



Commissioner for Children

Submission: African Committee of Experts on the Rights and Welfare of the Child

October 2022

Creation of an Ombudsperson for Children in South Africa

"Learning about the government. Learning about children's rights. Having our little voices heard. Learning and understanding other people's opinions. Meeting new people with great minds. Meeting Christina, of course." (Amahle, 17)

The Western Cape Commissioner for Children (Recommendation 7)¹ was established as an oversight mechanism from 1 June 2020 by provincial Act 2 of 2019² and chapter 9, sections 78-80 of the 1998 Western Cape Constitution³. According to the Western Cape Commissioner for Children Act 2 of 2019, the Commissioner must protect and promote the rights, needs, and interests of children in the province by working with the Departments of Education, Health, Social Development, and Cultural Affairs and Sport. The Commissioner for Children is an independent institution from government and reports to Provincial Parliament on activities, functions, and progress on objectives.

The powers and duties of the Commissioner include:

- *Monitoring* the impact of government services, policies and laws on children and pointing out negative impacts.
- *Investigating* complaints about government services and making recommendations.
- *Researching* policy or practice developments that affect child rights
- *Educating* everyone on the laws, programmes, and projects for children
- *Lobbying* key decision makers on laws, policies, and practices affecting children
- *Advising* government on improvements to realise child rights
- *Recommending* a clear course of action to change law, policy or practice that negatively affects children
- Children must know about and be *involved* in the work of the Commissioner for Children and be able to inform the Commissioner of their perspectives of their rights, needs and interests.

¹ All recommendations referred to in this submission refers to the recommendations made by the African Union Committee of Experts on the Rights and Welfare of the Child's concluding observations and recommendations for South Africa March 2019

² <https://www.westerncape.gov.za/childrens-commissioner/files/atoms/files/Western%20Cape%20Commissioner%20for%20Children%20Act%20of%202019.pdf>

³ https://www.westerncape.gov.za/text/2003/wcape_constitution_english.pdf



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WCCC implementation models for children's participation in governance

The WCCC is committed to substantive children's participation in governance (Recommendation 12). To this effect, she has developed four models of the full involvement of children in her office and in governance decisions:

1. *Child Government Monitors*⁴: Any child human rights defender under 18 years of living in the province can join this forum. Children engage the Commissioner and other children on a weekly WhatsApp forum for rights education, sharing their lived realities and opinions on social justice, and the realisation of children's rights. The 12-person Advisory Council selected from this forum is involved in the operations of the office of the Commissioner for Children.⁵

"Being a monitor means my voice is heard and working with a group of fellow peers to contribute towards our community and the Western Cape."
(Rushaan Abdol, 14)

"Leading the strategic planning camp with the Commissioner had a personal impact on my development. I have grown into this kind of person that is taking a leadership role and advancing the work that once intrigued me."
(Lukhanyo Sonyamba, 18)

2. *Community Child Rights Workshops*⁶: The Commissioner has visited communities in 6 rural municipalities to understand children views on community safety and dangers, children's hopes, dreams, and worries as well as collecting service delivery recommendations for mandate departments. The Commissioner writes reports including the authentic voice of children (in quotes and posters) to heads of government for their responses. These responses are validated at a children's feedback meeting. The Commissioner then directs advice and recommendations to departments.

"The Commissioner for children did something good because our community is very rural and now the children in the community know that government knows about us." (Ruan Klaase, 15)

⁴ https://www.westerncape.gov.za/childrens-commissioner/files/atoms/files/WCCC_CGM%202020%20Report.pdf;

https://www.westerncape.gov.za/childrens-commissioner/files/atoms/files/WCCC%20CGM%20Report%202022_FINAL.pdf

⁵ https://www.westerncape.gov.za/childrens-commissioner/files/atoms/files/WCCC%20Strategic%20Report%202022_Final.pdf

⁶ https://www.westerncape.gov.za/childrens-commissioner/files/atoms/files/WCCC_Community%20Child%20Rights%20Workshop%20Report%202020.pdf;

https://www.westerncape.gov.za/childrens-commissioner/files/atoms/files/WCCC%20Hessequa%202021%20Report_211005.pdf;

https://www.westerncape.gov.za/childrens-commissioner/files/atoms/files/WCCC%20Bitou%20Report%202022_FINAL.pdf



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"I did not know the Commissioner when she came to our school, but the principal called me to greet her because I am the head girl. I was a bit scared. I was a bit scared to share my story with her (about being a young mother), but she was so welcoming." (Gretchen Oliphant, 17)

3. *Children's consultations*⁷: Topical consultations are conducted with children by means of WhatsApp surveys or workshop focus groups to address issues of concern. The first report was focused on #LearninginCOVIDtimes and the second survey topic is understanding the value of Representative Councils of Learners (RCLs) at schools for influencing school governance. Results and reports are shared with the Western Cape Education Department top management structure.

