

## Article 10 WORKERS RIGHTS

1. Workers shall have the right to form trade unions and to regulate such trade unions without interference from the state. Trade unions shall be entitled to participate in lawful political activities.
2. Worker shall be free to join trade unions of their choice, subject only to the rules such trade union. No worker shall be victimised by his <sup>or her</sup> employer on account of his memberships of a trade union.
3. The right to organise and to bargain collectively on any social economic or other matter affecting workers interests shall be guaranteed. For these purposes trade unions shall be entitled to reasonable access to the premises of enterprises, and to receive such information as may be ~~also~~ reasonably necessary, and to union subscription deduction facilities where appropriate.
4. No law shall prevent representative trade unions from negotiating collective agreements which bind all workers covered by such agreements.



5. ~~At~~ Workers shall have the right to strike under law in pursuit of their social and economic interests subject ~~only~~ to reasonable limitations in respect of services the interruption of which endangers life health or the personal safety of the population or any part thereof.
6. Workers shall have the right to picket subject only to <sup>the imposition of</sup> reasonable conditions necessary in a democratic society

✓ 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



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## FACULTY OF LAW

19 March 1991

The ANC Constitutional Committee  
c/o The Centre for Development Studies (CDS)  
University of the Western Cape  
Private Bag X17  
**BELLVILLE**  
7535

Dear Sirs

Re: **BILL OF RIGHTS FOR A NEW SOUTH AFRICA—WORKING DOCUMENT**

I thank you for sending me a copy of the above and take this opportunity to make the following comments -

1 Article 1.1 and Article 5.11

The phrase "South Africans" needs to be clarified. There are many non-citizens living in South Africa. Surely it is your intention that the Bill of Rights will also protect them.

I suggest that you replace the phrase "South Africans" with the word "persons".

2 Article 2.28 and Article 7.

It will be necessary to abolish the old style marriage in community of property and marriages under s 22(6) Black Administration Act. This could prove difficult because of vested rights etc.

3 Article 6.2

Please amend last clause to read "no worker shall be victimised on account of membership of a union or because of his or her refusal to become a member."

A person has the right not to become a member of a union.

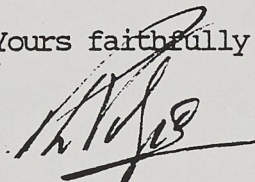


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Finally, on the need to set up a constitutional court (page xv of Introductory Note) I enclose for your consideration the summary of a paper I presented to the Fifth International Congress on Legal Science held at Leuven, Belgium, in August 1989.

If I can be of further assistance, please do not hesitate to contact me.

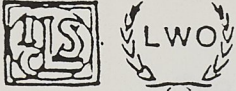
Yours faithfully

A handwritten signature in dark ink, appearing to read 'P. L. Volpe', written over the typed name.

PROFESSOR P L VOLPE  
DEAN : FACULTY OF LAW

Encl





V

FIFTH INTERNATIONAL CONGRESS  
ON LEGAL SCIENCE

*CONGRESS PAPERS*

PAPER TITLE:

HUMAN RIGHTS MUST NOT ONLY BE PROTECTED,  
THEY MUST BE SEEN TO BE PROTECTED

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Two or three years ago the United States of America embassy in Pretoria, South Africa, sponsored a short symposium at Pretoria University on a bill of rights for South Africa. Much was said, many suggestions were made, various bills of rights considered, the USA's Bill of Rights and the African National Congress's Freedom Charter were thought to be the best starting points.

However, the majority of participants, especially non-Whites that is Blacks, Coloureds and Indians, were of the opinion that there could not be an effective bill of rights before democratisation. By democratisation was meant not just "one-man one-vote" and a government representative of all the people but a truly democratised society with every part and parcel of it reflecting the population as a whole. Much criticism was levelled at the judiciary where the balance of members swung towards Africaans-speaking Whites. English-speaking Whites were in the minority. Blacks, Coloureds and Indians were not represented at all. It was felt that until the make-up of the judiciary was representative of all the peoples of South Africa, any bill of rights could not be really justiciable, there would be little confidence in the judges' protection of human rights, and the credibility of the bill of rights would be undermined. This feeling springs from the fact that the legitimacy of the law in South Africa is being questioned because only a small part of the population is involved with the administration of the law. Until the legitimacy of the law is re-established by removing the existing "juristocracy"\* and democratising the judicial system, there can be little, if any, possibility of making a bill of rights work.

What I have just said illustrates what I consider to be the juristocracy in South Africa. Such juristocracies exist throughout

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\* "Juristocracy" is a term and concept innovated by Dr.M.A. Mahmood in his writings in the ICLS(LWO) CONGRESS BULLETIN.



the world. They may not always be based on race and language (they often are); they may be based on nepotism and the old-school-tie principle (it is whom you know, not what you know), on money and social class. I do not think it is easy to point to any judiciary (I use the word "judiciary" to cover not just the bench but also the officers of the court, be they called barristers and solicitors, advocates and attorneys, or legal practitioners) and say it is free from the charge of being a juristocracy. Those peoples not forming part of the juristocracy will have little confidence in the courts' ability to give a fair and unprejudiced judgment in cases dealing with the infringement of human rights. The courts are likely to be identified with the government and considered its tool in upholding security legislation which infringes human rights. They will be accused of being executive-orientated, especially by those peoples not represented by the judiciary.

This is not the climate in which a bill of rights can thrive and human rights be protected. There must be changes to bring about confidence in the judicial system responsible for protecting human rights. Most changes presuppose the extension of legal training to all sections of the population. A special effort must be made to offer the opportunity to qualify as a lawyer to the disadvantaged part of the population (in South Africa there are now more Black universities than White and all with faculties of law with at least two hundred students). Awareness of the law must be stimulated by street law programmes, Legal Resources Centres, Legal Aid Clinics, and through the media. As awareness increases so too the number of law students from the disadvantaged peoples. This will enable a more representative judiciary to be created and bring to an end the present juristocracy.

Furthermore, implementation of a bill of rights and the protection of human rights can be done with greater credibility if its administration is removed from the existing court system, smeared as it is by the charge of being a juristocracy. Any bill of rights should be implemented by a separate court system, just like family law is in Australia (there you have Family Law Courts and a Family Law Chief Justice). The ideal would be to have



community courts of human rights, that is courts for the various communities be they tribal, racial or religious. A right of appeal should be allowed to a community appeal court and from there to an appeal court for human rights. It is important to involve all the different and varied communities in the implementation of the bill of rights. Only in this way can human rights not only be protected but also be seen to be protected.