

# Chapter 3

# Bill of Rights

---

*With sidebar notes*

---

Agreed

- Would not deal with this now, but look at this in 2/3 weeks time.

- Parties to make subs to the tech comm through the administrator.

preamble.

NP view

# Chapter 3 BILL OF RIGHTS

NP  
"shall"

## State Duty to Respect and Protect Rights

- 3. Human dignity is the foundation of a just society; the state therefore must respect and protect the rights declared in this Bill.

## Equality

- 4. (1) Everyone is equal before the law and has the right to equal protection and benefit of the law.
- (2) Equality includes the full and equal enjoyment of all rights and freedoms. To achieve equality, legislative and other measures designed to protect and advance groups or categories of persons disadvantaged by unfair discrimination may be used.
- (3) Neither the state nor any person may [unfairly] discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language, birth.
- (4) Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair.

## Human Dignity

- 5. Everyone has inherent dignity and the right to have their dignity respected and protected.

Agreement on the name of the Chapter and where it is to be situated is outstanding

Sec 3 Agreed to in principle. Referred to the Technical Committee to consider whether this clause should be separated from the rest of the chapter for purposes of constructing a preamble to the chapter.

Sec 44(1) Amended as per CC Subcommittee instructions.

4(2) Technical Committee instructed to consider the following:  
- DP proposal: "...and likely to protect...", to be included,  
- whether CP V is adequately addressed by the formulation, and  
- the Canadian Charter.

4(3) Amended as per Cc Subcommittee instructions. ACDP objection to the inclusion of "sexual orientation" was noted. The Technical Committee is considering the use of the term, "unfair" discrimination.

4(4) Referred to Technical Committee for reformulation.

Agreed to by CC Subcommittee

(NP)

- incl but not limited to
- emphasis has shifted way beyond CP V & AA clause in the IC.

ANC :

(DP) - add.

& w/out derogating from the generality of this provision

link the notion of equality with AA.

**Life (3 Options)**

Option 1

6. Everyone has the right to life.

Option 2

Everyone has the right to life, and the right not to be deprived of life except by execution of a court sentence following conviction of a crime for which the death penalty is prescribed by law.

Option 3

- (1) Everyone has the right to life, which must be respected by others and protected by law from the moment of conception to natural death.
- (2) No one may be deprived of life except by execution of a court sentence following conviction of a crime for which the death penalty is prescribed by law.

**Freedom and Integrity of the Person**

7. (1) Everyone has the right to physical and psychological integrity and to freedom of the person.
- (2) No one may be -
- (a) deprived of liberty arbitrarily or without just cause; or
- (b) detained without trial.
- (3) No one may be -
- (a) tortured in any way;
- (b) treated or punished in a cruel, inhuman or degrading way; or
- (c) subjected to medical or scientific experiments without their [that person's] consent.

**Slavery, Servitude and Forced Labour**

8. No one may be subjected to slavery, servitude or forced labour.

### Life (3 Options)

#### Option 1

6. Everyone has the right to life.

#### Option 2

Everyone has the right to life, and the right not to be deprived of life except by execution of a court sentence following conviction of a crime for which the death penalty is prescribed by law.

#### Option 3

- (1) Everyone has the right to life, which must be respected by others and protected by law from the moment of conception to natural death.
- (2) No one may be deprived of life except by execution of a court sentence following conviction of a crime for which the death penalty is prescribed by law.

### Freedom and Integrity of the Person

7. (1) Everyone has the right to physical and psychological integrity and to freedom of the person.
- (2) No one may be -
- (a) deprived of liberty arbitrarily or without just cause; or
- (b) detained without trial.
- (3) No one may be -
- (a) tortured in any way;
- (b) treated or punished in a cruel, inhuman or degrading way; or
- (c) subjected to medical or scientific experiments without their [that person's] consent.

### Slavery, Servitude and Forced Labour

8. No one may be subjected to slavery, servitude or forced labour.

Option 1 Options amended as per CC Subcommittee instructions.

Technical Committee to redraft taking into account the formulation proposed by the ANC: "Every person has the right to bodily integrity which shall include, but not to be limited to, the right to be free from all forms of violence from public and private sources and the right to security in and control over one's body." The DP opposed the proposal from the ANC and proposed the inclusion of the word "security" in 7.1. The ACDP reserved its position.

Agreed to.

### Privacy

9. (1) Everyone has the right to privacy, including the right not to have -
  - (a) their person, home, or property searched;
  - (b) their possessions seized; or
  - (c) their communications violated.
- (2) Every legal person has the right not to have -
  - (a) their property searched;
  - (b) their possessions seized; or
  - (c) their communications violated.

### Freedom of Religion, Belief and Opinion

10. (1) Everyone has the right to freedom of conscience, religion, thought, belief and opinion, including freedom to change religion or belief, and freedom to practise religion alone or in community, in private or in public.
- (2) Religious observances may be conducted at state or state-aided institutions provided -
  - (a) that those observances follow any rules established by an appropriate authority;
  - (b) that they are conducted on an equitable basis; and
  - (c) that attendance at them is free and voluntary.
- (3) Nothing in this Bill of Rights precludes legislation recognising -
  - (a) a system of personal and family law adhered to by persons professing a particular religion; and
  - (b) the validity of marriages concluded under a system of religious law subject to specified procedures.

### Freedom of Expression

11. (1) Everyone has the right to freedom of speech and expression, including -
  - (a) freedom of the press and other media; and
  - (b) freedom to receive and impart information and ideas.
- (2) The speech and expression protected in subsection (1) does not include either -
  - (a) propaganda for war; or

11 - The words "of speech" were removed, since speech is one form of expression, and "freedom of speech" is included within the meaning of "freedom of expression".

