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Children's Rights Research and Advocacy Project

DISCUSSION DOCUMENTS

COMMUNITY LAW CENTRE
University of the Western Cape

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Introduction

At least two generations of children have grown up in South Africa knowing nothing but the daily violence and inequality of apartheid and its destructive consequences.

Children have been a particular target of violent repression by security forces and the justice system. Many children have witnessed the deaths of family members and school friends. Countless others have become innocent victims of exploitation and abuse at the hands of members of both the public and private sectors. Moreover, children of all races and economic classes have been subjected to the racism and discrimination of the apartheid education system.

The absence of adequate legislation and a supporting infrastructure of facilities to ensure protection of children has been exacerbated by the unemployment, poverty and disintegration of the family unit as a result of apartheid,. Indeed although they lack representation in the political, economic and legal spheres, they have often assumed positions that would be unbearable even by their elders, in prisons, courtrooms and workplaces.

Recognising this, the Community Law Centre of the University of the Western Cape has launched a Children's Rights Research and Advocacy Project to ensure that the rights of our children become enshrined within the future constitution and justice system of South Africa.

To this end, a series of workshops were organised to culminate the International Children's Rights Conference. The theme, "The Survival, Protection and Development of the Child in a Democratic South Africa", will form the guidelines for our ongoing research and advocacy that will continue following the conference.

This publication includes some of the discussion documents presented at the workshops.

The Centre will welcome any contribution and comment you may wish to make on the documents.

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Discrimination against the child in South Africa

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The principle of non-discrimination

Non-discrimination is an established international principle. It is the basis upon which all fundamental rights are anchored. This principle therefore forms the basis of all the rights embodied in the Universal Declaration of Human Rights, the Covenant on Economic, Social and Cultural Rights as well as the Covenant on Civil and Political Rights. The two Covenants are today recognised as part of International Customary Law. States are therefore expected to abide by the principles embodied in these instruments irrespective of whether such states have expressly acceded to the Covenants or not.

The principle of non-discrimination has been further amplified in numerous other instruments. For our purpose, the most relevant instruments are:

- The International Convention on the Suppression and Punishment of the Crime of Apartheid.
- The United Nations Convention
- The Convention on the Elimination of all forms of Discrimination Against Women
- The Convention on the Rights of the Child

The Convention on the Rights of the Child should provide the basis for our discussion, however this should be done in the context of the Covenants, in particular, the Covenant on Civil and Political Rights which expressly protects the rights of the child.

Article 24 of the Covenant on Civil and Political Rights prohibits discrimination against the child and reads as follows:

> "Every child shall have, without any discrimination to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society, and the state ..."

Article 10 of the Covenant on Economic, Social and Cultural Rights protects the family, in particular the mother and child during nurturing and the child is specifically from social and economic exploitation.

Article 13 is wholly devoted to the elaboration of the right to education. The right to food, clean water and shelter is also embodied in the covenant.

The inclusion of these rights in the Covenant is therefore indicative of the importance at international law. Accordingly, it is in the context of these standards that the situation of children in South Africa should be examined.

I therefore wish to deal with the three major themes in the Convention on the Rights of the Child *viz.* Survival Development and Protection, but because South Africa is unique in that under the apartheid system, Africans are denationalised, I shall also refer to the issue of nationality specifically.

The right to nationality of the African child

Since colonial conquest the African child has been denied the right to nationality. For practical purposes we shall look at the period after the formation of the Union of South Africa. When South Africa was declared a union the Constitution of the time effectively relegated Africans to an inferior status.

The promulgation of the Land Act in 1913 further entrenched the inferior status of the Africans, in essence this was the beginning of influx control laws which were to usher in untold suffering to Africans, disrupting family life and grossly undermining the rights of the African child.

The Population Registration Act, the Influx Control Laws, the subsequent legislation on self-governing states and the Status Acts which established the TBVC states, denationalised millions of South Africans. Thousands of people from the rural areas, i.e., the designated TBVC states, have lived in South Africa with no proper national status and invariably failed to establish stable family lives. This is the legacy of apartheid.

Today millions of people are homeless. Decades of homelessness has resulted in the growth of the phenomenon of street children. Thus restoration of nationality and citizenship to all people denationalised under apartheid is a matter requiring urgent attention in the transitional period. It is hoped that this matter will receive attention at CODESA.

The right to survival

This is basically the right to health and life. Because of apartheid, black people have poor health care facilities. The rights of access to health care services, immunisation, nutrition and clean drinking water have historically been undermined by the unequal distribution of facilities.

The system of health care has been primarily curative and not preventive. Presently non-governmental organisations are battling to provide preventive medical systems. There is therefore a high percentage of infant mortality. The National Coordinating Committee on the Rights of the Child sponsored by UNICEF is currently conducting a situation analysis on women and children in South Africa, hopefully, the results of the study will provide the necessary information about the extent of the problem. However, present studies show that most of children who die before the age of five die of diseases which could have been prevented.

It should be the primary task of the democratic government to provide affordable health care facilities. The said government should seek to provide a minimum standard of health care, and people should be assured of shelter, proper sanitation and clean water.

Development

The present crisis in education is a result of decades of repression and an inferior education system. This workshop should focus specifically on educational needs of our people. We should also examine discrimination against disabled children, in particular African children who do not have adequate special facilities to meet their needs. There is an urgent need to begin to address the crisis in education. It is unacceptable that government argues that reform in the educational system hinges on constitutional changes. Equal education for all should be and can be provided immediately. Let us discuss this issue in our discussion groups.

Protection of the child

Post-Union childcare legislation discriminated against all racial groups in favour of the white child. The first post-Union child protection Act was promulgated in 1913 (Act 25 of 1913). The Act was directed at protecting white children against parental neglect and abuse, it made no mention of children of other racial groups. The Act was later amended by Act 31 of 1937 which provided for the creation of Children's Courts and also made provision for the adoption of the child as well as included the requisite procedures in this regard. Children of other races were only considered in the subsequent amendment (Act 33 of 1960). Sections 2 – 8 of the Act provided for the establishments of Juvenile Courts for African children, this Act was to be read with the Native Administration Act of 1927 where it applied to the African child.

The law, as it stands today, with regard to child welfare, is in the form of Child Care Act No. 74 of 1983 as amended, which purports to operate across the colour line. Emphasis in the Act is on ensuring proper parenting. This piece of legislation was hailed as a progressive step permitting equality of children before the Law. The Act prohibits any abuse or neglect of a child. It also creates a duty on the custodian or parent of the child to provide proper care and adequate food for the child. This Act is an anomaly, as it operates within an inherently discriminatory system. Had it been applied in any other situation, it would have been a progressive piece of legislation. However, in South Africa, it is an ineffective law. For example, the Act could not provide any protection for children under detention during the repressive years, in particular the period 1982 to 1985. The Act could be, and indeed was, superseded by the Emergency Regulations, specifically the Security Act and Public Safety Act. Under these acts, parents, guardians and lawyers were denied access to detained children. It is on record that children were tortured in detention, most of whom still retain the scars of police brutality. One other factor which makes the Act inoperative is the reality of the socio-economic conditions under which most African families live. The provision in the Act, which requires parents and/or custodians of the child to provide food and care to the child, puts an unfair burden on African families who live in abject poverty, to provide what they in fact do not have.

