

[1]

GAC

WORKING GROUP 1

EXTERNAL SUBMISSIONS

MARCH 1992

VOL 2



CONTENTS:

1. ANC WOMEN'S LEAGUE: REPRESENTATION AT CODESA
2. NATIONAL CHILDREN RIGHTS COMMITTEE
3. MS PHILLIPS: INDIVIDUAL SUBMISSION ON TERMS OF REFERENCE

PO Box 61884
Marshalltown 2107
Tel: 330-7143
Fax: 330-7144
Telex: 43-1466



17th Floor
51 Plein Street
Shell House
Johannesburg
2000

**ANC
WOMEN'S LEAGUE**

6 March 1992

The Daily Management Committee
CODESA

Dear Sir/Madam,

Re : ANC WOMEN'S LEAGUE REPRESENTATIONS TO CODESA

Please find herein enclosed written representations of the ANC Women's League to CODESA.

As you will note there is an introduction followed by submissions to each of the 5 working groups.

We hope that these will be taken into consideration during discussions.

Yours in the struggle,

A handwritten signature in dark ink, appearing to read 'Gertrude Shope', written over a horizontal line.

GERTRUDE SHOPE
PRESIDENT

PO Box 61884
Marshalltown 2107
Tel: 330-7143
Fax: 330-7144
Telex: 43-1466



17th Floor
51 Plein Street
Shell House
Johannesburg
2000

ANC WOMEN'S LEAGUE

AFRICAN NATIONAL CONGRESS WOMEN'S LEAGUE

WRITTEN REPRESENTATIONS TO CODESA

The African National Congress Women's League (ANCWL) is the largest women's organisation in South Africa. It is autonomously constituted and represents a broad spectrum of South African women.

The ANCWL believes that the terms of reference of all the working groups have implications for women. It is not only when a new constitution is drafted that consideration has to be given to gender issues. It is essential that, even prior to that stage, we ensure that the current democratising process eliminates discrimination and oppression of any kind and catapults us into a non-racial, non-sexist and democratic society. Our task in these representations is to ensure that the principles of non-sexism¹ and equality, adopted in the Declaration of Intent, are institutionalised in the transition to a democratic South Africa. We have not, however, confined ourselves to gender² issues.

¹ Sexism may be defined as the system and practice of discriminating against a person on the grounds of sex. Specifically, it refers to unfair prejudice against women, the stereotyping of women, the defining of women in regard to their sexual availability and attractiveness to men, and all the conscious and unconscious assumptions which cause women to be treated as not fully human, while men are identified as the norm.

² We feel that we ought to distinguish between sex and gender. "Sex" refers to the biological characteristics of men and women. "Gender" refers to the differential social and cultural characteristics that we attribute to men and women.

At Codesa 1, the absence of women in the negotiation process was raised, and it was agreed that CODESA would rectify this weakness. In this respect, it is important that CODESA looks at different mechanisms which would ensure the increased participation of women in the current process and in the process of writing up a new constitution.

In Working Group 1, we will show that there are particular factors affecting the free participation of women in the political process. The exercise of civil liberties, the Peace Accord, the role of the police force, the role of the media and education about CODESA - all have to be looked at from a gender perspective. Do they facilitate or do they further inhibit the participation of women in the political process, or do they just preserve the status quo which already mitigates against women's participation?

In Working Group 2, democracy and all other political practices should be defined as both non-racial and non-sexist. Equality should be entrenched in the Constitution and affirmative action must refer to gender as well as race. The participation of women in the constitution-making body and the electoral process needs to be assured.

Any interim government arrangement proposed in Working Group 3 needs the structured participation of women to ensure that the interests of women are represented during this period. This body should ensure that the gender issue is addressed in all interim matters, for example, the defence force, the Budget, foreign relations, media, land, local government and development.

In Working Group 4 where the reincorporation of the TBVC states is considered, special attention must be paid to the repeal of discriminatory laws and to the position of black rural women. It is important that the views of this group are heard, and that information about CODESA is disseminated to them.

Working Group 5 has the task of implementing and monitoring the decisions and agreements of CODESA. All Working Groups need to ensure that the representation and interests of women are promoted and entrenched in the interim period, but there is a particular duty on Working Group 5 to do this.

