

A BILL OF RIGHTS FOR A NEW SOUTH AFRICA - WORKING DOCUMENT

Introductory Note

After a long and ^{painful} arduous struggle, in which millions participated over the generations, and many gave their lives, South Africa is at last about to get a new Constitution. There are still heavy battles ahead, but the achievement of non-racial democracy in our country cannot be too far away. The dream of the founders of the ANC, namely, to end the colonial status of the African people and accord them equal rights with all other South Africans, is about to be realised.

A Constitution defines the rights of the people, the powers of the government, the way it functions and the manner in which it is chosen. The 1910 Constitution of South Africa gave no rights to the majority of the people. It provided for an all-powerful government, but a government consisting only of whites elected virtually only by whites; the minimal voting rights which black South Africans had were finally taken away by constitutional trickery. Its only good result was to lead directly to the ^{unity of its opponents and the} formation of the ANC. The 1961 Constitution which declared South Africa to be a Republic, ushered in the period of most bitter oppression and denial of rights for our people. The 1983 Constitution attempted to co-opt the coloured and Indian people as subaltern participants in the white-controlled Tri-cameral Parliament, leaving Africans out altogether. Its only virtue was to lead to the ^{creation} formation of the UDF.

The new Constitution which our struggles have placed on the agenda, will provide for the first time in the history of South Africa for all people to have rights, and for all people to choose the ^{country's} government. X

The rights of the people will be recorded in a Bill of Rights, which will be an integral part of our Constitution as ^{Bills of Rights} they are of ⁱⁿ most constitutions in the world. We want these rights to be guaranteed, so that our people will always enjoy them, and know that they can never be taken away. We look forward to a strong and effective Parliament capable of dealing with the great tasks facing the nation, but a Parliament that will operate within an agreed set of fundamental principles based upon universally held ideas of freedom and justice.

The idea of basic rights and freedoms means the most to those who have suffered the most. In South African conditions, a Bill of Rights becomes the fundamental anti-apartheid document. It guarantees equal rights for all citizens, and defends each and every one of us against the kinds of tyranny and abuse which have flowed daily from the apartheid state. It is not the Constitution which creates the rights. Rather, the Constitution recognises and protects the rights which have been gained in struggle, struggle by the people of South Africa and struggle by peoples the world over. X

The Universal Declaration of Human Rights was adopted in 1948 as a direct result of the struggle against the racist and inhuman ideas of nazism and fascism. The International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, were adopted by the United Nations in 1966 when the de-colonisation process was at its height and ^{when} new and more wide-ranging concepts of human rights were being accepted. X In preparing the draft text which follows, we have relied heavily on these great documents. We have also drawn upon the European Convention of Human Rights and the African Charter of Human and People's Rights, as well as ~~rights~~ ~~provisions~~

Above all, we have relied on the texts which have emerged from our own freedom struggle in South Africa. The Freedom Charter, adopted at Kliptown in 1955, is the great source of any Bill of Rights in our country. It did not deal with the institutions of government,

provisions dealing with protection of human rights in a great many constitutions ranging from those of India to West Germany to the USA to Namibia.

and consulted while draft proposals on workers' rights from COSATU, the Communist Party and other organisations associated with workers' struggles, have

nor did it indicate how the rights it proclaimed were to be guaranteed, but it did set out a firm vision of an apartheid-free future. In its January 8 statement of 1987, the ANC declared its commitment to a Bill of Rights that would be justiciable, that is, that would be protected by the courts. In 1988, the NEC issued its Constitutional Guidelines which gave an important position to a Bill of Rights. The Guidelines were extensively discussed inside and outside of the organisation, and a number of seminars were held specifically to analyse and enrich the text. The comments received ranged widely from insistence that the issue of women's rights be treated more extensively, to vigorous proposals that social and economic rights be spelt out more explicitly and that the question of access to the land receive fuller attention. We have tried to incorporate these observations into the text set out below.

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and certainly nothing secret

There is accordingly nothing ~~secret or~~ essentially new in the document. It does not deal with issues such as the electoral system, how Parliament should be constituted, the territorial division of the country, the way the government should be composed and the many other themes related to the institutional arrangements of democracy. A Bill of Rights to some extent stands on its own. Possibly its enforcement mechanisms have to mesh in with or be adapted to the specific way in which government and the judiciary are structured, but its basic principles should be capable of incorporation into any democratic system.