What we need to look for in our discussion are the factors which contribute to child neglect and abuse in our society. We have to look at these issues in the context of our history and our experience. We have to go further, and decide what we want for our children in a new South Africa. We have to examine what is in the best interest of the child in our society, to this extent, we have to examine the principle of non-discrimination in the context of race, colour, religion, culture, sex and disability. In this regard I wish to point out that in our culture a distinction is made between children born in wedlock, and those born our of wedlock. We need to answer the question, what are the implications of this distinction?

It has been noted that in Africa and in other developing countries, a distinction is also made in the upbringing of boys and girls. We must determine whether the differentiated treatment amounts to discrimination or not.

What we also need to look at is the difference, if any, between child-work and exploitation of the labour of the child. We also have to determine whether leisure should be recognised as a right of the child. In determining the way forward we should work towards the entrenchment of the rights of the child in the constitution. In addition we should lobby that the democratic government should ratify the United Nations Convention on the Rights of the Child.

In conclusion, let this workshop deliberate on what should constitute the rights of the child in the new South Africa.

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Violence against South Africa's children

Michelle Morris

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1. Where is South Africa now?

South Africa's children continue to endure enormous suffering. The following statistics were obtained during a two week news reporting period:

- Criminal acts against children have increased by 130 cases during the past year. *Weekly Mail*, 31 January 1992.
- Cases of serious assault, child neglect, rape and sodomy of children under the age of 14 increased 54% last year. *Daily Dispatch*, 4 February 1992.
- Three children, aged between six and eleven, were shot dead today while being driven to school by Impali deputy mayor and regional Inkatha leader Mr Abdul Awetha. *Argus*, 5 February 1992.
- An eleven year old girl is in serious condition after she was gang-raped by five men. No arrests have been made. *Daily Dispatch*, 11 February 1992.
- During the past ten days there have been shocking reports of child abandonment, rising numbers of child abuse cases, and the deaths of children in violence in Natal. *Natal Mercury*, 8 February 1992
- The notorious KwaMadala Hostel in the Vaal has been implicated in yet another major scandal in which young girls aged 12 to 18 have been held captive and abused as sex slaves by hordes of lusty inmates. *City Press*, 16 February 1992.
- Two Eldorado Park children who were abducted last week ...may have been the victims of a gruesome sexual ritual murder. *Star*, 12 February 1992.
- Three sleeping children were brutally attacked by two white men in Uitenhage. *Qalam*, January 2, 1992.
- No action taken against the district surgeon who failed to appear in court to give evidence in a rape trial involving a girl who is now eight years old. *Weekly Mail*, 7 February 1992.
- At least 15 children, some as young as three years, were severly burnt by chemical substances while playing at a dump in Alexandra. *Sowetan*, 6 February 1992.
- An eight year old girl was shot dead on her way to school when police opened fire to disperse taxi drivers. *City Press*, 9 February 1992.

- Younger children are becoming drug users as pushers stake out playgrounds...children in Cape Town as young as 8 are taking Mandrax and sniffing substances like Tippex regularly. *The South*, 27 February 1992.
- "What children? There are no children here...those who should have been children have lost it through exposure to so much violence." – a hostel resident in Natal. *Star*, 12 February 1992.

There is not time nor space to include all of the media articles directly related to violent acts against children – of 101 articles related to young people, 68 were stories of violent attacks against children. And this fails to include all the countless abuses perpetrated by state, police and external forces which go unreported everyday in South Africa. Moreover, instances of domestic abuse, abandonment and neglect, which are often indirectly related to outside forces such as apartheid, unemployment and poverty, occur so frequently that they rarely make the papers. Violence has become a way of life for most South African children – they are exposed to it within the family, in their communities and at school. Unfortunately, although the cloak of legality which the apartheid regime tried to use as a cover for their acts of violence is gone, children today are still suffering the brutal after-effects of such an entrenched tradition of abuse of their basic human rights. The Internal Security Act of 1982 and the Public Safety Act of 1953 allowed the police and judiciary wide discretion in the arrest, detention, and use of violence against the youth of South Africa. No longer in force by law, the actions that they upheld have yet to be eradicated in practice.

Today, we are here to talk about the violence which is occurring in 1992, not 1982. Principals, teachers and parents from the areas of unrest, most specifically the Nyanga taxi terminus, are here with us today to share their experiences. And we are honoured that Albie Sachs has come here today to speak of positive ways to challenge and prevent violent acts by the state. Evonne Mokgoro, a member of the UWC Law Faculty, will briefly touch on the conflicts which arise between the police and outside forces and families in situations of domestic violence. And Gasan Omar will relate his findings on the current situation of some of Western Cape street children's experiences with violence. Following our break, Shifra Jacobson, of RAPCAN, will be workshopping problems surrounding child abuse.

However, the speaker to listen to most carefully is a child from the streets, Simpiwe Mambisi. At our last workshop, the point was raised that the audience failed to include the most important participants – children. Today, a child will stand before you and share his own personal encounters with violence. Your workshop booklets also contain drawings by children from a primary school which is located in the middle of a taxi war zone. All of the banners displayed on the walls today were designed by children. It is imperative that we remember to include children in our discussions at all times, as they are the only ones who can truly fill us in on their feelings and experiences.

In this decade, we have witnessed the decline of many forms of anarchy, from the destruction of the Berlin Wall to the spreading of a rights-based culture in much of Southern Africa. Within South Africa, the foundations of apartheid are slowly crumbling. Never before has there been such wide-spread euphoria and hope for peaceful and fulfilling future for the next generation. However, underlying all of this optimism and good will, the fact remains that children are still victimised and abused. In Yugoslavia, children are caught up in the midst of a massive civil war. In Brazil, street children are the prey of vigilantes and police. And in Cape Town, Nyanga school children dare not attend class for fear of being the next innocent victim caught in the crossfire of the taxi war.

As an American, I am all too aware that my culture is one which contributed to the survival of apartheid, due primarily to the fact that the government of South Africa has been one that is white, Westernised and allegedly first-world capitalist. It is difficult to look into a mirror and see people very much like yourself committing acts of racism and abuse which your forefathers only confessed to some twenty-odd years ago. Additionally, South Africa served as a geo-political asset in the United States battle against communism during the now-defunct Cold War. Therefore, it comes as no suprise that America, with its "own unfinished agenda of anti-racism", should be so eager to congratulate de Klerk and his recently enlightened regime and move on to other more politically advantageous foreign affairs. Unfortunately, in doing so, this means that America, and other governments with white majority rule, as well as such powerful groups as the United Nations, will overlook the on-going plight of South Africa's children. If the focus continues to be upon applauding CODESA and the remarkable alliances which are being forged between former adversaries such as the ANC and the State instead of raising awareness of the vast array of social and economic problems which require immediate attention, children may be seen as a secondary issue to both funders, governments and individuals overseas. However, despite the appearance of "we've got everything under control, thanks anyway" postivism which the government is selling to those abroad, the fact remains that the children of South Africa are still suffering from the after-effects of apartheid and the growing increase in the violent crimes due to economic constraints. I challenge all parties interested in the future of South Africa's children to inform their international contacts of the situation of children today.