AFRICAN NATIONAL CONGRESS WOMEN'S LEAGUE

CODESA TERMS OF REFERENCE

RECOMMENDATIONS FOR WORKING GROUP 1

CODESA has recognised that

democracy requires that all the participants in the political process should be free to participate in that process without fear and on an equal footing and on a basis of equality with the other participants.(1.1)

In our understanding this means addressing the structural inequalities and disabilities not only of race, but also of gender.

In South African society women have suffered systemic oppression and occupied a subordinate position in the home, the work-place and in the public sphere.

Gender relations in the home have created dependency and subordination for most women in this society. The domestic division of labour has relegated women to child care and domestic work. In this arena, women's unpaid domestic labour has provided a significant, but unrecognised contribution to the maintenance of individual households, the economy and society. This has been one of the reasons why society has placed women in a position of subordination and economic dependence.

The relegation of women to the home has also rendered them vulnerable to violence and exploitative practices which are hidden from the public eye. There is little protection for women against such violence as the home is perceived as a private domain.

The subordination and oppression of women has also determined the access of women to paid employment. The unequal sexual division of labour in the work-place has concentrated women in particular categories of work, and has affected women's pay, promotion and treatment. A particularly blatant example of women's inequality in the work-place is the high level of sexual harassment. Domestic workers are especially subject to sexual exploitation and violence.

Women are generally invisible in the public sphere. There has been little or no representation of women and their interests in politics and political organisations. Women's contribution to politics has been marginalised. The only political space open to women has been in "women's issues" which are solely seen as women's responsibility.

The subordination of women is reflected in the legal system, particularly in customary law, and in the manner in which the law has been distorted, interpreted and fossilised in the courts and in the legislative process. Women have suffered disadvantage by the definition of their legal status and capacity. Criminal law (particularly those areas concerning violence against women), the laws of marriage and of the family, property ownership, tax and contractual ability are examples of the laws which have entrenched women's subordination. Moreover, the law has failed to protect women or to ensure their equal treatment.

These are some of the reasons why women have not enjoyed full and free participation in the political process. Women in rural areas have been particularly disadvantaged. Without addressing the systemic nature of women's subordination, CODESA will not be able to achieve its aim of fostering and establishing a climate in which all individuals and organisations can participate in the political process freely and without interference and intimidation (1.1.1).

The conditions for women's full participation in the political process require that CODESA address the following:

1. Women's right to exercise their civil liberties
2. Violence against women
3. Women's participation in the Peace Accord and its structures.
4. The possession of weapons by private persons.
5. Women and the police force.
6. Women and the defence force.
7. Women and the media.
8. Education about CODESA.
9. The participation of women in CODESA.

1. Women's right to exercise their civil liberties.

It is the urgent task of CODESA to ensure that a political climate is created in which men and women are free to exercise all their civil liberties. The subordinate position that women occupy in society means that special effort needs to be made to overcome their political and social disadvantages and to allow them to exercise their rights on an equal footing with men.

Women should have the right to make their own independent decisions about their participation in the political process.

2. Violence against Women.

As women we are concerned about the wave of violence which is sweeping our country. Women in the communities are affected by the increasing levels of violence in a particularly direct way. Research has shown an increase in domestic violence and rape. This is exacerbated by deteriorating socio-economic conditions and leads to the break-up of families.

Women suffer direct and indirect violence at the hands of men in the home, the work-place and in the public sphere. This acts to intimidate and restrict women in their political activity. The issue of violence against women and men's control over women has to be directly addressed by CODESA and the interim authority. Women have to be free of all forms of violence, abuse and subtle forms of harassment, including the use of sexual or other stereotypes, which may block their freedom in any way.

3. Women's participation in the Peace Accord and its structures.

We strongly believe that it is urgent for CODESA to take up the implementation of the Peace Accord.

It is our view that the Peace Accord should include within its purview, violence against women.

In most, if not all, of the methods of dealing with violence, women's organisations were not involved or consulted. For example, in the Peace Accord, no women's organisations were involved. Political parties, Bantustan governments, and trade unions signed the Accord. These groupings hardly drew women into the process.

Local Dispute Resolution Committees, which are the grassroot structures in the peace process, are meaningless unless they include women.

We believe that without the inclusion of women in all peace processes, there will be no solution to the violence in our country.

4. The possession of weapons by private persons.

South Africa's gun-licensing laws allow for the private possession of numerous firearms. There is an alarmingly high number of licensed weapons, as well as large numbers of unlicensed weapons in the country. This has increased the violence in the townships and suburbs of South African towns and cities.

