

1/12/4

CONSTITUTIONAL ASSEMBLY

**MINUTES
OF PUBLIC HEARING
ON
CHILDREN'S RIGHTS**

**VENUE: HSRC CONFERENCE CENTRE
PRETORIA**

DATE: 13 MAY 1995

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PROGRAMME

MINUTES

CONSTITUTIONAL ASSEMBLY
NATIONAL CHILDREN'S RIGHTS PUBLIC HEARING
PROGRAMME: SAT 13 MAY 1995

08:00 - 08:30 **Registration**
Tea/Coffee

08:30 - 08:45 **WELCOME AND PROGRAMME ARRANGEMENTS - Ms G.N. Pandor**
Member of Parliament (15 mins)

08:45 - 08:50 **WELCOME BY HSRC - Dr Rolf Stumpf, President of HSRC (5 mins)**

08:50 - 09:05 **KEYNOTE** **:** **Ms Shirley Mabusela - Director of NCRC**
JHB (15 mins)

09:05 - 09:45 **The Right to be heard and the Right to Participation:**

How these rights to survival, protection and development should apply to children with particular reference to children in difficult circumstances: children affected by violence, disability, special educational needs, early childhood development, children exploited for their labour etc.

- The Right to be Heard **:** **Mr Johnnie Dhlabu**
Youth representative
Soweto (15 mins)

- The Right of Participation **:** **Ms Kimberley Gamble-Payne (UNICEF)**
(10 mins)

- Participation of Children **:** **Child representation**
Molo Songololo, Cape Town (15 mins)

09:45 - 10:00 **Tea/Coffee**

10:00 - 10:30 **PANEL 1 : THE RIGHT TO SURVIVAL Chairperson E.Saloojee, TC4**

- The right to health and **:** **Prof H.M. Coovadia**
the right to a healthy
environment **Department of Paediatrics**
and Child Health, University of Natal
(15 mins)

- The right to social security **:** **Ms Jackie Loffell**
and the right to family life **Child Welfare (JHB) (15 mins)**

10:30 - 11:00 OPEN DISCUSSION

11:00 - 11:45 PANEL 2 : THE RIGHT TO PROTECTION Chairperson
M. Coleman, (TC4)

- Equality and minority : Ms Pansy Tlakula
Black Lawyers Association
JHB (15 mins)
- Freedom and security : Ms Ann Skelton
Lawyers for Human Rights
Pietermaritzburg (15 mins)
- Freedom from abuse
and neglect : Ms Rose September (CT)
Child Guidance University of the
Western Cape (15 mins)

11:45 - 12:15 OPEN DISCUSSION

12:15 - 13:15 Lunch

13:15 - 14:00 PANEL 3: RIGHT TO DEVELOPMENT Mr Jabu Sindane - HSRC

- The right to language,
culture and recreation : Prof. Temba Sono
Centre for Development
Analysis PTA (15 mins)
- The right to education : Ms Shireen Motala
Early Childhood Development
Durban (15 mins)
- The right to freedom
of religion, belief
and opinion : Bishop Peter Storey
Methodist Bishop and Human
Rights Activist
JHB (15 mins)

14:00 - 14:30 OPEN DISCUSSION

14:30 - 14:40 SUMMARY OF PROCEEDINGS Mrs G.N. Pandor

14:40 - 14:50 THANKS AND CLOSURE

14:50 - 15:20 Street Children Rap Group

15:20 - 16:00 Tea/Coffee

Departure

CONSTITUTIONAL ASSEMBLY

MINUTES OF THE NATIONAL CHILDREN'S RIGHTS PUBLIC HEARING SATURDAY 13 MAY 1995 HSRC Conference Centre: Pretoria

PRESENT:

Black Lawyers Association
Child Health Unit
Child Guidance, UCT
Child Welfare
Children's Resource Centre
Department of Child Health and Paediatrics, University of Natal
Early Childhood Development
FAMSA
HSRC
Lawyers for Human Rights
Learning for All Trust
Molo Songolo
National Children's Rights Committee (NCRC)
National Welfare and Social Development Forum
Primary Open Learning Pathways
RAPCAN
SABC
SANCO
South African Congress for Early Childhood Development
Streets
University of Pretoria Paediatrics Department

CA Members:

M Coleman
P Jana
N Pandor
E Saloojee
R Saloojee
G Shope
N Shope

1. OPENING

- 1.1 The proceedings were opened by Ms N Pandor who extended a welcome to organisations and members of the public.
- 1.2 Ms Pandor highlighted the following issues of major concern to those involved with the plight and rights of children:
- i) Statistics around child abuse keeps on increasing
 - ii) Large numbers of children do not have access to education and basic health care.
 - iii) Malnutrition amongst children is rife.
 - iv) The special vulnerability of the Girl child of which much research still needs to be done in SA.
 - iii) Child labour
- 1.3 Ms Pandor also emphasised that the Government of National Unity(GNU) is attending to the plight of children, but success is only possible if the GNU and NGOs work as partners. She expressed the hope that the Public Hearing will pave the way for solutions to the plight of children in SA.

2. WELCOME BY THE HSRC - Dr Rolf Stumpf (HSRC President)

- 2.1 Dr Stumpf highlighted the emergence of a new ethic as a result of an increasing awareness of human rights. SA is in the process of developing a human rights culture. Children's Rights are a cornerstone of such a culture.

3. KEYNOTE: MS SHIRLEY MABUSELA - Director: NCRC

- 3.1 The NCRC believes that the current provisions in the Interim Constitution(IC) should not only be maintained, but expanded and entrenched. In particular, Section 30 should apply horizontally to a certain extent.
- 3.2 The IC already recognises the unique status and needs of children as a group in need of special protection. The NCRC believes that children in SA, representing 44% of the total population, as an unenfranchised and acutely vulnerable group, should have clear constitutional guidelines which will protect their interests and needs.
- 3.3 The final constitution should set minimum standards for the survival, protection, development and participation of children to ensure that the State's legislative and policy decisions are made "in the best interests of the child".

3.4 While Section 30 entrenches basic rights to nutrition, health and social services it should be expanded to include **socio-economic rights**, ie: social security, shelter, early child care, and free and compulsory primary and secondary education.

3.5 As a signatory to the United Nations Convention on the Rights of the Child, SA should adopt its framework as a basis for constitutional protection of children

4. THE RIGHT TO BE HEARD AND THE RIGHT TO PARTICIPATION

4.1 *The Right to be Heard - Johnnie Dhlabu: Youth representative from Sebokeng*

i) The Constitution should enshrine the following rights for children:

- The right to be heard
- The right to survival
- The right to health
- the right to protection from disease, exploitation, mental and physical abuse
- The right to development

ii) Linked to the above rights is the need for constitutional provision for the following:

- The Constitution should provide for the rights of disabled children to be educated and cared for, especially those living in townships where there are no specialized facilities for disabled children.
- Children from violent-torn areas have special educational and counselling needs.
- Early Childhood Development should be guaranteed to all children.
- Child victims of rape, abuse and family violence need specialized services.

4.2 *Participation of Children - Patricia Mrhabalala and Shehaam Abass: Molo Songololo*

i) Children's Rights in the Constitution should take cognisance of The Children's Charter of South Africa drawn up in 1992. In particular the Charter stresses the following:

-
- The protection of children from violence
 - The right to a safe family environment
 - The right to free, equal and compulsory education
 - The right to protection from child labour and economic exploitation
 - The state's duty to ensure that children living on the streets have shelter.
 - Special protection for children who are orphaned, abandoned, refugees or returned exiles.

5. THE RIGHT TO SURVIVAL - CHAIR: E. SALOOJEE

5.1 *The right to health and the right to a healthy environment - Prof H.M. Coovadia: Department of Paediatrics and Child Health, University of Natal*

- i) The environment which influences children's health includes: the immediate family, built environment, economic, social and political.
- ii) The right to health implies the right to a healthy environment, free from disease and poverty.
- iii) The major concerns in SA are infant mortality rates, low birth weight, HIV/AIDS, all of which are preventable.
- iv) A healthy environment also means access to clean air and water, land ownership, sanitation, housing and electricity all of which directly impact on children's health.

5.2 *The Right to Social Security and the Right to Family Life - Ms Jackie Loffell: Child Welfare (JHB)*

- i) The child's right to survival implies the right to social security provision which should be directed primarily at strengthening the family unit.
- ii) The Constitution should reflect this right to a family life which is not sufficiently clear in the Interim's Constitution's reference to "parental care".
- iii) The final Constitution should make clear and specific provision for the child's right to social security.
- iv) Section 30 (1c) of the Interim Constitution which guarantees the child's right to basic nutrition, basic health and social services can only be effected if the right to social security is entrenched.

6. PLENARY DISCUSSION

6.1 The main issues raised were:

- i) Why has the HSRC been chosen by the CA to host this event when it has a clear history of collaboration with the Apartheid Regime.
- ii) The plight of children in armed conflict/violent situations, children in prison and children in rural areas.
- iii) Psychological needs of abused children.
- iv) The rights of pregnant children.
- v) Discrimination against 'illegitimate' children.
- vi) Equalisation of opportunities for disabled children.
- vii) Financial provision for pre-school education.

6.2 The main recommendations included:

- i) The Constitution should provide for the establishment of a High Court of Children's Rights - members appointed to this Court should have a track record of involvement with human rights.
- ii) The constitution should recognise Non-Christian/Judaeo marriages.
- iii) Abused children should be granted the right to therapy at state expense.

7. THE RIGHT TO PROTECTION - CHAIR : M. COLEMAN

7.1 *Equality and Minority - Ms Pansy Tlakula: Black Lawyers Association (JHB)*

The Equality Clause in the IC should specifically prohibit discrimination against children on the following grounds:

- The parents/guardian's activities or beliefs
- The marital status of the child's parents/guardian
- The child's economic status
- The child's national origin

7.2 *Freedom and Security - Ms Ann Skelton: Lawyers for Human Rights (PMB)*

- The Limitations Clause, when applied to Children's Rights, must be governed by the principle that "in all matters concerning a child his or her best interest must be paramount".
- The Final Constitution should be guided by the Beijing Rules which state that imprisonment of juveniles "should only be used as a last

resort and for the minimum period necessary".

- The Constitution should clearly spell out the special rights of juvenile prisoners. In particular Section 30(2) should be amended to read as follows:

A child who is detained shall have the right

- (a) ***to be detained under conditions and to be treated in a manner that takes account of his age, human dignity and developmental needs, and shall be aimed at the reintegration of the child into society;***
- (b) ***to be grouped according to age and sex and to be detained separately from persons over the age of eighteen years.***

- With regard to the protection of children from "cruel, inhuman or degrading punishment", the Constitution should be guided by UN the Convention of the Rights of the Child and the International Covenant on Civil and Political Rights. Both documents specifically name ***Corporal Punishment*** as "cruel, inhuman and degrading punishment" and calls for its prohibition. Section 11(2) of the IC should be amended to read:

"No person shall be subject to cruel, inhuman or degrading treatment or punishment, including all forms of corporal punishment".

7.3 Freedom from Abuse and Neglect - Ms Rose September : Child Guidance Clinic, UCT

- The constitution must ensure that the principle of the best interests of the child be paramount in all actions undertaken by public or private bodies.
- Children are the Bearers of human rights and hence they should have the right to representation in court.
- The law alone is not enough to protect children's rights; hence the need for reinforced constitutional protection of the rights of children.
- The Constitution must entrench the right of children to be protected from violence.
- The Constitution should include a Bill of Duties with regard to the protection of children's rights.

8. PLENARY DISCUSSION

8.1 The main issues raised were:

- i) The GNU was severely criticised for the manner in which it had

-
- handled the recent release of children from detention.
 - ii) There is a gap between constitutional rights and what actually happens at grassroots level.
 - iii) There is large-scale discrimination against children on the basis of age when it comes to education. In SA there are 1.7 million children out of school who need to be reintegrated into the education system.

8.2 Recommendations included:

- i) Children must be psychologically and emotionally prepared for release from detention and the state must be obliged to establish places of safety.
- ii) The constitution must guarantee the rights of refugee children and children of illegal immigrants.
- iii) The constitution must entrench the rights of children out of school to an education appropriate to their circumstances.
- iv) There must be a clear translation between constitutional rights and its implementation.

