punishment in schools is not allowed. So, when a teacher uses corporal punishment on a learner, it is breaking a law, for which they should bear the consequences".

The monitors were unanimous in their view that violators should receive a fine or imprisonment. Tara (13 years) noted:

"If someone does corporal punishment they should be fined or sent to prison because school should be a place for children to be safe and not feel endangered, if they do something wrong."

Zubair (17 years) added:

"It is only right that if a teacher uses corporal punishment on a child, they should be fined or jailed in some way because the law states that they can't abuse any child for any reason."

Monitors are very clear that corporal punishment is child abuse.

⁵ South African Schools Act 84 of 1996, section 10(1)

⁶ West Coast Report, page 15 <https://www.westerncape.gov.za/childrens-commissioner/news/child-rights-community-workshop-report-2020>



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Unfortunately, despite the legal ban of corporal punishment at schools, children in the Western Cape still report such incidents to the Commissioner. The children express that they feel that corporal punishment should stop. As the existent ban in law has not helped to halt this violation, they call for stronger measures against perpetrators at schools. Our proposal for the law reform process is tabulated below:

Clause in BELA Bill [B2-2022]	WCCC view
<p>1. Section 1 of the South African Schools Act, 1996, is hereby amended— (c) by the insertion in subsection (1) after the definition of “<i>Constitution</i>” of the following definition: “‘<i>corporal punishment</i>’ means any deliberate act against a child that inflicts pain or physical discomfort, however light, to punish or contain the child, which includes, but is not limited to— (a) hitting, smacking, slapping, pinching or scratching with the hand or any object; (b) kicking, shaking, throwing, throwing objects at, burning, scalding, biting, pulling hair, boxing ears, pulling or pushing children; and (c) forcing children to stay in uncomfortable positions, forced ingestion, washing children’s mouths out with soap, denying meals, heat and shelter, forcing a child to do exercise or denying or restricting a child’s use of the toilet;”</p>	<p>Disagree with list, please broaden the definition. The definition before sub point (a) could be nuanced to give clear guidance on the principle of what constitutes corporal punishment.</p>
<p><i>Consequences for corporal punishment</i> Amendment of section 10 of Act 84 of 1996 10. Section 10 of the South African Schools Act, 1996, is hereby amended by the substitution for subsections (1) and (2) of the following subsections: “(1) [No] Corporal punishment is abolished and no person may administer inflict or impose corporal punishment [at a school] to a learner at a school, during a school activity, or in a hostel accommodating learners of a school. (2) Any person who contravenes subsection (1) is guilty of an offence and liable</p>	<p>Agree, perpetrators of corporal punishment should face criminal charges and incarceration.</p>



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on conviction to a [sentence which could be imposed for assault] fine or to imprisonment for a period not exceeding 12 months, or to both a fine and such imprisonment.”.	
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Our recommendations for improving the BELA Bill are to:

- stop prevailing practice of corporal punishment in schools;
- have a broad definition of corporal punishment; and
- penalise perpetrators of corporal punishment at schools.

Codes of conduct need to reflect the ethos of a child rights respecting school. Children tell us that these codes of conduct are unnecessarily restrictive and punitive in nature, not guiding and supporting learners to behave well and learn from mistakes. This makes for an overly authoritarian environment where children learn in a milieu of fear and apprehension.

Children understand that there needs to be **discipline and order** at school and reflect some of their views on when and why learners get suspended and expelled. Liyanda (16 years) says:

“I agree a learner should be suspended for bunking classes also bullying others”

Jonay (13 years) shares that at her school:

“’n leerder kan geskors word ...wanneer hulle smokkel met dwelms, as hy onbeskof is en ook baklei met ander leerders” (A learner can be expelled for dealing in drugs, if they are rude or fight with other learners).

Children understand their codes of conduct consists of punishments for concerning behaviour. None of them communicated that their codes of conduct embraced restorative justice or that the evolving capacities of children were acknowledged. The Commissioner’s view is that children make mistakes and need to be guided and supported, they must face consequences for their actions but not automatically receive punishment.

Principals have extensive powers when dealing with perceived concerning behaviour by learners at schools. Thus, it is important that principals are oriented towards child rights realisation and alignment. Children share their impressions of whether concerning behaviour is currently being dealt with fairly or unfairly at their schools. Vimbai (16 years) says:



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"I would say principals like to make a big thing over hairstyles or haircut ... but turn a blind eye when it comes to bullying."

Liyanda (16 years) adds 'repeat offenders' of concerning behaviour face warnings and possible expulsion but this intervention is viewed as too late to help the learner, she notes:

"What is unfair is the favours that are done to some learners and how the teachers delay to seek help from social workers as soon as they see a problem in a learner, I find them as depriving them of their right to health as it may include mental health problems."

Therefore, behavioural issues are not viewed from the appropriate level of seriousness according to the children. Reportedly issues such as hairstyles are more important than bullying. They also alert us to the fact that the concerning behaviour may be a cry for help. These learners need supportive interventions by psycho-social professionals not punishment. Brandi (16 years) says it is a fair way to deal with concerning behaviour when principals:

"Talk to them and try to understand why they (are) misbehaving. Speak to them on a regular basis to see how they're doing instead of just punishment, you (show) the learners that if they behave, they can get a reward".