## Privacy

9. (1) Everyone has the right to privacy, including the right not to have -
- (a) their person, home, or property searched;
  - (b) their possessions seized; or
  - (c) the privacy of their communications violated.
- (2) Every juristic person has the right not to have -
- (a) their property searched;
  - (b) their possessions seized; or
  - (c) the privacy of their communications violated.

9(1) - Agreed to.

9(2) - A decision is subject to the rights of juristic persons. The Technical Committee was instructed to compile a list of rights borne by human beings only and another list of rights borne by legal persons as well, for further discussion.

## Freedom of Religion, Belief and Opinion

10. (1) Everyone has the right to freedom of conscience, religion, thought, belief and opinion, including freedom to change religion or belief, and freedom to practise religion alone or in community, in private or in public.
- (2) Religious observances may be conducted at state or state-aided institutions provided -
- (a) that those observances follow any rules established by an appropriate authority;
  - (b) that they are conducted on an equitable basis; and
  - (c) that attendance at them is free and voluntary.
- (3) Nothing in this Bill of Rights precludes legislation recognising -
- (a) a system of personal and family law adhered to by persons professing a particular religion; and
  - (b) the validity of marriages concluded under a system of religious law subject to specified procedures.

10(1) - Agreed to. ACDP proposed for the insertion of the words ".....including freedom to proselytize and to change religion...." was noted.

10(2) - Accepted. The ACDP reserved its position.

10(3) - Referred to Technical Committee, to consider in the light of draft formulations on customary law in the chapter on the Judiciary.

## Freedom of Expression

11. (1) Everyone has the right to freedom of expression, including -
- (a) freedom of the press and other media; and
  - (b) freedom to receive and impart information and ideas.
- (2) The protection in subsection (1) does not extend to either -
- (a) propaganda for war; or
  - (b) advocacy of hatred that constitutes incitement to discrimination, hostility or violence, and that is

11(1) - Agreed to.

11(2) - Technical Committee instructed to redraft taking the following proposals into account; DP: "advocacy of hatred that constitutes incitement to imminent violence." to replace words in 9(2)(a). ANC: the words "...grounds including..." to be inserted in 9(2)(b). ACDP reserved its position on the inclusion of the word "gender" in 9(2)(b).

- (b) advocacy of hatred that constitutes incitement to discrimination, hostility or violence, and that is based on race, ethnicity, gender, or religion.
- (3) The state must regulate any media that it finances or controls to ensure that it is impartial and presents a diversity of opinion.

### **Assembly, Demonstration and Petition**

- 12. Everyone has the right, peacefully and unarmed, to assemble, to demonstrate, or to present petitions.

### **Freedom of Association**

- 13. Everyone has the right to freedom of association.

### **Political Rights**

- 14. (1) Every citizen is free to make political choices which includes the rights -
  - (a) to form a political party;
  - (b) to participate in the activities of, or to recruit members for, any political party; and
  - (c) to campaign for a political party or cause.
- (2) Every citizen has the right to vote in secret in free, fair, and regular elections.
- (3) Every citizen has the right to stand for election to public office and, if elected, to hold office.

### **Citizenship**

- 15. No citizen may be deprived of citizenship.

### **Freedom of Movement and Residence**

- 16. (1) Everyone has the right to freedom of movement and residence anywhere in the Republic.
- (2) Every citizen has the right to remain in the Republic.
- (3) Everyone has the right to leave the Republic and every citizen has the right to return to the Republic.
- (4) Every citizen has the right to a passport.



based on race, ethnicity, gender, or religion.

- (3) The state must regulate any media that it finances or controls to ensure that it is impartial and presents a diversity of opinion.

11(3) - Technical Committee to reformulate to better distinguish between state and state-aided media.

### Assembly, Demonstration and Petition

12. Everyone has the right, peacefully and unarmed, to assemble, to demonstrate, or to present petitions.

Agreed to by CC Subcommittee.

### Freedom of Association

13. Everyone has the right to freedom of association.

Agreed to by CC Subcommittee.

### Political Rights

14. (1) Every citizen is free to make political choices which includes the rights -
- (a) to form a political party;
  - (b) to participate in the activities of, or to recruit members for, a political party; and
  - (c) to campaign for a political party or cause.
- (2) Every citizen has the right to vote in secret in free, fair, and regular elections.
- (3) Every citizen has the right to stand for election to public office and, if elected, to hold office.

Agreed to by CC Subcommittee.

### Citizenship

15. No citizen may be deprived of citizenship.

Agreed to by CC Subcommittee.  
Corrections made as per  
Subcommittee instructions.

### Freedom of Movement and Residence

16. (1) Everyone has the right to freedom of movement and residence anywhere in the Republic.
- (2) Everyone has the right to leave the Republic.
- (3) Every citizen has the right to enter and to remain in the Republic.
- (4) Every citizen has the right to a passport.

Agreed to by CC Subcommittee.

## **Economic Activity**

### Option 1

17. Omit the present provisions 26 entirely.

### Option 2

- (1) Everyone has the right to pursue a livelihood and engage in economic activity anywhere in the Republic.
- (2) Subsection (1) does not preclude measures that are designed to promote the protection or the improvement of the quality of life, economic growth, human development, social justice, basic conditions of employment, fair labour practices, or equal opportunity for all, provided such measures are justifiable in an open and democratic society based on freedom and equality.

## **Labour Relations**

18. (1) Everyone has the right to fair labour practices.
- (2) Workers have the right -
- (a) to form and join trade unions;
  - (b) to participate in the activities and programmes of a trade union; and
  - (c) to strike.
- (3) Employers have the right -
- (a) to form and join employers' organisations; and
  - (b) to participate in the activities and programmes of an employers' organisation.
- [(c) to lock-out.].
- (4) Every trade union and every employers' organisation has the right -
- (a) to determine its own administration, programmes and activities
  - (b) to organise;
  - (c) to bargain collectively;
  - (d) to form and join a federation.