"No one really takes an interest in the RCL. So, to have someone who I have never heard of (before and) also has a big role in our province, actually take an interest in us was uplifting. (John-Lee Plaatjies, 15)

4. *Children's public budget monitoring and advocacy*: Children have been trained to read and analyse government budgets for child rights alignment. They have identified resourcing priorities for the Medium-Term Budget Policy Statement.

"On 28 October 2020, the Minister of Finance read his Medium-Term Budget Policy Speech, why does he not write it so that children can understand if the money of the country is spent on children?" (Zubair Ryklief, 16)

"When I learnt about the budget, I felt educated. I learnt more than I would learn in EMS (Economic and Management Sciences at school). When you taught the budget, it opened my eyes to a whole new point of view." (Lilitha Kopolo, 14)

Children's submissions to the Commissioner

Children can make submissions to the commissioner in the form of letters, graphic art, drawings, poetry, collages, posters, position statements, quotations, and WhatsApp chats. These inputs are included in policy or law reform submissions, media, and advocacy, as well as speaking platforms that raise children's voices. Children working in partnership with the Commissioner have made submissions on:

⁷ <https://www.westerncape.gov.za/childrens-commissioner/files/atoms/files/%23learninginCOVIDtimes.pdf>



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- Xenophobia (Recommendation 9)
 - o *"Children should not have to live in fear of what may happen to them just because they are foreign/refugee a child has the RIGHT TO SAFETY."* (Vimbai Watambwa, 17)
- Violence against children (Recommendation 11,18, 19)⁸
 - o *"What is government doing to prevent children from being abused in their homes?"* (Lukhanyo Sonyamba, 17)
- Children's participation rights (Recommendation 12)⁹
 - o *We learned about child participation and were also allowed to give our opinion about the fact that child participation processes never get followed but should be followed."* – (Alessio Marcus, 17)
 - o *"Like nobody would ever really ask a child what they would like the message to be about, what they would like to see in church or what they would like to sing.* (Jaylin Badenhorst, 16)
- Corporal punishment (Recommendations 16, 17)
 - o *"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 Ryland, 16)
- Family and alternative care (Recommendation 20)
 - o *"Some people use the excuse of being beaten up by their parents to beat up anyone they want to and then they are not charged because apparently, they have anger issues. And some children get mental problems when beaten."* (Zubair Rykleif, 16)
- Social grants for children (Recommendation 21)
 - o *"Child support grant should not be the cause of an unstable and unsafe household. Some parents fight over the money. Parents use the money on their own addictions and habits instead of the children."* (Liyanda Sokuyeka, 16)

⁸ <https://www.westerncape.gov.za/childrens-commissioner/files/thumbnails/image/1%27m%20found%20Poem%20by%20Dr%20Luks%20and%20Chelsey%20Botha.jpg>;
<https://www.westerncape.gov.za/childrens-commissioner/files/thumbnails/image/GBV%20Poster%20by%20Aimee.jpg>

⁹ <https://www.westerncape.gov.za/childrens-commissioner/files/atoms/files/Children%27s%20voice%20in%20faith%20communities.pdf>



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- Children with disabilities (Recommendation 22, 27, 28)

"Personally, I feel as if differently abled peoples' needs aren't being met, quite a bit of buildings, schools, malls, and places of work are not accessible for us. I feel as if we're excluded from society because inaccessibility is all around us and often society is quite uncomfortable by our differences and feel the need to discriminate us." (Tara Hendricks, 13)