We have aimed at open and accessible language. This is in the tradition of the first great modern Bill of Rights, namely, that contained in the Amendments to the American Constitution adopted immediately after the Revolution against the British Crown. In our view, a Bill of Rights should set out general principles and not attempt to deal with each and every eventuality in advance. Moreover, its terms should be such that any person can understand them. It might be that other parts of the Constitution will be more technical; the Bill of Rights is the Chapter in the Constitution that should be capable of the most direct comprehension.

We have also benefited from receiving proposals ~~observations~~ from a wide range of organisations associated with the UDF, including those concerned with such issues as ecology, social welfare, gay and lesbian rights and rights of the disabled.

X law, and persons taken into custody shall immediately be informed of the charges against them, shall have access to a legal representative of their choice, and shall be brought before court within 48 hours or, where that would be a Sunday or a public holiday, on the first working day thereafter.

10. Bail shall be granted to awaiting-trial persons unless a court rules that in the interests of justice they should be kept in custody.

11. No-one shall be deprived of liberty or subjected to other punishment except after a fair trial in public by an independent court.

12. Trials shall take place within a reasonable time.

13. Everyone shall be presumed innocent until proved guilty.

14. No conduct shall be punished if it was not a criminal offence at the time of its occurrence, and no penalty shall be increased retrospectively.

15. No-one shall be punished twice for the same offence.

16. Accused persons shall be informed in writing of the nature of the allegations against them, and shall be given adequate time to prepare and conduct their defence.

16. Everything that is reasonable shall be done to ensure that accused persons understand the nature and the import of the charges against them and of the proceedings, that they are not prejudiced through illiteracy or lack of understanding, and that they receive a fair trial.

17. Accused persons shall have the right to challenge all evidence presented against them, to be defended by a legal practitioner of their choice, and if in custody, to have access to a legal practitioner at all reasonable times.

X 18. If a person is unable to pay for legal representation, and the interests of justice so require, the State shall provide or pay for a competent defence.

19. No persons shall be required to give evidence against themselves, nor, except in cases of domestic violence or abuse, shall persons be required to give evidence against their spouses, whether married by civil law or custom, their parents or their

children.

20. No evidence obtained through torture or cruel, inhuman or degrading treatment shall be admissible in any proceedings.

21. Juveniles shall be separated from adult offenders.

The Right to Judicial Review

22. Any person adversely affected by an administrative or executive act shall have the right to have the matter reviewed by an independent court or tribunal on the grounds of abuse of authority, going beyond the powers granted by law, bad faith, or such gross unreasonableness in relation to the procedure or the decision as to amount to manifest injustice.

The Right to Home Life

23. No-one shall be deprived of or removed from his or her home on the grounds of race, colour, language, gender or creed.

24. The privacy of the home shall be respected, save that reasonable steps shall be permitted to prevent domestic violence or abuse.

25. People shall have the right to establish families, live together with partners of their choice and to marry.

X 26. Marriage shall be based upon the free consent of the partners, and spouses shall enjoy equal rights at and during the marriage and after its dissolution.

The Right to Privacy

27. No search or entry shall be permitted except for reasonable cause, as prescribed by law, and as would be acceptable in an open and democratic society.

28. Interference with private communications, spying on persons, and the compilation and keeping of secret files about them without their consent, shall not be permissible save as authorised by law in circumstances that would be acceptable in an open and democratic

society.

The Right of Movement

29 .Everyone shall have the right to move freely and reside in any part of the country, to receive a passport, travel abroad and to emigrate or return if he or she so wishes.

The Right to Conscience

26. The right to conscience shall be inviolate, and no-one shall be penalised for his or her beliefs.

Article 3. POLITICAL RIGHTS

1. South Africa shall be a multi-party democracy in which all men and women shall enjoy basic political rights on an equal basis.
2. Government at all levels shall be subject to the principles of accountability to the electorate.
3. Elections shall be conducted in accordance with an electoral law which shall make no distinction on the grounds of race, colour, language, gender or creed.
4. Elections shall be regular, free and fair and based on universal franchise and a common voters' roll.
5. All men and women entitled to vote shall be entitled to stand for and occupy any position or office in any organ of government or administration.
6. All citizens shall have the right to form and join political parties and to campaign for social, economic and political change, either directly or through freely chosen representatives.