Crime has proliferated as a result both of the economic recession in which South Africa finds itself, and the wide and easy availability of firearms.

The African National Congress Women's League (ANCWL) believes that greater control over the use of licensed weapons is needed. This is particularly important with respect to the public carrying of firearms by private persons. This is intimidating and may impede the exercise of free political activity. Furthermore, the police need to enforce the law respecting the carrying and licensing of firearms more vigorously, and in good faith.

In our view, South Africa should ultimately be free of firearms.

5. Women and the Police Force

The police force in South Africa is not seen as neutral by the majority of South Africans. The dominant perception of its role is one of collusion, inaction and corruption. The police are seen to be players in the political violence. This makes it impossible for women and competing political groups to accept police attempts to act as mediators or referees in the endemic violence in South Africa.

Policemen have also participated in acts of violence against women. Police have been accused of sexual torture in their treatment of women detainees. More generally, there is evidence of policemen sexually harassing women in the course of their duties. These are notorious methods by oppressive regimes of controlling women and children.

In the light of these allegations, it is imperative that the police force introduce codes of conduct and ethics which deal with the issue of police violence against women, and of sexual harassment.

It is also imperative that the police force begin to enforce the law in good faith. The way in which it is enforced appears to be selective, and appears to exacerbate or even engender conflict and violence. Further, we believe that the carrying of guns, knives and so-called cultural weapons in public should be prohibited, and that the police should act to disarm persons carrying such weapons. CODESA is urged to find ways of addressing this situation as a matter of urgency.

Of particular concern to the ANCWL is the composition of the police force. There is a notable absence of women in the force. The ANCWL recommends that this situation be redressed by the active recruitment of women from all sectors of the population into a future democratically constituted police force.

6. Women and the defence force.

A single unified defence force should be created which is committed to the principles of non-racialism, non-sexism, democracy and national unity.

Women should be included in the debates around the formation and principles of this new defence force. Particular attention should be paid to the eradication of discrimination against women in training, deployment, command structures and combat roles.

Conscription into a new defence force should be voluntary and should include the active recruitment of women from all sectors of the population. Programmes of affirmative action should be introduced.

7. Women and the Media

The public media should be governed by the principles of political neutrality and fair access (1.1.4f). In this respect, the ANCWL recommends that the principle of non-sexism be enforced by both public and private media. Moreover, we recommend that control of the public media during the interim period be removed from government control and handed to an Independent Communications Authority comprised of representatives of the South African community, including women.

A fundamental principle of this authority should be that the content of the media is both non-racist and non-sexist. Programmes for and about women are an important part of this principle.

In respect of the media, CODESA needs to address two issues. The first is how to redress the unequal access of sections of South African society, in particular women, to the media. The second issue is how to ensure that the principles of non-racism and non-sexism are adhered to in the private media. One suggestion is that the Independent Communications Authority withdraws licenses to media groups, including political parties, which do not adhere to these principles.

8. Education about CODESA

Education and campaigns about CODESA should focus on the issue of political tolerance. In particular, the ANCWL recommends that CODESA has campaigns which address the question of violence against women and which dispel degrading and stereotyping myths about women, their private role and their exclusion from politics.

All sectors of the population should be permitted and encouraged to debate constitutional and political issues and should have access to the political parties

and representatives of their choice. Particular attention should be paid to ensuring that women in the homes and in the rural areas are provided with access to information about CODESA and the political process. Of particular concern here is the servile and restricted position of people in domestic employment, especially live-in domestic workers, and farm workers. Employers have no rights over their workers' political identity or political ideas. This issue also needs to be addressed in the TBVC states and the Bantustans. Free political activity must become a fundamental principle.

9. The participation of women in CODESA

CODESA One adopted non-sexism as one of its principles in the Declaration of Intent. Yet it cannot be said that women or women's interest are represented at CODESA. In other words, one of the basic principles of democracy, the participation of the majority in decision-making, is being violated by CODESA. It cannot claim to represent the voice of women if it does not have mechanisms to include the representation of women and their organisations.

The response so far given by the management committee to resolve this problem is that political parties should include women in their delegations.

We feel this response denies the fact that gender oppression is actually structured in society and permeates all aspects of life. In this way we cannot rely on political parties to deal with this situation. To solve this dilemma we need to create special mechanisms which will redress the problem. One of the mechanisms we suggest is the formation within CODESA of a Gender Advisory Committee, set up by the Management Committee. The Advisory Committee would receive all documentation from the Working Groups, would review the gender implications of such documents, and return these to the working groups for amendment. The Committee would have a further supervisory function, in ensuring that changes were implemented.

