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TO : MELODY: TECHNICAL COMMITTEE ON  
FUNDAMENTAL HUMAN RIGHTS.

FAX NO : 397- 2211

FROM : Mrs Shirley Mabusela : NCR Executive Director

FAX NO : 403 - 3870

DATE : 29/9/93

SUBJECT : SUBMISSIONS

NUMBER OF PAGES (INCLUDING COVER SHEET) : 6

(1)





TO : THE ADMINISTRATOR  
 THE TECHNICAL COMMITTEE ON FUNDAMENTAL  
 HUMAN RIGHTS

FROM : THE NATIONAL CHILDREN'S RIGHTS COMMITTEE

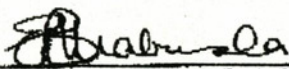
SUBJECT : COMMENT ON SECTIONS OF THE DRAFT BILL OF RIGHTS

DATE : 29 SEPTEMBER 1993

THE NCRC WISHES TO DRAW YOUR ATTENTION TO COMMENTS MADE BY ITS  
 LEGAL COMMITTEE TO PARTS OF THE DRAFT BILL OF RIGHTS AS THEY  
 RELATE TO CHILDREN.

KINDLY CONSIDER THIS INPUT AS IT DOES NOT CHANGE THE SPIRIT OF  
 WHAT IS CONTAINED ESPECIALLY IN SECTION 25, BUT SEEKS TO HAVE  
 CHILD RIGHTS ISSUES CLEARLY STATED AND UNDERSTOOD FOR WHAT THEY  
 ARE.

ANOTHER AREA OF CONCERN IS RELATED TO ENSURING THAT CULTURAL  
 PRACTICES OR CUSTOMARY LAWS WHICH DO NOT PROMOTE CHILD RIGHTS ARE  
 BROUGHT IN CONFORMITY WITH THE BILL OF RIGHTS.

  
 SHIRLEY MABUSELA  
 EXECUTIVE DIRECTOR : NCRC

(2)

**INPUT BY THE LEGAL COMMITTEE OF  
THE NATIONAL CHILDREN'S RIGHTS COMMITTEE**

At a meeting held in Johannesburg on 20 September 1993, the Seventh Progress report of the Technical Committee on Fundamental Rights during the transition was perused from a children's rights perspective. This report sets out the comments and recommendations put forward by the meeting for consideration by the Technical Committee on fundamental Rights during the transition.

**1. APPLICATION**

The NCRC argues strongly in favour of horizontal application of fundamental rights, even during the transition. The protections provided for children in the Chapter on Fundamental Rights will not be effective in a vertical application framework, as many instances of abuse and neglect are brought about by actions or omissions by members of society and not only by the State.

The term "where just and equitable" at 1(1)(b), is open to interpretation, and much energy and finance will be wasted on bringing actions to the courts to clarify whether, in any particular set of circumstances, it would be "just and equitable" to bind other persons or bodies to the provisions.

In the light of the abovementioned points we urge the Technical Committee to reconsider its decision with regard to the horizontal application of the Chapter on Fundamental Rights.

**2. ARTICLE 25**

The NCRC supports the general concept set out in Article 25, and make suggestions for the purpose of clarification. We recommend the following reformulation:

Article 25

a) A child is a person under the age of 18 years.

b) Every child shall be registered immediately after birth.

- b) Every child shall be registered immediately after birth and shall have the right, from birth, to a name and nationality.
- c) Every child shall have the right to security, basic nutrition, basic health services and compulsory basic education.
- d) Every child shall be protected from exploitative labour practices and shall not be permitted to perform work that is hazardous or harmful to their education, health and wellbeing.
- e) In all matters concerning the child, the best interest of the child shall be the primary consideration.

Explanatory comment on the abovementioned recommendations

- a) "Under the age of 18 years" is the definition used by the Convention on the Rights of the Child, as adopted by the General Assembly of the United Nations on 20 November 1989.  
The phrase "a child is a person" is important as it ensures that children will not be excluded from enjoyment of any other rights appropriate to them expressed elsewhere in the Chapter.
- b) The right to registration, a name and nationality is a civil right peculiar to a child and provides the basis of citizenship.
- c) Our suggestion to add "compulsory basic education" is based on the fact that Article 27 on Education seems to refer to education for adults as well as children. As we strongly support the need for compulsory basic education, this could not be inserted into the Education clause, as it is not possible to provide compulsory education for adults. It is therefore necessary to stipulate it under the Children' Rights Article.

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- d) The basis for our addition to the Child Labour clause is that there are many children who are currently working in South Africa, and who will continue to do so. It will be very difficult to abolish child labour more practical and

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completely, and therefore, more practical and  
realisable to build in special protections.

- e) The best interest of the child is the standard already accepted by South African Law, and is also the wording of the Convention on the Rights of the Child.

Other concerns and suggestions

1. The equality clause list should include the words "birth or other status" in order to protect illegitimate children from discrimination.
2. Because of the effect of certain customary law practices which adversely affect children, the NCRC is in favour of a clause which ensures that the provisions of the Chapter override customary law. We understand that Article 30(2), which provides such an override, is currently under discussion, and we would support the retention of the clause.
3. Children in Prison. The NCRC is most concerned about the plight of children in prison, both awaiting trial and sentenced. We believe that legislative reform is probably the best way of ensuring changes in this regard, but a concern was expressed that regional legislative drafting powers may result in unequal protection for children living in different regions of South Africa.
4. There was some discussion on the subject of security legislation and its effect on children. Again, it was felt that legislative reform was necessary, perhaps protecting the provisions of the Child Care Act from limitation by security legislation.

5. The NCRC believes it is imperative that the Convention on Children's Rights be ratified during the transition period, immediately after the new constitution has been adopted.
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