## **Environment**

19. Everyone has the right -
- (a) to an environment that is not harmful to their health or well-being;
  - (b) to have their environment protected through reasonable measures designed to -

### Economic Activity

#### Option 1

17. No provision regarding a right to economic activity.

#### Option 2

17. (1) Everyone has the right to pursue a livelihood and engage in economic activity anywhere in the Republic.
- (2) Subsection (1) does not preclude measures that are designed to promote the protection or the improvement of the quality of life, economic growth, human development, social justice, basic conditions of employment, fair labour practices, or equal opportunity for all, provided such measures are justifiable in an open and democratic society based on freedom and equality.

### Labour Relations

18. (1) Everyone has the right to fair labour practices.
- (2) Workers have the right -
- (a) to form and join trade unions;
  - (b) to participate in the activities and programmes of a trade union; and
  - (c) to strike.
- (3) Employers have the right -
- (a) to form and join employers' organisations; and
  - (b) to participate in the activities and programmes of an employers' organisation.
  - [(c) to lock-out.].
- (4) Every trade union and every employers' organisation has the right -
- (a) to determine its own administration, programmes and activities
  - (b) to organise;
  - (c) to bargain collectively;
  - (d) to form and join a federation.

### Environment

19. Everyone has the right -
- (a) to an environment that is not harmful to their health or well-being;
  - (b) to have their environment protected through reasonable measures, including legislation, de-

The Technical Committee was instructed to

- further examine international instruments, taking into account the views expressed by political parties at the Subcommittee meeting, and
- report on its understanding of the term, "economic activity" and why it considered the term to be problematic, in the present context

Agreed to by CC Subcommittee 18(4) Discussion was deferred to give political parties an opportunity to consider a proposal from the DP to amend the clause as follows; "to determine its own administration, programmes, activities which promote honest, efficient, democratic and accountable government". (c) - The right to lock-out in subsection (3)(c) has been bracketed as its inclusion is contentious.

Agreed to by CC Subcommittee

- (i) prevent pollution and ecological degradation;
- (ii) promote conservation; and
- (iii) secure sustainable development and use of natural resources.

### **Property**

20. (1) Property and the right of inheritance are guaranteed. Its content and limits may be determined by law. Property imposes duties. Its use should also serve the common good.
- (2) No one may be deprived of property except in accordance with a law of general application.
- (3) Property may be expropriated in terms of a law of general application -
- (a) for a public purpose or in the public interest; and
  - (b) subject to payment of compensation and a payment schedule which has been either -
    - (i) agreed; or
    - (ii) decided by a Court of Law to constitute an equitable balance between the public interest and the interests of those affected.
- (4) When any Court decides either the amount or the payment schedule of compensation in terms of subsection (3)(b)(ii), the Court must consider all relevant factors, including, with respect to the amount of compensation -
- (a) the current use of the property;
  - (b) the history of its acquisition; and
  - (c) its market value.
- (5) Every person and community dispossessed of land after [decided date] as a result of any law or practice which would have been inconsistent with [the section of the Constitution which prohibits discrimination] had that section been in operation at the time of dispossession, shall be entitled to restitution of that land, or alternatively, to equitable redress in the manner described by law.
- (6) . . .

### **Housing and land**

21. (1) Everyone in need [whose own efforts or resources are inadequate to provide housing] has a right to reason-

signed to -

- (i) prevent pollution and ecological degradation;
- (ii) promote conservation; and
- (iii) secure sustainable development and use of natural resources.

### Property

20. (1) Property and the right of inheritance are guaranteed. Its content and limits may be determined by law. Property imposes duties. Its use should also serve the common good.
- (2) No one may be deprived of property except in accordance with a law of general application.
- (3) Property may be expropriated in terms of a law of general application -
- (a) for a public purpose or in the public interest; and
  - (b) subject to payment of compensation and a payment schedule which has been either -
    - (i) agreed; or
    - (ii) decided by a court of law to constitute an equitable balance between the public interest and the interests of those affected.
- (4) When any court decides either the amount or the payment schedule of compensation in terms of subsection (3)(b)(ii), the court must consider all relevant factors, including, with respect to the amount of compensation -
- (a) the current use of the property;
  - (b) the history of its acquisition; and
  - (c) its market value.
- (5) Every person and community dispossessed of land after [decided date] as a result of any law or practice that would have been inconsistent with section 4 had that section been in operation at the time of dispossession, has a right to restitution of that land, or alternatively, to equitable redress in the manner described by law.

(6) ...

### Housing and land

21. (1) Everyone without adequate resources has a right to reasonable and appropriate measures by the state -

Sec 20 The Technical Committees of Theme Committees 4 and 6.3 are considering draft formulations to give effect to the consensus emerging among political parties

*NP say have never agreed on this posn.*

20(6) The Technical Committee is considering draft formulations on tenure.

Sec 20 The Technical Committee is to reorder and redraft taking into account the discussions at the CC Subcommittee.

able and appropriate measures by the State -

- (a) to secure adequate housing; and
  - (b) to obtain equitable access to land.
- (2) Everyone has the rights not to be evicted from home, or have their home demolished -
- (a) arbitrarily ; and
  - (b) without an order from a Court made after considering the circumstances under which such home is occupied, the duration of the occupation and the availability of suitable alternative accomodation.

### **Health**

22. (1) Everyone has the right to -
- (a) health care which the state must take reasonable and progressive measures to improve and make accessible to all; and
  - (b) reproductive health
- (2) Any measures taken by the state in terms of subsection (1) must include at least necessary medical treatment for anyone without adequate resources.

### **Social Assistance, Food and Water**

23. (1) Everyone who is unable to support themselves and their dependants has the right to receive reasonable and appropriate social assistance from the state.
- (2) Everyone has the right to clean water and sufficient food which the state must take reasonable and appropriate measures to make accessible.