AFRICAN NATIONAL CONGRESS WOMEN'S LEAGUE

CODESA TERMS OF REFERENCE

RECOMMENDATIONS FOR WORKING GROUP 2

1. CONSTITUTIONAL PRINCIPLES AND THE GENDER QUESTION

The African National Congress Women's League (ANCWL) recommends that a principle which characterises a future South African state as non-sexist is vital.

The responsibility for eliminating sexism should be placed upon the state and entrenched in the Constitution.

The ANCWL does not seek rights for women that are in any way different from those enjoyed by all citizens. However, because of the history of subordination of women, and the fact that women bear children, it is necessary to recognise that special provision will have to be made to ensure that women are, in fact, equal to men in a democratic South Africa.

Our recommendations are:

- 1.1 that in drafting the Bill of Rights, full account should be taken of gender differentiation and the subordination of women.
- 1.2 that the new Constitution should also include a Charter which will assist women in claiming and exercising the rights in the Constitution and Bill of Rights on an equal basis with men.
- 1.3 that provision for affirmative action on the basis of race and gender must be made in the Bill of Rights.
- 1.4 that all laws, customs and practices that discriminate against women shall be held to be unconstitutional.

2. THE CONSTITUTION-MAKING BODY:

- 2.1 The Constitution must be made by a body elected on the basis of one-person, one-vote, on a common voters roll and with a vote of equal value.

- 2.2 This body should include a large number of women to ensure a proper democratic process.
- 2.3 Political parties should apply affirmative action in their selection of candidates for the constitution-making body by including women in their lists. This means that there should be a representative portion of women equally distributed throughout these lists. Proper exposure should be given to women candidates by giving them campaign platforms.

3. ELECTIONS.

The historical oppression of women has created a male-dominated political culture amongst all racial, ethnic and religious groups. Politics has become an almost exclusive male domain in many societies, not only in South Africa, where men resent and actively prevent women from debating political issues and seek to prevent their participation in elections. Women too, have internalised this culture. Where women attempt to exercise an independent choice, men often impose their preferences upon women and prevent them from doing so. If democracy is to be effective, then it is important to break this mould in order to facilitate and create a climate for the confident expression of women's opinions in the political arena.

In particular, the ANCWL believes that the following are important :

- 3.1 CODESA should institute education programmes which address the issue (see recommendations to working group one).
- 3.2 At a later date, it will be necessary for the Electoral Commission or body controlling elections, as well as political parties, to address and educate the community. At the appropriate time, the ANCWL will make submissions to the Commission.
- 3.3 In any election the voter identification procedures must take into account that women, particularly African women, are less likely to have identification documents. Alternative arrangements should be found for the identification of these voters in the election process.
- 3.4 Whatever mechanisms are decided upon for the electoral process, these need to make special provision to reach women and facilitate their participation.

AFRICAN NATIONAL CONGRESS WOMEN'S LEAGUE

CODESA TERMS OF REFERENCE

WORKING GROUP THREE - TRANSITIONAL ARRANGEMENTS / INTERIM GOVERNMENT / TRANSITIONAL AUTHORITY.

1. INTERIM ARRANGEMENTS FOR THE PARTICIPATION OF WOMEN

Regardless of what form the interim government takes, it is imperative that women participate in all its structures and that their interests are protected.

The African National Congress Women's League (ANCWL) recommends that women's interests should be represented and protected in the interim period as follows :

- 1.1 During the period of Codesa and any nominated or appointed interim authority, a Gender Advisory Committee should exist. The ANCWL will make further recommendations about its composition, powers and terms of reference at the appropriate time.
- 1.2 Once a constitution-making body has been elected, that body should establish a Gender Commission to deal with gender issues and sexism. At the appropriate time, the ANCWL will make representations about its composition, powers and terms of reference.

2. KEY ISSUES, PROCESSES AND PROBLEMS IN THE INTERIM PERIOD.

The ANCWL sees the following issues as important for consideration in the interim period. Many of these issues have already been raised in more detail in our recommendations to Working Groups 1 & 2 and the reader is referred to these.