9. THE RIGHT TO DEVELOPMENT - CHAIR: JABU SINDANE: HSRC

9.1 *The right to language, culture and recreation - Prof. Temba Sono: Centre for Development Analysis (PTA)*

- Children, although not having civil and political rights nonetheless have human rights.
- A fundamental human right is the right to language and recreation which in the case of children become the instruments of self-actualization.
- Language development is crucial to the eradication of illiteracy, which was earmarked as a priority at the World Summit for Children(1990).
- The right to language, culture and recreation are second generation rights and should not be specifically enshrined in the constitution

9.2 *The right to education - Ms Shireen Motala: Early Childhood Development (DBN)*

- i) The constitution should entrench children's rights as they are the most vulnerable group in society.
- ii) The right to education is a fundamental human right for children and should include the following:
 - Life-long learning and development.
 - Formal and non-formal education.
 - The right to Early Childhood Development(ECD) as recognised by the

-
- UN Convention on the Rights of the Child.
 - A commitment to supporting parents through the provision of Adult Basic Education (ABE) programmes.
 - Equal rights and the provision of appropriate facilities for disabled children.
 - Particular attention must be given to the educational needs of 'Out of School Children and Youth'.
 - The rights of parents to have a say in the education of their children.
 - Free and compulsory education for the first 10 years.

9.3 *The right to freedom of religion, belief and opinion - Bishop Peter Storey: Methodist Bishop and Human Rights Activist.*

- The constitution must entrench freedom of religion and belief to encourage a culture of tolerance. The first right of any child is to grow up free from bigotry and intolerance.
- The constitution must enshrine not only the right to practice religion but also the absence of it.
- Children must be protected from being coerced into any religion (age being taken into account).
- Children must be protected from religious practices which detract from universal human rights/standards. Therefore Freedom of Religion cannot be absolute.
- Children must have the right to choose which faith (if any), or no faith at all.
- No child must be forced to receive religious instruction at school.
- The Constitution should entrench complete separation between Church and State to ensure that no preference is given to a particular religion.

10 PLENARY DISCUSSION

10.1 The main issues raised were:

- i) The lack of facilities for the needs of slow-learning children in black areas
- ii) The dual vulnerability of street children
- iii) Children forced to perform adult tasks
- iv) Corporal Punishment must be replaced by alternative disciplinary methods.

10.2 The main recommendations were:

- i) The constitution has to be specific to allow citizens to take the state to court
- ii) The constitution must provide special protection for children living on the streets.
- iii) The child's basic right to an awareness of her/his rights should be incorporated in life skills education.
- iv) Children must be guaranteed the right to play.

11. SUMMARY OF PROCEEDINGS - Ms N Pandor (CA member)

11.1 Ms Pandor emphasised the following points:

- i) The discussions did not consider the impact of customary and traditional laws on the rights of the child.
- ii) There is a need for organisations to become trained in the art of lobbying.
- iii) Parliamentarians have certainly received clear guidelines from those involved in children's rights.

12. CLOSURE

Ms G Shope, a member of the CA, closed the proceedings at 15h30.

PAPERS

CONSTITUENT ASSEMBLY
NATIONAL CHILDREN'S RIGHTS COMMITTEE
PUBLIC HEARING

13 MAY 1995

Stanley Mabusela
Executive Director NCRC
Johannesburg

**CONSTITUENT ASSEMBLY
NATIONAL CHILDREN'S RIGHTS COMMITTEE PUBLIC HEARING
13 MAY 1995**

KEYNOTE ADDRESS BY MRS S MABUSELA

PERSPECTIVE TO CHILD RIGHTS IN SOUTH AFRICA

INTRODUCTION

In the late 1970s and 80s, the international community accused the South African government of engaging in a "war against children". They made this accusation after watching the apartheid State fire into crowds of student protesters in Soweto on June 16, 1976. They also made this accusation on the mounting evidence of torture, arbitrary detention, beatings and systematic discrimination against black children, in particular African children, which were being carried out at all levels of government.

I am honoured to stand before you today in the new South Africa and say that that kind of war waged against children is over. We now live in a country governed by a constitution based on equality and freedom for all, including children. Under our Interim Constitution, no police officer, no presiding officer, nor any civil servant is entitled to wage any kind of war against our children. All persons must be bound by the provisions of the Interim Constitution in their dealings with children and must seek to protect and respect these.

The NCRC has lobbied extensively for this guarantee of rights for children to be included in Section 30 of the Interim Constitution. Section 30 in the constitution states:

1. Every child shall have the right to:
 - a) to a name and nationality as from birth;
 - b) to parental care;
 - c) to security, basic nutrition and basic health and social services;
 - d) not to be subject to neglect or abuse; and

- e) not to be subject to exploitative labour practices nor to be required or permitted to perform work which is hazardous or harmful to his or her education, health or wellbeing.
2. Every child who is in detention shall, in addition to the rights which he or she has in terms of Section 25, have the right to be detained under conditions and to be treated in a manner that takes account of his or her age.
3. For the purpose of this section a child shall mean a person under the age of 18 years and in all matters concerning such child his or her best interest shall be paramount.

Today we are being provided with a unique opportunity by the Constituent Assembly to comment on these rights as we are drafting our final constitution. All of you are experts on children and we look forward to working together today to harness that expertise in deciding which rights of the child should be protected in the final constitution.

It is important to note that all political parties, with the exception of the DP, are in favour of retaining the section on children in the constitution, and that many are in fact, in favour of expanding the section to be more comprehensive e.g. the ANC and the Freedom Front.

The right of children to participate on issues affecting them is contained in the UN Convention on the Rights of the Child. South African NGOs honoured this participatory right when in May and June 1992 the children of South Africa were brought together at an historic international summit for children in Cape Town. At that summit children adopted a first Charter of Rights for Children in South Africa. All children were unanimous in their move to have the contents of the Charter included in South Africa's new constitution.

Children are present here today and it is important that the Constituent Assembly take into account what their views are and which rights they wish to have placed in South Africa's new constitution.

The NCRC as an umbrella organisation for over 200 NGOs, believe that the right to free and compulsory education for all children should be included in the new constitution. While constitutions govern relations between the government and citizens, i.e. vertical application, we call for the protection of children's rights to also apply, to a certain extent, between children and non-state entities i.e. horizontal application.

It is important at this time in our history to maintain and expand the current protection for children in the final constitution, because :

Children represent one of the largest groups of disadvantaged persons in South Africa. They are approximately 44% of the population, and are our country's most precious resource. Children are an acutely vulnerable group, whose development can easily be stunted or damaged, with devastating consequences for themselves, their families and the broader society. Black children, and in particular African children, have suffered tremendous disadvantage and hardship under the previous apartheid regime.

The Interim Constitution recognises the unique status and needs of children in Section 30 on the rights of the child. It is essential that the existing provision be maintained, strengthened and expanded. Efforts to heal, reconstruct and develop South Africa will surely fail if we do not absolutely commit ourselves to the wellbeing of our children as the highest priority.

The United Nations Convention on the Rights of the Child provides the most comprehensive framework for ensuring a child's right to survival, protection, development and participation. As a signatory of this Convention, South Africa currently has a moral obligation to implement its principles.

At present, there are at least 79 national constitutions containing provisions dealing explicitly with the rights of children. The inclusion of such provisions is an acknowledgement that children, as a group have certain rights and needs which are unique to them. The phenomenal acceptance of the convention, (ratified by 171 countries, or nearly 90% of the world's countries since 1989), also indicates that the governments of the world have recognised that children have special rights and needs.

As unenfranchised and vulnerable members of society, children should have clear constitutional safeguards which will protect their interest and needs. We have seen time and time again, that the needs of children are ignored, misunderstood, traded off in political negotiations and otherwise forgotten in the formulation of legislation and policy.

In order to guarantee that the State's legislative and policy decisions are made in the best interests of the child, it is necessary to include a comprehensive section on the rights of the child in the final constitution setting minimum standards for the survival, protection, development and participation of our children.

WHY CHILDREN SHOULD HAVE SOCIO-ECONOMIC RIGHTS IN THE FINAL CONSTITUTION

The Convention on the Rights of the Child re-affirms in the Preamble that "the child, by reason of his or her physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth".

While all persons need what has been termed "socio-economic rights" such as the right to nutrition, housing, health care etc, children are particularly vulnerable and in need of the care and assistance which will help them to grow and develop, regardless of their financial or social status. In situations where the

parents of a child are unable to provide the basic necessities of life, the State must step in and ensure that the child has a standard of living adequate for his/her growth and development.

Thus, it is imperative that the child's right to basic socio-economic rights is protected in the final constitution. Section 30 of the Interim Constitution has set this precedent by entrenching the child's right to basic nutrition, health and social services. We strongly advocate that this language remain in the final constitution. In addition, we advocate that the child's right to social security, shelter, safety, early childhood development and free and compulsory primary and secondary education be added to the final constitution.

In conclusion allow me to quote from President Mandela's Nobel Peace Prize acceptance speech in December 1993:

"At the southern tip of the continent of Africa, a rich reward is in the making, an invaluable gift is in preparation, for those who suffered in the name of humanity when they sacrificed everything for liberty, peace, human dignity and human fulfillment. This reward will not be measured in money

It will and must be measured by the happiness and welfare of the children, at once the most vulnerable citizens in any society and the greatest of our treasures. The children must, at last, play in the open veld, no longer tortured by the pangs of hunger or ravaged by disease or threatened with the scourge of ignorance, molestation and abuse, and no longer required to engage in deeds whose gravity exceeds the demands of their tender years."

Let us all make this reward come true by contributing meaningfully today to secure their future.

I thank you

SHIRLEY MABUSELA
Executive Director NCRC

THE RIGHT TO HEALTH AND THE RIGHT TO AN HEALTHY ENVIRONMENT

Professor HM Coovadia

Introduction

The rights of children have not always been recognised. Indeed childrens' rights are very twentieth century phenomena. For countless centuries in India, China, Athens, Rome and Africa, unwanted children were abused, maimed or left to die. During the Middle Ages there was little record of any concern for children. During the late fifteenth and sixteenth centuries the first books were published in which European writers dealt with feeding of children.

The basic pre-requisites for health of children, mothers and women, are peace, shelter, education, food, income and a stable eco-system. Health services for children, mothers and women are an important facet of this broader dimension of human development. In societies with diverse historical groups, the provision of health services should be undertaken with due regard to traditions and cultural values which do not conflict with the harmonious development of children and women.

1. The Right to Health

Mothers, children and women of South Africa, have an incontestable right to justice, peace and freedom, a special claim to the resources and riches of this land, and open access to the generosity of its people. This higher call to the conscience of our country arises from their wider exposure and deeper suffering during generations of neglect, discrimination and racism.

There are numerous international agreements, declarations, conventions and charters of modern civilisation, (such as the UN Convention on the Rights of the Child (1989) and the World Summit for Children (1990) which adopted the Declaration on the Survival, Protection and Development of the Child), which embody the quintessential hopes of people for a better life on earth. The promotion and protection of the rights of mothers, women and children to health as a basic human right are enshrined in these international conventions. They all attest to the philosophy that the foundations of freedom, justice and peace are built on the inherent dignity and on the inalienable rights of all member of the human family. This dignity is enhanced and these rights are fulfilled when social progress guarantees the well-being of the individual and the community. The attainment of a healthy life is both a driving force and an end result of such social progress.

The above-mentioned declarations also identify children as deserving of particular safeguards, care and assistance, because of their immaturity and vulnerability. Young children are especially vulnerable in times of conflicts, natural disasters and economic hardship.

THE RIGHT TO HEALTH AND THE RIGHT TO AN HEALTHY ENVIRONMENT

Professor HM Coovadia

- 1. INTRODUCTION**
- 2. THE RIGHT TO HEALTH**
- 3. DEFINING 'ENVIRONMENT'**
- 4. DISEASES AND ENVIRONMENT**
- 5. ENVIRONMENT AND DISEASES**
- 6. ENVIRONMENTAL CHANGE AND DISEASE REDUCTION**

enough places for them to live nor are their parents in a position to look after them. The Charter also says that children should not be kept in prison, but the Charter also asks that children be protected. So where do they go to?

The Childrens Act says that children should not be employed, but the laws of this country goes against the Rights of Children as described in the Constitution. (Patricia which law are you talking about).

Children's Rights are not enforced in a clear way.

12TH MAY 1995

My name is Patricia Mrhabalala. I am 17 years old. and have lived in exiled for most part of my childhood. I now live with my parents, two brothers and two sisters in Khayalitsha. Like Shehaam I have been part of the Molo Songololo Children's Rights Programme since my return from exile in 1991. I was one of the delegates to the Children's Summit and the pre-election debate between Political leaders and young people. I am here to plea that adults take seriously and make sure that children's rights are not only respected but to find ways to protect and implement them.

THE CHILDREN'S SUMMIT

The summit gave us the unique experience to meet children from different backgrounds, race gender disability and from other parts of South Africa. We were given the platform to discuss ~~(to speak)~~ about problems that concerns us and speak about our rights and what we expect from adults and the government of South Africa. We felt that we needed to draft a document that will protect us. The many workshops provoked us to speak and experience freedom. It made us feel important because we were given the opportunity to discuss our rights.

