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THE WESTERN CAPE CHILDREN'S COMMISSIONER UNDER THE SPOTLIGHT

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The Western Cape is a dangerous place for children. The province has the highest child murder rate in the country, with four children murdered every week, according to IOL. Besides that, children are subject to violence, abuse and rape every day. This is in stark contrast with the rights extended to children under both international and South African law. South Africa has committed to respecting children's rights, including their right to life, under the *United Nations Convention on the Rights of the Child*, the *African Charter on the Rights and Welfare of the Child*, and the South African Constitution.

With this unacceptable situation in mind, children's rights advocates have campaigned for a Commissioner for Children (Children's Commissioner) in the Western Cape for almost 20 years. Their calls to establish a State institution to monitor and promote children's rights are founded in the *Constitution of the Western Cape*, which specifically provides for a provincial Children's Commissioner. In February, children's rights advocates celebrated a huge victory in their struggle, when the Western Cape legislature enacted the *Western Cape Commissioner for Children Act* (the Act).

The Act finally establishes a Children's Commissioner in the Western Cape, who is empowered to monitor, advise, recommend, investigate, research, educate and lobby on children's rights in the fields of health services, education, welfare services, recreation and sport. In the exercise of its monitoring function, the Commissioner assesses the impact of provincial policy, legislation and state organs in the said areas on the rights of children. To this end, he or she may set up a provincial monitoring system and collaborate with child rights bodies in both the public and the non-governmental sector. The monitoring may also result in advice and recommendations, with an obligation to report to the Commissioner for the monitored institution. The Commissioner is empowered to investigate children's rights issues on his or her own initiative, or on the occasion of a complaint. When investigating, the Commissioner may accompany police when they investigate, subpoena witnesses and request them to produce evidence, as well as administer an oath or affirmation to witnesses.

There is general agreement that the former institutional set-up was insufficient to end the cycle of violence against children in the Western Cape. Before the Act was passed, the Children's Rights portfolio at the South African Human Rights Commission (SAHRC) was the only institutional body mandated to monitor and promote children's rights. Due to severe budget constraints, the SAHRC's work is constantly impaired. Out of the Commission's total budget of R189.7 million allocated for 2019/20, only R 13.2 million - or 7% - will be available for core operations. This amount has to be split between seven different human rights portfolios, of which children's rights are just one. At the same time, the SAHRC is supposed to cover all of South Africa.

The establishment of the Children's Commissioner's Office allows hope for an improvement of the state of children's rights in the Western Cape. Although the mandate of the new



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provincial Children's Commissioner does not differ from the powers of the SAHRC's Children's Rights portfolio, its work promises to be more effective. The reason for this lies within the design of the institution. For the first time, an institution solely dedicated to advocate on children's rights will be established. Financial and personal resources, as well as focus, will not be split between different interests, as is the case with the SAHRC's various portfolios. The Act guarantees the Children's Commissioner's independence from any State institution, meaning that the institution will not be involved in political power struggles between different government departments.

Concerns may be raised, however, with regard to the budget for the Children's Commissioner.

Appropriate funding is crucial for an effective Commissioner, and - in South Africa's current economic climate - this poses a major challenge for any public institution. The Department of the Premier has announced plans to allocate R8 million to establish the Children's Commissioner and R5 million to cover the annual running costs in its *Annual Performance Plan for 2019/2020*. In comparison with the SAHRC's budget, this constitutes a considerable increase in resources available to protect children's rights, in particular in light of the mandate being limited to the Western Cape. At the same time, there is doubt whether said sum will allow for the Commissioner to fulfil its mandate effectively. The Act requires the Children's Commissioner to be independent from any government institution, and a stand-alone office comes with high expenses. It is also unclear how the budget will be allocated and in addition, the budget still has to be approved by the Provincial Legislature. Questions as to the purpose and the allocation of the announced sum were also raised by the Western Cape Standing Committee on Premier and Constitutional Matters.

There is hope, however, that the Children's Commissioner will be adequately funded, since the Premier himself has made its establishment a priority. In his statement on the occasion of the Child Protection Week and Youth Month in June of 2019, the Premier committed to improving the situation for children in the Western Cape. A first step has already been taken, with the announcement that applications for the position of the Commissioner will be opening soon.

The establishment of a Children's Commissioner at provincial level has already resulted in calls rather to introduce such Commissioner at national level. In this respect, it should be noted that although the protection of all children in South Africa is desirable, the provincial establishment will most likely be more effective, for a number of reasons.

First of all, the geographical area to be covered is limited - in contrast, for example, to the SAHRC's mandate, which covers all of South Africa. Secondly, authorities involved in questions relating to children's rights are usually local ones, such as youth welfare offices, the police and health and social services. A provincial set-up will facilitate cooperation and coordination between the Commissioner and such authorities better. Although an overlap with a potential Children's Commissioner on national level cannot be ruled out, such a Commissioner does not



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exist as of now, and, if appointed, could rather complement the work on provincial level than render it less effective.

It is encouraging that the Western Cape Government has finally embraced its constitutional obligation to establish the Children's Commissioner. Although there is some uncertainty in terms of its budget, the first vital step has been taken to address the threats - including the threat of violence - to the rights of children in the Western Cape. It is hoped that more provinces will follow the Western Cape's lead to improve children's lives in South Africa.