- 2.1 The unification of the defence forces is a matter of priority for the interim authority. This unified defence force will then need to begin immediately to redress race and gender imbalances in their composition, and to introduce codes of conduct and norms which will create confidence amongst all the people in the country.
- 2.2 The Budget in the interim period needs to begin to equalise the benefits of national expenditure and focus on redistribution to the disadvantaged, particularly women, who have suffered the greatest neglect under the apartheid regime.
- 2.3 Development is a vital component in the need to redress the inequalities and imbalances of apartheid. The ANCWL believes that the process of development should begin in the interim period. Human resources and development in its training and resource allocation has to become gender sensitive and provide access to and for women.
- 2.4. South Africa's foreign relations have mainly been conducted by men. In the interim period, women should be employed on an equal basis with men, in establishing and maintaining foreign relations. Any existing discriminatory regulations and practices with respect to gender and race in South Africa's foreign service need to be removed.
- 2.5 In the arena of local government the participation and representation of women should reflect the gender composition of the local communities. Any projects undertaken during the life of CODESA and the interim government should be aimed at the interests of all groups in local communities, including women.
- 2.6 Any structures established to ensure an impartial media must :
 - 2.6.1 include women;
 - 2.6.2 ensure access for women to the media;
 - 2.6.3 ensure that women's issues are publicised; and
 - 2.6.4 bring an end to all forms of sexist, pornographic and objectifying portrayals of women.

- 2.7 Land and women:** The history of dispossession of land has meant that the land is predominantly owned by whites and by men. Women have been disadvantaged in their occupation and ownership of, and access to land.

The present government is in the process of transferring state land to private individuals. In our view this should cease immediately, not only because we believe that the question of the redistribution of land is one for a future democratic government, but also because we are concerned that the full range of rights and interests of the dispossessed, especially women, will be ignored in the process of land allocation.

AFRICAN NATIONAL CONGRESS WOMEN'S LEAGUE

CODESA TERMS OF REFERENCE

RECOMMENDATIONS FOR WORKING GROUP 4 - FUTURE OF TBVC STATES

The African National Congress Women's League (ANCWL) has fundamental problems with the terms of reference of this working group in so far as they contain an inherent assumption that the TBVC states are legitimate and have a choice about their reincorporation into South Africa. The TBVC states are a creation of apartheid and were constituted without consultation with the people of these regions. The elimination of apartheid should be accompanied by the reincorporation of these states.

The process of reincorporation must pay particular attention to the following :

1. The immediate removal of all discriminatory laws of the TBVC states :

After independence, the TBVC states enacted sexist legislation in introducing, for example, polygamy, the flogging of women, the prohibition of married women's employment in the civil service, including educational institutions, and discriminatory marriage and family laws. The position and status of women in these states worsened. All laws which operate against women in the TBVC states must be repealed.

2. Citizenship

The ANCWL endorses the position of the ANC that all people in the TBVC states should get their South African citizenship back.

3. Equality of women

In establishing the bantustans and the TBVC states, the South African government sought to entrench indirect rule through the manipulation of the system of traditional rule.

This system has in all its aspects discriminated against women. Women have been excluded from all decision-making. Customary laws and land allocation have been particularly glaring in their discrimination against women.

The equality of women cannot be established without the democratic transformation of the system of customary law and the institution of hereditary rulers and chiefs.

Our views follow the ANC's constitutional guidelines which state that :

the institution of hereditary rulers and chiefs shall be transformed to serve the interests of the people as a whole in conformity with the democratic principles embodied in the constitution.

We believe that the entrenchment of the principle of non-sexism is a crucial part of this transformation.

4. Strategies to inform the population

We have made specific recommendations to Working Group 1 about the importance of ensuring that women have access to information. This will be particularly important for women in the TBVC states, where a high proportion of women will be illiterate. Special effort must be made to communicate with the population of the rural areas through oral education programmes.

5. Business confidence and the relevance for women.

Investment within the areas of the TBVC states has been encouraged by special tax benefits, subsidies and privileges. The ANCWL is not opposed to investment in these areas, but we are opposed to the exploitative manner in which this investment has taken place.

There is evidence that the residents of these areas have been disadvantaged, inter alia by corruption, the payment of excessively low wages, the absence of protective labour legislation and the refusal to recognise trade unions.

Women, as the most vulnerable and exploited section of society, have experienced the worst effects of business involvement. Furthermore they have experienced sexual exploitation, for instance, in the denigration of women in casinos and the promotion of pornography and prostitution.