2. What is the definition of violence?

Regardless of the fact that apartheid emergency regulations are no longer in effect, prevention and protection of children from violent acts through legal channels is not an easy task in South Africa even today. Violence against children must first be defined before one can decide what legal options are available to a child victim. I submit that violence may be subdivided into two major categories, which are not necessarily mutually exclusive. Firstly, there are external instances of violence. The perpetrator may be the state, or an organ of the state such as the police or security force, or a vigilante group. Street children are the most common example of a group which suffers from this type of violence. However, an indirect example of this type of violence is the abandonment or neglect of children by parents due to economic or psychological problems caused by apartheid – a problem which is causing great concern in Natal. Secondly, there is internal violence, most often referred to as domestic or family violence. This may stem from the side effects of apartheid upon parents who feel powerless, impotent or angry at the system. However, even though there may be extenuating factors which act upon parents, siblings or extended family members, this should not be used to excuse those adults who mete out their frustration upon innocent children. I submit however, that domestic or internal abuse will continue to rise within the walls of South African homes due to the longlasting pyschological effects that apartheid will have upon individuals long after a new constitution has been approved.

3. Existing legal protections

Recognising that violence may take a number of different forms, what must be done to protect our young through legal avenues? It has been said that the majority of South Africans accord less legitimacy to their laws than perhaps any other governed modern society. Even if the law is applicable to prevent violence, will it be accepted by society? Today, both the criminal and civil laws may be applied concurrently, or in sequence, to address the issue of child violence. The criminal law is most often used for the purpose of punishing the perpetrators of violence, in many cases the child victim's parent or guardian. Police, security force members and vigilante groups are rarely prosecuted for their abusive treatment of children. Civil law is directed towards the protection of children themselves when they are under the care of their parents or another adult. The Child Care Act No. 74 of 1983, as well as the Children's Status Act No. 82 of 1987, amongst other legislation, purport to protect children and prohibit anyone from permitting a child (anyone under 18 years of age) in their care to be ill treated or neglected. There is also an obligation of care, support, food and medical care for the child.

A. Criminal law

Criminal law deals with proof beyond a reasonable doubt that an accused person has done a specific act, with a specific intention, at a specific time, date and place. Unfortunately, unless you are dealing with an isolated incident by a stranger, violence against children is usually an on-going event that occurs over a period of time, especially when it occurs within the family structure. Criminal law is a normative science – that is, an accused must be charged with a specific offence, such as rape, assault or murder. Even though a chain of events may lead up to a single excessive act of violence, the trial of an accused may only focus on that one event. This results in a distorted view of the situation by the courts. Moreover, even though the law now requires certain trained people to report acts of child abuse, in light of both the history of the relationship between police and the community and of course, family dynamics, violent acts against children are reported in only the severest of instances.

Finally, use of the criminal law in a case of child abuse often subjects the child victim to further harassment and discrimination. Although children no longer have to touch their attacker to identify them to the court, the fear and stress that a child witness must endure is often as destructive as the attack itself. In the rape trial of a eight year old girl held here in Cape Town less than two weeks ago, the judge actually reiterated the age-old fallacy of a child's evidence being "fantasy". Even though the criminal law's primary purpose is to serve as a deterrent effect, as well as a punishment, in cases involving children, the accused is often suffering from some form of disease, be it social or mental. And the decision to sentence an adult which the child must rely upon for basic needs to prison may actually serve to punish the child even more so than the adult. The most obvious danger of utilising criminal law to bring an action against an accused violator of a child is that the proceeding may fail, and the parent or guardian may be acquitted and allowed to return to the homeplace with the child.

Even when children find themselves in the position of the accused before the courts, the juvenile justice system offers little protection from continuing violence. The juvenile court, which alleges to follow the social welfare model of the best interest of the child, bases its principles upon the Criminal Procedure Act. Criminal trials of children between the ages of 7 and 18 are heard in juvenile courts. In fact, these are ordinary criminal courts, and the only protections offered the youth in theory are that trials are held in camera; parents may assist their children in court and alternatives are offered in the sentencing process. In

practice, parents are rarely informed, police often use physical abuse on a child and then release him/her back onto the streets, and detention and corporal punishment are the sentences most often meted out by the court.

B. Civil law and procedure

So is civil law the only answer to best protect and prevent violence against children? Or is the use of civil protection proceedings just an argument for immunity or leniency for abusive adults? Under the present child welfare system, children who are found to be "in need", are placed in foster homes, places of safety and schools of industry. Unfortunately, there are currently no corresponding rehabilitative, non-custodial programmes for the alleged attacker. Although use of the civil process may persuade more people, especially family members, to report acts of violence, the child who is taken from a home and placed in a home or school outside the community often discovers that they are the one who has been imprisoned and institutionalised. In most places of safety and other similar facilities, juvenile offenders are often locked in the same cells as children in need. It is arguably true that the developmental interests of abused children are better attended to under civil law. However, the existing infrastructure offers little to no real assistance via counseling, education and pyschological support for both the accused and the victim, much less the victim's family.

In talking about the violence which is occuring in South Africa today, I would submit that the first step is to identify and understand the source of the problem. Whether we are discussing the rapid increase in family physical and sexual abuse, the treatment of street children and juvenile offenders by the police, or the recent taxi war violence, we should remember that the primary goal here at this workshop is to begin preparing for the drafting a policy for a Children's Charter and Bill of Rights. In preparation for this workshop, a survey of 300 first year law students at UWC, most of them between the ages of 17 and 20, was conducted. The evaluation of the survey revealed two important points which I believe are applicable to the wider South African populace. Firstly, violence against children, whether it be verbal, physical or sexual, is widespread in South African society. At least eighty percent of the respondents had been subjects of abuse themselves, or had witnessed the abuse of a child. Secondly, a concrete definition of violence is made difficult due to cultural and traditional differences. Most respondents felt that parents, schools and juvenile courts were authorised to use corporal punishment against their children. A few respondents did not see sexual abuse of females as a form of violence. Problems of definition will naturally arise in a society as diverse as South Africa. The concept of violence is one which evolves around a particular set of social and customary traditions – behavior that is seen as abusive or sexual in one culture may be generally accepted by another. In drawing up a bill of rights which will serve to protect all of South Africa's children, we need to develop an understanding of each culture so that we can bring forth a document which is accessible to everyone.

Even leaving aside issues of cross-cultural relativism, problems of definition are bound to occur due to historical and patriarchal influences. Prior to 1950, there were only a couple of references to sexual abuse of children in the law. Before 1970, child sexual abuse almost always referred to incestuous relationships between fathers and daughters. Even today, legal evidentiary proof of sexual child abuse requires a showing of rape or serious molestation. These problems must addressed

3. International Law

There is another set of laws which binds governments and allows individuals and groups the opportunity to use a clear-cut set of guidelines regarding the actions of their state. Although South Africa is not yet a signatory to the United Nations, these international documents can and should be used as guidelines for children's rights advocates in the drafting of a bill of rights which reflects the cross-cultural diversity of South Africa's peoples. The principal concern of the international community in recent years has been to prohibit societal abuses of children by traditional and state practices and to establish basic standards to be used by all groups towards the development of their own set of principles regarding the protection of the child.