Article 4. FREEDOM OF SPEECH, ASSEMBLY AND INFORMATION

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1. There shall be freedom of thought, speech, expression and opinion, including a free press which shall respect the right to reply.

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2. All men and women shall have the right to assemble peacefully and without arms, and to submit petitions for the redress of grievances and injustices.

3. All men and women shall be entitled to all the information necessary to enable them to make effective use of their rights as citizens or consumers.

Article 5. RIGHTS OF ASSOCIATION, RELIGION, LANGUAGE AND CULTURE

Freedom of Association

1. There shall be freedom of association, including the right to form and join trade unions, religious, social and cultural bodies, and to form and participate in non-governmental organisations.

Freedom of Religion

2. There shall be freedom of worship and tolerance of all religions, and no State or official religion shall be established.

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3. The institutions of religion shall be separate from the State, but nothing in this Constitution shall prevent them from co-operating with the the State with a view to furthering the objectives of this Constitution, nor from bearing witness and commenting on the actions of the State.

4. Places associated with religious observance shall be respected, and no-one shall be barred from entering them on grounds of race.

Language Rights

5. The languages of South Africa are
Sindebele, Sepedi, Sesotho, Siswati, Setswana, Afrikaans, English, Tsonga [Shangaan], Venda, Xhosa, and Zulu.

at this stage

of our organisations

What follows is a draft text for consideration by the members. We look forward to receiving the fullest commentaries possible from the regions, so that we can amend and enrich the text before submitting it in finalised form for consideration by the NEC. We would appreciate comments on the overall shape and presentation of the document as well as on the detailed clauses. If there are any essential matters appropriate for a Bill of Rights that we have left out, we would like to be advised of them. We hope in due course to organise, together with the ANC's allies and other interested persons, a workshop or a series of workshops on the document.

In the meanwhile, for the information of those members not familiar with Bills of Rights, we offer a few *comments* on the specific features of the document. *rebuttal remarks*

In the first place, in keeping with *the approach of* most contemporary human rights *documents,* ~~charters,~~ we do not feel that it is necessary to choose between having freedom or having bread. We do not want freedom without bread, nor do we want bread without freedom. We want freedom, and we want bread. The document thus opts firmly and unequivocally for the fundamental rights and freedoms associated with a democratic society. Indeed, abhorrence of any form of arbitrary or oppressive behaviour is underlined in a whole series of articles which not only affirm ~~the~~ classic civil, political and legal rights, but which assert the claims made in modern society for freedom of information, freedom from censorship, and freedom from *surveillance and* secret political files. Members will notice too that the draft proposes the abolition of capital punishment and the ending of detention without trial.

At the same time, the document gives considerable attention to social, economic and educational rights. There are some lawyers who argue that these rights should not appear in a Bill of Rights at all, since they are not enforceable through recourse to the courts.

6. The State shall act positively to further the development of these languages, especially in education, literature and the media, and to prevent the use of any language or languages for the purpose of domination or division.

7. When it is reasonable to do so, one or more of these languages may be designated as the language to be used for defined purposes at the national level or in any region or area where it is widely used.

8. Subject to the availability of public and private resources, and limitations of reasonableness, primary and secondary education should wherever possible be offered in the language or languages of preference of the students or their parents.

9. The State shall promote respect for all the languages spoken in South Africa.

Creative Freedom

10. There shall be freedom of artistic activity and scientific enquiry, without censorship, subject only to such limitations as may be imposed by law in accordance with principles generally accepted in open and democratic societies.

The Right to Sporting, Recreational and Cultural Activities

11. Sporting, recreational and cultural activities shall be encouraged on a non-racial basis, drawing on the talents and creative capacities of all South Africans, and autonomous organisations may be established to achieve these objectives.

Article 6. WORKERS' RIGHTS

1. Workers shall have the right to form and join trade unions, and to regulate such unions without interference from the State.

