

ROUGH DRAFT WORKING PAPER SIX.

prepared by students in London

GENERAL

1. All South Africans are born free and equal in dignity and rights.
2. No individual or group shall receive privileges or be subjected to discrimination, domination or abuse on the grounds of race, colour, language, gender, birth or creed.
3. All men and women shall have equal protection under the law.

Article 6 PERSONAL RIGHTS

- 1.. Every person has the right to life.
2. Capital punishment is abolished and no further executions shall take place.
3. No-one shall be subjected to slavery, servitude or forced labour.
4. The dignity of all persons shall be respected.
5. No-one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment.
6. Everyone shall have the right to appropriate protection by law against violence, harassment or abuse or the impairment of his or her dignity..
7. No persons shall be arrested or detained for any purpose other than that of bringing them to trial on a criminal charge.

8. Arrest shall take place according to procedures laid down by 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.

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

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

11. Trials shall take place within a reasonable time.

12. Everyone shall be presumed innocent until proved guilty.

13. 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.

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

15. 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. They 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. 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.

17. 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.

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

19. Juveniles shall be separated from adult offenders..

20. 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.

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

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

23. 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.

24. 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.

25. 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.

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

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

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

Article 7. 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 8. Freedom of speech, Assembly and Information

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

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 8 Rights of Association, Religion, Language and Culture

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

2. There shall be freedom of worship and tolerance of all religions. No state or official religion shall be established.

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.

5. The languages of South Africa are

Sindebele, Sipedi, Sesotho, Siswati, Setswana Afrikaans, English, , Tsonga [Shangaan], Venda, Xhosa, and Zulu.

6. Respect for all the above languages shall be encouraged by the State which shall act positively to further their development, 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. 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.

10. 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 10 Workers' Rights

1. Workers shall be free to join trade unions, which shall be autonomous of the state.

2. The right to organise, to engage in collective bargaining and to receive such information as may reasonably be necessary for the purpose of advancing workers' claims, shall be guaranteed.

3. Workers shall have the right to strike, subject only to limitations in relation to essential services, organs of security and procedures to be followed as are generally accepted in democratic countries.

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

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

6. 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.

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

Article 11 GENDER RIGHTS

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 12 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 13 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.

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.

Article 14 Social, educational, economic and welfare rights.

1. The State, shall, to the maximum of its available resources, undertake appropriate legislative and executive action in order to guarantee the progressive realisation of basic social, educational, economic and welfare rights for the whole population.

2. Such State action shall establish standards and procedures whereby all men, women and children are guaranteed by law a progressively expanding platform of enforceable minimum rights, with special attention to nutrition, shelter, health care, education and income.

3. In order to achieve a common platform 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.

4.. The State shall 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.

5. 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.

6. In order to guarantee the right of freedom from hunger, the State shall establish mechanisms for ensuring the progressive introduction of minimum standards of nutrition throughout the country, with special emphasis on pre-school and school feeding.

7. In order to guarantee the right to shelter, the State shall, in collaboration with private bodies, dismantle compounds, single-sex hostels and other forms of accommodation associated with the migrant labour system, embark upon and encourage an extensive programme of house-building, ensure that persons are not evicted from their homes or from land if reasonable alternative accommodation is not available to them, and take steps to ensure that energy, sewage and waste disposal and access to clean water are available to every home.

8. In order to guarantee the right to education, the State shall, in collaboration with non-governmental and private educational institutions, ensure that there shall be free and compulsory primary education for all, provide for the progressive expansion of access of all children as of right to secondary education, enable adults to receive basic education and overcome illiteracy, and permit access on the basis of merit to institutions of vocational or higher learning.

9 Education shall be directed towards the full development of the human personality and 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.

10. 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.

11. In order to guarantee the right to work, the State shall, in collaboration with private bodies and non-governmental institutions, make technical and vocational training available to all, remove the barriers which at present 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.

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

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

Article 15 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. The State may by legislation prohibit or regulate as it deems necessary the right to acquire, hold or dispose of property by persons who are not citizens of South Africa.

4. 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

5. 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.

6. Provision may be made by law for the management, control and disposition of any assets belonging to or acquired at any time by the State.

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

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

9. No persons or legal entities shall be deprived of their possessions except on grounds of public interest or public utility.

10. 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.