"I feel R1900 is too little for our differently abled people as we need general basic needs and our equipment to assist in our daily routines as some of our people are not so fortunate to have medical aid" (Saadiq Daniels, 17)
- Quality of education (Recommendation 24)¹⁰
 - o *"For me, influencing the movement of the cancellation of the rewrite (of matric papers). That was, for me, amazing and historic." – Ambrose Phillips 17)*
- Safety of schools (Recommendation 26)
 - o *"I would say principals like to make a big thing over hairstyles or haircut ... but turn a blind eye when it comes to bullying." (Vimbai Watambwa, 16)*
- Quality of health services (Recommendation 29)
 - o *"The problem I've had was that a nurse told me that she would delete my baby's name from their books and systems if I take the baby for a second opinion. The Commissioner took my complaint and she dealt with the matter to the best of her ability, I couldn't thank her enough for the great job she's doing." (Gretchen Nathalie Oliphant, 17)*
 - o *"At clinics go for family planning as a girl and they'll tell you about how disgusting it is to be having sex at a young age instead of educating you about the consequences of it, like we are receiving these services, but we are unhappy with the way we are handled at public facilities." (Liyanda Sokuyeka, 16)*
- Migrant children's access to services (Recommendation 38)
 - o *"Children have the RIGHT to basic social activities and shouldn't be denied opportunities just because of their nationality." (Vimbai Watambwa, 17)*
- COVID -19 pandemic and Vaccines¹¹
 - o *"You need a lot of patience because the way they explain it (schoolwork) on the App is not the same as how they explain at school." – (Zee Le Roux, 10)*

¹⁰ <https://www.westerncape.gov.za/childrens-commissioner/files/thumbnails/image/Cancel%20the%20rewrite%20campaign.jpg>;

<https://www.westerncape.gov.za/childrens-commissioner/files/thumbnails/image/Cancel%20the%20rewrite%20graphic.jpg>

¹¹ <https://www.westerncape.gov.za/childrens-commissioner/files/thumbnails/image/Mubeen%20Ganie%27s%20letter.jpg>



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- Mental health in schools
"As youth, we must promote lively conversations around mental health and how our peers that we care about them." (CGM position statement)
- Inclusive sex education in schools
 - o *"...with the queer community, I realised I don't have to agree but I can refrain from making mean comments." (Mwilu Adewumi, 17)*
 - o *"My favourite submission was inclusive sex ed!" – Christopher Kleynhans, 17)*

Children's submissions to Parliament, AU, and UN

The Child Government Monitors have made the following submissions:

- African Peer Review Mechanism – high school as youth empowerment;¹²
- United Nations Committee on the Rights of the Child 2020 – List of issues prior to reporting;¹³
 - o *"Can government find a way to make adults understand that they are not always right, and they should listen to children, and they should listen to children – if it means that they should change...then it is only for the better?" (Ms S, 14, in alternative care)*
- Written and oral submission on the Children's Amendment Bill 2020 – on parenting;¹⁴
 - o *All children are worthy of love from their caregivers, all children deserve good parents, good parents are not determined by gender identity, government must help parents become good parents." (CGM key messages)*
- Written and oral submission on Children's Amendment Bill 2020 – on public officials;¹⁵
 - o *"How is it possible that a(child) rapist and fraudster can be in position to run a whole municipality?" (Zubair Ryklief, 16)*

¹² <https://www.westerncape.gov.za/childrens-commissioner/files/thumbnails/image/mental%20health.jpg>;
<https://www.westerncape.gov.za/childrens-commissioner/files/thumbnails/image/inclusive%20sex%20education.jpg>;
<https://www.westerncape.gov.za/childrens-commissioner/files/thumbnails/image/equality%20and%20equity%20of%20education.jpg>;
<https://www.westerncape.gov.za/childrens-commissioner/files/thumbnails/image/RCL.jpg>;

¹³ https://www.westerncape.gov.za/childrens-commissioner/files/atoms/files/Final%20Child%20Monitors%20to%20UN%20CRC%20Comm_19%20November%202020%20protected%20version.pdf

¹⁴ https://www.westerncape.gov.za/childrens-commissioner/files/atoms/files/Final%20submission%20on%20Childrens%20Act%20Amendment%20Bill%202020%20%28WCCC%20and%20CGM%29_20201126.pdf; https://www.westerncape.gov.za/childrens-commissioner/files/thumbnails/image/Children%27s%20Amendment%20Bill%20Submission_Key%20Messages%20Infographic.jpg;
<https://www.westerncape.gov.za/childrens-commissioner/files/atoms/files/Child%20Government%20Monitors%20Experiences%20at%20Parliament.pdf>

