



ASSOCIATION FOR MENTAL HANDICAP

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27 October 1993

TO : THE TECHNICAL COMMITTEE ON FUNDAMENTAL
HUMAN RIGHTS
MULTI-PARTY NEGOTIATIONS
WORLD TRADE CENTRE
KEMPTON PARK

Dear Sirs

REPRESENTATION RE: INTERIM BILL OF FUNDAMENTAL HUMAN RIGHTS

The Association for Mental Handicap is an organisation of parents of people with a mental handicap, and some others working in this field. It is a branch of the Witwatersrand Mental Health Society, is affiliated to the South African Federation for Mental Health, and works closely with homes and centres on the Witwatersrand. This Association therefore has a direct interest in protecting the rights of persons with a mental handicap.

Persons with a mental handicap need special protection in a Bill of Rights because :

1. Society tends to regard people with a mental handicap as "different" and not in need of fundamental human rights such as the Right to Education, Health Care and Personal Freedom.
2. Persons with a mental handicap are generally not able to speak for themselves and therefore require protection.
3. Their rights are often overlooked since it is agreed that they are unable to understand these rights or to exercise them.
4. They are often confused with persons with a physical disability or mental illness, and their needs are therefore not understood.

In South Africa, about 1 person in 25, or over 1 million of our population, have a mental handicap and therefore some 5 million people's lives are probably affected in some way. We, together with many parents, relatives and friends of persons with a mental handicap, feel very strongly that there is a need to protect their interests in the Bill of Fundamental Rights. In a recent campaign this Association took part in the collection of approximately 50 000 signatures in support of a petition for a Charter of Rights for Persons with a Mental Handicap which we felt should be an Addendum to the Bill of Fundamental Rights in South Africa. These signatures and petition were submitted to Judge P J J Olivier of the South African Law Commission in March 1993 and are held in custody by that Commission. The petition was received with sympathy and understanding. A copy of the Charter adopted by the United Nations is attached.

2.

We understand that the Bill of Rights, as presently proposed, has no place for a Charter of Rights as an addendum, or for any special rights for minority groups, and we urge you to give special consideration to the cause of the mentally handicapped for the reasons outlined above. We believe that there will be some legal mechanism, such as a commission, set up to monitor human rights and we feel that any such body must include a person with knowledge and experience of disability in the area of mental handicap. That person should be specially appointed to safeguard the fundamental rights of persons with a mental handicap.

In view of these concerns by a large number of people in South Africa, we ask that you take the necessary steps to build suitable protection for people with a mental handicap into the Bill of Fundamental Rights and its administrative provisions. We would appreciate it very much if a person representing this Association and the mentally handicapped could be given an opportunity to address the Technical Committee about the Rights of people with a mental handicap.

Thankyou for your attention.

Yours sincerely



Jerry E COMPTON
CHAIRMAN

CHARTER OF RIGHTS**FOR****PERSONS WITH A MENTAL HANDICAP**

**THE DECLARATION OF GENERAL AND SPECIAL RIGHTS OF THE MENTALLY HANDICAPPED
ADOPTED BY THE U.N. GENERAL ASSEMBLY 1971**

1. The mentally retarded person has the same basic rights as other citizens of the same country and the same age.
2. The mentally retarded person has a right to proper medical care and physical restoration and to such education, training, habilitation and guidance as will enable him to develop his ability and potential to the fullest possible extent, no matter how severe his degree of disability. No mentally handicapped person should be deprived of such services by reason of the costs involved.
3. The mentally retarded person has a right to economic security and to a decent standard of living. He has a right to productive work or to other meaningful occupation.
4. The mentally retarded person has a right to live with his own family or with foster parents, to participate in all aspects of community life and to be provided with appropriate leisure time activities. If care in an institution becomes necessary, it should be in surroundings and other circumstances as close to normal living as possible.
5. The mentally retarded person has a right to a qualified guardian when this is required to protect his personal well-being and interest. No person rendering direct services to the mentally retarded should serve as his guardian.
6. The mentally retarded person has a right to protection from exploitation, abuse and degrading treatment. If accused, he has a right to a fair trial with full recognition being given to his degree of responsibility.
7. Some mentally retarded persons may be unable, due to the severity of their handicap, to exercise for themselves all the rights in a meaningful way. For others, modification of some or all of these rights must contain proper legal safeguards against every possible form of abuse, must be based on an evaluation of the social capability of the mentally retarded person by qualified experts and must be subject to periodic reviews and to the right of appeal to higher authorities.