The most useful document to be used is of course the United Nations Convention on the Rights of the Child which has been signed by over 100 states since its acceptance in 1991. It has been widely accepted by South African children's advocates as the primary foundation for the survival, development and protection of children. There are, however, some who may argue that inclusion of children's rights in a future democratic constitution is not enough to recoup the losses suffered as a result of apartheid. These individuals purport that the United Nations Declaration of Human Rights be used to try government individuals and parties within South Africa of Crimes against Humanity for many of the inhuman acts that the state and its arms inflicted upon innocent youth. However, in trying to develop a peaceful society, this may not be the best example for the young people. A more positive answer may be to include some type of reparation clause within a Children's Charter which requires any person/state found guilty of committing an act of violence against a child to pay the family and/or child a certain sum of money. This type of reparation has been used in some Latin American countries in the attempt to heal deep scars caused by political violence. Moreover, as mentioned previously, use of criminal law is rarely an effective means of punishment in a case involving a child and in no way acts to rehabilitate the accused or to create a positive atmosphere of growth for the child victim.

Indeed, a Children's Charter or Bill of Rights should include a clause which will prevent future violent acts from endangering the lives and future of the young people of South Africa. As violence is an act which most often occurs within the confines of a family or community, provisions for community support groups, counseling and educations should be included as well. One answer may be the development of a Children's Ministry which will act to monitor abuse of children and offer services to those who are not capable of controlling violence in the home or community. Acts of violence against children could be reported to an Anti-violence or discrimination ombudsman, which would be specially trained in handling situations of child abuse, neglect and violence. This would eliminate many of the frustrations which are encountered within the patriarchal, male-dominated criminal and civil courts today. Emphasis would be upon rehabilitation, protection and care, as well as compensation and counseling for the victim.

On a final note, I would like to state that the international community, and as such, I am referring to international NGO's, private and government funders and multi-nationals, many of whom fled South Africa for the purpose of sanctions, have a responsibility to assist the communities of South Africa in setting up re-constructive programmes for families and children, as well as maintaining a sense of social responsibility within their own operations upon their return. It is unrealistic to expect a future government to be able to solve the complex problems which a legacy of violence has instilled within South African society. International organisations should be utilised to empower national organisa-

tions. Additionally, campaigns, such as the one institututed by the National Committee on Children's Rights in following the 1987 conference in Harare, should be supported to ensure that children are placed on the constitutional agenda in their own right – as children, and not as political tools, soldiers or non-persons. Children are unrepresented as citizens within South African society – in fact, in the United States, children were not recognised as persons under the law until 1969, when Justice Fortas, in a First Amendment case, declared that children were indeed persons under the United States Constitution. The only way to ensure that violent acts against children begin to decline is to first re-establish the South African child's rightful status as a citizen of South Africa. To do so requires more than constitutional amendment. It requires the empowerment of both regional and national NGO's via financial and educational resources. The international sphere must be made aware of the continuing need of our children on the ground despite the recent goodwill that the government has spread overseas.

It is hoped that this flood of information about violence and the current inadequacies within the law will not discourage you from seeking constructive ways of achieving peace in such a violent society. As advocates and spokespersons for children, we may differ in our opinions about how peace should be achieved, however, we must unite in the struggle to end the history of violence and strive toward the development of a human rights – and children's rights-based – culture.

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3

Exposing discrimination against disabled children

Colleen Howell

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Any attempt to focus on the promotion and protection of the rights of disabled children in South Africa, demands a recognition of the particularly stressful, undermining and restrictive conditions within which the majority of children live. It is recognised that discriminatory legislation, inadequate living conditions and poor services have defined the nature of the lives of so many children in our country. These conditions, emanating from an unequal political and economic system, have served to consistently violate all the fundamental rights which should be the entitlement of all children "no matter what their race, colour, sex, language or religion".[1] The rights of children have been violated through ideological interpretation, political and economic control and social practice.

Within this complex set of destructive forces disabled children have been further handicapped by inherent prejudices and attitudes towards disabled people. In our country, as in most countries in the world, disabled people are discriminated against and abused through ignorance and prejudice. Disabled children are the most severely affected by these attitudes which permeate all levels of the child's functioning from the day he or she is born.

For many disabled children, attitudes which undermine and restrict their development are present at their birth, where the bearing of a disabled child is often regarded as a form of failure, misfortune and personal tragedy. The United Nation's Declaration of Children's Rights states that "Children have a right to grow up with love, affection and security". From birth, these rights of a disabled child are violated through societal attitudes and practices which refuse to accept impairments as normal and which contribute to the inadequacy of support services for new mothers with disabled children. The precedent which is set with regard to inequality and discrimination is reinforced throughout the child's life and at all stages of its development.

In commenting on the discrimination faced by disabled children, the World Programme Action for Disabled Persons argues that for most of these children, "the presence of an impairment leads to rejection and isolation from experiences that are part of normal development". They further state that "this situation may be exacerbated by faulty family and community attitudes and behaviour during the critical years when children's personalities and self-images are developing". Thus it is recognised that throughout the world the rights of disabled children are particularly vulnerable and subject to violation at many stages during the child's formative years.[2]

In South Africa, there are a number of areas in which the rights of disabled children are most severely abused. Most disabled children face extreme prejudice through inadequate services, failure to meet their basic needs, attitudes which exclude them from the mainstream of society and practices and conditions which actively prevent them from participating in activities which able-bodied children enjoy. At the same time, most of them are subjected to conditions which are prevalent among deprived communities in South Africa and which prevent people from living happy and fulfilled lives. Thus the task of exploring the rights of disabled children in South Africa is a complex one and cannot be divorced from an exploration of the rights of all children in this country. It is particularly important to note discriminatory practices and inadequate service provision evident in the health care system, education system, recreational facilities, welfare system and legal system.

The problems in these areas of our society and the particular ways in which they serve to hinder and undermine disabled children have become especially evident to us in the Disability Rights Unit of Lawyers for Human Rights, through two projects which we have been involved in over the past twelve months. The Discrimination Watch Project and the Disability Rights Charter Project, initiated and run by the Unit, have both exposed the particularly vulnerable conditions faced by disabled children. The evidence which has been collected from these projects regarding violations in the rights of disabled children has enabled us to intervene in two important ways. Firstly, through the Discrimination Watch Project the Unit has acted to change particular situations and rectify particular problems faced by disabled children whose parents have contacted the unit. Secondly, through the Disability Rights Charter Project, which has involved workshops with disabled people to collect demands for a disability rights charter, the unit has been able to draw together a list of demands which particularly pertain to disabled children.

I have mentioned earlier that the work which the unit has been involved in through these two projects has highlighted the particularly undermining experiences of disabled children and the parents of these children. I would like to now briefly look at two project activities in which the unit has been involved which highlight the above concerns.