¹⁵ <https://www.westerncape.gov.za/childrens-commissioner/files/atoms/files/CGM%20UN%20Statement%20Final.pdf>



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- Written submission on Basic laws Amendment Bill 2022 – on education system;¹⁶
 - o *(I think) a learner can be expelled for dealing in drugs if they are rude or fight with other learners. (Jonay Skietekat, 13)*
- United Nations Universal Periodic Review Pre-session – voting age and national children's ombudsperson;¹⁷
 - o *"Our recommendations were that the South African Constitution must be amended that the voting age must come down to the age of 16 and that there be a National Commissioner for Children, with provision for provincial Commissioners." (Saadiq Daniels, 17)*

Commissioner mandated powers and duties

The Commissioner for Children has compiled two (2) Annual Reports.¹⁸ In the Annual Reports, the Commissioner collates data on the character of childhoods / situation of children in the province as compared to the national picture:

- Demographics and family make-up (Recommendation 20):
 - o 20.7 million in South Africa, 2.1 million children in Western Cape in 2021
 - o WC children living with both parents 34% in 2020
- Childhood deprivation (Recommendation 21)
 - o WC 45.6% children live in households that are income poor
- Children's access to social assistance (Recommendation 21)
 - o 52% SA households with at least one social grant in 2020, 45 % in WC in 2020
- Children's access to early childhood development (Recommendation 24)
 - o Approximately 42 420 Early Learning Programmes serving 1 660 317 children across the country¹⁹.

¹⁶ https://www.westerncape.gov.za/childrens-commissioner/files/atoms/files/WCCC%20BELA%20submission_20220815.pdf

¹⁷ <https://www.westerncape.gov.za/childrens-commissioner/files/atoms/files/CGM%20UN%20Statement%20Final.pdf>

¹⁸ https://www.westerncape.gov.za/childrens-commissioner/files/atoms/files/WCCC%20Annual%20Report%202021_FINAL%20%281%29.pdf;

2021/2 Annual Report not yet tabled in Parliament

¹⁹ ECD Census Report 2021 <https://bit.ly/3CwvyHy>



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- o In the Western Cape, there are approximately 4 715 ELPs serving 184 686 children in the province.
- o Enrolment in early learning and care programmes in the Western Cape has dropped by almost half in three years. In 2017, 41% of children aged 0-4 in the Western Cape attended either grade R, pre-school, nursery school, creche or an educare centre²⁰.

Care Arrangement	2017		2020	
	SA	WC	SA	WC
Grade R, Pre-school, nursery school, crèche, educare centre	36,9	41,1	24,2	22,5
Day mother	5,0	5,6	6,1	12,1
At home with parent or guardian	50,2	44,0	58,9	49,6
At home with another adult	6,7	8,5	8,2	9,7
At somebody else's dwelling	0,9	0,5	1,9	6,2

Source: Statistics South Africa (2017;2020). General Household Surveys of 2017 and 2020.

- Children's access to education (Recommendation 24)
 - o COVID- 19 had a detrimental impact on education resulting in increased learner drop-outs and lower numbers of learners benefitting from the 'no-fee' policy.

Table 2. Education access data between 2016-2021

Year	Population	Retention gr 10-12	Learners benefitting from no-fee policy	NSC Pass Rate
2016	998925	67	58	86
2017	1020642	68	68	83
2018	1044596	67	58	82
2019	1063293	70	63	82
2020	1080651	68	59	79
2021	1098878	62	[not yet available]	81

Source: Western Cape Education Department Annual Performance Plan (2020/2021 – 2022/2023)

²⁰ Statistics South Africa (2017). General Household Survey: 2017.



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- o Low levels of literacy and mathematics outcomes for grade 3 and 9, and low rates of bachelor pass in the National Senior Certificate.