### **Children**

24. Every child has the right to -
- (a) a name and a nationality from birth;
  - (b) family care, or appropriate alternative care when removed from the family environment;
  - (c) basic nutrition and health and social services;
  - (d) be protected from maltreatment, neglect, or abuse;
  - (e) to be protected from exploitative labour practices, and not to be required or permitted to perform work or provide services that are inappropriate for a person of that child's age, or that place at risk the child's well-being, education, physical or mental health, or spiritual, moral, or social devel-

- (a) to secure adequate housing; and
- (b) to obtain equitable access to land.
- (2) Everyone has the rights not to be evicted from home, or have their home demolished -
  - (a) arbitrarily ; and
  - (b) without an order from a court made after considering the circumstances under which such home is occupied, the duration of the occupation and the availability of suitable alternative accomodation.

### Health

- 22. (1) Everyone has the right to health care, including reproductive health care, which the state must take reasonable and progressive measures to improve and make accessible to all; and
- (2) Any measures taken by the state in terms of subsection (1) must include at least necessary medical treatment for anyone without adequate resources.

### Social Assistance, Food and Water

- 23. (1) Everyone who is unable to support themselves and their dependants has the right to receive reasonable and appropriate social assistance from the state.
- (2) Everyone has the right to clean water and sufficient food which the state must take reasonable and appropriate measures to make accessible.

### Children

- 24. Every child has the right to -
  - (a) a name and a nationality from birth;
  - (b) family care, or appropriate alternative care when removed from the family environment;
  - (c) basic nutrition and health and social services;
  - (d) be protected from maltreatment, neglect, or abuse;
  - (e) be protected from exploitative labour practices, and not to be required or permitted to perform work or provide services that are inappropriate for a person of that child's age, or that place at risk the child's well-being, education, physical or mental health, or spiritual, moral, or social development; and
  - (f) not to be detained except as a measure of last

The DP registered reservation regarding the phrase "equitable access to land" The NP suggests the inclusion of the qualification "subject to resources from the state on a nondiscriminatory basis" .

21(2) The DP had reservations about 21(2)(b)

22 The Technical Committee is to regroup with other Socio-Economic Rights and redraft taking into account discussion at the Subcommittee meeting.

Accepted by the Subcommittee To be reordered.

Sec 2424(1)(b) The inclusion of "parental care" was referred to the Technical Committee. The Technical Committee also to consider the notion of "Family" in the Bill of Rights.

24(1)(f) redrafted in accordance with the instructions of the CC Subcommittee

- opment; and
- (f) without limiting the rights in section 7 or 31, not to be detained, except as a measure of last resort and for the shortest possible period of time and, if detained, to be -
  - (i) kept separately from other detained persons over the age of 18 years; and
  - (ii) treated in a manner, and kept in conditions, that take account of the child's age.
- (2) The child's best interest is of paramount importance in every matter concerning the child.
- (3) In this section, "child" means a person under the age of 18 years.

### Education

25. (1) Everyone has the right to -
- (a) a basic education, including adult basic education, in a state or state-aided institution;
  - (b) further education, which the state must take reasonable and progressive measures to make generally available and accessible; and
  - (c) choose instruction in any language where instruction in that language can be reasonably provided at state or state-aided institutions.
- (2) Everyone has the right to establish and maintain, at their own expense, private educational institutions that-
- (a) do not discriminate on the basis of race;
  - (b) are registered with the state; and
  - (c) maintain standards that are not inferior to standards at comparable state-aided educational institutions.

Alternative wording suggested for subsection (2)(c)

- (c) to educational institutions based on a common culture, language, or religion, provided that there shall be no discrimination on the ground of race and, provided further that the state shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it has been established on the basis of a common language, culture, or religion.



resort, in which case, in addition to the rights the child enjoys under sections 7 and 31, the child may be detained only for the shortest possible period of time and has the right to be -

- (i) kept separately from other detained persons over the age of 18 years; and
  - (ii) treated in a manner, and kept in conditions, that take account of the child's age.
- (2) The child's best interest is of paramount importance in every matter concerning the child.
- (3) In this section, "child" means a person under the age of 18 years.

### **Education**

25. (1) Everyone has the right to -

- (a) a basic education, including adult basic education, in a state or state-aided institution;
- (b) further education, which the state must take reasonable and progressive measures to make generally available and accessible; and
- (c) choose instruction in any language where instruction in that language can be reasonably provided at state or state-aided institutions.

(2) Everyone has the right to establish and maintain, at their own expense, private educational institutions that-

- (a) do not discriminate on the basis of race;
- (b) are registered with the state; and
- (c) maintain standards that are not inferior to standards at comparable state-aided educational institutions.

Alternative wording suggested for subsection (2)(c)

- (c) to educational institutions based on a common culture, language, or religion, provided that there shall be no discrimination on the ground of race and, provided further that the state shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it has been established on the basis of a common language, culture, or religion.

Sec 25 To be reordered and placed with Socio-Economic Rights 25(1) Agreed to by CC Subcommittee

Alternative wording to Subsection 2(c) Option included for further consideration by CC Subcommittee

### **Academic Freedom**

26. [(1) Every institution of higher learning and everyone within these institutions has the right to academic freedom.
- (2) Everyone has the right to freedom of artistic creativity and scientific research [activity].]

### **Language and Culture**

27. Everyone has the right to choose a language and a culture, and to use that language and participate in the life of that culture; but, no one exercising this right may violate the rights of anyone else.

### **Access to Information**

28. Everyone has a right to access -
- (a) any information held by the State; and
- (b) any information that is held by another person and that is required for the exercise or protection of any rights.

### **Administrative Justice (3 Options)**

#### Option 1

29. (1) Everyone has the right to administrative action that is lawful, reasonable [justifiable], and procedurally fair.
- (2) Everyone has the right to be given written reasons for administrative action, unless the reasons have been published.