As a result these regions and the people in the TBVC states have been significantly disadvantaged by such investment. Special attention must be paid to future investment to ensure that there is equitable investment in all regions of the country and that this investment benefits women.

AFRICAN NATIONAL CONGRESS

CODESA TERMS OF REFERENCE

RECOMMENDATIONS FOR WORKING GROUP 5

The African National Congress Women's League (ANCWL) believes that the transition to a democratic South Africa should take place as soon as possible. Within this process special attention must be paid to the representations and interests of women to ensure that the principles of non-sexism and equality are entrenched in the spirit and letter of the new constitution.

Our understanding of the terms of reference of Working Group 5 is that this group has the task of monitoring the process at CODESA, implementing the decisions and agreements reached by CODESA, disseminating information about CODESA and identifying key issues and problems that may arise from the above.

In this respect, we wish to draw the working group's attention to the following issues and tasks :

1. There should be public access to all documentation of CODESA (1.1.4 e).
2. All information relating to CODESA should be made available to the African National Congress Women's League and other women's organisations (1.1.4 e).
3. In the dissemination of information by CODESA, particular attention should be paid to reaching people in rural areas, particularly women (1.1.4 e).
4. In view of the high level of illiteracy in the country, it is important that CODESA find oral methods of disseminating its information (1.1.4 e)
5. It is our view that public oral hearings at CODESA will constitute an important mechanism to reach all sectors of the population (1.1.4 e).

6. With respect to its monitoring function (1.1.4 d) and its task of implementing agreements (1.1.4 i), we believe that this working group will have to work closely with the proposed Gender Advisory Committee to ensure that the principles of non-sexism and equality contained in the Declaration of Intent are entrenched. In practical terms this means that this working group needs to ensure that the process takes account of and implements the ANCWL recommendations.
7. In order to create a climate conducive to free political participation (working group 1), CODESA needs to address all discriminatory legislation, both in terms of race and gender. There are many laws which entrench discriminatory practices and ideas about women and which consequently impede women's ability to participate freely and without fear in the political process. It is the urgent task of working group 5 to begin identifying these laws for repeal and amendment (1.1.4 f & g).

WGI

Miss L.A. Phillips
P.O. Box 48721
Roosevelt Park 2129
RSA Tel: 011 659-1203

28-2-1992

The Chairman
CODESA
P.O. Box 304
KEMPTON PARK
ISANDU
1600.

Date Rec'd : ...9/3/92....
Date Ackn : ...9/3/92....
Docs Sent :
Handed for Processing to :
.....WGI.....

Dear Sir,

SHORT SUBMISSION TO CODESA
from a private citizen

① CREATION OF A CLIMATE FOR FREE
POLITICAL PARTICIPATION:

This can be achieved only by STOPPING
THE SENSELESS (?) VIOLENCE NOW.
OTHERWISE CODESA'S WORK & THE
R3.5 ± Million expenditure will be
in vain.

DEMOCRACY DEPENDS UPON THE
ACTIVE INFORMED INDIVIDUAL
ACCEPTING his/her responsibility to
SOCIETY.

2) The Media must remain FREE OF
GOVERNMENT CONTROL but naturally
operate under a code of ethics.

3)

The INTERNATIONAL community CANNOT BE DEPENDENT upon: they have their own interests & hidden agendas to pursue.

If The proposed Constitution should be for a FEDERATION. It must be accepted by all the peoples of South Africa through the medium of a referendum

A Federal Democracy will make it easier for the TBVC states to join in.

Codesa is a break through in trying to formulate a new environment (Physical, spiritual & emotional) for South Africa. However Codesa is not a democratically instituted body and is therefore artificial. This must be understood as a limitation.

It will be wise for Codesa to go back time & time again to the Public for feed-back. Therefore the TIME FRAMES depend upon the investment of accepting public opinions.

Yours faithfully,

Min L.A. Phillips

N C R C

**NATIONAL CHILD'S
RIGHTS COMMITTEE**

1.Campaign for Children's Rights - Objectives

(a)To raise the awareness of everyone in South Africa about

- the plight of children in our land
- the rights of children as laid down by the UN Convention on the Rights of the Child
- the rights of women as mothers of children

(b)To entrench the rights of the women and child in a non-racial non-sexist democratic South Africa, through a Bill of Rights that includes a section on children, and through South Africa signing the Convention on Children's Rights.