Within the bounds of the Discrimination Watch Project, the Unit recently was involved in investigating the situation of a young disabled boy in Gazankulu. The young child in question had started school in 1985 at a primary school in his residential area. During the course of 1986 the child was forced to stay away from school for a long period of time as he began to suffer from an extremely painful disease of the joints called rheumatoid arthritis. The nature and extent of the disease prevented the child from being able to return to school until last year.

The Unit, acting on behalf of the child's mother was informed that the child had been re-accepted into his old school and then, not long after the commencement of the first term, he was asked to leave the school and apply for admission to the closest school for disabled children. When the child's mother investigated this possibility she was informed by social workers working in the area that the school had an extremely long waiting list and it was unlikely that the child would be able to attend this school for a number of years. The child's mother was concerned, not only about the length of time which the child had spent out of school, but also that he would reach a point in his schooling where present age limit laws would force him to leave school before his schooling was completed.

It was also argued by an occupational therapist working with the child that, in her opinion, despite initial difficulties in orientation and adaption, the young boy was likely to cope well with his studies at his old school.

Through the intervention of the Unit, the school was persuaded to re-consider the matter and eventually decided to re-admit the young boy. It was argued that like every child in South Africa, he should be able to exercise his right to education, which under the existing circumstances could best be achieved at his original primary school.

The case described above highlights a number of important concerns when the rights of disabled children in particular are considered and attempts made to introduce effective measures of protection. A child's right to education has been expressed as a primary concern of international human rights bodies such as the United Nations as well as by political groups in South Africa intent on defining the scenario for a future Bill of Rights for South Africa. The United Nation's Declaration of Children's Rights states that "Children have a right to free education."[3] Similarly the African National Congress in its proposed Bill of Rights for a New South Africa stress that "All children shall have the right to a name, to health, to security, education and equality of treatment."[4] A child's right to education is also implied, although not as clearly stated, in the South African Law Commission's recent report on group and human rights.[5] It would seem therefore that it is universally recognised that all children have the right to education, and that to deny a child access to education would constitute a violation of this right.

Disabled children, in exercising this right, may need to be provided with special facilities and may need to be taught by teachers with specialised skills. Thus the right of a disabled child to exercise his or her right to education is dependent on the education system's ability to accommodate the special needs of the child. Where these special needs are not catered for the child's right to education is violated.

It is thus important to recognise that if effective measures are to be instituted which protect and promote the rights of disabled children, changes will have to take place in the present education system in relation to the availability, accessibility and appropriateness of the services offered. While the present education system remains in force disabled children are discriminated against and denied their right to appropriate and effective education. This point has been highlighted in the United Nation's World Programme of Action Concerning Disabled Persons which stresses the inequality evident in developing countries. They argue that:

> At least 10 per cent of children are disabled. They have the same right to education as non-disabled persons and they require active intervention and specialised services. But most disabled children in developing countries receive neither specialized services nor compulsory education.[6]

It is not only within the education system that these arguments can be asserted. Similar arguments can be levelled at the health care system, the welfare system, the legal system etc. An understanding of how extensive violations in the rights of disabled children are was made evident to the unit at a workshop which was held with parents of disabled children in Cape Town in July last year. The demands put forward by the participants at the workshop reflected clearly how disabled children's rights are violated in almost all areas of a child's normal functioning.

The areas in which parents felt that discrimination was most acute ranged from services provided by, and the accessability of, state institutions, to basic needs such as adequate housing, proper nutrition and shelter for severely disabled children. We were also made aware of how inadequate parents of disabled children feel as a result of the lack of effective education programmes and services designed to provide knowledge and support about caring for disabled children. Most parents felt tremendous frustration that due to the inaccessibility of recreation facilities their children could not participate in activities which able-bodied

children enjoy. In fact, a central concern expressed by the parents was that all services and facilities which were available to their children tended to have the effect of isolating their child from the broader society rather than contributing to improved integration.

It is also important to realise that disabled children are also particularly vulnerable to the level of violence in our society as well as to physical and sexual abuse within the family. it has been made clear to the staff members of the unit that violations in the rights of disabled children are not only induced by outside institutions. Family members may also be responsible for acts which undermine the psychological and physical well being of the child. We have been made aware of problems in families ranging from sexual abuse to the misuse of a disability grant by a family member. Where mistreatment of a disabled child takes place within the family, it is most often related to social attitudes which contribute to a lack of community support for the family of the disabled child which increases the stress placed on the family.

As was mentioned earlier in this paper, it has been our experience that litigation and legal intervention into cases brought to our attention is not enough to ensure the protection and promotion of the rights of disabled children. It is our contention that effective action needs to be taken to challenge existing legislation which fails to provide adequate protection against discrimination and inequality. At the same time, programmes need to be instituted which actively integrate disabled children into the mainstream of society. This may involve improved training of teachers who are involved with disabled children, making schools and recreational facilities accessible to all children, whatever their special needs, and providing health care which also recognises the particular needs of disabled children. It is also felt that support services such as child care should be created, aiming to provide the most supportive and stimulating environment for children with disabilities.

Thus, real activism is needed to pressurise the state, local government and other decision making bodies into providing facilities and ensuring legal protection so that the rights of all children can be ensured. This point is argued strongly by Albie Sachs in his paper on the rights of children in a future South Africa. He argues that:

> An active programme of affirmative action, binding on the state, on public authorities an on the schools, is required to convert abstract legal rights into actually lived social reality.[7]

It would also seem that time and energy is needed to change attitudes in society and to promote public awareness around the needs of disabled children and their parents. The Disability Rights Unit hopes, through its various projects and activities, to continue to highlight the particularly vulnerable position of disabled children and to work towards the protection of their rights through legal intervention and public education.

Notes

1. United Nations Declaration of Children's Rights.
2. The World Programme of Action Concerning Disabled Persons was adopted by the United Nations General Assembly on 3 December 1982. The adoption of this programme followed the formation of Disabled People International (DPI) in 1980, which represents organisations of disabled people throughout the world. The objectives of the World Programme of Action are summarised as follows: "The purpose of the World Programme of Action Concerning Disabled Persons is to promote effective measures for prevention of disability, rehabilitation and the realisation of the goals of 'full participation' of disabled persons in social life and development, and of equality."
3. United Nations Declaration of Children's Rights (abbreviated), adopted by the General Assembly.
4. "A Bill of Rights for a New South Africa", working document by the ANC Constitutional Committee, 1990.
5. *Interim Report on Group and Human Rights*, South African Law Commission, August, 1991.
6. World Programme of Action Concerning Disabled Persons, United Nations, 1983.
7. Sachs, A., "Towards a Charter of Children's Rights", in A Collection of Papers by Albie Sachs, compiled by the Centre for Applied Legal Studies, University of the Witwatersrand, 1991.

4

The situation of disabled children in South Africa

Vuyo Mahlati

Disabled children in this country (especially blacks) are faced with multi-oppression, first as children, because of race, gender, religion, class origin, and later as scholars and as workers.

