

ANC NATIONAL CONFERENCE JULY 1991 DURBAN

PROPOSAL FOR A NEW CLAUSE ON LAND RIGHTS TO BE PUT INTO THE DRAFT BILL OF RIGHTS

Arising out of recommendations made at the Salt Rock Workshop on the Draft Bill of Rights, members of the Constitutional Committee have prepared the following draft to be considered by the Land Commission and to be discussed at conference. It is proposed that something on the lines of this draft be included in the final revised version of the Bill of Rights, the exact text yet to be finalised.

ARTICLE 11 – LAND AND THE ENVIRONMENT

- (1) The land, the waters and the sky and all the natural assets which they contain, are the common heritage of the people of South Africa who are equally entitled to their enjoyment and responsible for their conservation.
- (2) The system of property rights in relation to land shall take into account that it is the country's primary asset, the basis of life's necessities, and a finite resource.

Rights to Land

- (3) South Africa belongs to all who live in it.
- (4) Access to land or other living space is the birthright of all South Africans.
- (5) No one shall be removed from his or her home except by order of a court, which shall take into account the existence of reasonable alternative accommodation.
- (6) Legislation shall provide that the system of administration, ownership, occupation, use and transfer of land is equitable, directed at the provision of adequate housing for the whole population, promotes productive use of land and provides for stable and secure tenure.
- (7) Legislation shall provide for the establishment of a tribunal for land claims which shall have the power to adjudicate upon land claims made on legal or equitable grounds, and in particular shall have:
 - (a) the power to order the restoration of land to people dispossessed by forced removals, or where appropriate to direct that compensation be paid, or other suitable acknowledgement be made, for injury done to them.
 - (b) the power to award particular portions of land, or rights to land, to such claimants, where there are special circumstances arising out of use, occupation or other similar grounds, which make it equitable for such an award to be made.
- (8) Legislation shall also make provision for access to affordable land to be given as far as possible, and with due regard to financial and other resources available to the state, to those historically deprived of land and land rights, or deprived of access to land by past

- statutory discrimination.
- (9) All such legislation shall guarantee fair procedures and be based on the principle of achieving an equitable balance between the public interest, including the above objectives, and the interests of those whose existing titles might be affected.
 - (10) Any redistribution of land or interest in land required to achieve the above objectives shall be subject to just compensation which shall be determined according to the principle of equitable balance between public interest and the interest of those whose existing titles might be affected.
 - (11) In the case of a dispute regarding the amount of the compensation or its mode of payment, provision shall be made for recourse to the courts or an independent tribunal, with an appeal to the courts.
 - (12) 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 otherwise owned at the time of coming into force of this Constitution, shall be vested in the state acting as trustee for all South Africans.
 - (13) The state shall have the right to regulate the exploitation of such natural resources, grant franchises and determine royalties subject to payment of appropriate compensation in the event of interference with any existing title, mining or fishing right, concession or other vested interest.