2. Workers shall be free to join trade unions of their choice, subject only to the rules of such unions and to the principles of non-discrimination set out in this Constitution, and no worker

We do not agree. These rights are contained in nearly all contemporary human rights documents. In Europe they appear in the Charter of Social Rights. In the Irish, Indian and Namibian Constitutions, they appear as Directives of State Policy. Our approach has been to identify certain needs as being so basic as to constitute the foundation of human rights claims, namely, ^{the rights to} nutrition, education, health, shelter, employment and a minimum income. In South Africa, it is not just a question of dealing with poverty such as you might find in any country, but with responding to the social indignities and inequalities created as a direct result of State policies under apartheid. The strategy proposed for achieving the realisation of these rights is to ^{acknowledge} declare them as human rights, and require the State to devote maximum available resources to their progressive materialisation. In particular the document envisages the State establishing a minimum floor of statutory and enforceable rights in relation to each area. Thus, ^{with} ^{regard} in relation to nutrition, there can be the compulsory furnishing of a minimum diet to children; in the case of education, free and compulsory primary education, ^{for all} and a duty on local authorities to provide access to literacy classes; in respect of shelter, there could be the duty to furnish electricity or other forms of energy as well as access to clean water for every home, ^{and also} as well as the need to take account of the availability of alternative accommodation before ordering eviction. ~~A decent home for everyone might take time, but in the meantime there can be the progressive extension of minimum rights to all.~~

In other words, whichever government is in office, there will be a constitutional duty progressively to expand the floor of basic human rights in these areas. Exactly how the economy is to be organised and how revenue is to be raised is a matter for the parties to argue about and for the electorate to decide. ^{upon-} Governments and Oppositions will come and go, but all will have to ensure that resources are devoted to providing the minimum elements of a decent life for all South Africans.

A second feature of the document is the attention it pays to securing language, cultural and religious rights. Extensive

shall be victimised on account of membership of a union.

3. The right to organise and to bargain collectively on any social, economic or other matter affecting workers' interests, shall be guaranteed.

4. In the furtherance of these rights, trade unions shall be entitled to reasonable access to the premises of enterprises, to receive such information as may be reasonably necessary, and to deduct union subscriptions where appropriate.

5. No law shall prevent representative trade unions from negotiating collective agreements binding on all workers covered by such agreements.

X 6. Workers shall have the right to strike under law in pursuance of their social and economic interests subject to reasonable limitations in respect of ~~services~~ ^{of services such as} the interruption of which would endanger the life, health or personal safety of the community or any section of the population.

7. Workers shall have the right to peaceful picketing, subject only to such reasonable conditions as would be acceptable in a democratic society.

8. Trade unions shall have the right to participate in lawful political activities.

9. Trade unions shall have the right to form national federations and to affiliate to international federations.

10. Employers shall be under a duty to provide a safe, clean and dignified work environment, and to offer reasonable pay and holidays.

11. There shall be equal pay for equal work and equal access to employment.

X 12. The State shall make provision by way of legislation for compensation to be paid to workers injured in the course of their employment and for benefits to be paid to unemployed or retired workers.

13. Trade unions shall have the right to form national federations and to affiliate to international federations

Article 7. GENDER RIGHTS

recognition is given to the right of people to organise their own associations in keeping with the principles of a vigorous civil society existing autonomously of the State. Bearing in mind the importance of religion to a great many South Africans, considerable attention is paid to the question of religious freedom. Similarly, the question of language rights is dealt with on the basis not of taking away language rights that already exist, but of giving recognition to the many South African languages that have been marginalised or recognised only in the context of Bantustans.

Thirdly, and in direct response to the recommendations of the ANC in-house Seminar on Gender Rights and ^{on} the Family, the principle of equal rights between men and women is referred to throughout the document and not just in a special clause tacked on near the end, and there are a number of articles which seek to protect the constitutional right of women not to be abused or assaulted or treated as inferior, whether in the home, or at work or in public places. Attention is also given to the principle of non-discrimination against single-parent families or against children born out of wedlock, or on the grounds of ^{persons} being gay or lesbian.

Fourthly, ^{there are a number of articles devoted to} ~~special attention is given to~~ the theme of workers' rights. This is a complicated area in which many of the rights claimed have to be understood against the background of anti-Union rulings by the courts in this country and others. The opinions of union members will be especially valuable in this area.

Fifthly, there is a special section dealing with the rights of disabled persons which takes into account proposals made by the UDF affiliate, Disabled Persons of South Africa.

Sixthly, ^{is a section on children's} ~~there are a number of articles on the rights of the child~~ which ~~are drawn from~~ the International Convention on Children's Rights. ^{the Rights of the} ~~Children's~~ ^{heavily on the provisions of}

Seventhly, the document attempts to give an equitable framework for

1. Men and women shall enjoy equal rights in all areas of public and private life, including employment, education and within the family.
2. Discrimination on the grounds of gender, single parenthood, legitimacy of birth or sexual orientation shall be unlawful.
3. Positive action shall be undertaken to overcome the disabilities and disadvantages suffered on account of past gender discrimination.
4. The law shall provide remedies for sexual harassment, abuse and violence.
5. Educational institutions, the media, advertising and other social institutions shall be under a duty to discourage sexual and other types of stereotyping.