The word "disability" in children has recently been used not only for deficiencies intrinsic to the child – i.e. hearing, speech, visual impairment, physical and mental disabilities, but also problems created by factors extrinsic to the child e.g. learning, emotional or behavioural problems. To accommodate the two categories children with such disabilities are mostly referred to as "children with special needs".

UNESCO estimates disability in Third World countries to be near 20%, whereas it is accepted to be approximately 10% of population in First World countries. In South Africa it is difficult to determine the prevalence of the various forms of disability beyond any doubt, and come up with a figure which is a true reflection of disabled children because, the schools, institutions and agencies seem to be the only structures used to determine prevalence of disabled children nationally. This is problematic, as it is reported that in 1987 only 20% of African disabled children were in special schools. Moreover, these institutions and agencies are mostly in urban areas, thus excluding a great number of disabled children in rural areas.

The structure of services for disabled children in this country is riddled with separate and unequal provision of services. The different houses for different races, i.e. House of Assembly for whites, House of Representatives for Coloureds and House of Delegates for Asians, have maintained the oppressive apartheid regime which has deprived black disabled children of their rights and led to their deterioration, with some even dying. The health, welfare and education became "own" affairs and are currently administered by departments within these houses. The provincial administrations have assumed authority for health and welfare aspects of black services, while the Department of Education and Training retains the responsibility for matters of education (in this case special schools including training centres).

The House of Assembly is the controlling body and this control of power extends to spending the country's financial resources on an unequal basis.

There does not seem to be a strong call for mainstreaming in South African education, particularly at government level. Current state policy offers special education services to most categories of disability outside of the mainstream. Where adequate provision does not exist and where individuals survive within

the system, it could be argued that mainstreaming occurs by default and without adequate mechanism of support.

What does this mean for our disabled children?

In a country where families of these children are faced with unemployment, poverty, poor health, violence etc, inadequate health and welfare services and the lack of legislation and protection of the rights of children leads to the continuous victimisation of these children. There are no support systems within the homes or at government level. The following case is illustrative:

CASE A: Bee is a fifteen year old girl born in Ciskei. She is mentally disabled and lives with her mother in Crossroads. She could not go to school because of the long waiting list in the "only" training centre for black mentally disabled children in the Western Cape. When her mother came to Cape Town she could not get a grant because (1) "She is not a South African Citizen" (2) According to "tests" her IQ (Intelligence Quotient) does not qualify for a special care grant (i.e. she is not severe). Bee's father, after discovering that the child is disabled, left the mother and does not help with maintenance. Local educare centres for non-disabled children refused to take her because of her disability. Her mother had to look after her until recently, when Bee joined the Siyazama Educare Centre. She then stayed with her uncle whilst her mother worked in Sea Point as a domestic worker, coming home weekends. One day she came to school crying and it was learnt that she was sexually abused. This matter is being dealt with.

At sixteen she can qualify for a disability grant, if she has a South African Identity Document – but she cannot get one because her mother does not have one. The mother has lost her job because of an alcohol problem, and a social worker is dealing with the case presently, one of the aims being to seek alternative accommodation within the community.

5

Juvenile justice in South Africa

Michelle Morris

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INTRODUCTION

In any legal system, the criminal process is the area of law in which human rights have found their most long-standing and traditional application. Yet, in the criminal justice system of South Africa, the concept of human rights is virtually non-existent.

This is especially the case in the area of juvenile justice and in the treatment of juvenile offenders. In the most traditional sense, the central role of human rights in any society is to protect individuals against the powers of the state. In South Africa, it has been the state, via the police and security forces and the compliance of the justice system to emergency regulations, which has posed the most severe threat to the human rights of young people.

This workshop sought to discuss how and why human rights have been ignored by the agents involved in the administration of juvenile justice – including police, prosecutors, social workers, correctional officers and most importantly, the judiciary – and sought to advance the argument that there are advantages to conceptualizing the criminal process in terms of rights in general and human rights in particular. In short, if the underlying context of the juvenile justice system should become one which acknowledges and protects human rights, then the plethora of abuses which are presently occuring in the administration of juvenile justice will decline dramatically.

This will require a complete re-structuring of the existing system and a careful analysis of practical means of implementation and acceptance by both the legal community and more importantly, the police force. The new system must also be introduced into communities and accepted by parents, teachers and neighbourhoods where these young offenders have been raised or, as is the more likely scenario, have fled. The problems and challenges of addressing the rights of the young offender are intrinsically interwoven into the wider and more myriad problems pertaining to the realization of human rights as a whole in South Africa.

Re-structuring of the juvenile justice system does not mean a mere shifting of duties and responsibilities amongst the existing players. In the long-term, innovative alternatives to the system must be incorporated into the operations of the judiciary and police forces. Parents, teachers, community leaders, victims and young people must play crucial roles in the decision-making process. However, understanding the unique nature and history of South Africa, it can not be expected that a programme which has realized overwhelming success elsewhere is the answer to our problems. This workshop sought to place the responsibility

on all of you who are involved in the present juvenile justice system – lawyers, social workers, magistrates and the police – to begin working towards the development of juvenile justice system which respects the human rights of our youth.

Background of juvenile justice in South Africa

There has been relatively little analytical research in the area of juvenile justice in South Africa. The last study of any import was undertaken by NICRO in 1975. Since that time, many changes have occurred within South African society. Social welfare as a model for juvenile reform has been adopted through the Child Care Act of 1983. As a direct result of apartheid legislation, beginning in the Soweto uprisings of 1976 and continuing throughout the days of Emergency regulations during the 1980's, the number of juveniles who have passed through the doors of the juvenile courts has increased dramatically.

Unfortunately, very few of this number have benefited from any form of social welfare in reality. The absolute powers of arrest and detention which the police and security forces were allowed by the judiciary and apartheid legislation has subsequently led to recidivism and has ultimately destroyed the deterrent effect of incarceration. Children's respect of the law and the justice system has deteriorated.

However, the rapid climb in the number of juvenile offenders is also directly linked to the system's failure to honour and respect the human rights of children themselves as prescribed within international human rights instruments. Children are arrested, tortured and detained without sufficient evidence of their alleged criminality.

Once the human rights of these children have been violated, the system places the child in a situation where it is much easier to enter the doors of the police station time and time again. An analysis of this purported social welfare process, which often shapes and creates criminal offenders, and rarely succeeds in reforming, punishing or re-habilitating the children, is relevant to the protection of the human rights of children in a democratic South Africa. Simply put, the process of juvenile justice has become one which systematically perpetuates crime, juvenile delinqency, homelessness, poverty, unemployment, and despair amongst our youth.

There is a wide gap between the rights of the juvenile in theory and the protection of these rights in practice. Moreover, there is little, if any, recognition of the corresponding duties of both law enforcement officers and the judiciary and legal community that are attached to these rights. Limited interaction occurs between the parents of the juvenile, the social workers, police and magistrates, the community and the juvenile. NGO's are almost always excluded from any type of evaluation or interjection by the courts. Although the existing law under s 254 of the Criminal Procedure Act presently provides for a choice between the welfare system and therefore, protection of the child under the Child Care Act of 1983 and its amendments, preliminary studies have revealed that this option is chosen in approximately 4 to 5% of the cases brought before the juvenile court. In fact, the persons responsible for making this decision are frequently police officers, not magistrates or even social workers, as prescribed by law.