THE PRESENT SITUATION

The government promised free education for the first 10 years. However this is not being implemented as many children from our communities, like Mannenberg, Guguletu etc are not at school. So if the government passes a law that says "free and compulsory education for the 1st 10 years" (May i just remind you that the Charter says that there should be free and compulsory education up to standard 10) and the reality says that children are not at school then for me there is something going wrong. I think that everybody has the responsibility to ensure that children does go to school and ways has to be found to draw in everybody. Even some of the reasons, like gangsterism drugs, and violence that prevents children from going to school has to be addressed to ensure a safe and healthy environment for children to attend school.

Last year our President said that children should not be kept in prison and recently all of them were released. But the problem is that there are not

Education

Under the section on Education we felt that all children should get free, equal, non-racial and compulsory education. We also felt that we had a right to have;

- Qualified teachers, and that teachers be evaluated and monitored to ensure that they are protecting the rights of children.
- Right to be educated on sexuality, Aids and human rights, ect

Child Labour

About having to work, the charter say that children have a right to be protected from child labour and any other economic exploitation. It also says that;

- There should be regulations and restrictions on hours and type of work and penalties for those who violate them.

Homelessness and children living on the street

About children being homeless and living on the street,

- we felt it is essentially the governments' responsibility to provide adiquate shelter for children who are homeless.
- Our demand is that no child should be forced to live on the streets.

→ Patricia

The Constitution

The present constitution have a number of points on children's rights. This is very good. But the constitution is vague and doesn't touch on issues relation to children growing up in a South African environment.

A constitution normally contains rules and principals according to which a country is governed. It is supposed to be supreme and no other law may differ from it.

We want you to take the Children's Charter of South Africa seriously. It is the voices of children to be respected.

At the end of the year children will once again come together to look at the charter and evaluate it, for there voices to be heard.

Today we brought these voices along.

- ~~This is something which a child experiences.~~
he wrote this letter

Points from the charter to be raised

Beside the basic human rights and special attention that children need, our charter also reflects the different experiences of children in South Africa and how we think we should be treated and protected.

Violence

Everyday children experience violence. Many of us live in constant fear and thousands have been hurt and scarred for life. In the past few years many children have been killed because of political violence and gangsterism. In the charter we stated that

- all children have a right to be protected from all types of violence
- that children should not be used as shield for perpetrators of violence.
- that special groups be formed to protect and council children who experienced violence.
- We felt strongly that no child should be held in prison or police cells at any time.

The charter ^{has} ~~have~~ 16 points on violence. This strongly shows what we feel about violence. Violence is doing great damage to the children of South Africa. The constitutional assembly must make sure that everything possible is done to protect children from violence.

Family Life

Many of our families are falling apart. More and more children are expected to take great responsibilities within the family. They are forced to work, beg, steal and do things to help bring in money. The level of abuse and neglect of children in families are increasing. Domestic violence is a big problem for children. In our charter we stated that children have

- a right to a safe, secure and nuturing family
- children have a right to a home, healthy food, clean water, sanitation and be clothed.
- a right to a clean healthy environment.
- a right to special protection when children are orphaned, abandoned, refugees or returning exiles.

Shehaam Abass

My name is Shehaam Abass. I am 17 years old. I am the oldest of five children with both ~~my~~ parents. I ~~live in Cape Town.~~ ^{live}

I have been involved with Molo Songololo for a few years and took part in the Children's Summit where we drew up the Children's Charter of South Africa. I have also been a representative at the Children's Peace Summit in Norway. *and pre-electn debate with Political leaders +*

Very soon I will reach the age of maturity and will no longer be entitled to special protection and care that children need to ensure they grow up well, and enjoy their childhood. In general I have had a good and loving upbringing. I have always been and still am very concerned about children not being taken seriously. *+ protected*

*yang
peop.*

→ Patricia

Children's Charter;

More importantly we are here to make sure that the voices of children are heard. The Children's Charter of South Africa, which we drew up in 1992 reflects our voices. It is the voices of the children of South Africa. Children want their rights to be respected and to be consulted on matters that affect them and their future. We drew up the charter because we felt that the government and the people of South Africa have abandoned children.

→ Patricia

"If you build castles in the sky
you need not despair; for now is the time
to get busy and build good foundations
under them."

By Henry David Thoreau

⑨

May I warn that we might be a headache to the South African children but I personally found that we are much more matured and better off than most countries of the world as they look up to us as their role models, this I established in the International Youth Forum held in Manila, Philippines in January. The children of South Africa are ever hopeful and praying for peace and stability and progress ^{in part} of the government and all they are asking for is to be heard and they are patiently waiting. This I established during the past weekend in a Tai'ce prayer weekend where about 3000-4000 youth gathered in the Standard Bank Arena Johannesburg in a pilgrimage of Trust organised by the Brothers from Tai'ce, and these young people from all the corners of Southern Africa to pray for reconciliation and peace together as human beings.

Ladies and Gentlemen thank you for giving an understanding and concerned ear I hope I have been of help to you. Thank you very much

From Johnny Mmeiwa Dhlaby.

- Empowerment of individuals esp. women.
- Effective service delivery
- Allocation of resources.

This may I say is an expectation by the world and they are waiting to support us as we get our house in order.

With more than 34,000 Non-governmental organisations and single issued forums whom I strove to address press problems arising at the time we were destroying apartheid and which again pulled us through our miraculous elections April 1994. I have nothing to fear because of the strong civil force which is merely awaiting direction from their government. I feel we should start on a national awareness campaign on children's rights, educating and informing our society of the importance of this matter.

I conclude by saying that first these rights are interlinked and there is an urgent need to implement them (not to mention enshrining them on the constitution). As a lay man I do not expect a lot of papers written and published in the name of children's right but with little or no action to ensure that the children have a right to survival, protection and development.

⑤

Thanks to National Children's Rights Committee for having a consultative competence last year to establish a task force meant to set up a National Programme of Action, which over 90% of the world countries had have it in place, with an aim of alleviating our plight. They had this being mandated by the Tientsin Declaration on Children's Rights and with the support from UNICEF.

The children are the responsibility of the entire society, not a black sector or white sector or grey sector, as this is what lead to the misallocation of funds totally and/or proportion. We are the responsibility of the states, and we are hopeful that our rights will be enshrined in the new constitution as our state president and his second deputy were signatories to the World Declaration on Children's Rights.

As the world have set 27 goals to be achieved in their world summit by the year 2000, we urge the new government with the NARC to move into the implementing of the N.P.A, which will survive on four pillars, as this was established through experience worldwide i.e. participation by local community.

(4)

As we take up into the streets and march
 over campuses and try to get an increase
 in our salaries as ^{young} teachers and young
 nurses, young police, members of the
 defence force; students in the classrooms
 we are seen as irresponsible and immature
 and yet two years ago, to put the new
 government in power we were asked to
 roar as young lions, so somebody forgot
 to tame us into negotiating lambs in the
 new dispensation.

Early childhood development is crucially
 to any nation as it shapes the future
 image of the country, but with little
 or no opportunity we are left with no
 choices but to jump that crucial stage
 with a view that South Africa has no
 human beings but superior whites to blacks
 blacks and isolated indians ~~and hopelessly~~
 and coloureds; so we still remain a sick
 society with no hope.

Releasing children into the streets and cutting
 down the budget of social welfare and retrenching
 social welfare who are working and listening
 to us makes us scared of the future. 9 CPD officers
 in Johannesburg is simply not enough for protecting
 children abused and on top of that are given responsibil-
 ties of family violence and rape victims.

③

The latter statistics were accumulated through a non-scientific survey in over a 1000 people in the Evaton - Sebokeng area.

The sight of a mentally retarded raped girl last week at 13hoo in one of the local schools informed me that there are no special places for disabled children in most townships or rural areas and no specialist counsellors in local hospitals and schools. There is no better burden to a disabled child to be kept to learn and have no place to learn except to have a place to be kept in whilst parents are away and working.

We have special educational needs from violent torn areas, we need to learn and be counselled, former prisoners, to learn skills for life and to build up our moral through a number of things like sports. Our self confidence so low and with a cloudy or uncertain look into what we desire to realise as we study due to lack of vocational guidance and role models we are left with gangsters who rape, steal, rob, drink and sell dagga and other drugs as our role models and we tend to follow them and instead of someone to speak to us we are simply termed the lost generation or the marginalised youth.

②

The reasons are basic, if you ^{pay} ~~pay~~ per years to be heard and know the frustration of not being heard, do not allow us the chance to experience this. I fear if you do not hear us and enshrine our rights in the new constitution, somebody is very bad for our future and the fate of what you will be busy building is already hearing most of us; despite the efforts by NGOs to redirect our course and those are drug dealers, people who want us to be prostitutes, gamblers, pornographers, child rapists and abusers, they are directing our course now.

Somebody needs to give children who have seen people hacked, murdered, burnt alive for that matter their own families, their brothers being arrested and with no one to protect them have been robbed their early childhood development and they will burn and kill people in 3 years from if nothing is done to redress their situation. With horrifying statistics of 43% having seen mutilated bodies, 20% losing their brothers into exile, 50% exposed to a family member being a drug addict and a neighbor or father battering his wife, 16% having seen an AK47 in action and felt stimulated by its sound and found it an honour to use it somehow.

The Right to be heard

13 May 1995

Johnny Dhlabu

CA. Public hearing on Children's Rights

I would like to extend my greeting to all who are present in this hearing. I am delighted to see and take part in a new contributing towards the drawing up a new constitution, to shape our destiny.

My duty is to share with you my thoughts on what I think should be done to alleviate the plight of children in this country. We have a right to be heard by the authorities it is our birth right. We the children from violent torn areas; disabled children children exploited for child labour have a right to survival; i.e. right to health; social security and the right to genuine family life. We also have a right to protection from diseases, exploitation, mental and physical abuse. We have a right to development as we need to realise our fullest potential. Ma. chairman in my speech I want to tell why should the constituent assembly make an effort in enshrining this rights and how I think we can realise this dream.

I am preaching the gospel that we are all unique and we have something we can give to this country.

There are large numbers of children who have been driven to the fringes of society; they live in exceptionally difficult circumstances and therefore require special consideration.

The basic human rights and freedoms due to all children have been denied to children in South Africa, who instead have been treated with scant respect and subjected to violence, discrimination and racism. Women have endured an equal, if not greater pain.

A number of laws provide the legal framework for promoting the survival, development and protection of children. The Alma Ata Declaration forms the basis of the philosophy of the health care approach, which is expanded in documents from the WHO Regional Office in Brazzaville and from the Organisation of African Unity. The struggle for Childrens Rights in South Africa begin with the Soweto Uprising in 1976, and are encoded in declarations from numerous conferences (such as the Harare Conference 1987, Gaborone Conference - which resulted in The National Childrens Rights Committee 1990, Childrens Charter 1992, and the Thembisa Declaration 1993).

Within the country, the basic developmental and civil rights of children were included in Article 30 of the new constitution and the maternal and child health programme is located in general development policies which are aimed at promoting access to an adequate standard of living. The Reconstruction and Development Programme is an instrument for transforming government and society; it stresses "the needs of children must be paramount throughout all programmes aimed at meeting basic human needs and socio-economic upliftment." It aims to deepen democracy by removing the veil which obscures the methods of political decision making and by making the processes of governance both visible and accountable. Democracy is further strengthened by rooting the RDP firmly in development. Its people-centred approach ensures that the poor and disadvantaged are both participants and beneficiaries of the development process.

The key programmes of the RDP are focused on meeting basic needs of rural and urban communities, maximising human resource potential, enlarging the economy and spreading its benefits, and democratising the state and society and its institutions. Indeed the first ten of the twenty fund allocations for 1994/5 deal with health or health-related projects. The people-centred approach of the RDP resonates perfectly with the philosophical underpinnings of Alma Ata. Accordingly MCH programmes can draw nourishment from the resources of the RDP and, in turn, facilitate the achievement of its goals for children, mothers and women.

2. Defining 'Environment'

The environment which influences child health can be conveniently divided into the following:

- * *The immediate family* : Together with men, women and children constitute the family which is the abiding unit of social cohesion and the fundamental group in communities. It is the natural environment for the growth and development of children and for the stability of mothers and fathers. The family therefore deserves protection. The status of women influences the strength of the family and women are often marginalised. Therefore the care of women is a major social concern.
- * *Poverty* : This leads to a wide range of diseases as indicated below; most prominent are infections and malnutrition.
- * *Built-Environment* : This includes industrial and agricultural development, pollution, traffic, stress etc., and is related to accidents, cancers and psycho-social growth.
- * *Social and Political Environment* : Instability leads to substance abuse, prostitution, alcoholism, and violence.