#### Option 2

The same as Option 1, except delete the words "lawful" and "procedurally" from subsection 1.

#### Option 3

- (1) Anyone whose rights or interests are affected or threatened by administrative action has the right -
- (a) to have that administrative action be fair, reasonable, and justifiable; and
- (b) to be given written reasons for that administrative action, unless those reasons have been published.
- (2) Anyone whose rights or legitimate expectations are

**Academic Freedom**

- 26. [(1) Every institution of higher learning and everyone within these institutions has the right to academic freedom.
- (2) Everyone has the right to freedom of artistic creativity and scientific research [activity].]

The Technical Committee to redraft in terms of the CC Subcommittee instructions

**Language and Culture**

- 27. Everyone has the right to choose a language and a culture, and to use that language and participate in the life of that culture; but, no one exercising this right may violate the rights of anyone else.

Parties for further consider the provision

**Access to Information**

- 28. Everyone has a right to access -
  - (a) any information held by the state; and
  - (b) any information that is held by another person and that is required for the exercise or protection of any rights.

For further consideration. Technical committee to give opinion on possible qualification of the right, based on a comparative analysis.

**Administrative Justice (3 Options)**

Option 1

- 29. (1) Everyone has the right to administrative action that is lawful, reasonable [justifiable], and procedurally fair.
- (2) Everyone has the right to be given written reasons for administrative action, unless the reasons have been published.

The Technical Committee is to redraft taking into account the discussions at the CC Subcommittee meeting

Option 2

The same as Option 1, except delete the words "lawful" and "procedurally" from subsection 1.

Option 3

- (1) Anyone whose rights or interests are affected or threatened by administrative action has the right -
  - (a) to have that administrative action be fair, reasonable, and justifiable; and
  - (b) to be given written reasons for that administrative action, unless those reasons have been published.
- (2) Anyone whose rights or legitimate expectations are

affected or threatened by administrative action has the right to have that administrative action be reasonably fair.

### Access to Courts/Justice

30. Everyone has the right to have any dispute that can be resolved by law decided in a fair, public hearing in either a court of law or another independent and impartial forum.

### Detained, arrested and Accused Persons

31. (1) Everyone who is arrested for allegedly committing an offence has the right -
- (a) to remain silent;
  - (b) to be informed, promptly and in a language that the accused person understands -
    - (i) of the right to remain silent; and
    - (ii) of the consequences of giving up that right;
  - (c) not to be compelled to make any confession or admission that could be used in evidence against that person;
  - (d) as soon as reasonably possible, but at least within 48 hours of being arrested, either to be released or to be brought to a court of law and, while there, to be either charged or informed of a reason for the detention to continue; but, if no court is in session within 48 hours of an accused person being arrested, that person may be detained until the next day that a court is in session; and
  - (e) to be released with or without bail, unless the interests of justice require that person to be detained. [if the interests of justice permit that person to be released.]
- (2) Everyone who is detained or imprisoned has the right-
- (a) to be informed, promptly and in a language that the detained or imprisoned person understands, of the reason for being arrested or detained;
  - (b) to choose and to consult with a legal practitioner, and to have a legal practitioner provided at state expense if substantial injustice would otherwise result [if the interests of justice require it], and to be informed of both of these rights promptly and in a language that the detained or imprisoned

affected or threatened by administrative action has the right to have that administrative action be reasonably fair.

### **Access to justice**

30. Everyone has the right to have any dispute that can be resolved by law decided in a fair, public hearing in either a court of law or another independent and impartial forum.

Agreed to by CC Subcommittee

### **Arrested, detained and accused persons**

31. (1) Everyone who is arrested for allegedly committing an offence has the right -
- (a) to remain silent;
  - (b) to be informed, promptly and in a language that the arrested person understands -
    - (i) of the right to remain silent; and
    - (ii) of the consequences of not remaining silent;
  - (c) not to be compelled to make any confession or admission that could be used in evidence against that person;
  - (d) as soon as reasonably possible, but at least within 48 hours of being arrested, either to be released or to be brought before a court of law and, while there, to be either charged or informed of a reason for the detention to continue; but, if the period of 48 hours after a person has been arrested expires outside ordinary court hours, that person may be detained until the next court day; and
  - (e) to be released with or without bail, unless the interests of justice require that person to be detained. [if the interests of justice permit that person to be released.]
- (2) Everyone who is detained, including every sentenced prisoner, has the right-
- (a) to be informed, promptly and in a language that the detained or imprisoned person understands, of the reason for being detained;
  - (b) to choose and to consult with a legal practitioner, and to be informed of this right promptly and in a language that the detained person understands;
  - (c) to have a legal practitioner provided by the state if substantial injustice would otherwise result, and to

31(1)(c) The Technical Committee is to redraft after submissions from political parties.

31(2)(e) Amended as per CC Subcommittee instructions.

- person understands;
- (c) to challenge the lawfulness of the detention in person before a court of law and, if the detention is unlawful, to be released;
  - (d) to conditions of detention that are consistent with human dignity, including at least the provision of adequate accomodation, nutrition, reading material, and medical treatment at state expense; and
  - (e) to communicate with, and be visited by, that person's
    - (i) spouse or partner;
    - (ii) next of kin;
    - (iii) chosen religious counsellor; and
    - (iv) chosen medical practitioner.
- (3) Every accused has a right to a fair trial, which includes the right -
- (a) to be informed of the charge with sufficient details to answer the charge;
  - (b) to have adequate time and facilities to prepare a defence;
  - (c) to a public trial that begins, and concludes, without unreasonable delay in an ordinary court of law;
  - (d) to be present when being tried;
  - (e) to choose and be represented by a legal practitioner, to have a legal practitioner provided at state expense if substantial justice would otherwise result, [where the interests of justice require it,] and to be informed of both of these rights;
  - (f) to be presumed innocent, and to remain silent, and not to testify during the proceedings;
  - (g) to adduce and challenge evidence;
  - (h) to be tried in a language that the accused person understands or, if that is not practicable, to have the proceedings interpreted in that language;
  - (i) not to be convicted for any act or omission that was not an offence under [either] national or international law at the time it was committed or omitted;
  - (j) not to be tried on any charge for which that person has previously been either acquitted or convicted;
  - (k) to be sentenced within a reasonable time after being convicted;