The theory of criminal justice holds that children of a defined age of criminal responsibility, in South Africa at age seven, are subject, as are adults, to the jurisdiction of criminal law. This means that they may, on suspicion of criminal behavior, be questioned and arrested by the police and brought before a court with criminal jurisdiction. A child who is accused of breaking the law is dealt

with in terms of adult criminal justice procedures. There are a number of additional provisions which have been added to this process. Unfortunately, these provsions have failed to meet their purpose, that of protecting the rights of the juvenile in South Africa, and have served instead to eliminate or diminish the duties and responsibilities of the justice system.

This occurred with the most frequency during the State of Emergency when children were detained. The Internal Security Act, which allowed indefinite detention in solitary confinement prior to trial, overrode these purported precautionary provisions, as did the emergency regulations imposed under the Public Safety Act of 1953. To this extent, those in charge of prisons or police stations in which children were detained were under no legal obligation to treat the children in their care any differently than adults. Although the current atmosphere of change which is sweeping through South Africa is quite different than the mood which prevailed in the 1980's, children are still being arrested on spurious charges and detained without notification of parents or legal guardians while awaiting trial as a matter of routine procedure.

Existing legislative protections

The Child Care Act No 74 of 1983 and its amendments, as well as the Children's Status Act of 1987 were enacted with the aim of protecting and caring for children and young persons in need. The Act places children in need of care and protection under the same legislative protections as those children who offend the law. This grouping has extended beyond the pages of the Act and into the residential homes and places of safety – young offenders who are awaiting trial are often held in the same facility as children who have been taken out of an abusive home situation.

On paper, South African procedural law makes provisions for two inter-related court systems – the Juvenile Court and the Children's Court. In the Juvenile Court, the child is entitled to all the formal legal protections as an adult accused under criminal law. These rights include legal representation, if the child can afford one, as well are a presumption of innocence until proven guilty by a court of law. Additionally, provisions are made within the juvenile court for the protection of the accused youth. Trials of juveniles are held in camera before an unrobed magistrate. Parents are to be informed of the trial and have the right to be present.

However, as opposed to the juvenile court, which has as its aim the determination of guilt, the Children's Court is concerned with the "best interests of the child". The objective of the court is a welfare question – whether the child is in the legal sense a "child in need of care". If so, the child is placed under the supervision of the child welfare system. As stated, s 254 of the Criminal Procedure Act No 51 of 1977 provides for a transfer of the juvenile from the juvenile or criminal courts to the Children's Court if they are determined to be in need of care. In practice, this option is of little consequence.

Theoritical base of child care legislation

Most persons involved with juvenile justice will be all too aware that the debate in most countries has centred around two basic paradigms – the "welfare" model and the "justice" model. The two models have been the source of an ongoing source of contention. Seen as opposites, the two models have clear distinctions of ideology, practical applications and perceived goals. During the 1970's and

early 1980's, the welfare model gained wide popularity both overseas and in South Africa. Hence, the current Child Care Act of 1983 has as its primary function the "best interests of the child". It seeks to intervene at an early stage to discover the antecedent causes of unlawful or deviant behaviour. Once these causes are identified, treatment such as counseling, rehabilitation and reform are implemented, usually by social workers. Issues of due process do not come into play.

Under the justice model, the juvenile is viewed as being the one who is fully responsible for their actions. If found guilty in a court of law, the accused must receive some form of punitive or rehabiliative punishment, such as whipping, fine or imprisonment. Ironically, despite the adoption of child care legislation which purports to follow the welfare model, the present system of juvenile justice adheres to a rather strict interpretation of the justice paradigm.

Current trends in the administration of juvenile justice

There has been an increasingly popular trend towards the re-examination of these theories in practice. In the last ten years, more and more criminal justice systems have been re-examining both models as a result of their shared failure to address the underlying causes of juvenile crime. On a broader level, the origins of crime are being seen in a macro-economic and social context, which often involves well-known and common relationships, such as the interdependency of rising crime and unemployment. More emphasis has been placed on the environment and influences of factors such as poverty upon groups and communities. While not derogating the need for individual responsibility for crime, this approach eschews a system disigned to deal with individual and family and cultural pathology. The major role for the criminal justice system is seen as one which seeks to avoid further injustices to existing economic and social inequalities. This wider perspective still considers the "best interest of the child", yet it also gives notice to wider and more complex factors which are out of the control of young people.

There are shortcomings and failings of the South African welfare model were apparent in other welfare-type systems internationally. However, the problems are even more glaring in South Africa, as there is often little distinction between a child in need and one who is found guilty under criminal law. While awaiting trial and determination of direction to children's or juvenile court, a young person is usually held within a prison or prison-like facility and treated as a criminal. Even upon determination of the court system, ultimate destination of children in both the welfare and criminal systems is some form of confining residential institution.

Additionally, in a welfare-based system, a child who experiences formal involvement within the juvenile justice system often becomes a repeat offender. The police cells and places of safety used to hold awaiting-trial children, the intimidating and authoritative courtroom trial and the placement of those found guilty in adult prisons intitiates a cycle of labelling by both the system, peers and the child themself. Additionally, there is increased opportunity or forced pressure to associate with, learn from and join other offenders.

There is also abundant evidence, from both formal and informal studies and sources, as well as from the children themselves, that most juvenile justice systems work in a racially-discriminatory manner against ethnic and lower-income groups and the unemployed. Nowhere is this more obvious than in South Africa. The welfare system plays a significant role in this discrimination in that it finds African and coloured children to be more fundamentally at risk and in need than white youth. This stems primarily from the role of the police in the

arrest and charges brought against juveniles. Street children are often arrested on mere grounds of loitering and are the particular target of abuse by the police and legal system. The majority of the decision-makers in the youth justice system, in both the social work and legal fields, are white and middle class and often impose their cultural beliefs and opinions onto the child.

Prior to an extensive analystical discussion of the weaknesses and practical failures of the existing legislation and actions of the players within the system, it is important to summarise these issues into the realistic social background in South Africa. The following conclusions are raised for purposes of discussion at this workshop today. They reflect only some of the views of individuals who are intrisically involved in some way in the juvenile justice system within South Africa. However, they are presented here for the purposes of initiating a strategizing session.

Current issues surrounding the juvenile justice system

1. The most pressing concern is the attitude and conduct of the police in their arrest of juveniles, specifically those children who are homeless amd reside on the streets. Spurious and trumped up charges such as drukeness, public indecency and theft are often placed on street children. Additionally, use of loitering laws to arrest children is fairly routine procedure. Although reports of police harassment and abuse of children have been declining, the problem has not been eliminated.

   Once arrested, police have the authority to detain the child within the police cell for indefinite periods of time. Although there is a tendency for strict adherence to police form and procedure as regards placement of a formal charge within 48 hours, other rights are often ignored. Attempts to contact parents or family are rarely pursued. The reputation of the police, as agents of the state government, has been virtually destroyed by apartheid. This is especially true amongst African and coloured youth.