3. Diseases and Environment

Black babies and children often suffer needlessly and die early; this is so because they frequently fall prey to ordinary diseases which are easily preventable or treatable. Perinatal, infant and child mortality rates are high with marked disparities between the races, the regions and between urban and rural areas. Perinatal mortality is the single largest cause of the death of infants and children. Newborn babies inherit the effects of maternal disorders, therefore hypertension, sepsis, infections, ruptured placentae, haemorrhage, pre-term labour and unexplained still births, are the most frequent causes of perinatal deaths. Good antenatal care and improved services for delivery can reduce the incidence of these problems.

Low birth weight babies are prone to serious diseases in the first weeks of birth and are likely to fail to achieve their potential for growth and development in later life. About 10-19% of Black babies born in hospitals are low birth weight. Beyond the neonatal period, the major causes of infant mortality are diarrhoea and respiratory diseases. The latter two, together with perinatal causes, viral diseases, congenital defect, and ill-defined causes, account for just over 90% of all infant deaths. Children beyond infancy die from a similar range of diseases; malnutrition and

infection are especially important in pre-school children. Accidents are also responsible for much injury and death in this age group.

Morbidity data are very weak. Diarrhoea, respiratory infections, allergies, malnutritions (protein-energy malnutrition and micro nutrient deficiencies), poisonings, and child abuse are undoubtedly common. Vaccine preventable diseases are on the decline though tuberculosis and measles are prominent causes of morbidity. Pertussis may be an hidden but serious problem. HIV/AIDS is looming large on the horizon. Disabilities and handicap are inadequately provided for by the health and welfare services.

Adolescents are vulnerable to an array of psychosocial problems, such as teenage pregnancy, sexually transmitted diseases, HIV/AIDS, substance abuse, violence, trauma, smoking and alcoholism.

Many of these problems arise from a poor or inhospitable environment. The latter includes poverty, unemployment, low income, illiteracy and lack of education, inadequate sanitation, restricted access to safe water, breakdown of family life, inaccessible or inappropriate health services, etc.

4. Environment and Diseases

The pillars of society such as money, work, shelter, land, learning, water and culture, influence health and development.

Industrialisation

In the industrialized countries, infectious diseases began declining and indices of health began improving from the mid-nineteenth century, mainly due to growth of the economy and development of social services. The incidence of many infectious diseases such as tuberculosis fell rapidly during this period. In the UK this led to a sustained decline in age-adjusted mortality rates from all causes and diseases, for both sexes, between 1841 and 1985. These benefits were due primarily to enlightened public health legislation enacted from 1848 which improved water and food supplies, housing, sanitation and nutrition.

Wealth

The association between penury, pestilence and ill-health has been recognised for centuries. In the modern world there is a stark difference between the health and disease patterns of rich and poor nations. Developing countries, as compared to industrialized countries, have a higher mortality among infants and under-5-year-olds; more infectious diseases such as gastroenteritis, pneumonia, measles, polio, tetanus, whooping cough, diphtheria and tuberculosis; frequent anaemias in women during pregnancy; and higher rates of population growth and illiteracy. In the Third World, life expectancy; immunisation rates; health care provision for pregnant mothers, women and infants; provision of safe water and sanitation; daily intake of

proteins, calories and fat; and enrolment at secondary school, are all lower than in the developed countries.

It has been shown that when women have to work harder and longer to offset inflationary pressures in order to buy the same quantity of basic foods, the number of low birth weight babies and infants dying in the first year of life increase. Time and again observers have recorded the inverse relationship between wages and infant mortality rates.

Productivity is also influenced by poor health conditions and the latter may be experienced very early in life. Poor women fail to gain weight in pregnancy and therefore have smaller babies who often develop malnutrition. Those children who have prolonged malnutrition become stunted. Such children do badly at school and as adults can have as much as a 30% deficit in work capacity.

Housing

The type of shelter available to people can either nurture or damage health. What is important for well-being is the number of rooms, water supply and availability of toilets. Faulty design, little lighting, damp, lack of safe amenities, poor food storage and cooking facilities and faulty ventilation, lead to rapid spread of infectious diseases, respiratory problems, skin diseases and accidents.

Education

In 24 separate studies in 15 different nations, it has been shown that the educational level of the mother is a critical determinant of children's health. Education is even more closely associated with health than is income. With better education, the number of deaths in infancy and childhood is reduced, nutrition improves and the birth-rate goes down. These startling changes come about because of improved care of children (indeed, mothers are, rightly speaking, the finest primary health care workers available for their offspring), an alteration in attitudes with decreasing fatalism, an increased knowledge of health practices, an openness to the use of new ideas and institutions (e.g. clinics) and finally, an enhanced status and power of women in the family and society.

There is considerable proof for the prevailing belief that large families in the Third World lead to a deterioration in child health. Conversely, reductions in fertility benefit babies and children in numerous ways. During the last third of the nineteenth century, a surprising but consistent and undeniable fall in fertility rates was detected in England, Wales, the Netherlands, Belgium, Germany, Australia, Italy, Spain, France, Ireland, the USA, New Zealand, Canada and among white English-speaking South Africans. There appeared to be a colossal social force acting on fertility rates in these diverse industrialized countries. The main force was the introduction of mass education at this time in the industrializing world.

Land

The ownership of land bears directly and indirectly on health through innumerable interlocking mechanisms. To quote some simple examples: in Bangladesh (1974-1977) the death rate (per 1 000 live births) of the children of landowners was 16, in contrast to 43 for children of the labourers. In Maharashtra, India, land ownership was related to the daily intake of food. Only those who possessed more than 10 acres had daily calorie intakes above recommended amounts; those with less than 10 acres did not consume sufficient calories.

In South Africa, where black people have been forcibly dispossessed of their land through conquest and removals, the question of an equitable return of the land to the people is of crucial importance for democracy. It is obvious that this issue is closely tied up with the promotion of health of black South Africans.

Water Supply and Sanitation

Safe water provision and sanitation are essential for health. Improved water supplies lead to fewer gastrointestinal diseases, less wastage of nutrients due to infection and malabsorption, greater crop production and animal husbandry, increased cash incomes, economies of time, saving of energy and more available food and energy. Rate of expansion of water supplies will have to increase two-and-a-half-fold in this decade over that of the last decade to achieve health for all the people.

Pollution

Poor inner-city housing and informal settlements have severely polluted environments. This is mainly due to internal and external pollution. The former is caused by domestic burning of fuel which releases smoke particles and sulphurdioxide in the air. This increases the risk and severity of respiratory diseases and allergies. Externally, there are the hazards of traffic accidents and lead toxicity. High lead levels have been detected in some urban and peri-urban areas in the Cape and Natal. The extent of childhood diseases in South Africa due to air pollution, photochemical smog, indoor air pollution, pesticides, many metals especially environmental lead, and climate changes, are not known.

5. Environmental Change and Disease Reduction

The environmental changes which need to occur to address the health problems of children include:

For malnutrition, we require economic growth, job creation, rural development and food price control;

For improved early childhood development, we need more educare programmes for pre-school children;

For the reduction of diarrhoea, we have to begin providing clean and potable water to the 12 million South Africans who do not have these necessities, and sanitation to the 20 million South Africans who do not possess a proper toilet.

For less respiratory diseases and other health problems, the state and NGO's have to build homes for the 5 million homeless.

To improve access to health services and reduce accidents, the transport system has to be upgraded.

To reduce pollution and generally improve health, electricity has to be introduced to the 36% of household which are without this.

Largely social, legislative, political and economic measures have to be undertaken to protect children in difficult circumstances (situations of violence, abuse, neglect and abandonment, streetchildren, disabilities, child labour, children in prison, AIDS, etc).

SUBMISSION TO THE CA NATIONAL CHILDREN'S RIGHTS PUBLIC HEARING,
13 MAY 1995

1. Position of the NCRC on the Child's Right to Family Life and Social Security

The child's right to survival implies the right to social security provision to ensure that his or her fundamental needs will be met. Such provision should be directed primarily towards strengthening the family unit - either biological or substitute - as the primary context within which the child should be nurtured. The NCRC calls for the Constitution to specifically reflect the broader right to family life, which is implicit but insufficiently clear in the concept of "parental care". Provision for social security is crucial to this right, hence we call for clear and specific inclusion of the right to such provision in the final Constitution.

2. The right of the child to family life

The UN Convention on the Rights of the Child repeatedly affirms the right of the child to family life. Article 5 refers to the responsibilities of parents, extended family members and/or designated adults within the community to provide guidance and direction for the child. Article 9 affirms the right of the child to live with his or her parents unless compelling reasons to the contrary, as determined by authorised persons through legally specified processes, are present. Where a child has to be separated from his/her parents, that child's right to maintain a personal relationship with them is recognised, again unless there are serious reasons why this should not be so. Article 10 affirms the right of parents and children to cross national borders for purposes of family reunification. Article 18 places the primary responsibility for raising the child with the parents, and simultaneously obliges states parties to support them in this task by provision of the necessary services, facilities and assistance. Article 20 obliges states parties to provide special protection for a child who has been deprived of a family environment and to ensure the provision of appropriate alternative care, particularly substitute family care. Section 30 (1) (b) of our Interim Constitution follows the spirit of the Convention by affirming the right of a child to parental care.

These provisions are a reflection of the deeply held conviction within the international community that the environment best suited to meeting the primary physical, emotional and social needs of the child is the family. Despite experimentation with alternatives in various parts of the world, no satisfactory substitute has ever been found. A country which seeks to nurture its young to healthy adulthood is obliged, to the best of its ability, to protect the integrity of the family unit and to promote the stability of family life. High rates of family breakdown are inevitably accompanied by a proliferation of

social ills such as mental illness, child neglect and abuse, addictions, crime and violence. Where the biological family fails to meet the basic needs of the child or is actively dangerous to the child, efforts have to be made to ensure either that they are helped to overcome their problems or that substitute care, preferably a substitute family, is provided.

It is recognised that families take many different forms, by no means confined to the urban nuclear variety. What is at stake is the provision of a consistent nurturant environment which is responsive to the needs of the child at the different stages of his or her development, and which provides opportunities for attachment, stable and positive relationships, and healthy socialisation.

2. The right of the child to social security

Articles 26 and 27 of the UN Convention on the Rights of the Child refer, respectively, to the right of the child to benefit from social security, and to an adequate standard of living. While the obligation of parents to support the child is recognised, Articles 18 and 27 require states parties to assist parents in this task where necessary. Article 27 also requires that states parties institute appropriate measures to recover costs from parents who default. In accordance with the Convention, Section 30 (1) (d) of the Interim Constitution, assures the child's right to security, basic nutrition and basic health and social services. Clearly, such rights can only be upheld where there is sufficient provision for social security. Section 30 (1) (e) is also in harmony with the Convention in prohibiting the exploitation of children for their labour. Social security provision is again necessary for the implementation of this right, to ensure that the labour of children is not the only means available for the survival of extremely impoverished families. Social security must in the first place be geared towards provision to make it possible for parents to fulfil their role, so as to maintain the integrity of the family, as the most crucial and fundamental mechanism in our society for meeting the needs of children.

3. Discussion

There are heated debates at present about the affordability of social security provision and of services to promote family life. We should however be asking whether we can afford to be without a social security safety net and essential services which are required to ensure that children have the benefit of a secure family life. We only need to look around us to see that where such provision is nonexistent, inadequate or inaccessible, problems develop which become intractable and are far more expensive to resolve. The costs of failure to provide social security and associated services tend not to be taken into account when those who draw up our national and regional budgets make their calculations.

For example, it is far cheaper to provide a Maintenance Grant to a destitute mother than to cover the costs of hospital and institutional care for an abandoned baby. It is likewise far more cost-effective to assist parents to meet the basic needs of their children, than to deal with the growing phenomenon of children who end up living in the street. Such children will ultimately create costs to the welfare, justice and various other systems which far outweigh what could instead have been spent on assisting their families to support them. This does not even begin to touch on issues such as the costs of lost productivity and antisocial behaviour in adulthood, inability to parent competently due to having never experienced healthy parenting, the resultant continuation of cycles of child abuse and neglect, and so forth.

Social security should in the first place have the aim of preserving the biological family unit. In cases where this is not possible, our social security investment should in particular be geared towards ensuring substitute family care for children, in the forms of foster care and adoption. These are in general both far more beneficial to children and far less expensive than the institutional provision which must be relied on when they are not available. Institutional care should be used only when care within a family context is impossible, and then usually only as a short-term measure. The NCRC has in Clause (2) of its submission referred to the need to divert children away from institutional care wherever possible.

