

FREEDOM FRONT

THEME COMMITTEE 4 (FUNDAMENTAL RIGHTS)

SUBMISSIONS ON CHILDREN'S RIGHTS

1. Content of children's rights

- 1.1 Children's rights are briefly set out in section 30 of the transitional Constitution. South Africa recently ratified the Convention on the Rights of the Child, adopted by the General Assembly of the United Nations on 20 November 1989.

In view of the fact that the above-mentioned Convention contains extensive provisions relating to children, it is not possible to give any description of the content of children's rights.

The Freedom Front attaches great importance to the family as 'the natural and fundamental group unit of society' as acknowledged by article 10 of the International Covenant on Economic, Social and Cultural Rights 1966 as well as article 23 of the International Covenant on Civil and Political Rights 1966. The Freedom Front accordingly agrees generally with the provisions of the Convention of 1989, which is certain to have important effects on the quality of life of children in the country. We support in almost all respects the contents of the four main groups of rights dealt with in this Convention viz. survival rights, development rights, protection rights and participation rights.

We are of the opinion that the provisions of section 30 of the transitional Constitution should be expanded to make provision for a slightly more comprehensive treatment of children's rights in the new Constitution. In this regard we wish to draw attention to a few specific provisions of the 1989 Convention, as well as some provisions of other international instruments (see the note under (iii)(b) below), which provisions should, in our view, be incorporated in the chapter on fundamental rights in the new Constitution.

The successor to the Present section 30 of the transitional Constitution should, in our view, contain provisions dealing with the in the Convention of 1989:

- (i) the rights and responsibilities of parents and 'the extended family or community' (stress supplied to provide guidance for the child which is appropriate to his or her evolving capacities (article 5 of the Convention);
- (ii) the child's right to freedom of thought, conscience and religion, 'subject to appropriate parental guidance' (article 14 of the Convention);
- (iii) the aims of education as set out in article 29 of the Convention, including, in particular,

(a) the fostering of respect for the child's parents, his or her own cultural identity, language and values, and for the cultural values of others;

(b) the liberty of individuals and bodies to establish and direct educational institutions, subject to certain principles mentioned in article 29 and minimum standards laid down by the state.

NOTE: The Constitution should also provide for the right of parents to ensure education and teaching 'in conformity with their own religious and philosophical convictions' (article 2 of the First Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950).

(iv) the right of children of minority communities and indigenous populations to enjoy their own culture and to practise their own religion and language (article 30 of the Convention of 1989);

(v) the consideration that children need special safeguards and care, including appropriate legal protection, before as well as after birth (preamble of the Convention of 1989).

1.2 Controversial issues

Juvenile Justice and detention of children

The Freedom Front is of the opinion that, in the context of the administration of juvenile justice, the provisions of section 30(2) of the transitional Constitution (children in detention) are too cryptic. In the new Constitution the successor to section 30 should be an expanded version of section 30 (2), making provision for greater safeguards for children in detention, e.g. measures to promote 'the constructive role in society' (article 40.1 of the Convention of 1989) and express provision for 'alternatives for institutional care' (article 40.4 of the Convention of 1989). Moreover, we propose that the Constitution should also contain the following provisions: 'Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication' (article 10(2)(b) of the International Covenant on Civil and Political Rights) and 'Juvenile offenders shall be segregated from adults' (portion of article 10(3) of the same Convention).

Child labour

In our view the provisions of section 30 (2 the transitional Constitution are inadequate to deal effectively with the regulation of child labour. We propose that it should be expanded to provide inter alia for a minimum age or minimum ages for admission to employment (see article 32.2(a) of the Convention) and to comply in other respects with the wording of article 32.1 of the Convention. In this context we wish to point out that the International Covenant on Economic, Social and Cultural Rights 1966 in article 10.3 provides: 'States should also set

limits below which the paid employment of child labour should be prohibited and punishable by law' (stress supplied).

Social security

Article 26 of the Convention of 1989 makes provision for children to have the right to benefit from social security, including social insurance.

The Freedom Front adheres to the view that, laudable as it may be in principle, statutory provision for a right to social security (including social insurance) will prove to be an empty gesture, in so far as the country does not have the resources to implement the principle. Such a right would, accordingly, not be iusticiable, i.e. effectively enforceable by courts. In this connection it should be noted that the Constitution and all fundamental rights must be enforced by the courts (Constitutional Principle VII). The Freedom Front cannot support this so-called 'right to social security'.

2. Application of the right

2.1 Nature of the duty imposed on the state

The nature of the duty imposed on the state is to take such legislative and administrative steps in terms of the principles set out in the international instruments and the proposed provisions of the new Constitution as are at all times in the best interests of children.

2.2 Application of the right to common law and statutory law

In view of advanced contemporary concepts relating to the duties of society towards children this collection of rights will have a statutory basis. Virtually all common law and statutory law rules will be superseded by statutory law.

2.3 Should these rights impose a constitutional duty on actors other than the state?

These rights naturally impose constitutional duties not only on the state but, by their nature, also on parents, the 'extended family' (see 1.1 (i) above), schools, churches, penal institutions, as well as related social institutions.

2.4 Who should bear these rights?

All children within the country should be bearers of these rights, with (possibly) some exceptions in the case of children of aliens unlawfully in the country. Juristic persons created for the benefit of children should also be empowered by law to act in the best interests of children.

2.5 Should these rights be capable of limitation by the legislature?

At this stage it seems that these rights should be capable of limitation by the legislature only in accordance with the general limitation clause (at present section 33 of the transitional Constitution) and in the case of a state of emergency (see section 34 of the transitional Constitution).