Brandi shows how we can move from a punitive to a restorative and support approach. Our proposal for the law reform process is tabulated below:

Clause in BELA Bill [B2-2022]	WCCC and CGM view
<p>Amendment of section 8 of Act 84 of 1996, as amended by section 4 of Act 50 of 2002, and section 6 of Act 31 of 2007</p> <p>7. Section 8 of the South African Schools Act, 1996, is hereby amended—</p> <p>(a) by the substitution for subsection (1) of the following subsection:</p> <p>“(1) Subject to the <i>Constitution</i>, <i>this Act</i> and any applicable provincial law, a <i>governing body</i> of a <i>public school</i> must adopt a code of conduct for the <i>learners</i> after consultation with the <i>learners</i>, <i>parents</i> and <i>educators</i> of the <i>school</i>.”;</p> <p>(b) by the substitution for subsection (2) of the following subsection:</p> <p>“(2) A code of conduct referred to in subsection (1) must be aimed at establishing a disciplined and purposeful <i>school</i> environment, dedicated to the improvement and maintenance of the quality of the learning process, taking into account the diverse cultural beliefs, religious</p>	<p>Disagree with the framing of the purpose of a code of conduct. Steer away from authoritarianism to guidance and support.</p>



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observances and medical circumstances of the *learners* at the *school*.’;

(c) by the substitution for subsection (4) of the following subsection:

“(4) (a) Nothing contained in *this Act* exempts a *learner* from the obligation to comply with the code of conduct of the *school* attended by such *learner*.

(b) Despite paragraph (a), the code of conduct must contain an exemption provision in terms of which a *learner*, or the *parent* of a *learner*, may apply to the *governing body* for exemption of that *learner* from complying with certain provisions of the code of conduct on just cause shown.

(c) On receiving an application contemplated in paragraph (b), the *school governing body* must communicate its decision to the *learner*, or

the *parent* of the *learner*, as the case may be, within 14 days after receiving the application, and must in the case of a refusal provide written reasons for the refusal.

(d) A *learner*, or the *parent* of a *learner*, who has been refused exemption as contemplated in paragraph (c) may, within 14 days of receiving the notice of the decision, appeal to the *Head of Department*

against the decision of the *governing body*, and the *Head of Department* must, after considering the reasons for the appeal and the reasons for the refusal by the *governing body*, communicate his or her decision to the *learner* or the *parent* of the *learner*, as the case may be, and to the *governing body*, within 14 days after receiving the appeal, and must provide written reasons for his or her decision.’;

and
(d) by the addition to subsection (5) of the following paragraph:

“(c) The disciplinary proceedings referred to in this subsection must be age-appropriate, must be conducted in the best interests of the *learner*, and must adhere to the principles of natural justice, fairness and reasonableness prescribed by the *Constitution*.’.

We recommend a restorative justice and support approach to guiding behaviour.



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Freedom of expression is also suppressed in codes of conduct. For example, learners of **LGBTQIA+** identities need to conform with dress and hair norms that suppress their identities. Ruan (14 years) notes:

*"Ja, hulle word (gediskrimineer). Kinders kan nie help dat dit die manier is wat die Here hulle geskep het nie. As 'n kind voel dat hy of sy GEMAKLIK is om vir hulle lang hare op te sit moet dit so wees. En as hulle wil rokke aantrek dan moet SKOLE dit aanvaar of die gemenskap waar hulle in word. Dit is die manier hoe hulle wil wees." (Yes, they are discriminated against. Children can't help that God created them that way. If they feel they are more **COMFORTABLE** with long hair, this should be allowed. And if they want to wear dresses then the **SCHOOL** must accept this and the communities in which they live.) (own emphasis)*

Liyanda (16 years) elaborates on this point, she says:

"Yes, they are forced to wear a uniform as per the gender they were born in. Whereas some are uncomfortable with it. There aren't even campaigns around the LGBTQI family to aware learners. Therefore, they are bullied and not taken seriously."

Vimbai (16 years) has a contrary experience at her school, she asserts:

"I wouldn't say they are discriminated against but at the same time there is nothing about them in the code of conduct. I'm not sure if that makes them 'invisible' but in my school, students (part of the LGBTQI+) are treated equally and are not discriminated against."