Article 8. DISABLED PERSONS

1. There shall be no discrimination against disabled persons.
2. Legislation shall provide for the progressive opening up of employment opportunities for disabled men and women, for the removal of obstacles to the enjoyment by them of public amenities and for their integration into all areas of life.

Article 9. CHILDREN

1. All children shall have the right to a name, to health, to security, education and equality of treatment.
2. The State shall, to the maximum of its available resources, seek to achieve progressively the full realisation of these rights.

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3. No child shall suffer discrimination or enjoy privileges on the grounds of race, colour, gender, language, creed, legitimacy or the status of his or her parents.

4. → In all proceedings concerning children, the primary consideration shall be the best interests of the child.

5. Children are entitled to be protected from economic exploitation and shall not be permitted to perform work that is likely to be hazardous or harmful to their education, health or moral well-being.

6. It shall be unlawful to oblige children to work for the employer of their parents or other family members.

but without sacrificing the just claims of the people.

dealing with the emotive question of property rights. Since a Bill of Rights is a document for all South Africans, and not a manifesto or programme of the ANC alone, the issue has to be looked at from all points of view. In the past, successive racist governments have trampled deliberately and relentlessly on property rights of blacks. The question of access to land cannot be ignored. In the Namibian Constitution the formula of just compensation for expropriated land was used. ^{it is in the public interest,} The proposal made here is somewhat more textured, and draws extensively on the formula used in the post-World War 11 Constitution in West Germany which sought to reconcile the principle of the need to provide compensation with the importance of recognising the public interest.

in an equitable way the interests of the individual owner in receiving compensation with the interests of the larger community
Eighthly, there are several clauses which deal with the importance of protecting the environment, a theme not found in older Constitutions, but one which is achieving increasing recognition today.

↓ providing a clear constitutional framework for
Ninthly, the importance of affirmative action to overcome race and gender discrimination, and of positive action to restructure governmental and other institutions so as to make them more balanced, is highlighted.

Tenthly, the limitations clause does not set out in detail the limitations that might be imposed in relation to the exercise of rights. Instead, the formula is used of permitting legislation to regulate or limit the exercise of rights to the extent ^{such limitations} that would be acceptable in democratic societies. The question of the suspension of rights during a state of emergency is not dealt with in the document, since it cannot be adequately treated without knowing what the organs of government will be [for example, who will declare a state of emergency, the President or the Prime Minister, and to what body would he or she be accountable]. It follows from the whole approach adopted in the document, however, that any suspension of rights should be strictly controlled, with well-defined limits and explicit accountability, a subject to be treated in a later document.

Article 10. SOCIAL, EDUCATIONAL, ECONOMIC AND WELFARE RIGHTS

General

1. All men and women have the right to enjoy basic social, educational, economic and welfare rights.
2. The State, shall, to the maximum of its available resources, undertake appropriate legislative and executive action in order to achieve the progressive realisation of basic social, educational, economic and welfare rights for the whole population.
3. Such State action shall establish standards and procedures whereby all men, women and children are guaranteed by law a progressively expanding floor of enforceable minimum rights, with special attention to nutrition, shelter, health care, education and income.
4. In order to achieve a common floor of rights for the whole country, resources may be diverted from richer to poorer areas, and timetables may be established for the phased extension of legislation and minimum standards from area to area.
5. The State may collaborate with non-governmental organisations and the private sector in achieving these goals, and may impose appropriate responsibilities on all social and economic bodies with a view to their materialisation.
6. In circumstances where persons are unable through lack of means to avail themselves of facilities provided by the State, the State shall, wherever it is reasonable to do so, give appropriate assistance.

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Finally, ~~we wish to draw attention~~ to three particular aspects of the enforcement mechanisms; the possibility of setting up a constitutional court, the establishment of a Human Rights Commission and the creation of the office of Ombudsman.

