

C.70 [70]

**SOUTH AFRICAN GOVERNMENT OFFICE
- WORLD TRADE CENTRE -**

28 July 1993

Head of the Administration
Multi-Party Negotiating Process
World Trade Centre

Dear Dr Eloff

**SUBMISSION BY THE SOUTH AFRICAN GOVERNMENT FOR THE ATTENTION OF
THE TECHNICAL COMMITTEE: FUNDAMENTAL HUMAN RIGHTS**

1. Attached is a submission by the South African Government entitled ***COMMENTS BY THE GOVERNMENT REGARDING THE POSSIBLE SECTION 25 OF THE BILL OF RIGHTS: CHILDREN.***
2. Kindly transmit the document for immediate attention to the Technical Committee.

Yours sincerely

E. Diering

1 GOVERNMENT OFFICE: WORLD TRADE CENTRE

child

COMMENTS BY THE GOVERNMENT REGARDING THE POSSIBLE EXTENSION OF
SECTION 25 OF THE BILL OF RIGHTS: CHILDREN

1. The Government has, in its draft Charter on Fundamental Rights, proposed the following section with regard to the rights of Children::

"(1) Every parent shall have the right to have his or her child live with him or her and to care for and bring up such child, unless the interests of the child require some other arrangement.

(2) Every child shall have the right -

- (a) not to be compelled to perform work or to render services harmful to his or her physical or mental health, upbringing, education or moral or social development, or which amounts to economic exploitation;
- (b) not to be compelled to perform work or to render services for the benefit of the employer of the parents of the child or any other person;
- (c) to protection against physical or mental violence, injury, neglect or abuse, including sexual abuse.

PAGE 2

(3) Every child in need of care shall have the right to medical treatment by medical personnel in the service of the State or at medical institutions managed by the State in so far as such medical treatment is provided or can be provided by the State with available personnel and facilities.

(4) This Charter shall not be construed as to affect the powers of the Supreme Court as upper guardian of all minors".

2. Section 25 of the Committee's sixth report does not recognized the supreme need of a child, namely to be cared for and brought up by his parents.

3. Internationally the most important development is the adoption of a Convention on the Rights of the Child which is a comprehensive document and deals with various rights of the child in detail. It also provides for general prohibition of discrimination and gives the State, parents and others guidelines regarding the care of children. The opinion is held that it is not acceptable that the rights of other individuals, for example the detainee, are dealt with in much detail while the protection of the child in a Bill of Rights are reduced to one sentence. It is of likewise importance to a helpless child that his rights be spelled out in detail.

PAGE 3

4. Certain groups in our society, like detainees, are at risk in our society. Children are part of these groups. It is of utmost importance that the individual child should be protected not only from discrimination but also from parents or guardians who violate his or her rights. The rights of the children should be spelled out to the parents so that they do not infringe upon these rights.

5. The Government concur that a Bill of Rights governs the relationship between state and individual. The right of a child to live with his or her parents and to be cared for and brought up by them, is a right the child has vis-a-vis the State. It is therefore important to include this right in a Bill of Rights so that the State may not by legislation or executive conduct remove the child from his or her family environment. This right is also recognised in Article 9 of the Convention on the Rights of the Child.

6. The Government therefor recommends that at least section 13(1) of the Government's Charter on Fundamental Rights should be included in the proposed clause 25 of the Technical Committee's report.