Social security provision must provide for the necessary supportive infrastructure for foster care and adoption services as well as for the relevant grants and allowances. Such provision will be needed on a massive scale if we are to uphold the right to family care of the hundreds of thousands of children who will be left destitute after losing their parents to AIDS within the next few years. We must understand that if we fail to make this provision we will face the enormously destructive and vastly more expensive alternative of a flooding of our hospitals and residential facilities for children, plus a spiralling of the numbers of destitute children on our streets.

4. Conclusion

There is a saying that if we fail to provide for what children need when they need it, they will reclaim the costs of such provision many times over later down the line, often in very destructive ways. Our children are the human resources of our nation - if we fail to protect the family as the environment which must nurture them, we will destroy our future. If we fail now to ensure that their basic needs are met, we cannot expect them to be healthy and productive members of society who respect the rights of others. If we want them to be an asset to the nation we have to make the necessary investment in their wellbeing now, during their crucial formative years. We must commit

ourselves to this investment by affirming their right to family life and to social security in the final Constitution.

JACKIE LOFFELL
NCRC LEGAL COMMITTEE

1. INTRODUCTION

Equality before the law is one of the fundamental principles of the Interim Constitution. This principle is enshrined in most of the sections of this Constitution, from the Preamble to the Postamble. The Constitution further enjoins the courts, in interpreting the Bill of Rights, to promote "The values which underline an open and democratic society based on freedom and equality. The principle of equality is also enshrined in the constitutional principles, which inter alia, provides that "The Constitution ... shall provide for the establishment of ... a democratic system of government committed to achieving equality between men and women and people of all races. The fifth constitutional principle enjoins the legal system to ensure the equality of all before the law and an equitable legal process. The Constitutional principles, together with the Preamble and Postamble, serve as a guide in the interpretation of the Constitution.

Section 8 of the Interim Constitution prescribes the way in which equality can be achieved namely, by prohibiting discrimination, directly and indirectly, on the grounds listed and on any other grounds, inherent in the nature of human identity, which are not expressly mentioned. The Constitution does not expressly mention the prohibition of discrimination against children, yet they are one of the most

vulnerable groups of the society and need protection. Even if they are not directly discriminated against, the tendency is to punish them for the evils of their parents by discriminating against them on the basis of their parents status and beliefs. If the Bible is anything to go by, it confirms this. To remedy this situation, the Final Constitution should provide in very clear and specific terms, for the protection of children against all forms of discrimination. This is in keeping with international instruments, such as the Convention on the Rights of the Child, which contain provisions to that effect.

Exide.
Chapter 8 of the Interim Constitution prohibits discrimination, direct or indirect on the grounds listed therein and also on the grounds other than those listed. This Constitution is however, silent on the prohibition of discrimination against children, yet children, because of their vulnerability, suffer not only from discrimination in but are also marginalisation. Hence they are usually discriminated against on the basis of their parent's status. If this state of affairs is to discontinue, the final Constitution should, in very specific and clear terms, protect children from all forms of discrimination.

2. THE INTERNATIONAL INSTRUMENTS

Article 2 of the Convention on the Rights of the Child protect children against discrimination and asserts their civil, political, economic, social and cultural rights.

Article 2(1) provides as follows:

State Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parents or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

Article 2(2) -

obliges the State Parties to take all appropriate measures to ensure that the child is protected against all forms of

discrimination or punishment on the basis of the status, activities, expressed opinions or belief of the child's parent's, legal guardians or family members.

If one analyses Section (2) of the Convention, it provides the following protection to the child:

1. protection against discrimination on the basis of the status, activities, expressed opinions or beliefs of the child's parents, his or her legal guardian or family members;
2. protection against discrimination based on the child's birth or other status (i.e. a child born out of wedlock);
3. protection from discrimination based on the child's property (i.e. economic status) and
4. protection from discrimination based on the child's national origin (i.e. citizenship)

3. PROPOSALS AND RECOMMENDATIONS

The Interim Constitution is silent on the issue of non-discrimination of children. South Africa, as a signatory of the Convention on the rights of the child, should incorporate, as part of its national law, the principles of the Convention in the final Constitution.

1. Discrimination on the basis of parent's legal guardian's or family member's activities, beliefs etc.

Section 8 of the Interim Constitution lists grounds upon which a person shall not be discriminated against, whether directly or indirectly. Although discrimination against a child on the basis of his or her parent's actions may be construed as indirect discrimination, there is a need for a clause which grants explicit protection.

The need for such a provision is necessitated by the discrimination which children suffer in practice, due to the activities, opinions, beliefs et cetera of their parents and guardians. To give an example, freedom of religion, which

includes freedom of conscience, thought and belief, is one of the most fundamental freedoms. Although the Constitution requires people to be treated equally and not to be discriminated against, it also allows people to differ when it comes to matters of religion, yet children continue to suffer discrimination, especially in schools, on the basis of their parents beliefs. How many times have children from minority religious groups like Muslims, Orthodox Jews, et cetera been discriminated against at schools by non-recognition of their religious holidays while allowing Christians to observe theirs. This does not only constitute violation of their right to freedom of religion or belief, but also constitutes discrimination on the basis of their religion or belief. To protect children against this form of discrimination, the final Constitution should contain in its equality clause, a clause explicitly stating that "neither may any person be discriminated against on the basis of the status, activities expressed opinions or beliefs of the person's parent's legal guardians or family members".

- (b) Protection against discrimination based on the child's birth or other status

Our Interim Constitution commits itself to equality and

equal protection yet many children continue to be discriminated against on the basis of the marital status of their parents. These children are constantly stigmatised by being referred to as "illegitimate" simply because some of them were born from unions deemed unlawful, by either State or religious law. This Western notion of illegitimacy has been applied in South Africa despite of our cultural and religious diversity. Resultantly, children have been stigmatised as illegitimate and discriminated against even though they are legitimate in terms of the culture or religion of their parents.

There is an increase in our country, of children born out of wedlock. Widespread poverty and disorganisation of the family structure, which arise from and was aggravated by apartheid is responsible for this.

Although female headed households are becoming a norm, children born out of wedlock continue to suffer severe discrimination compared to their peers who are born within marriage. Although there has been an attempt to remove some legal disabilities suffered by children born out of wedlock, there is an urgent need to equalise the

position of all children before the law, irrespective of the marital status of the parents. Our national law should be brought in line with international conventions such as the Convention on the Rights of the Child and the European Convention on the Human Rights which outlaw discrimination against children born out of wedlock.

In our country, 45% of all children are currently born out of wedlock. The law has to be reformed to incorporate the full sharing of parental rights and responsibilities, irrespective of whether the child is born in or out of wedlock. Emphasis should be on the Welfare and needs of a child rather than on marriage and responsibilities which flow from it.

To prevent discrimination of a child on the basis of the status of his or her parents, the right of every child to security and equal treatment should be enshrined in the final Constitution. It is therefore submitted that to ensure protection of the rights of children born outside of marriage, "birth and other status" should be added to the list of protected grounds in the equality clause of the final Constitution.

(c) Protection from discrimination based on the child's economic status

The political and economic policies of the defunct apartheid government have left many children in our country in a terrible state of poverty. In South Africa today, millions of children are estimated as living far below the bread line. The social welfare system is extremely inadequate in meeting the needs of children. Children rely on their parents for their survival, protection and development. The majority of the people in our country live in squalor and poverty and are therefore not in a position to discharge this obligation. The State therefore, has an obligation to provide for children. The reality of the matter is that in most instances, the State would rather spend more on acquisition of arms than on the welfare of children. The result is that children are always at the bottom of the political and financial agenda.

In a country divided on socio-economic lines such as ours, and which has a painful history of racial discrimination, discrimination based on a person's economic status is a norm and children have not escaped from this.

In a country with our history, even after the coming into existence of a new political order, the traditionally disadvantaged groups continue to fall at the bottom end of the socio-economic ladder. This is still happening in countries such as the United States where schools are financed on the basis of neighbourhood property taxes. The result of this is that greater amount of money per student is available in the wealthier neighbourhoods thus leading to violation of the right to equality and equal protection.

To avoid the the occurrence this type of situation in our country, there must be an explicit constitutional provision in the final Constitution which prohibits discrimination based on economic status. It is therefore recommended that "economic status" should be included as one of the protected grounds in the equality provision.

(d) Protection from discrimination based on the Child's national origin

It is our uncommon to find provisions denying rights (for example, education rights) to children who were not

legally admitted into a country. However, because children have little if any control over where they live, this amounts to discrimination against children for the acts of their parents.

The Convention makes it quite clear that the State has a duty to provide for all children within its borders, regardless of national origin. This duty is based on the principle that children are the common responsibility of both parents, the State and society as a whole.

In 1982, the Supreme Court of the United States struck down a law denying state-funded education to children who were illegal aliens as violative of the Equal Protection Clause (Plyler v Doe, 457 U.S. 202 (1982)). The Court found that no rational justification for discriminating against children on the basis of their status as illegal aliens existed, as it was a legal characteristic over which they have no control.

As this is one area where children are exceedingly vulnerable, we recommend adding "national origin" to the list of protected grounds in the equality provision.

(c) Other considerations

It is essential that the equality clause maintain its current flexible language allowing for consideration of additional grounds of discrimination. It is important that any class of individuals not contemplated during the writing of the equality provision also be able to bring a constitutional claim based on the provision. For example, a class of adoptees should be free to argue that adoption laws that destroy the opportunity of the adoptees to learn the identity of their biological parents unjustifiably discriminate against them (Roger B., 418 N.E.2d 751 (III, 1981)). We are satisfied that the Interim Constitution's equality provision meets this requirement, and recommend maintaining language that is equally flexible in the final Constitution.

Finally, it is noteworthy that the Canadian courts

Children's rights : Freedom and Security.

by Ann Skelton.

A paper written for the
Constitutional Assembly Public hearing
on children's rights.

13 May 1995.

CHILDREN'S RIGHTS : FREEDOM AND SECURITY.

By Ann Skelton¹

Introduction

Freedom is coming tomorrow. That was the lyric of Sarafina's song², and many children in South African prisons have taken the song to their hearts. On Monday 8th May 1995 the announcement was made that all children were to be released from prisons and many from police cells. Are our children now free?

To begin with, the amended section 29 of the Correctional Services Act 8 of 1959 only deals with children who are unsentenced. It provides that children can never be held in a prison awaiting trial. Children under 14 years can be held in a police cell or lock up for no more than 24 hours if such detention is necessary and in the interests of justice and if the child cannot be placed in a place of safety. Children Over the age of 14 but under 18 can be held for a further 48 hours if they have committed a crime listed in schedule 2 to the act³, and if they cannot be placed in a place of safety. The essence of it all is that children should be allowed to await trial in their own homes. The new section 29 is in keeping with the new constitution, and with the pertinent United Nations instruments.⁴ As we all know there were problems with the way in which the legislation was brought into force, and the situation is made difficult by the fact that many children have become displaced from their families, and compounding that is the lack of appropriate places of safety. However, perhaps this will be a situation where legislation leads the way. The crisis which has occurred during this last week will hopefully give rise to some solutions which will allow our children to exercise their right to freedom in a way which they have never been able to before.

¹ Ann Skelton BA LLB is a graduate of the University of Natal, and is currently director of the Juvenile Justice Project of Lawyers for Human Rights.

² From the musical *Sarafina* by Mbongeni Ngema.

³ schedule 2 to Act 8 of 1959 lists the following offences; murder, rape, robbery, assault (when a dangerous wound is inflicted), kidnapping, arson, breaking or entering any premises with intent to commit an offence, any offence under any law relating to the illicit conveyance or supply of dependence producing drugs, and any conspiracy, incitement or attempt to commit any offence referred to in the schedule.

⁴ The UN standard minimum rules for the administration of juvenile justice, The UN rules for the protection of juveniles deprived of their liberty.

In this presentation I will be looking at the interim constitution, with emphasis on section 11 and section 30. I will also talk about some of the challenges we will face in protecting the freedom and security of South African children.

Freedom

Section 11 of the interim constitution says that

- (1) Every person shall have the right to freedom and security of person, which shall include detention without trial.
- (2) No person shall be subject to torture of any kind, whether physical, mental or emotional, nor shall any person be subject to cruel, inhuman or degrading treatment or punishment.

The right to freedom is a very fundamental right, but it is also one which ~~we~~ as a society are quite ready to limit through imprisonment. All the rights set out in chapter 3 are not absolute, they are subject to limitation. The limitations clause in section 33 indicates that the rights set out in section 11 can only be limited in cases when such limitation is reasonable and necessary and justifiable in a an open and democratic society based on freedom and equality.

