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To: The Standing Committee on the Premier & Constitutional Development

SUBMISSION: WESTERN CAPE COMMISSIONER FOR CHILDREN BILL (B-2018)

1 INTRODUCTION

The Cape Town Peace Centre (CTPC [formerly the Quaker Peace Centre]) is a registered NGO and PBO with a long involvement in addressing violence in our society in general, and violence against children in particular.

It is the view of CTPC that a child rights monitoring mechanism should be established at national level. However, this is not yet on the table. Hence, we welcome the opportunity to present this submission on the Western Cape Commissioner for Children Bill (B-2018), to the Standing Committee on the Premier and Constitutional Development.

The CTPC endorses the Joint NGO Submission, the preparation of which was spearheaded by Molo Songololo, and which deals comprehensively with a range of issues raised by the Bill. In this independent submission, we highlight the issues that are of particular concern to CTPC.

Given that provision was made for the creation of the Western Cape Commissioner for Children over two decades ago, we commend the Western Cape Parliament for taking up this issue again.

The importance of an independent and resourced entity to promote and protect the rights of children is well recognised by international and regional child rights monitors, and this appointment is long overdue.

2 REQUIREMENTS FOR INDEPENDENT CHILD RIGHTS MONITORING BODIES

There is general agreement that bodies tasked with monitoring the state of child rights within country must be:

- Independent from the state;
- Set up in law;
- Adequately resourced; and
- Operate without interference.

The role should be to:

- Promote the well-being and protection of children;
- Involve children themselves;
- Receive and investigate complaints;
- Review laws and policies affecting children; and
- Report annually and make recommendations on children's wellbeing and progress made to implement the rights of the child;

3 COMMENTS AND RECOMMENDATIONS

Chapter 2

Appointment

Section 2(a):

The input of children must be sought when seeking to fill the position of Children's Commissioner.

Section 2(c):

Shortlisted candidates must be interviewed in an open public interview. Representatives from civil society organisations should be invited to participate in an advisory capacity. The selection process should also be independently audited.

Qualification for appointment

Section 3(1)(a)

An independent verification process should be used to confirm the qualifications, experiences and standing of the applicants. Consideration must be given to statutory and constitutional child rights, including verifying that applicants have not been found to be a person unfit to work with children, as defined in the Children's Act (38 of 2005, as Amended), in making the appointment.

Removal and suspension

Section 4(1)(b)

The Children's Commissioner can only be removed or suspended on the provision of substantive reasons free of any influence or political interests.

Chapter 3

Functions

Section 6(c)

It is the view of CTPC that the Commissioner should pay special attention needs of children in especially difficult circumstances, and propose that Section 6(c) be amended to reflect this.

Monitoring

The Bill in its current form does not consider a wide-enough range of stakeholders with regard to responsibilities in respect of children's rights.

Section 4

The following departments should be added to the provisions of this section:

- [Department of Social Development](#) [Department of Health](#)
- [Western Cape Education Department](#) [Department of Human Settlements](#)
- Department Water & Sanitation [Department of Agriculture](#)
- [Department of Community Safety](#) [Department of Cultural Affairs and Sport](#)
- [Department of Economic Development and Tourism](#)
- [Department of Environmental Affairs and Development Planning](#)
- [Department of Local Government](#) [Department of Transport and Public Works](#)
- [Department of the Premier](#) [Provincial Treasury](#)

Section 7(1)(b)

This section should be amended to include monitoring of not only provincial legislation and policy, but also budgets and expenditure.

Section 7(4)(b)

Monitoring should include non-governmental organisations, institutions and agencies that deal with, affect or render a service to children in the Province; to monitor their services, programmes, good practice and child care and safety compliance.

Investigations

In terms of the current provisions of the Bill, there is a failure to provide for state organs to cooperate with the Commission during investigations. In addition, the participation of children in such processes must be formalised.

Section 8(6)

All provincial and local government departments and municipalities must co-operate with and provide support where needed and requested by the Commissioner during the process of investigations.

Section 8(7)

Non-governmental organisations, institutions and agencies must cooperate with and provide support where needed and requested by the Commissioner during the process of investigations

Section 8(8)

The Commissioner must develop an ethical policy guideline for the involvement and participation of children during investigations

Research

The Commissioner must promote good child rights practices and therefore must give consideration for the involvement of children in the research that will be initiated and conducted.

Section 9:

The word *may should be replaced by must*

Section 10

The language of this section should be strengthened by replacing *may* with *must*.

Section 10b

In addition, CTPC has a particular concern about the continued high rate of corporal punishment of children in schools, and suggest the following wording be added:

(including the prohibition on corporal and humiliating punishment)

Lobbying

Section 11

The language of this section should be strengthened by replacing *may* with *must*.

Acting and making recommendations

Section 12

The Commissioner's powers must be secured so that the recommendation and the obligation to positively respond, consider and implement it can be achieved.

Section 12(5)

This section should be strengthened by inserting:

The Commissioner may request the Provincial Parliament to exercise its oversight role and instruct the affected organ of state to comply and report on progress made to implement, within a prescribed timeframe, the final recommendations.

Child Participation

Section 13(5)(a)

The Commissioner must establish a policy, procedure and support for children to make request for a matter to be monitored, investigated or researched.

Section 14(1)

This section should be strengthened by the addition of *and promote child participation*

Section 16(3)

In addition, Reports from the Office of the Commissioner should be accessible to all children, via text as follows:

(p)rovide and distribute to children a child-friendly version of the Commission's Reports to the Provincial Parliament; or any other reports on the rights, needs and interests of children.

Thank you



Carol Bower,
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