Children feel the gender and sexual identity choices that learners make should be respected and not made invisible. There should be awareness campaigns to combat stigma and bullying. Furthermore, codes of conduct should enable children to express their identities freely without being made to conform to heteronormativity. Our proposal for the law reform process is tabulated below:

Clause in BELA Bill [B2-2022]	WCCC and CGM view
<p>Amendment of section 8 of Act 84 of 1996, as amended by section 4 of Act 50 of 2002, and section 6 of Act 31 of 2007</p> <p>7. Section 8 of the South African Schools Act, 1996, is hereby amended—</p> <p>(b) by the substitution for subsection (2) of the following subsection:</p> <p>“(2) A code of conduct referred to in subsection (1) must be aimed at establishing a disciplined and purposeful <i>school</i> environment, dedicated to the improvement and maintenance of the quality of the learning process, taking into account the diverse cultural beliefs, religious observances and medical circumstances of the <i>learners</i> at the <i>school</i>.”;</p>	<p>Agree, add considerations for diverse gender and sexual identities</p>



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We recommend codes of conduct are more inclusive of LGBTQIA+ identities and allow freedom of expression.

Children’s right to protest must be respected. Raising children’s voices in all forms of legal protest is an important facet of children’s right to participate in all decisions affecting their lives. The UNCRC affirms this right of children to be heard.⁷ Suppression of this right to be heard is not in keeping with the ethos of a rights respecting school. At times, the need for discipline and order at schools may be used as a reason to quell learner voices. Codes of conduct should make clear provision of the way learners can raise their voices, via their Representative Council of Learners representatives or in concert as an entire school body, if they so choose. Liyanda (16 years) understands the value of protest for raising learner issues when other means have failed to get learner views across, she says:

“Yes, protest is one of the ways that learners voice themselves when they have been speaking and not being heard.”

Natalie (17 years) says that protests should not be considered disruptive behaviour if:

“Nie as die protest binne reëls en wetlik gedoen word nie” (Not if the protest follows the rules and is lawful).

Children understand they have the right to participate in all decisions affecting their lives. Therefore, they assert that their voices should be listened to and heard. At times, they may need to resort to other means of advocacy or campaigning, like protest action, if they feel they are not being taken seriously. Our proposal for the law reform process is tabulated below:

Clause in BELA Bill [B2-2022]	WCCC and CGM view
<p>Amendment of section 3 of Act 84 of 1996 2. Section 3 of the South African Schools Act, 1996, is hereby amended— (c) by the addition of the following subsection: “(7) Any person who, unlawfully and intentionally interrupts, disturbs or hinders any <i>school</i> activity, or hinders or obstructs any <i>school</i> in the performance of the <i>school’s</i> activities, is guilty of an offence and liable, on conviction, to a fine or to imprisonment for a period not exceeding 12 months, or to both a fine and such imprisonment.”.</p>	<p>Disagree with the right to protest being hindered by what is considered ‘disturbance of school activities’ and being punished with fines and imprisonment.</p>

⁷ United Nations Convention on the Rights of the Child, Article 12



Commissioner for Children

We recommend learners voices be heard and their right to protest be protected without the fear of being fined or imprisoned.

Conclusion

The Commissioner and Child Government Monitors make recommendations towards the BELA Bill to promote the concept of **child rights respecting schools**. We recommend:

- not criminalising parents for learner non-attendance
- not creating a more accepting and permissive climate for alcohol use at schools
- a more inclusive orientation to language policies
- stop corporal punishment in schools; penalise perpetrators
- a restorative justice and support approach to guiding behaviour
- codes of conduct that are more inclusive of LGBTQIA+ identities and allow freedom of expression; and
- protect children's right to be heard.

This submission contains the views of children shared with the Western Cape Commissioner for Children. The children have guided the topics on which they would like to make input. The following are the **key messages** from their views:

- *Parents have an important role in their child's education and should do everything in their power to realise children's rights to education, but they should not be criminalised for being unable to achieve compulsory attendance of their children as there may be many factors that constitute barriers to learning outside of their control.*
- Alcohol abuse has a negative effect on children and our society, so it should not be permitted on schools.
- Rights respecting schools should actively promote non-discrimination whether in their decisions about language policy or respecting the rights of LGBTQI+ learners.
- Whereas discipline and order are essential for the functioning of schools, codes of conduct should not be punitive but restorative and supportive.
- **#littlevoicesMUSTcount, #kleinstemmetjiesMOETsaakmaak, #amazwiamancinciMAKAVAKALE**
— the right for children to be heard must be protected.

Children understand keenly the value of education. Zureeslia (13 years) asserts in conclusion:

"Kinders wat die skool gelos het, maak asseblief seker dat hulle akademie ontvang, want akademie is die beste wapen." (Children who have left school prematurely, please make sure they also get an education. Because education is the best weapon.)



**Commissioner
for Children**

List of contributing Child Government Monitors

Brandi Ryland (Heathfield), 16 years
Johnlee Plaatjies (Blackheath), 14 years
Jonay Skietekat (Slangrivier), 13 years
Liyanda Sokuyeka (Beaufort West), 16 years
Matthew Jacobs (Ottery), 17 years
Nathalie Oliphant (Murraysburg), 17 years
Ruan Klaase (Rietpoort), 14 years
Saadiq Daniels (Bonteheuwel), 17 years
Tara Hendricks (Wetton), 13 years
Vimbai Watambwa (Ocean View), 16 years
Zubair Ryklief (Belhar), 17 years
Zureesia Esthuizen (Prince Albert), 13 years old