When one is dealing with an adult offender, it is conceivable that there may be many circumstances where the limitation of the right to freedom could be reasonable, necessary and justifiable. When dealing with an offender under the age of 18, however, another right must be entered into the equation. That is that according to section 30(3) of our interim constitution in all matters concerning a child his or her best interest must be paramount⁵. This means that even in a situation where rights limitations are being considered, and there is a balancing out of rights, the best interest rule must weigh more heavily. In this way it can be seen that the best interest right becomes a vital factor to the protection of all rights for children. It is essential that the best interest of the child remains a cornerstone of the children's rights section of the final constitution. This will not necessarily mean that all children will be protected from imprisonment, but it will certainly limit those circumstances in which a child can have his or her liberty removed.

The word freedom is also helpfully broad. A risk which we may well run into in future years is the holding of children against their will in institutions which masquerade as places of care but which are, for all intents and purposes prisons for children. If

⁵ For the US Supreme court's handling of the best interest rule see Moore v Moore, 386 S.E.2d 456 (S.C. 1989), in which it was held that the best interest of the child is the primary and controlling consideration of the court in all child custody controversies.

we were to do this, we would be travelling in the footsteps of many other nations of the world who have been this route and given up on it.⁶

A danger in this regard is that when services such as counselling, education or skills training are offered in prisons, it will be tempting for magistrates and judges to send young people to prison on the basis that it is in their best interest to receive such services. This notion is ill conceived. The fact is that all children should have access to such services, without being incarcerated. Imprisonment for children should only be considered in exceptional circumstances where the protection of society requires it.

The United Nations standard minimum rules for the administration of juvenile justice (Beijing rules) put it as follows " The placement of a juvenile in an institution shall always be a disposition of last resort and for the minimum period necessary." the rules also indicate the importance of diversion when dealing with juveniles. Diversion requires that wherever possible children should not be taken through the criminal justice system, but can be made accountable for their actions through some other method.

The final constitution of South Africa should include wording which allows for diversion, and which ensures that imprisonment should only be used as a last resort.

The fact remains though, that a number of children will continue to be imprisoned in South African prisons, both those already serving sentences and those who will be sentenced in the future. It is important that the special rights of these young prisoners be spelt out in the constitution. Section 30 of the interim constitution provides that "every child who is in detention shall in addition to the rights which he or she has in terms of section 25, have the right to be detained under conditions and to be treated in a manner that takes account of his or her age. this is a good start, but it does not go far enough. It is submitted that the wording of the final constitution should read along the following lines;

*a child who is detained shall have the right
(a) to be detained under conditions and to be treated in a manner*

⁶ In In re Gault, 387 U.S. 1(1967) . A decision to send a boy to a residential State Industrial School for three years for allegedly making an obscene phone call was overturned. In explaining the reasons for judgement, the judge pointed out that the juvenile justice system had developed special processes of its own aimed at "rehabilitation" and "treatment", and that the juvenile justice system had come to operate outside the constitutional protections guaranteed to adult offenders. He said that whilst these special courts and processes had been developed by policy makers who had the best interest of children at heart, an enlightened result was not always forthcoming.

that takes account of his or her age, human dignity and developmental needs, and shall be aimed at the reintegration of the child into society;

(b) to be grouped according of age and sex and to be detained separately from persons over the age of eighteen years.

This language should allow for provision of essential basics for children in prison such as education, adequate nutrition, play and recreation. The aim of reintegration of the child into society is intended to promote rehabilitation, and to ensure that children are able to maintain regular contact with their families.

In determining what is required for developmental needs, we can be guided by the United Nations rules for the protection of juveniles deprived of their liberty, a very detailed document.

Security of person

Section 11 also provides for "security of person" together with freedom. All persons, it might be argued, have the right to security of person. but it is a fact that when people lose their liberty, their personal security is immediately put at risk. A prison is a violent place. Children and young people are often the victims of assault, and very prevalently, of sexual assault. In addition to reducing the risk of attacks by prison warders.

Detention without trial.

The right to freedom guaranteed in section 11 also includes the right not to be detained without trial. Experience in South Africa has shown us that children are equally vulnerable to this suppressive action. It is of concern that this right, like every other one can be limited, although the test of "justifiable in an open and democratic society based on freedom and equality" will be a tough one against which to argue for detention without trial.

Cruel, inhuman or degrading treatment or punishment.

The second part of section 11 provides protection against torture of any kind, as well as from cruel, inhuman or degrading treatment or punishment.

Of particular importance is the fact that this provision hints at, but does not specifically name corporal punishment. Corporal punishment is still used in South Africa against children in homes, schools, child care institutions, foster care, day care, correctional services institutions, and by the criminal

justice system as a sentence.⁷

Adults are not, as a rule, exposed to corporal punishment. In the case of Williams and another v the State in which the constitutionality of judicial corporal punishment was argued, the respondents did not even attempt to argue for the retention of adult whippings. This is where we are as a society on the issue; we do not want corporal punishment for ourselves, as adults, but we do not want to extend that protection to our children. This is illogical, and is arguably in breach of the equality provision. Although the constitution allows for differentiation of protection between adults and children, in every other case this operates in the child's favour.

On the question of judicial whippings as a sentence the constitutional court has yet to give judgement. Observers speculate however that the court will in all likelihood rule judicial whippings to be unconstitutional.

The issue does not end there, however. The constitutionality of corporal punishment in state institutions as well as in the home was not argued before the court.

The UN Convention on the Rights of the Child provides international authority for the child's right to physical integrity and dignity. The UN committee on the rights of the child has emphasised that physical punishment in institutions and in the home is not compatible with the Convention. Furthermore, the committee has stated that the legal prohibition of physical punishment of children is necessary to overcome the problem of violence in society.

Additionally, the Human Rights committee overseeing the International Covenant on Civil and Political rights has interpreted "cruel inhuman or degrading punishment" to include a prohibition on corporal punishment. They stated in 1992 that "It is appropriate to emphasise in this regard that Article 7 protects, in particular, children, pupils and patients in teaching and medical institutions."

The United Nations instruments pertaining to juvenile justice prohibit corporal punishment, whether as a sentence or as a disciplinary method in institutions.

There have been a number of court decisions in other countries which have resulted in the prohibition of corporal punishment, two of them from our neighbouring countries Namibia and Zimbabwe.

⁷ For more information on this see *People and Violence in South Africa*, eds Brian Mc Kendrick and Wilma Hoffman, particularly the articles on *Violence in schools* (T. Holdstock), *Violence in group care* (C.Giles), *Violence in detention* (The Human Rights commission),

Many countries further afield abolished corporal punishment in schools some time ago. Poland, for example, outlawed corporal punishment in schools in 1783. The United Kingdom was the last European country to end corporal punishment in state schools in 1987. It has been outlawed in China, Russia, half of the states of the USA, and most of the states of Australia. Other African countries which have done away with corporal punishment in schools are Burkina Fasso and Botswana.

Some countries have prohibited all forms of punishment of children by parents and other care givers. These are Finland, Denmark, Norway, Austria and Cyprus.⁶

It seems then, that the wording of section 11 (2) does not go far enough. Let us unequivocally give our children the protection and dignity we ask for ourselves, by rewriting section 11 (2) to say, "No person shall be subject to torture of any kind, nor shall any person be subject to cruel, inhuman or degrading treatment or punishment, including all forms of corporal punishment".

⁶ Information provided by Epoch South Africa.

CONSTITUTIONAL ASSEMBLY CHILDREN'S RIGHTS PUBLIC HEARING

FREEDOM FROM ABUSE AND NEGLECT

by R L SEPTEMBER
(13 May 1995)

INTRODUCTION AND PROBLEM STATEMENT

There is a growing awareness that child abuse and neglect are serious and escalating problems. In 1994, the SAP's Child Protection Unit alone dealt with 22 911 cases of abuse against children, which indicates an increase of 36% over the number of cases dealt with during the previous year. Over the period 1993 - 1994, officially reported rape cases increased from 4 736 to 7 559 (62,7%) common assault from 2 364 to 3 246 (72,9%), offenses according to the Child Care Act 74/1983, e.g. child neglect and abandonment, from 1 969 to 2 694 (73,0%) and attempted murder from 175 to 213 (82,2%). The National Council for Family and Child Care was informed of about 10 000 cases dealt with by Child Welfare Societies. Because of under-reporting and the lack of systematic research, a coordinated data system and a centralised register, the true extent of child abuse and neglect is unknown.

Existing services are fragmented and under-resourced, leaving large parts of the country (especially rural areas) unserved. The standard of services varies greatly and there is a shortage of suitably qualified and trained staff as well as serious financial difficulties experienced by organisations. There is a lack of policy guidelines and an absence of management protocol and procedures. There is therefore no guarantee that a child entering the system will be dealt with in terms of acceptable procedures or protected against further abuse. No coordinated and comprehensive prevention strategies exist.

FUNDAMENTAL RIGHTS IN THE NEW CONSTITUTION AND THE IMPLICATIONS FOR CHILDREN WHO ARE ABUSED AND NEGLECTED.

"Constitutionalism is about balancing the principles of liberty and equality against power" [Cachalia et al 1994].

and

"A bill of rights is a constitutional instrument in which the basic rights and freedoms of the subordinates of state authority are defined and afforded protection by means of constitutional entrenchment against the exercise of legislative and executive powers"

and

Children are bearers of rights -

but ...

how do we ensure that they are indeed protected? We know from experience that children are often the worse off victims of human rights violations.

In asserting the importance of enforcement mechanisms, James Madison wrote:

"If men were angels, no government would be necessary. If angels were to govern, neither external or internal controls on government would be necessary. In framing government which is to be administered by men, the great difficulty lies in this: you must first enable the government to control the governed and in the next place oblige it to control itself".

It is for this reason, it is argued here, that the law alone is not enough to protect children's rights. Reinforced constitutional protection for the rights of children is imperative.

However, the constitution accords a vital role to the judiciary in its application. If all fundamental human rights, including children's rights are fully justiciable children, who are abused and neglected must enjoy adequate protection! What protection exists currently and how do we ensure that protection mechanisms are adequately enforced?

● **Section 30 of the interim constitution states:**

1. Every child shall have the right -
 - a. to a name and nationality as from birth
 - b. to parental care
 - c. to security, basic human nutrition and basic health and social services.
 - d. not to be subject to neglect or abuse; and
 - e. not to be subject to exploitative labour practises nor to be required or permitted to perform work which is hazardous or harmful to his or her education, health or well-being.
2. Every child who is in detention shall, on addition to the rights which he or she has in terms of section 25, have the right to be detained under conditions and to be treated in a manner that takes account of his or her age.
3. For the purpose of this section a child shall mean a person under the age of 18 years and in all matters concerning such a child his or her best interest shall be paramount" [S A Fundamental Rights].

The above section 30 (3) of our constitution makes it clear that in regard to the issues dealt with in the section, the approach of the courts must be to regard the child's best interests as paramount. It therefore does not seek to protect or establish parental rights save for those which are in the child's best interest.

● **The UN Convention on the Rights of the Child**

The UN Convention (which our government is in the process of ratifying) provides the following protection for children:

Article 4 of the convention states:

"State Parties shall undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, State Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international cooperation".

Article 3,1 states:

"In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be primary consideration".

Article 12,1 states:

"State Parties shall assure to the child who is capable of forming his or her own views, the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child".

Article 2 states:

"State Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status".

More explicitly with regard to Child Abuse and Neglect Article 22 deals with children in especially difficult circumstances.

"Millions of children around the world live under especially difficult circumstances - as orphans and street children, as refugees or displaced persons, as victims of war and natural and man-made disasters, including such perils as exposure to radiation and dangerous chemicals, as children of migrant workers and other social disadvantaged groups, as child workers or youth trapped in the bondage of prostitution, sexual abuse and other forms of exploitation, as disabled children and juvenile delinquents and as victims of apartheid and foreign occupation. Such children deserve special attention, protection and assistance from their families and communities and as part of national efforts and international co-operation".

- The Children's Charter of South Africa: A Call from our Children:

Our children in their June 1992 Charter, article five asserted their right to be protected from all types of violence. As full bearers of rights of the New Constitution must entrench this right.

The following case study illustrates what happens in the absence of mechanisms to enforce good ideals.

CASE STUDY: THE CASE OF COURT PROTECTION FOR CHILDREN WHO ARE VICTIMS OF ABUSE AND NEGLECT.

Protection of child victims: What is the reality

The courts has historically, both nationally and internationally assumed an important role as final arbiter of disputes between adult rights and the rights of children. During its long history within the child and family welfare field the courts assumed jurisdiction over a wide spectrum of family issues. These include juvenile justice, custody, foster care, adoptions, residential care placement, maintenance, divorce and aspects of criminal justice cases such as family violence and rape. Children's court inquiries, over which a commissioner of child welfare presides are held where the legal status of parents over their children are at stake. In cases of sexual offenses against children, the Criminal Procedures Act, 1977 and Amendment Act of 1988 and the Child Care Act, 1983 (Act 74 of 1983) and the Child Care Amendment Act, 1991 (Act 74 of 1991) provides the legal framework for court action in these cases.