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

12. In the case of a dispute regarding the amount of compensation or its mode of payment, provision shall be made for recourse to the courts or to a Land Commission, presided over by a Supreme Court judge, to be established by law, with an appeal to the courts.

13. 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 of the use of property

in accordance with the general interest or to preserve the environment or to secure the payment of taxes or other contributions or penalties.

Article 16. 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. Every man and woman 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 17. 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.

Article 17. 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 18. 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 19 ENFORCEMENT

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.

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.

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. He or she shall report to the department or organ concerned and make such recommendations as he or she feels fit 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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884 3456
Arth.

ROUGH DRAFT WORKING PAPER SIX.

prepared by students in London

~~of or other opinion, birth or other status~~

GENERAL

Article 1.

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2. No individual or group shall receive privileges or be subjected to discrimination, domination or abuse on the grounds of race, colour, language, gender, ~~birth or creed~~, *political* or ~~other status~~ *opinion, birth or other status*.
3. All men and women shall have equal protection under the law.

Article 2 PERSONAL RIGHTS

- 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.
4. No-one shall be subjected to slavery, servitude or forced labour. *Provided that [States] forced labour shall not include [p. 2 - labor].*
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..
There shall be no detention without trial.
7. No persons shall be arrested or detained for any purpose other than that of bringing them to trial on a criminal charge.

8. Arrest shall take place according to procedures laid down by 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.

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

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

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Art. 15 - Namibia

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6. In order to guarantee the right of freedom from hunger, the State shall establish mechanisms for ensuring the progressive introduction of minimum standards of nutrition throughout the country, with special emphasis on pre-school and school feeding.

Rf to SHELTER
7. In order to guarantee the right to shelter, the State shall, in collaboration with private bodies, dismantle compounds, single-sex hostels and other forms of accommodation associated with the migrant labour system, embark upon and encourage an extensive programme of house-building, ensure that persons are not evicted from their homes or from land if reasonable alternative accommodation is not available to them, and take steps to ensure that energy, sewage and waste disposal and access to clean water are available to every home. where appropriate

EDUCATION
8. In order to guarantee the right to education, the State shall, in collaboration with non-governmental and private educational institutions, ensure that there shall be free and compulsory primary education for all, provide for the progressive expansion of access of all children as of right to secondary education, enable adults to receive basic education and overcome illiteracy, and permit access on the basis of merit to institutions of vocational or higher learning. where appropriate

9 Education shall be directed towards the full development of the human personality and the sense of its dignity, and shall aim at strengthening respect for human or by 7/16 encourage

No evicts without order of court which shall have regard to award of alt accomm

rights and fundamental freedoms, and promoting understanding, tolerance and friendship among all South Africans and between nations.

HEALTHY
10. 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.

EMPLOYMENT
11. In order to guarantee the right to work, the State shall, in collaboration with private bodies and non-governmental institutions, make technical and vocational training available to all, remove the barriers which ~~at present~~ 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.

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

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

where appropriate

Article 15 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. The State may by legislation prohibit or regulate as it deems necessary the right to acquire, hold or dispose of property by persons who are not citizens of South Africa.

4. 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

5. 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. *equitable*

6. Provision may be made by law for the management, control and disposition of any assets belonging to or acquired at any time by the State.

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

8. There shall be no forced removals of populations from their homes or land on the basis of race, colour, language, gender or creed. *Persons or communities*

9. No persons or legal entities shall be deprived of their possessions except on grounds of public interest or public utility, *incl. the achievement of the object of the constitution*

10. 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.

11. Such compensation shall be just, taking into account the need to establish an equitable balance between the public interest and the interest of those affected. *an appropriate tribunal*

12. In the case of a dispute regarding the amount of compensation or its mode of payment, provision shall be made for recourse to the courts or to a Land Commission, presided over by a Supreme Court judge, to be established by law, with an appeal to the courts. *court to be est. by law with appeal*

13. 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 of the use of property *ex aequis*

special tribunal

Law to regulate municipalities

in accordance with the general interest or to preserve the environment or to secure the payment of taxes or other contributions or penalties.

Article 13. 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. Every man and woman 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 B of R 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 19 ENFORCEMENT

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.

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.

Navin - pts. - put to terms. [Art 25]

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.

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. He or she shall report to the department or organ concerned and make such recommendations as he or she feels fit 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.

Investigative powers
bring legal pros,
refer to prosecuta.
negot. compromise

Independent
in carrying out

Corrupt
Report to Parle.