Strategies: a National Campaign Task Force, representative of all organisations dealing with children and women in South Africa has been established, to co-ordinate national campaigns. Local campaign committees are responsible for regional campaigns. These include media coverage, meetings marches, conferences, booklets, posters, cultural performances, calendars, and networking with other organisations.

2.Research - Objectives

To develop a comprehensive information base on the situation of children and women in South Africa, so that their most urgent needs can be addressed first. Information will also help in effective planning for longer term projects.

This information will be published in a form and in languages that make it accessible to all the people of South Africa.

NOTE:Facts and figures about the needs of women and children also form the basis for campaigns and the effective mobilisation of communities.

Strategies: a situational analysis on the present situation of women and children is to be undertaken by a National Task Force, made up of representatives from all the organisations dealing with women and children in South Africa.

Some sections of this research are to be undertaken by local branches, other sections have been commissioned from research institutes and professional organisations and there will also be grassroots research done with community participation.

3.Objectives in the Campaign to Support NGO's Working for Children

(a)To improve the capacity of all the democratic, non-racial and non-governmental organisations concerned with the survival, protection and development of children and women, so as to broaden and strengthen their work, particularly at local and regional levels.

(b)To support specific projects developed by organisations for the survival, protection and development of children and women.

Strategies: to provide a communication network through newsletters and meetings so that NGO's can support each other;
to provide resource material on children's rights, and such further information on resources and community development as may be requested;
to encourage community programmes for parents, teachers, educare-teachers and health and welfare workers on the issue of the survival, protection and development of women and children to help with funding projects where possible (sec. FUNDING below)

The NCRC encourages the participation of communities in decision making. It encourages any programme that will empower communities through helping them to gain in knowledge and management skills.

4. LONG TERM AIMS - AREAS OF SPECIAL INTEREST

In the long term, the survival, protection and development of children depends on underlying POLICIES and ATTITUDES in our land. The NCRC therefore, is looking at the following areas.

ECONOMIC PLANNING & POLICY - this needs to promote genuine and development for the most disadvantaged group society - women and children

LAW: the legal rights of women and children need to be established and everyone needs to know what these rights are. There also needs to be a system for even the poorest to be able to enforce their rights by law.

CULTURAL TRADITIONS: in this sensitive area the rights of women and children need to be promoted with the maximum co-operation of all. The rights of women and children will not be established through the passing of laws, alone - their rights need to be accepted into the culture of every group in South Africa.

LANGUAGE: the rights of the child include relevant and accessible reading and illustrative material, in the child's home language, and reflecting his or her culture.

THE LEGACY OF APARTHEID: the total transformation of the apartheid system is needed in order for the rights of women and children to be met. The cruel legacy of apartheid can be seen in the destabilising of black communities with a break-down of family life from the migrant labour system, the overwhelming shortage of low-cost urban housing, the neglect of primary health care, the chaos in black education, the poverty in the homelands and resettlement areas - and more recently in the on-going violence in black communities.

5. FUND - RAISING NCRC TRUST

The NCRC recognises that NGO's have a need for funding for projects they undertake for the survival, protection and development of women and children.

A legal NCRC Trust has therefore been established, and this had entered into a partnership with UNICEF - the United Nations Children's Fund. The NCRC TRUST administers all funds raised in its name, both international and locally, for projects of non-governmental organisations. The projects recommended for funding must meet its criteria, in particular that projects directly benefit women and children and that they encourage self-reliance.

Convention on the Rights of the Child

Preamble

The States Parties to the present Convention, Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world

Bearing in mind that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,

Recognizing that the United Nations has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance,

Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity,

Bearing in mind that the need to extend particular

care to the child has been stated in the Geneva Declaration on the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in article 10) and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of children,

Bearing in mind that, as indicated in the Declaration of the Rights of the Child, "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth",

Recalling the provisions of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"); and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict,

Recognizing that, in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child,

Recognizing the importance of international co-operation for improving the living conditions of children in every country, in particular in the developing countries,

Have agreed as follows:

Part I

Article I

For the purposes of the present Convention, a child means every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier.

such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

2. In any proceedings pursuant to paragraph 1, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

Article 10

1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.

2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country.

The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (*ordre public*), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

Article 11

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.

2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

Article 12

1. States 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.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 13

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.