There seems to be no clarity among professionals on the statutory entrenchment of the "paramount consideration" rule, meaning that the interest of the child now take precedence over the claims of the parents [Schäfer 1993]. Tensions clearly exists between what are perceived to be "children's rights" and adult rights and responsibilities. Based on these vague and blurred notions, concern was expressed for many years about the protection of children in cases of child abuse offenses during criminal court proceedings.

Who really determines what is in the best interest of the child? In the final instance the court does. The court therefore must establish mechanisms to aid it in making this important decision. Logically, it therefore follows that, if the determination of the best interest of the child is paramount, the establishment of and clarity about these mechanisms or entities must be a first priority. Unfortunately, this is not the case for South Africa's children, a study conducted at two "Specialized Sexual offenses courts in Cape Town reveals that: the legal representation of and for children participating in criminal court proceedings are blurred and in essence extremely contradictory.

The most startling reality in most Courts are that children's interests are not necessarily represented. The State will typically be represented in these proceedings by its Prosecutor; the Social Services Department by the Child Welfare Commissioner during the children's court inquiry; and the accused or the parents by court-appointed counsel. Arguably, some commentators believe that, the local state department files the petition on behalf of the child, the state prosecutor therefore represents the child's interests. Realistically they do not, once State

Prosecutors are in the court they assume a prosecutorial role. Their primary emphasis is not the independent representation of the child's interest - it is an attempt to establish, with requisite burden of proof, the allegations contained within the petition. The establishment of the accused's culpability and the protection of the child's interests are not the same.

This non-representation of the child in the court is in my opinion the root cause for the current role confusion and secondary victimisation that still persist in the new court system. It also serves as an overt statement that children are still not perceived to be bearers of fundamental human rights.

Central to the above discussion, is two critically important issues. Firstly, the issue of Second and Third generation Rights. These rights are equally important in light of the huge inequalities and extent of poverty in our society.

Secondly, with regard to the protection of children, consideration must be given to the inclusion of a Bill of Duties and obligation (in the Constitution). Such a Bill of Duties should include the mechanisms to ensure the implementation of child protection.

IMPLICATIONS FOR STATE AND SOCIETY

Some of the immediate obligation of the state and society in response to the Rights of children as entrenched in our constitution and an implication of the signing and ratification of the UN Convention on the Rights of the Child is presented here:

1. Each citizen is urged to recognize that a serious emergency related to child maltreatment exists and to resolve that its continued existence is unacceptable.
2. Each citizen is urged to demand from our elected state officials that whatever steps are necessary must be taken to resolve this emergency. This includes the identification and application of revenue resources to transform the Child Protection System.
3. The National Government, Provincial Governments and Legislation are urged to view the prevention of child abuse and neglect as a matter of national security and, as such, to increase all resources and support to meet basic needs such as housing, child care, education and health for low income families and the poor.
4. The President to continue to invest and to support the campaign for children's rights and a "first call for children" as a model for the nation to follow.

5. All Mayors and local government leaders to become personally involved in improving and developing services related to the prevention and intervention of child abuse and neglect.
6. All training institutions and other relevant associations should develop major initiatives to stimulate the development of knowledge about child abuse and neglect and the improvement of the child protection system. [Training and research].
7. All citizens are urged to contribute to the development of coordinated community services related to the protection of children.
8. Coordinated inter-ministerial, interdepartmental mechanisms should be created to undertake joint efforts to address Child Abuse and Neglect cases. The issue of fatal child abuse and neglect caused by family members and other caretakers is a critical example. These efforts should include an urgent and clear mandate from National Government to Provincial Governments, to develop and submit Policy, Legislation and procedures for child protection. Such Provincial Plans should include prevention strategies, multidisciplinary coordinated management strategies and information systems and monitoring mechanisms.
9. The establishment of an Interdepartmental data collection system that provides a comprehensive national picture of child maltreatment and the response to it by Provinces.
10. Provincial Government should take the necessary steps to assure that all public and private CPS caseworkers systematically receive adequate pre-service and in-service continuity training for the proper performance of their duties.
11. CPS services must be representative of racial, ethnic and cultural composition of the case load population.
12. Child Protective Services case loads in most agencies are two or five times above a manageable level. Good Child Protection practise dictates 12 - 25 cases per worker at any one time.
13. The highest state court and the judicial leaders should assure that all courts handling the large numbers of child abuse and neglect cases coming before the court system promptly and fairly resolve these cases. Prompt and fair resolution will require sufficient resources including:
 - a. adequate numbers of well-trained judges, lawyers, child welfare commissioners, prosecutors and other court support staff, as well as manageable caseloads that take into account the complex and demanding nature of child abuse and neglect litigation.

- b. specialized, uniform judicial procedures that are sensitive to the needs of children and families.
 - c. improved court-based diagnostic, assessment and evaluation services.
 - d. greater educational opportunities for all professional personnel involved in such proceedings.
 - e. courts hearing child maltreatment cases must be given the funding and status befitting these most important cases.
 - f. courts should take steps to assure that every child has independent advocacy and legal representation.
14. The National Government should direct an appropriate research unit to determine the cost of developing and implementing a comprehensive National Programme for the prevention and treatment of child abuse and neglect. Such research should include the development of a model planning process aimed at generating plans for coordinated, comprehensive, community-based prevention, identification, and treatment of abuse and neglect, and take appropriate steps to assure that the model process is implemented throughout the nation.

CONCLUSION

The transformation cliché of the day is, "change does not come easily. Old ways die hard. And no change, no matter how needed, is accomplished without tension and trauma".

The challenge to Child Protective professionals from all disciplines is - be ready to respond to more change - change directed constructively towards the protection of our children.

SPECIFIC STRATEGIES TO BE INCLUDED IN A NATIONAL PROGRAMME OF ACTION

- a. research that incorporates both an urgent needs assessment to determine the nature and extent of the problem for purposes of planning and comprehensive on-going investigation and monitoring of the system;
- b. the development of mechanisms and structures for effective communication, coordination and cooperation between the Government, NGO's and communities on a regional, provincial and local level;
- c. developing new working agreements and partnerships for service provision, financing and registration between the national government, provincial and local government and NGO's;
- d. upgrading and extending services and making services and places where abuse can be reported more accessible to communities
- e. developing management protocols for service provision and special training of all role players to ensure effective and efficient service provision appropriate to local conditions and resources;
- f. development of support systems for child victims provided by trained volunteers;
- g. the provision of a combination of services on a preventive, protective and statutory level delivered in an inclusive manner to address the fundamental needs of a community, e.g. life skills and parent training skills and safe houses for children and women;
- h. rendering services by means of an interdisciplinary and intersectoral team;
- i. reforming the legal system to ensure a child friendly service and reviewing legislation on a continuous basis;
- j. the provision of mandatory protection for child witnesses and the development of bail and sentence procedures which are effective in protecting children and promoting rehabilitation of offenders; and
- k. launching public awareness campaigns, developing advocacy strategies to promote children's rights and
- l. providing comprehensive life skills education and appropriate sex education as an integral part of the school syllabus with the aim of making children less vulnerable by providing appropriate sex education and social skills training at school

MISDADE TEEN KINDERS : SUID-AFRIKA

KINDERBESKERMINGSEENHEID EN GESPECIALISEERDE INDIVIDUE

SUID-AFRIKAANSE POLISIE

OPSOMMING : JANUARIE 1993 - APRIL 1995

CRIMES AGAINST CHILDREN : SOUTH AFRICA

CHILD PROTECTION UNITS AND SPECIALISED INDIVIDUALS

SOUTH AFRICAN POLICE

SUMMARY : JANUARY 1993 - APRIL 1995

LET WEL / TAKE NOTE:

Die getalle dui slegs die aantal sake wat deur die Kinderbeskermingseenheid en gespesialiseerde individue gehanteer is, aan en nie sake wat deur ander eenhede gehanteer is nie.

The numbers indicate only the number of cases handled by the Child Protection Unit and specialized individuals and not cases handled by other units.

MISDADE (KINDERS ONDER 18 JAAR) CRIMES (CHILDREN UNDER 18 YEARS)	1993 JAN - DES/DEC	1994 JAN - DES/DEC	1995 JAN - APR/APRIL
VERKRAGTING / RAPE	4 736	7 559	2 809
SODOMIE / SODOMY	431	491	184
BLOEDSKANDE / INCEST	146	156	57
ONSEDELIKE AANRANDING / INDECENT ASSAULT	3 439	3 904	1 319
WET/ACT 23/1957 (SEKSUELE MISD) / (SEXUAL OFF)	1 034	1 094	352
POGING TOT MOORD / ATTEMPTED MURDER	175	213	54
AANRANDING ERNSTIG (ELL) / ASSAULT (GBH)	1 339	1 905	678
AANRANDING GEWOON / ASSAULT COMMON	2 364	3 246	1 251
ONTVOERING / ABDUCTION	522	743	291
MENSEROOF / KIDNAPPING	654	906	319
WET/ACT 74/1983 (KINDERSORG) / (CHILD CARE)	1 969	2 694	1 210
TOTAAL / TOTAL	16 809	22 911	8 524

MISDADE TEEN KINDERS : SUID-AFRIKA
KINDERBESKERMINGSEENHEID EN GESPECIALISEERDE INDIVIDUE
SUID-AFRIKAANSE POLISIE
VERGELYKENDE STATISTIEK : 1993 - 1995

CRIMES AGAINST CHILDREN : SOUTH AFRICA
CHILD PROTECTION UNITS AND SPECIALISED INDIVIDUALS
SOUTH AFRICAN POLICE
COMPARATIVE STATISTICS : 1993 - 1995

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Die getalle dui slegs die aantal sake wat deur die Kinderbeskermingseenheid en gespesialiseerde individue gehanteer is, aan en nie sake wat deur ander eenhede gehanteer is nie.

The numbers indicate only the number of cases handled by the Child Protection Unit and specialized individuals and not cases handled by other units.

MISDADE (KINDERS ONDER 18 JAAR) CRIMES (CHILDREN UNDER 18 YEARS)	1993 JAN - APR/APRIL	1994 JAN - APR/APRIL	1995 JAN - APR/APRIL
VERKRAGTING / RAPE	1 419	1 941	2 809
SODOMIE / SODOMY	114	139	184
BLOEDSKANDE / INCEST	60	55	57
ONSEDELIKE AANRANDING / INDECENT ASSAULT	998	1 202	1 319
WET/ACT 23/1957 (SEKSUELE MISD) / (SEXUAL OFF)	332	336	352
POGING TOT MOORD / ATTEMPTED MURDER	57	61	54
AANRANDING ERNSTIG (ELL) / ASSAULT (GBH)	414	616	678
AANRANDING GEWOON / ASSAULT COMMON	746	1 010	1 251
ONTVOERING / ABDUCTION	162	211	291
MENSEROOF / KIDNAPPING	221	458	319
WET/ACT 74/1983 (KINDERSORG) / (CHILD CARE)	682	678	1 210
TOTAAL / TOTAL	5 205	6 707	8 524

THE RIGHT TO LANGUAGE

CULTURE & RECREATION

By

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Act 200 of 1993 (i.e. Constitution of the Republic of South Africa, 1993) as amended by Act 2 of 1994 and Act 3 of 1994 enumerates the rights of children in Section 30, and stipulates, in Section 31, that every person shall have the right to use the language and to participate in the cultural life of his or her choice. What these sections are suggesting, amongst others, is that language, leisure, and culture are essential elements of human development.

Why is it essential to constitutionalise language and leisure rights for children? The simple and expedient answer may be that such rights have either not existed, or have been seriously curtailed for the majority of children, in South Africa during the tenure of apartheid. Language rights for children especially, became so bastardised that many of these children, for instance, in Soweto revolted against this bastardisation in 1976. Rebellion, revolts and general cultural mayhem became the majority of leisure activism for these children. Consequently, South Africa became the first country that I know of which lost control of its children.

That is the simple answer to the complex question why the need to constitutionalise language and leisure rights for children. But there are more deeper and extensive reasons for such constitutionalisation, albeit ingeniously. For instance, although children, not being citizens, do not have citizens' rights, they have nonetheless human rights. There is everything fundamental a right in the development of language and leisure (recreation) for children precisely because they become the instruments of self-actualisation. Language is not merely a means of communication, a mere cultural artefact, it is a vital component of the edifice of a child's identity and development. Moreover, these rights are merely the local enshrinement of a global phenomenon. You may recall that the World Summit for Children held in 1990 in New York virtually came out with a detailed description of a new order for the world's children. The 159 nations assembled there agreed that, amongst other things, ending mass malnutrition, preventable disease, and widespread illiteracy should be a priority.