Table 3. Education outcomes data

Year	% of grade 3 passing maths systemic assessments	% of grade 3 passing language systemic assessments	% of grade 9 passing maths systemic assessments	% of grade 9 passing language systemic assessments	Bachelor Pass Rate
2016	58	43	24	55	40
2017	59	47	22	53	38
2018	56	46	23	53	42
2019	58	45	23	54	44
2020	n/a	n/a	n/a	n/a	44
2021	56	45	22	50	45

Source: Western Cape Education Department Annual Performance Plan (2020/2021 – 2022/2023)

- Children's state of health and wellness (Recommendation 29) including malnutrition (Recommendation 31)
 - o Between 2009 and 2016, the overall mortality rate for children between one and five decreased by 38%²¹. This reduction was due to declines in deaths in almost all categories, with the biggest declines in number of deaths due to HIV/AIDS (76%), diarrhoea (71%) and malnutrition (69%)
 - o In the Western Cape, 13% of children (i.e. 271 000) live in homes with reported hunger, which is 4 percentage points lower than the levels of reported child hunger in 2002 (i.e. 17%).²²
- Child safety (Recommendation 11,18, 19)
 - o 1291 and 1597 child deaths occurring annually since 2017 – the highest amounts of deaths can be attributed to 2018, which mainly owes to a stark increase in natural deaths.
 - o Natural causes of death are mostly linked to much younger children, aged 0 – 5,
 - o The second most common form of death amongst children is homicide; 1058 children have been murdered in the Western Cape since 2017.

²¹ Western Cape Department of Health (2019). *Western Cape Burden of Disease: Rapid Review Update 2019*

²² Statistics South Africa (2003;2021) General Household Survey 2002; General Household survey (2020). Pretoria: StatsSA. Analysis by Katharine Hall, Children's Institute, UCT.



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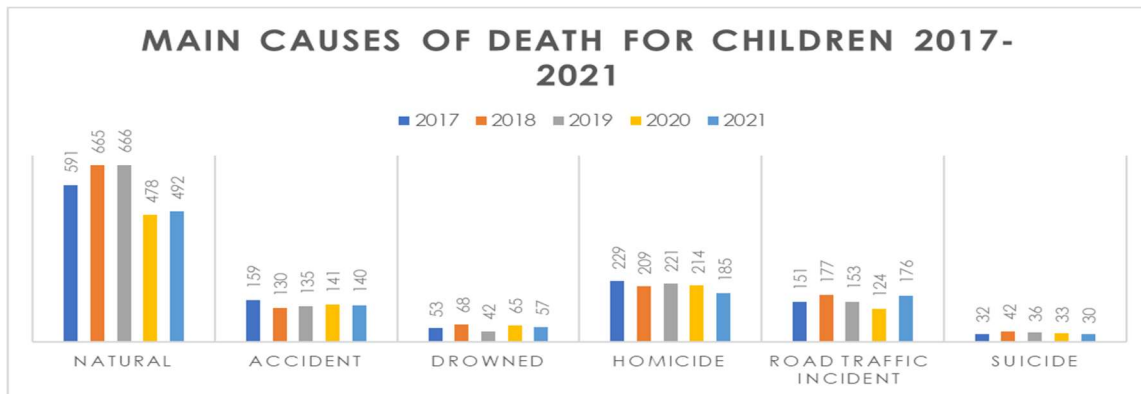


Figure 1. Causes of death for children between 2017 and 2021

Source: Data supplied by the Western Cape Department of Health and Wellness (2022).

The situation of children in the Western Cape and across South Africa is a great cause for concern. With increasing dependence on state support, children are increasingly vulnerable to the growing inequality, which put their development and futures at risk.

Thus far, only the Investigations and Advice Branch is operational in the office. The Monitoring and Awareness Branch is still being recruited. The Commissioner has received complaints, enquiries, or requests to investigate in relation to:

- Child protection system (Recommendations 11,18, 19, 24)
- Education system (Recommendations 16,17, 24, 26)
- Difficulties with birth registration (Recommendation 14)
- Child and Youth Care Centres (Recommendation 23)
- Juvenile justice (Recommendation 35)

Child rights promotion and awareness (Recommendation 2) has been achieved through branded materials, media, and workshops.

In conclusion, the establishment of the WCCC provides a strong platform to amplify the voices, needs, and interests of children in the Western Cape to key decision makers. The creation of a national Ombudsperson for Children is crucial for the promotion and protection of children's rights, especially for realising children's participatory rights in high levels of governance.