- be informed of this right promptly and in a language that the detained person understands;
- (d) to challenge the lawfulness of the detention in person before a court of law and, if the detention is unlawful, to be released;
  - (e) to conditions of detention that are consistent with human dignity, including at least the provision of adequate accommodation, nutrition, reading material, and medical treatment at state expense; and
  - (f) to communicate with, and be visited by, that person's
    - (i) spouse or partner;
    - (ii) next of kin;
    - (iii) chosen religious counsellor; and
    - (iv) chosen medical practitioner.
- (3) Every accused has a right to a fair trial, which includes the right -
- (a) to be informed of the charge with sufficient details to answer the charge;
  - (b) to have adequate time and facilities to prepare a defence;
  - (c) to a public trial that begins, and concludes, without unreasonable delay in an ordinary court of law;
  - (d) to be present when being tried;
  - (e) to choose and be represented by a legal practitioner, to have a legal practitioner provided at state expense if substantial injustice would otherwise result, [where the interests of justice require it,] and to be informed of both of these rights;
  - (f) to be presumed innocent, and to remain silent, and not to testify during the proceedings;
  - (g) to adduce and challenge evidence;
  - (h) to be tried in a language that the accused person understands or, if that is not practicable, to have the proceedings interpreted in that language;
  - (i) not to be convicted for any act or omission that was not an offence under either national or international law at the time it was committed or omitted;
  - (j) not to be tried for any offence in respect of an act or omission for which that person has previously been either acquitted or convicted;
  - (k) to be sentenced within a reasonable time after

- (l) not to be sentenced to a more severe punishment than that which was applicable when the offence was committed; and
  - (m) to the benefit of the least severe of the prescribed punishments, if the prescribed punishment for the offence has been changed during the period between the time that the offence was committed and the time of sentencing;
  - (n) of appeal to, or review by, a higher court.
- (4) No one may be compelled to give self-incriminating evidence.
- [(5) Any evidence obtained in a manner that violates any right in this Bill must be excluded if the admission of that evidence would bring the administration of justice into disrepute.]

### Limitation of Rights

32. (1) The rights in this Bill, except the rights in section 34, may be limited by or pursuant to law of general application only to the extent that the limitation of a right is -
- (a) [reasonable and justifiable\ necessary] in an open and democratic society based on freedom and equality; and
  - (b) compatible with the nature of the right that it limits.
- (2) The provisions of this Bill of Rights do not prevent the state from adopting any measures designed to prevent or prohibit unfair discrimination.
- (3) Except as provided in subsection (1) or in any other provision of this Constitution, no law may limit any right entrenched in this Constitution.



being convicted; and

- (l) to the benefit of the least severe of the prescribed punishments, if the prescribed punishment for the offence has been changed during the period between the time that the offence was committed and the time of sentencing;
  - (m) of appeal to, or review by, a higher court.
- (4) No one may be compelled to give self-incriminating evidence.
- [(5) Any evidence obtained in a manner that violates any right in this Bill must be excluded if the admission of that evidence would bring the administration of justice into disrepute.]

### Limitation of Rights

32. (1) The rights in this Bill, except the rights in section 34, may be limited by or pursuant to law of general application only to the extent that the limitation of a right is -
- (a) [reasonable and justifiable\ necessary] in an open and democratic society based on freedom and equality; and
  - (b) compatible with the nature of the right that it limits.
- (2) The provisions of this Bill do not prevent the state from adopting any legislative or other measures designed to prevent or prohibit unfair discrimination.
- (3) Except as provided in subsection (1) or in any other provision of the Constitution, no law may limit any right entrenched in the Constitution.

31(4) - The scope of this section may need to be considered by the Technical Committee.

31(5) - This section is under consideration.

Under consideration. The Technical Committee to reformulate this provision on the basis of the discussions at CC Subcommittee and further submissions from political parties.

### State of Emergency

33. (1) An Act of Parliament may provide that a State of Emergency may be declared whenever -
- (a) the life of the nation is threatened by war, invasion, general insurrection, disorder, national disaster, or other public emergency; and
  - (b) declaring a state of emergency is necessary to restore peace or order.
- (2) Any declaration of a state of emergency, and every regulation enacted or other action in consequence of that declaration, may be effective only -
- (a) prospectively from the date of the declaration; and
  - (b) for no more than 21 days from the date of the declaration, unless the National Assembly resolves to extend the declaration. The National Assembly, by a majority of at least two-thirds of all its members, may resolve to extend a declaration of state of emergency for a period of up to three months, or for consecutive periods of up to three months each. [for no more than 14 days . . . up to 60 days, or for consecutive periods of up to 60 days each.]
- (3) Any laws or regulations enacted in consequence of a declared state of emergency may derogate from this Bill only to the extent that -
- (a) is strictly required by the emergency;
  - (b) they are consistent with the Republic's obligations under international law;
  - (c) they conform to subsection (4); and
  - (d) they are published in the Gazette immediately after being enacted.
- (4) No Act that authorises a declaration of a state of emergency, and no regulation enacted or other action in consequence of that Act, may permit or authorise -
- (a) the creation of retrospective crimes or the imposition of retrospective penalties;
  - (b) indemnifying the state, or anyone acting under state authority, for unlawful acts committed during the state of emergency; or
  - (c) any derogation from this section or any of the sections listed below.