2. Inexplicably linked to police conduct is the rejection of the existing State government and its agents by society at large. There is a need to redress the imbalance of power between this government and the agents, individuals and families caught within the criminal justice system.

3. Rising unemloyment, urbanisation and poverty levels have led to an increase in crime and therefore, an explosion of socio-economic criminal actions. This in turn has resulted in a increasing number of arrests, convictions and in the eventual overcrowding of institutions and prisons.

4. The use of the welfare system, through the Child Care Act of 1983, has had little impact on levels of offending behavior. In most instances, the welfare system was not even chosen as a means of rehabilitation. Juveniles awaiting trial are held for months at the expense of the system. Costly "therapeutic" programmes that often congregate young offenders in prison-like residential settings have emerged as part of the problem rather than the solution.

5. Little cognizance of the juvenile'e legal rights have been given within the juvenile courts. Parents are rarely contacted and charges are often placed by police. Few juveniles are legally represented in court and many have language difficulties, yet pleas are often made without assistance of a lawyer or translator. Confessions to police, whether coerced or not, are admissible as evidence.

6. Sentencing often takes the form of confinement within a place of safety, school of industry or reformatory. The period for which a juvenile may be detained is determined by their age at the time of the making of the order of the court, not the age at which he committed the act. A fault of the existing Child Care Act allows for the placement of juveniles in prisons, both while awaiting trial and upon sentencing, if other places of safety are full. Because they are not part of the permanent prison population, facilities such as clothing, education and recreation are not provided to these children. Additionally, the atmosphere is prisons is geared toward adult and hardened prisoners. Space for juveniles is limited and approximately 20-30 children of all ages are often held in one cell. An 11-year old has told us that the younger boys sit awake night after night with their legs wrapped tightly against them to protect themselves from violent attacks.

7. Corporal punishment, in the form of whippings, is the preferred choice of most juveniles, especially amongst African and coloured youth. In terms of the Act, juvenile whippings may be imposed freely and are not subject to the same restrictions in relation to the number of occasions on which they may be imposed as are adult whippings. This is the most common form of sentencing handed down by the juvenile courts.

8. The changing political climate of reform and emphasis on the participation of formally disenfranchised groups in this process, especially in the impending constitutional negotiations and formulation of a bill of rights, has resulted in an increasing awareness of the culture, traditions and community values of African society. Additionally, acknowledgement of the socio-economic and political factors which have contributed to the rise in crime has led to a demand for the re-structuring of the police and justice systems.

9. Finally, there is a growing dissatisfaction amongst practicioners, such as social workers and correctional officers and employees, about the effectiveness of their work amongst young offenders. Over-worked, under-staffed and with little control over the decisions of the court and police, they have witnessed first-hand the failure of treatment programmes and reformatories. The loss of confidence in the system has resulted in a lack of enthusiasm for their work, has placed barriers between themselves and the families of young offenders, and consequently has had damaging effects on juveniles placed under their "care".

Suggested proposals for intervention

Recognising this, what can we do? How can these fair winds of social reform be harnessed and put to work in the area of juvenile justice? It is generally accepted that the existing system is not working. Alternative policies and procedures must be investigated and the overall structure of the juvenile justice system must be re-evaluated by policy-makers and Parliament. However, in the immediate future, we, as lawyers, social workers and children's rights advocates, should develop a short-term strategy to ensure that further abuses are minimised until such greater changes occur. The following list represents just a few of the short-term considerations:

Short-term solutions?

I. Arrest and charge

1. *Establish relationship with police.:* Top down order must be issued to stop harassment and abuse of children by police. Questions rising from complaints about street children by businesses and citizens must be addressed. Investigate possibilty of intervention or attention by Child Protection Unit beyond abuse role. Consider temporary police liason officer.

2. *Develop community-based youth watch programmes:* Establish linkages within communities to begin to identify and establish key problems and reasons which may cause juvenile crime.

3. *Child Police Liason Officer and Advocacy Unit:* Establishment of children's advocacy unit police liason officer? All arrests of children must be reported to this officer immediately upon arrival at station. The system must be computerised and central record keeping (charges brought and by whom in juvenile arrests, trial dates and places where they are being held awaiting trial) must begin at once. Interested party (parent, guardian, court-ordered guardian, NGO's) will be contacted at time of arrest. Computerised process will ensure that a child may be found within the system in a second's notice.

4. *Spurious charges and trumped up charges:* Children are often picked up by police from merely being homeless or looking suspicious. All spurious charges must stop. Must have reasonable suspicion that youth committed crime to stop and arrest. Search powers must be limited. Investigate defenses to charges of loitering law, public drunkeness, public indecency, eg. necessity.

5. *48 hour decision making process:* Must not be held in police cell longer than 48 hour after arrest and prior to charge.

II. Pretrial detention and awaiting trial

1. *Admission of juveniles to prisons:* Various organisations have been considering legal and non-legal means to ensure that children are no longer held in adult facilities. Thus far, these have realised only temporary or partial success. Prior to change in law, more definite strategies should be considered.

2. *Length of stay while awaiting trial:* Presently, some juveniles are held indefinitely while awaiting trial. As this is the time when they are subject to some of the most severe abuse, definite time limitations should be instilled.

3. *Conditions of places of safety:* Hardened older criminals must be seperated from the very young minor offenders and street childre. Facilities presently inadequate and crowded. Also, ensure that proper educational facilities are provided.

III. Sentencing

1. *Legal representation of juvenile:* Presently children are rarely provided with proper legal defense at trial. As the state-operated Public Defender's office will soon become a part of the criminal justice system, should investigate possibility of reserving certain number of attorneys for juvenile offenders. In the short-term, practising attorneys should be sensitized to the situation and urged to take up pro deo cases on behalf of juvenile offenders.

2. *Elimination of corporal punishment:* Lobbying should begin to eliminate use of corporal punishment as sentence or as punishment within juvenile institutions.

3. *Alternative sentencing:* Lobbying should begin to urge consideration of alternative sentences, such as community service, etc. Additionally, consideration should be given to pre-trial assesment programmes which release juveniles from the pressures and uncertainty of the courtroom. Involvement of family and community in sentencing process should be considered.

IV. Long-term goals

1. *Children's ministry:* Establish ministry which will deal exclusively with children's rights, care and protection. Within this ministry, establish a children's advocacy unit with the primary goal of prevention of juvenile crime and the education and re-integration of juvenile offenders into their families and communities.

2. *Adoption of children's advocacy programme:* This programme will seek to make use of "family" advocacy groups in the determination of the sentences of juveniles. "Family" should be defined in the broadest sense to include community representative, victims, parents, teachers, social workers and the juvenile. Children should be tried before a juvenile court only when it is impossible to reach a reasonable decision via the family advocacy group or if they have committed a serious offense. Legal representation must be provided by the state if the child is unable to afford one. Incarceration of juveniles in residential facilities should be considered in the most serious of cases. *

* *This is only a brief summary of this proposed programme.*