There are many other aspects which members might find interesting or controversial. We welcome ~~your~~ *on every aspect* comments *of the document. The voice of the members is vital.*

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Chairperson of the Constitutional Committee

A BILL OF RIGHTS FOR A DEMOCRATIC SOUTH AFRICA - WORKING DRAFT

Article 1. GENERAL

1. All South Africans are born free and equal in dignity and rights.

No individual or group shall receive privileges or be subjected to discrimination, domination or abuse on the grounds of race, colour, language, gender, creed, political or other opinion, birth or other status. X

All men and women shall have equal protection under the law.

Article 2. PERSONAL RIGHTS

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Freedom from Hunger

7. In order to guarantee the right of freedom from hunger, the State shall ensure the introduction of minimum standards of nutrition throughout the country, with special emphasis on pre-school and school feeding.

The Right to Shelter

8. In order to guarantee the right to shelter, the State shall, in collaboration with private bodies where appropriate, dismantle compounds, single-sex hostels and other forms of accommodation associated with the migrant labour system, and embark upon and encourage an extensive programme of house-building.

9. The State shall take steps to ensure that energy, access to clean water and appropriate sewage and waste disposal are available to every home.

10. No eviction from homes or from land shall take place without the order of a competent court, which shall have regard to the availability of alternative accommodation.

The Right to Education

10. In order to guarantee the right to education, the State shall, in collaboration with non-governmental and private educational institutions where appropriate, ensure that

there shall be free and compulsory primary education for all, with a school-leaving age of sixteen,

there shall be progressive expansion of access by all children as of right to secondary education,

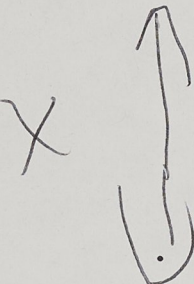

there shall be progressive increase in access to pre-school institutions and institutes of vocational training and of higher learning,

The Right to Life

1. Every person has the right to life.
2. No one shall be arbitrarily deprived of his or her life.
3. Capital punishment is abolished and no further executions shall take place.

The Right to Dignity

4. No-one shall be subjected to slavery, servitude or forced labour, provided that forced labour shall not include work normally required of someone carrying out a sentence of a court, ^{not} military service or national service by a conscientious objector, ^{not} services required in the case of calamity or serious emergency, ^{not} or any work which forms part of normal civil obligations.

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5. The dignity of all persons shall be respected.
 6. No-one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment.
 7. Everyone shall have the right to appropriate protection by law against violence, harassment or abuse, or the impairment of his or her dignity.)
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The Right to a Fair Trial

8. There shall be no detention without trial.
9. No persons shall be arrested or detained for any purpose other than that of bringing them to trial on a criminal charge.
10. Arrest shall take place according to procedures laid down by

there shall be increasingly extensive facilities to enable adults to overcome illiteracy and further their education.

X 10. Education shall be directed towards the full development of the human personality and ^{personal} the sense of its dignity, and shall aim at strengthening respect for human rights and fundamental freedoms, and promoting understanding, tolerance and friendship among all South Africans and between nations.

The Right to Health

11. In order to guarantee the right to protection of health, the State shall establish a comprehensive national health service linking health workers, community organisations, State institutions, private medical schemes and individual medical practitioners so as to provide hygiene education, preventive medicine and health care delivery to all.

The Right to Work

12. In order to guarantee increasing enjoyment of the right to work, the State shall, in collaboration with private bodies and non-governmental institutions, where appropriate, make technical and vocational training available to all, remove the barriers which keep large sections of the population out of technical, professional and managerial positions, and promote public and other works with a view to reducing unemployment.

The Right to a Minimum Income and Welfare Rights

13. In order to guarantee the achievement of a minimum income for all, the State shall introduce a scheme of family benefits and old age pensions financed from general revenue.

14. In order to guarantee the enjoyment of basic social welfare rights, in particular unemployment benefits, compensation for injury, superannuation or retirement pensions, the State shall, in collaboration with private bodies where appropriate, establish a

system of national insurance based upon contributions by employers, employees and other interested persons.

Article 11 THE ECONOMY, LAND AND PROPERTY

1. Legislation on economic matters shall be guided by the principle of encouraging collaboration between the State and the private, co-operative and family sectors with a view to reducing inequality, promoting growth and providing goods and services for the whole population.

2. All men and women and lawfully constituted bodies are entitled to the peaceful enjoyment of their possessions, including the right to acquire, own, or dispose of property in any part of the country without distinction based on race, colour, language, gender or creed.