2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others- or

(b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

Article 14

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.

treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 20

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.
2. States Parties shall in accordance with their national laws ensure alternative care for such a child.
3. Such care could include, *inter alia*, foster placement, *kafalah* of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

Article 21

States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

- (a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;
- (b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;
- (c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;
- (d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not

result in improper financial gain for those involved in it;

- (e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multi-lateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

Article 22

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.
2. For this purpose, States Parties shall provide, as they consider appropriate, cooperation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

Article 23

1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance, and facilitate the child's active participation in the community.
2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is

Article 27

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.

3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

Article 28

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

(a) Make primary education compulsory and available free to all;

(b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;

(c) Make higher education accessible to all on the basis of capacity by every appropriate means;

(d) Make educational and vocational information and guidance available and accessible to all children;

(e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

3. States Parties shall promote and encourage international co-operation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Article 29

1. States Parties agree that the education of the child shall be directed to:

(a) The development of the child's personality, talents, and mental and physical abilities to their fullest potential;

(b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;

(c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;

(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;

(e) The development of respect for the natural environment.

2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 30

In those States in which ethnic, religious or

the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Article 38

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.

2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of 15 years do not take a direct part in hostilities.

3. States Parties shall refrain from recruiting any person who has not attained the age of 15 years into their armed forces. In recruiting among those persons who have attained the age of 15 years but who have not attained the age of 18 years, States Parties shall endeavour to give priority to those who are oldest.

4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Article 40

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner

consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

(a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions which were not prohibited by national or international law at the time they were committed;

(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

(i) To be presumed innocent until proven guilty according to law;

(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;

(iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality

(v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;

(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used

(vii) To have his or her privacy fully respected at all stages of the proceedings.

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and in particular:

(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law

(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

4. A variety of dispositions, such as care, guidance and supervision orders, counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

Article 41

Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in:

(a) The law of a State Party; or

(b) International law in force for that State.

Part II

Article 42

States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means to adults and children alike.

Article 43

1. For the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention, there shall be established a Committee on the Rights of the Child which shall carry out the functions hereinafter provided.

2. The Committee shall consist of ten experts of high moral standing and recognized competence in

the field covered by this Convention. The members of the Committee shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution, as well as to the principal legal systems.

3. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

4. The initial election to the Committee shall be held no later than six months after the date of the entry into force of the present Convention and thereafter every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to States Parties inviting them to submit their nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating States Parties which have nominated them, and shall submit it to the States Parties to the present Convention.

5. The elections shall be held at meetings of States Parties convened by the Secretary-General at United Nations Headquarters. At those meetings, for which two thirds of States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

6. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. The term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the Chairman of the meeting.

7. If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee, the State Party which nominated the member shall appoint another expert from among its nationals to serve for the remainder of the term, subject to the approval of the Committee.

8. The Committee shall establish its own rules of procedure.

9. The Committee shall elect its officers for a period of two years.

10. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee. The Committee shall normally meet annually. The duration of the meetings of the Committee shall be determined, and reviewed, if necessary, by a meeting of the States Parties to the present Convention, subject to the approval of the General Assembly.

11. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

12. With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from the United Nations resources on such terms and conditions as the Assembly may decide.

Article 44

1. States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights:

(a) Within two years of the entry into force of the Convention for the State Party concerned,

(b) Thereafter every five years.

2. Reports made under this article shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.

3. A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports submitted in accordance with paragraph 1 (b) of the present article repeat basic information previously provided.

4. The Committee may request from States Parties further information relevant to the implementation of the Convention.

5. The Committee shall submit to the General

Assembly of the United Nations through the Economic and Social Council, every two years, reports on its activities.

6. States Parties shall make their reports widely available to the public in their own countries.

Article 45

In order to foster the effective implementation of the Convention and to encourage international cooperation in the field covered by the Convention:

(a) The specialized agencies, the United Nations Children's Fund, and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies, the United Nations Children's Fund and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite the specialized agencies, the United Nations Children's Fund, and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities;

(b) The Committee shall transmit, as it may consider appropriate, to the specialized agencies, the United Nations Children's Fund and other competent bodies, any reports from States Parties that contain a request, or indicate a need, for technical advice or assistance along with the Committee's observations and suggestions, if any, on these requests or indications

(c) The Committee may recommend to the General Assembly to request the Secretary-General to undertake on its behalf studies on specific issues relating to the rights of the child.

(d) The Committee may make suggestions and general recommendations based on information received pursuant to articles 44 and 45 of the present Convention. Such suggestions and general recommendations shall be transmitted to any State Party concerned and reported to the General Assembly, together with comments, if any, from States Parties.