Section 2

Equality

Section 3

Human Dignity

### State of Emergency

33. (1) An Act of Parliament may provide that a state of emergency may be declared whenever -
- (a) the life of the nation is threatened by war, invasion, general insurrection, disorder, national disaster, or other public emergency; and
  - (b) declaring a state of emergency is necessary to restore peace or order.
- (2) Any declaration of a state of emergency, and any legislation enacted or other action taken in consequence of that declaration, may be effective only -
- (a) prospectively from the date of the declaration; and
  - (b) for no more than 21 days from the date of the declaration, unless the National Assembly resolves to extend the declaration. The National Assembly, by a majority of at least two-thirds of its members, may resolve to extend a declaration of state of emergency for a period of up to three months, or for consecutive periods of up to three months each. [for no more than 14 days . . . up to 60 days, or for consecutive periods of up to 60 days each.]
- (3) Any legislation enacted in consequence of a declared state of emergency may derogate from this Bill only to the extent that -
- (a) is strictly required by the emergency;
  - (b) it is consistent with the Republic's obligations under international law;
  - (c) it conforms to subsection (4); and
  - (d) it is published in the Gazette immediately after being enacted.
- (4) No Act that authorises a declaration of a state of emergency, and no legislation enacted or other action taken in consequence of a declaration, may permit or authorise -
- (a) the creation of retrospective crimes or the imposition of retrospective penalties;
  - (b) indemnifying the state, or anyone acting under state authority, for unlawful acts committed during the state of emergency; or
  - (c) any derogation from this section or any of the sections listed below.

Agreed to in principle by CC Subcommittee. The Technical Committee is to reformulate, taking into account consistency with the Security Services draft.

Section 4	Equality
Section 5	Human Dignity

Section 4	Life
Section 5(2)	Freedom from torture and degrading treatment
Section 6	Freedom from servitude (excluding forced labour)
Section 8	Freedom of Religion, Belief and Opinion
Section 16.1	Right to fair labour practices
Section 16.2&3	Right to form and join trade unions or employers' organisations
Section 22.1.d	Right of children to not be abused or neglected
Section 22.1.e	Right of children to freedom from exploitative labour practices
Section 22.1.f	Rights of children who are detained
Section 28	Right of access to the courts
Section 29.2.d	Right to challenge detention and be released
Section 29.1.a&b	Right to remain silent, and to be informed of that right
Section 29.1.c	Right not to be compelled to confess or make statements
Section 29.3&4	Right to a fair trial
Section 30	Rights contained in limitation section.
Section 33	Application of the Bill

(5) Despite subsection (4)(a), nothing in this section prevents the state trying and punishing anyone for an act or omission that, at the time it was committed, was criminal according to the general principles of law recognised by the community of nations.

(6) Any superior court may enquire into the validity of -

- (a) a declaration of a state of emergency;
- (b) any extension of a declaration of a state of emergency; or
- (c) any regulation enacted, or other action taken, under a declaration of a state of emergency.

(7) Whenever anyone is detained in consequence of a declaration of a State of Emergency, the following conditions must be observed -

- (a) an adult family member or friend of the detainee must be contacted as soon as reasonably possible,

Section 6	Life
Section 7(3)	Freedom from torture and degrading treatment
Section 8	Freedom from servitude (excluding forced labour)
Section 10	Freedom of Religion, Belief and Opinion
Section 18(1)	Right to fair labour practices
Section 18(2)&(3)	Right to form and join trade unions or employers' organisations
Section 24(1)(d)	Right of children to not be abused or neglected
Section 24(1)(e)	Right of children to freedom from exploitative labour practices
Section 24(1)(f)	Rights of children who are detained
Section 30	Right of access to the courts
Section 31(2)(d)	Right to challenge detention and be released
Section 31(1)(a)&(b)	Right to remain silent, and to be informed of that right
Section 31(1)(c)	Right not to be compelled to confess or make statements
Section 31(3)(4)&(5)	Right to a fair trial
Section 32	Rights contained in limitation section.
Section 35	Application of the Bill
(5)	Despite subsection (4)(a), nothing in this section prevents the state trying and punishing anyone for an act or omission that, at the time it was committed, was criminal according to the general principles of international law.
(6)	Any superior court may enquire into the validity of - (a) a declaration of a state of emergency; (b) any extension of a declaration of a state of emergency; or (c) any legislation enacted, or other action taken, under a declaration of a state of emergency.
(7)	Whenever anyone is detained in consequence of a declaration of a state of emergency, the following conditions must be observed - (a) an adult family member or friend of the detainee must be contacted as soon as reasonably possible,

33(5) - This provision may not be necessary because the Right to a Fair Trial is a non-derogable right.

33(7) is to be redrafted taking into account the provision on the state of national defence.

- and told that the person has been detained;
- (b) a notice must be published in the Gazette within five days of the person being detained, stating the detainee's name and referring to the emergency measures under which that person has been detained;
  - (c) the detainee must be allowed to choose, and be visited at any reasonable time by, a medical practitioner;
  - (d) the detainee must be allowed to choose, and be visited at any reasonable time by, a legal representative;
  - (e) a court must review the detention as soon as reasonably possible, but no later than 10 days after the date the person was detained, and the court must release the detainee unless the detention is necessary to restore peace and order;
  - (f) if the court does not release a detainee, that detainee may apply to the court for a further review after 10 days, and the court must again review the detention, and must release the detainee unless the detention is still necessary to restore peace and order;
  - (g) the detainee must be allowed to appear in person before any court considering the detention, and to be represented by a legal practitioner at those hearings, and to make representations against continued detention; and
  - (h) the state must present written reasons to the court to justify the detention or continued detention of the detainee, and must give a copy of those reasons to the detainee at least two days before the court reviews the detention.
- (8) If a court releases a detainee, that person may not be detained again unless the state first shows the court good cause for re-detaining that person.