3. All natural resources below and above the surface area of the land, including the air, and all forms of potential energy or minerals in the territorial waters, the continental shelf and the exclusive economic zone of South Africa, which are not owned by any person at the time of coming into force of this Constitution, shall belong to the State

4. The State shall have the right to regulate the exploitation of natural resources, grant franchises and determine royalties, subject to payment of appropriate compensation in the event of interference with any lawfully vested interest.

5. The State may by legislation take steps to overcome the effects of past statutory discrimination in relation to enjoyment of property rights.

6. There shall be no forced removals of persons or communities from their homes or land on the basis of race, colour, language, gender or creed.

X 7. No persons or legal entities shall be deprived of their possessions except on grounds of public interest or public utility, including the achievement of the objectives of the Constitution.

8. Any such deprivation may be effected only by or pursuant to a law which shall provide for the nature and the extent of

compensation to be paid.

9. Compensation shall be just, taking into account the need to establish an equitable balance between the public interest and the interest of those affected.

10. In the case of a dispute regarding the amount of compensation or its mode of payment, provision shall be made for recourse to a ^{independent} special tribunal, with an appeal to the courts.

X 11. The preceding provisions shall not be interpreted as in any way impeding the right of the State to adopt such measures as might be deemed necessary in any democratic society for the control, use or acquisition of property in accordance with the general interest, or to preserve the environment, or to regulate or curtail monopolies or to secure the payment of taxes or other contributions or penalties.

Article 12. ENVIRONMENTAL RIGHTS

1. The environment, including the land, the waters and the sky, are the common heritage of the people of South Africa and of all humanity.

2. All men and women shall have the right to a healthy and ecologically balanced environment and the duty to defend it.

3. In order to secure this right, the State, acting through appropriate agencies and organs shall conserve, protect and improve the environment, and in particular :

i. prevent and control pollution of the air and waters and degradation and erosion of the soil;

ii. have regard in local, regional and national planning to the maintenance or creation of balanced ecological and biological areas and to the prevention or minimising of harmful effects on the environment;

iii. promote the rational use of natural resources, safeguarding their capacity for renewal and ecological stability;

iv. ensure that long-term damage is not done to the environment by industrial or other forms of waste;

v. maintain, create and develop natural reserves, parks and

recreational areas and classify and protect other sites and landscapes so as to ensure the preservation and protection of areas of outstanding cultural, historic and natural interest.

4. Legislation shall provide for co-operation between the State, non-governmental organisations, local communities and individuals in seeking to improve the environment and encourage ecologically sensible habits in daily life.

5. The law shall provide for appropriate penalties and reparation in the case of any direct and serious damage caused to the environment, and permit the interdiction by any interested person or by any agency established for the purpose of protecting the environment, of any public or private activity or undertaking which manifestly and unreasonably causes or threatens to cause irreparable damage to the environment.

Article 13. AFFIRMATIVE ACTION

1. Nothing in the Constitution shall prevent the enactment of legislation, or the adoption by any public or private body of special measures of a positive kind designed to procure the advancement and the opening up of opportunities, including access to education, skills, employment and land, and the general advancement in social, economic and cultural spheres, of men and women who in the past have been disadvantaged by discrimination.

2. No provision of the Bill of Rights shall be construed as derogating from or limiting in any way the general provisions of this Article.

Article 14. POSITIVE ACTION

1. In its activities and functioning, the State shall observe the principles of non-racialism and non-sexism, and encourage the same in all public and private bodies.

2. All benefits conferred and entitlements granted by the State shall be distributed on a non-racist and a non-sexist basis.

3. The State and all public and private bodies shall be under a

duty to prevent any form of incitement to racial, religious or linguistic hostility and to dismantle all structures and do away with all practices that compulsorily divide the population on grounds of race, colour, language, or creed.

4. With a view to achieving the above, the State may enact legislation to prohibit the circulation or possession of materials which incite racial, ethnic, religious, gender or linguistic hatred, which provoke violence, or which insult, degrade, defame or encourage abuse of any racial, ethnic, religious, gender or linguistic group.

5. All organs of the State at the national, regional and local levels shall pursue policies and programmes aimed at redressing the consequences of past discriminatory laws and practices, and at the creation of a genuine non-racial democracy in South Africa.

6. Such policies shall include the implementation of programmes aimed at achieving speedily the balanced structuring in non-racial form of the public service, defence and police forces and the prison service.