This World Summit came up with 10 Propositions, amongst which was that the principle of 'first call for children' - meaning that protection for the growing bodies and minds of the young ought to have a first call on societies' resources - should become an accepted ethic of a new world order. South Africa's constitutional rights for children - in this case language and leisure rights - are part and parcel of the package of this 'first call for children'.

Curbing illiteracy is enshrining language development. Yet we have to be careful with the constitutionalisation of rights. Basic as language and recreational rights are, are they not really second

generation rights? And if they are, should they be constitutionalised sui generis? The fundamental purpose of a constitution is to govern power relationships; to protect members of a society from abuse. The distinction between a first generation right and a second generation right is important if we are to understand, in proper perspective, what language, culture and recreation rights are for children.

'Leave me alone' is a first generation right. The right to be left alone to live my life undisturbed is a natural first generation right. But the right to a house, a job, a car, a fridge, a school, are a second generation right. Similarly, language, cultural and recreational rights for children are second generation rights. I believe these children's rights should be constitutionalised, but in a rather circumspect manner, as for example in the German Constitution. Article 6(2) states:

The care and upbringing of children shall be a natural right of and a duty primarily incumbent on the parents. The state shall watch over their endeavours in this respect.

Article 6(5) states:

Illegitimate children shall be provided by legislation with the same opportunities for their physical and mental development and for their place in society as are enjoyed by legitimate children [My emphasis].

"Children shall have the right to physical and mental development" may be one generic way of constitutionally enshrining these rights without the clumsiness of specifically referring to a litany of second generation rights. Moreover, the German Constitution give primacy and priority of the nurturement and development of children to parents or guardians.

Or another way of constitutionalising these three second generation rights for children may be stated in the paraphrased form of Article 22 of the Republic of China Constitution:

All freedoms and rights of the children that are not detrimental to social order or public welfare shall be guaranteed under the Constitution.

This would have neatly skirted the silliness and clumsiness of Section 30 of our Interim Constitution. For instance what is the purpose of constitutionalising, as in Section 30(1)(a), "Every child shall have the right to a name ...?" What is the purpose of such an entry? And where does one stop? Shouldn't we then say "every child shall have the right to a friend ...", "every child shall have the right to a

etc.

Language Culture

To deny children the development of their language is to deny them the capacity to think, because thinking, in any society, is not an overt process, is not analysable or recognisable unless it finds some kind of expression. That expression is through language, oral, written, or symbolic. There is then a reciprocal relationship between thought and language, and thus between language and development. Clearly, then language has a formative impact or influence on both the thinking individual mind and the culture and society associated with a given speech community.

Language rights are important because they lead to the development of a language which means the development of a person because language is an avenue through which concepts are built. Conceptualization, articulation, ellaboration, critical review, and analysis all depend on language. That is, thought and action may equally be constrained by a retarded language development. Not only speaking, but reading and writing are an organic aspect of social conduct.

Language rights - especially the written - help in the disposition of systematised knowledge. Reflection and analytical discourse are possible then, in one whose language development has not been retarded. Unless language rights of children are enlarged and enshrined, orality and oracular "thinking" will become the dominant pattern of social conduct. Oral culture can hardly ever develop mathematical rigour and scientific exactitude. Analytical thinking is rare through orality; but happens largely through literacy.

Without language rights and language development children are cheated of the future. Their conceptual maps are dotted with values of uniformity, homogeneity, collectivity, ideology. These values are enemies of the mind. Abstract and highly intellectual activities are severely constrained in a non-literate culture.

Leisure

Leisure & recreation are indispensable in the development of children. Leisure/recreation is a prerequisite of every free activity. Recreation is an imperative which has to be guaranteed for children because if not s/he will not know what to do with the empty time that has befallen him/her.

While recreation and leisure are essential for children, the same could not, of course, be said of adults. An adult who is relieved of work is not thereby capable of leisure or recreation. A person who gains time does not thereby gain the capacity to spend this time in free activity, for leisure is not a mere doing-nothing, a state that can be defined negatively. An adult may gain nothing but empty time, whereas for children, their developmental rights demand it because children, more than adults, are capable of filling empty time.

The culture, recreation and liberty of the child have for their base the liberty and development of the child. Children should be helped to conquer the social obstacles which frequently impede their development. Families, neighbourhoods, and communities have a first and critical role in supporting children in their transition to adolescence and adulthood finally. The State should play a less conspicuous role besides that of the traditional laying the foundation for education, health and survival/protection.

As Josiah Warren noted in 1855 "children must be surrounded with equity and must be equitably treated, and each and every one, parent or child, must be understood to be an individual, and must have his or her individual rights equitably respected".

Since Schedule 4 (Constitutional Principle XI) has made provision for the acknowledgement and protection of the "diversity of language and culture", as well as encouraging the conditions for their promotion, it is not necessary that language, culture and recreation rights of the child should be specifically enshrined in the Constitution without reducing this Basic Law to ridicule. It would add nothing to the Constitution. It is merely a truism.

* * * *

PUTTING THE CHILDREN FIRST -
THE RIGHT TO LIFELONG LEARNING
AND DEVELOPMENT

PAPER DELIVERED BY

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AT CONSTITUENT ASSEMBLY

PUBLIC HEARING ON CHILDRENS
RIGHTS HELD ON 13/05/95 IN PRETORIA

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- (2) A CHILDRENS RIGHTS - IMPERATIVE FOR S.A.
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 - EARLY CHILDHOOD DEVELOPMENT
 - COMMITMENT TO SUPPORTING PARENTS
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 - OUT OF SCHOOL CHILDREN AND YOUTH - HOPE OR DESPAIR
 - PARADIGM SHIFT - TO A HOLISTIC EDUCATION APPROACH

INTRODUCTION - CHILDREN ARE VULNERABLE

The legacy of apartheid lives on in South Africa. Poverty is wide spread and deep, particularly in rural areas. Low wages, high unemployment, homelessness, escalating violence and the resultant breakdown of family life has resulted in an enormous waste of human life and potential, of course it is the most vulnerable in society who have been its victims - our children.

It is against this background that S.A. interim constitution has recognized fundamental rights of all persons. It further recognizes children as persons and accepts the notion of the Rights of the Child.

A CHILDRENS RIGHTS IMPERATIVE

The idea that children have rights of their own which transcend the family is considered a fairly radical and complex issue.

Rights of the child have generally been subsumed in the rights of adults, particularly parents and family and hence does not take cognizance of childrens innocence and vulnerability. This is the basis for arguing for special provision at the highest level viz the constitution.

For S.A. the ongoing inclusion of childrens rights has moved from a moral obligation to a legal one with our commitment to the adoption and ratification of the UN Convention of the Rights of the Child (1990).

The S.A. Childrens Charter adopted by children themselves in 1992 at a summit in Cape Town and the African Charter on Human and Peoples Rights also speak of the Rights in such a way as to acknowledge the special status and needs of children.

Finally noting that 44 % of our population (population census 1991) is comprised of children and that 18 % are below the age of 7 means that in S.A. we cannot allow children to be excluded from otherwise universal human rights.

THE RIGHT TO EDUCATION - LIFELONG LEARNING AND DEVELOPMENT

The UN Convention on the Rights of the Child (article 28,29), the African Charter on Human and Peoples Rights (article 17) and the childrens charter of S.A. (Article 8) all point to the importance of Education and Learning which is directed to Development of a child's personality, potential and talent, which prepares children for responsible life and which enables the development of respect for parents, basic human rights, the natural environment and their own and other cultural and national issues.

It promotes the notion of both formal and non-formal education, the key role that parents play in providing care and promoting development of children as well as the need for support to parents in order to enable them to fulfil their responsibilities.

In addition to the specific clause on education several other articles of the UN convention reflect the

rights of children to Early Childhood Development.

They include:

- article 2: Rights for all children
- article 3: best interest of the child
- article 6: the right to life and survival and development
- article 9: right to both parents
- article 18: responsibility of both parents to child
- article 27: a standard of living conducive to optimal development of the child
- article 31: the right to play

If we are to accept the right to education as encompassing all the rights ^{above}, the consequence of neglecting to meet the rights can span generations, and place a huge strain on limited resources. It will also mean the violation of basic human rights of the child in developing to their full potential.

I wish to argue that in order to ensure *redress* and to transform the educational system we must place our emphasis on the following:

- The promotion of Early Childhood Development
- A commitment to providing support for parents
- Fair and equal provision for development of disabled children
- Promoting challenges and appropriate learning opportunity for out of school children and youth.
- A shift from didactic learning to concept of holistic Education. Lets look briefly at each of these issues.

PROMOTION OF E.C.D.

There is international acceptance of ECD as providing the foundation for a child to become healthy, active and sociable.

ECD is defined as a process whereby a child from birth grows and develops physically, mentally, emotionally and socially.

ECD is seen as a continuous process of care and education, within the context of the family

Noting the extraordinary levels of disadvantage suffered by SA children the need for ECD is now even greater as an effective vehicle for providing support to children in poverty and where family life has broken down.

We need to rear both physically healthy and emotionally stable children

ECD provides an opportunity for the nurturing of a child:-

- sense of self esteem and confidence
- development of social relations
- building independence
- development of trust
- self discipline
- development of a child's creative potential
- encouragement to have fun

The focus on ECD is justified as a mechanism for ⁱⁿbreaking the cycle of human deprivation

COMMITMENT TO SUPPORTING PARENTS

If we are to free the child we must help the parent. The care and well being of children is closely linked with that of their parents, especially their mothers.

However, parents and family are too vulnerable and disempowered to take fully the responsibility for their children's well being and health in developing countries. This is where the state must commit itself.

A world development report of the World Bank (1991) finds that the level of maternal education is the best single predictor of children's well being.

In a country where approximately 15 million people are not literate and less than 1% are in A.B.E programmes the urgent need for Adult Basic Education is stressed.

Through these sort of programmes parents will be strengthened in their roles as 1st and lifelong educators of their children

FAIR AND EQUAL PROVISION FOR DISABLED CHILDREN

All human beings have the need to be seen as unique and this is for disabled children as well.

The reality, however, is that a disabled child already deprived of some of the riches of life, experiences further disadvantage by the denial of or inappropriate provision of education and care.

The question of integration of disabled children is crucial to accepting that they have some right to education and to take part in the same activities.

However it is accepted that this will require physical modification, training and support for parents, caregivers and teachers and access to adequate resources.

It is an accepted fact that children with disabilities benefit enormously from early detection and intervention and this could be facilitated by ECD programmes.

Where it is not possible to integrate children, effort should be made to provide services and facilities to both child and parents.

OUT OF SCHOOL CHILDREN AND YOUTH

Past policies of apartheid have resulted in massive education backlogs. The S.A. Foundation estimates that approximately 1,7 million children are out of school and a further 1,7 million aged under 30 have dropped out, with 600 000 not having attended school at all.

According to DET the number of over age pupils is also a growing concern with 32 % of children being 3 years above the norm and 19 % being 4 years above the norm in their respective grades.

There is surely a cause for alarm, and ^{calls} for the development of appropriate infrastructure to cater for a variety of learners.

They include children and youth:

- previously out of school for whatever reason
- over age for specific grades
- are homeless on the streets
- cannot attend school on a continuous basis
- have had disrupted schooling

What they need is not remedial education but a more challenging form of education which takes cognizance of their ages, experience and need for appropriate methods which are age specific.

This is important if we want to ensure that there is an opportunity for full development of potential.

Some recommendations from the Gauteng Education ministry task force on this matter include:

- special relevant open learning curricula
- children / youth are 15 entering school for the 1st time should be accommodated in ABE classes or other secondary pen distance education classes.

A PARADIGM SHIFT - HOLISTIC EDUCATION

Education is for too often confused with schooling and academic learning. What we need in fact is a process of life long learning within an informal and formal environment and which is child centred. It should recognise the importance of empowerment for the sake of the children as individual and for the sake of the community in which they live.

In revisiting education curricula we need ensure that a focus on Peace Education and Anti Bias is a strong component to facilitate nation building.

The UNDP 1993 report sees ^{child} Development as a "process of exploring choices....." ^{there} can be no limit no bliss point".

CONCLUSION

A constitution should embody the ^{highest} aspiration of a nation to ensure basic human rights for all especially the most vulnerable in society.

Hence it is argued that the failure to entrench childrens rights in a future constitution will deny children their future.

We must however be cautious on the need for careful drafting of childrens rights clauses for 2 reasons:

- i) so that they are not too specific as this could restrict negotiations and interpretations
- ii) be too unrealistic as this could prevent any reasonable attempt to halt the tremendous death of needs because they will be regarded as utopian by the many people whose job it is to interpret the constitution.