### **Enforcement of rights**

34. (1) Anyone listed in this section has the right to apply to a competent court, alleging that a right declared in this Bill has been infringed or threatened, and the court may grant appropriate relief including a declaration of rights. The persons who may apply for relief are:
- (a) anyone acting in their own interests;
  - (b) anyone acting on behalf of another person who cannot act in their own name;
  - (c) anyone acting as a member of, or in the interest

- and told that the person has been detained;
- (b) a notice must be published in the Gazette within five days of the person being detained, stating the detainee's name and referring to the emergency measures under which that person has been detained;
  - (c) the detainee must be allowed to choose, and be visited at any reasonable time by, a medical practitioner;
  - (d) the detainee must be allowed to choose, and be visited at any reasonable time by, a legal representative;
  - (e) a court must review the detention as soon as reasonably possible, but no later than 10 days after the date the person was detained, and the court must release the detainee unless the detention is necessary to restore peace and order;
  - (f) if the court does not release a detainee, that detainee may apply to the court for a further review after 10 days, and the court must again review the detention, and must release the detainee unless the detention is still necessary to restore peace and order;
  - (g) the detainee must be allowed to appear in person before any court considering the detention, and to be represented by a legal practitioner at those hearings, and to make representations against continued detention; and
  - (h) the state must present written reasons to the court to justify the detention or continued detention of the detainee, and must give a copy of those reasons to the detainee at least two days before the court reviews the detention.
- (8) If a court releases a detainee, that person may not be detained again unless the state first shows a court good cause for re-detaining that person.

### **Enforcement of rights**

34. (1) Anyone listed in this section has the right to apply to a competent court, alleging that a right declared in this Bill has been infringed or threatened, and the court may grant appropriate relief including a declaration of rights. The persons who may apply for relief are:
- (a) anyone acting in their own interests;
  - (b) anyone acting on behalf of another person who cannot act in their own name;
  - (c) anyone acting as a member of, or in the interest

Agreed to by CC Subcommittee.

- of, a group or a class of persons;
  - (d) anyone acting in the public interest; and
  - (e) an association acting in the interests of its members.
- (2) If anyone, acting as a member of, or in the interests of, a group or class of persons, applies for relief and the court makes an order that may prejudice the members of that group or class, that order is not binding on the members of that group or class unless they have received notice of the action and have had an opportunity to exclude themselves from the group or class.

### Application

35. (1) This Bill of Rights applies to all law and binds the legislature, the executive, the judiciary, and all other organs, institutions, and agencies of the state at every level and, where applicable, binds all natural and juristic persons.
- (2) This Bill of Rights applies to -
- (a) all law that is in force and all proceedings pending before any court of law, tribunal or reviewing authority, when this Constitution takes effect; and
  - (b) all executive and administrative decisions and acts that are performed after this Constitution takes effect.
- (3) This Bill of Rights does not deny the existence of any other rights or freedoms that are recognised or conferred by common law, customary law, or legislation, to the extent that they are consistent with this Bill.

### Option 1

- (4) Juristic persons are entitled to the rights in the Bill of Rights, to the extent that the nature of the rights, and of the juristic persons, permit.

### Option 2

- (4) Juristic persons are entitled to the following rights . . .



- of, a group or a class of persons;
- (d) anyone acting in the public interest; and
  - (e) an association acting in the interests of its members.
- (2) If anyone, acting as a member of, or in the interests of, a group or class of persons, applies for relief and the court makes an order that may prejudice the members of that group or class, that order is not binding on the members of that group or class unless they have received notice of the action and have had an opportunity to exclude themselves from the group or class.

### Application

35. (1) This Bill applies to all law and binds the legislature, the executive, the judiciary, and all other organs, institutions, and agencies of the state at every level and, where applicable, binds all natural and juristic persons.
- (2) This Bill does not deny the existence of any other rights or freedoms that are recognised or conferred by common law, customary law, or legislation, to the extent that they are consistent with this Bill.

### Option 1

- (3) Juristic persons are entitled to the rights in the Bill of Rights, to the extent that the nature of the rights, and of the juristic persons, permit.

### Option 2

- (3) Juristic persons are entitled to the following rights . . .

Agreed to by CC Subcommittee.  
35(1) - The reference to "organs, institutions and agencies of the state" must be reconsidered when a standardized method of referring to the state has been decided.

Option 1 For further consideration by Subcommittee.

**Interpretation of the Bill of Rights**

36. (1) When interpreting this Bill of Rights, every court -
- (a) must promote the values that underlie an open and democratic society based on freedom and equality;
  - (b) must consider all applicable public international law; and
  - (c) may consider comparable foreign case law.
- (2) When interpreting any legislation, every court must prefer any reasonable interpretation of the legislation that is consistent with this Bill of Rights over any alternative interpretation of the legislation that is inconsistent with this Bill.
- (3) When interpreting any legislation, and when developing the common law or customary law, every court must promote the spirit, purport, and objects of the Bill of Rights.

### **Interpretation of the Bill of Rights**

36. (1) When interpreting this Bill of Rights, every court -
- (a) must promote the values that underlie an open and democratic society based on freedom and equality;
  - (b) must consider all applicable international law; and
  - (c) may consider comparable foreign case law.
- (2) When interpreting any legislation, every court must prefer any reasonable interpretation of the legislation that is consistent with this Bill of Rights over any alternative interpretation of the legislation that is inconsistent with this Bill.
- (3) When interpreting any legislation, and when developing the common law or customary law, every court must promote the spirit, purport, and objects of the Bill of Rights.

Parties to further consider proposals. ACDP "generally accepted moral values" to be included in  
36(1)(a). ANC: "an open, equal and democratic society" to amend  
36(1)(a). DP: "application" to be inserted in 34(3).  
36(2) Redrafted in terms of the CC Subcommittee decision.



Box 7

- Preamble: story about  
ask for input on what should  
be in the Preamble