7. Without interfering with its independence, and with a view to ensuring that justice is manifestly seen to be done in a non-racial way and that the wisdom, experience and judicial skills of all South Africans are represented on the bench, the judiciary shall be transformed in such a way as to consist of men and women drawn from all sectors of South African society.

8. In taking steps to correct patterns or practices of discrimination, special attention shall be paid to rectifying the inequalities to which women in South Africa have been subjected, and to ensuring their full, equal, effective and dignified participation in the political, social, economic and cultural life of the nation.

9. Legislation may be enacted requiring non-governmental organisations and private bodies to conduct themselves in accordance with the above principles.

Article 15. LIMITATIONS

1. Nothing in the Constitution shall be interpreted as implying for any group or person the right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth in the the Constitution, or at their limitation or suppression to a degree other than is authorised by the Constitution itself.

2. Nothing in this Constitution should be interpreted as impeding the right of the State to enact legislation regulating the manner in which fundamental rights and freedoms shall be exercised, or limiting such rights, provided that such regulation or limitation is such as might be deemed necessary in an open and democratic society.

3. Any restrictions permitted under the Constitution to fundamental rights and freedoms shall not be applied to or used as a cover for any purpose other than that for which they have been expressly or by necessary implication authorised.

4. Any law providing for any regulation or limitation of any fundamental right or freedom shall:

i. be of general application;

ii. not negate the essential content of the right, but simply qualify the way that right is to be exercised or the circumstances in which derogation from the right is permitted;

iii. as far as practicable, identify the specific clauses of the Constitution relied upon for the limitation of the right and the specific clauses of the Constitution affected by the legislation;

iv. specify as precisely as possible the exact reach of the limitation and the circumstances in which it shall apply.

Article 16 ENFORCEMENT

General

1. The fundamental rights and freedoms contained in this Bill of Rights shall be guaranteed by the courts .

2. Provision shall be made for the establishment of a constitutional court.

3. The terms of the Bill of Rights shall be binding upon the State and organs of government at all levels, and where appropriate, on all social institutions and persons..

4. All persons who claim that rights guaranteed them by the Bill of Rights have been infringed or threatened, shall be entitled to apply to a competent court for an order for the declaration or enforcement of their rights, or for the restraining of any act which impedes or threatens such rights.

5. Any law or executive or administrative act which violates the terms of the Bill of Rights shall be invalid to the extent of such violation, save that the Court shall have the discretion in appropriate cases to ~~give~~ put the relevant body or official or person to terms as to how and within what period to remedy the violation.

HUMAN RIGHTS COMMISSION) u/l

6. Parliament shall have a special responsibility for ensuring that the basic social, educational, economic and welfare rights set out in this Bill of Rights are respected.

7. Parliament shall establish by legislation a Human Rights Commission to promote observance of the Bill of Rights.

8. Such Commission shall have the right to establish agencies for investigating patterns of violation of any of the terms of the Bill of Rights and for receiving complaints and bringing proceedings in court where appropriate.

9. The Commission shall monitor proposed legislation with a view to reporting to Parliament on its impact on the realisation of the rights set out in the Bill of Rights.

OMBUDSMAN u/l

10. With a view to ensuring that all functions and duties under the Constitution are carried out in a fair way with due respect for the

rights and sentiments of those affected, the office of Ombudsman shall be created.

11. The Ombudsman shall be independent in the carrying out of his or her functions and may open offices in different parts of the country.

12. The Ombudsman shall receive and investigate complaints from members of the public concerning abuse of power or unfair, insensitive, capricious, harsh, discourteous or unduly delayed treatment of any person by any official of government at national, regional or local level, or any attempt by such official to extort benefits or corruptly to receive favours.

13. In accordance with his or her findings, the Ombudsman may initiate legal proceedings, refer the matter for prosecution, negotiate a compromise, or make a report to the department or organ concerned containing recommendations with a view to remedying the improper conduct, preventing repetition, and, where appropriate, making amends, including compensation.

14. Recourse to the Human Rights Commission or to the Ombudsman shall not oust the jurisdiction of the courts to hear any matter.

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EMERGENCIES

63. In time of war, national disaster or grave public emergency or danger threatening the life of the nation or the democratic constitutional order, the President may by proclamation declare a temporary suspension of certain provisions of the Constitution law and the adoption of special emergency measures to deal with