

MCH 91-109-3-4

KA

Draft No.3

BILL OF RIGHTS

Article 5 Equality

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.

Any discrimination on these grounds shall be prohibited.

All men and women shall have equal protection under the law in the enjoyment of their fundamental rights and freedoms.

Article 6 Personal Rights

(1) Every person has the right to life.

No-one shall be arbitrarily deprived of his or her life.

Capital punishment is abolished and no further executions shall take place.

(2) No-one shall be subjected to slavery, servitude or forced or compulsory labour.

For the purpose of this paragraph, 'forced or compulsory

labour' shall not include (i) any work or service normally required of a person who is in detention in consequence of a lawful order of a court, or of a person during conditional release from such detention; (ii) any service exacted in cases of emergency or calamity threatening the life or the well-being of the community; (iii) any work or service which forms part of the normal civil obligations.

- (3) The dignity of all persons shall be respected.

No-one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. No-one shall be subjected without his or her free consent to medical or scientific experimentation.

Everyone shall have the right to appropriate protection by law against violence, harassment, abuse or the impairment of his or her dignity.

- (4) There shall be no detention without trial.

Arrest shall take place according to procedures laid down by law, and persons taken into custody shall immediately be informed of the reasons for their arrest and 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. Bail shall

be granted to awaiting-trial persons unless a court of competent jurisdiction rules that in the interests of justice, they should be kept in custody.

- (5) No-one shall be deprived of liberty or subjected to other punishment except after a trial in public by an independent court. Trials shall take place within a reasonable time. Everyone shall be presumed innocent until proved guilty. 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. No-one shall be punished twice for the same offence. 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. Everything that is reasonable shall be done to ensure that accused persons understand the nature and 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. No persons shall be required to give evidence against themselves or their spouses, children or parents and no evidence obtained through torture, or cruel, inhuman or degrading treatment shall be admissible before any court. Every person shall have the right to challenge the legality of his or her detention or arrest. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

All persons deprived of their liberty shall be treated with humanity and with respect for their dignity. Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

- (6) 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 the amount to manifest injustice.

- (7) The privacy of home and person shall be respected.

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

No search or seizure shall be permitted except for reasonable cause, as prescribed by law.

- (8) 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 a democratic society.
- (9) Everyone shall have the right to move freely and reside in any part of the country, to receive a passport and travel abroad and to emigrate and return if he or she so wishes.
- (10) The right to conscience and freedom of thought shall be inviolate, and no-one shall be penalised for his or her beliefs.
- (11) People shall have the right to establish families, live together with partners of their choice and to marry. Marriage shall be based on the free consent of the partners, and spouses shall have equal rights at marriage, during marriage and at 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.

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.

Elections shall be regular, free and fair and based on universal franchise and a common voters' roll.

(3) All men and women entitled to vote shall, subject to this Constitution, be entitled to stand for and occupy any position or office in any organ of government or administration directly or through freely chosen representatives.

3a) Every person shall have access, on general terms of equality, to public services in South Africa.

3b) There shall be a free press. No law may impose restrictions on the exercise of this right which would

effectively nullify its exercise.

- (4) There shall be freedom of expression, which shall include freedom to seek, receive and impart information and ideas of all kinds. Restrictions by law must be necessary in a democracy in order to respect the rights or reputations of others for the protection of national security, or of public order or of public health or morals.

4a) Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, shall be prohibited by law.

- (5) All men and women shall have the right to assemble peacefully and without arms and to submit petitions for the redress of grievances.

No restrictions on the exercise of the right to peaceful assembly may be imposed by law unless they are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.

- (6) All citizens shall have the right to form and join political parties and to campaign for political, social and economic

(2) There shall be freedom of worship and tolerance of all religions. No state or official religion shall be established. The institutions of religion shall be separate from State, but nothing in this Constitution shall prevent them from cooperating with the State with a view to furthering the objectives of this Constitution, nor from bearing witness and commenting on the actions of the state. 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 Afrikaans, English, Ndebele, Pedi, Sotho, Swati, Tsonga [Shangaan], Tswana, Venda, Xhosa and Zulu
defined purposes at the national level or in any region or area where it is widely used.

as in original

(8) Subject to the availability of public and private resources, 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. There shall be free circulation of ideas, recordings and images save that the law may permit steps to be taken to prohibit the circulation of possession of materials which incite racial, ethnic, religious, gender or linguistic hatred, provoke violence, or which insult, degrade, defame or encourage abuse of any racial, ethnic, religious, gender or linguistic section of society.

In addition, as the exercise of these rights carries with it special duties and responsibilities, the law may impose certain restrictions necessary in a democratic society to ensure respect for the rights and reputations of others and for the protection of national security or of public order, or of public health or morals.

The State recognises the right of everyone to take part in cultural, sporting and recreational life ie., 1st sentence of (10).

- (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. Autonomous organisations may be established to achieve these objectives.

Article 9 Workers' Rights

- (1) Workers shall have the right to form and join the trade union of their choice, subject only to the rules of the trade union, for the promotion and protection of their economic, political and social interests.
- (2) Trade unions shall have the right to establish national federations of confederations and the right of the latter to form or form international trade union organisations.
- (3) Trade unions shall have the right to bargain collectively with employers and to function freely, subject to no limitations other than those prescribed by law and which are necessary in a democratic society.
- (4) Without prejudice to the general provisions of this Article, trade unions shall have the right of
 - (i) reasonable access to enterprises;
 - (ii) reasonable disclosure of information by employers for collective bargaining;
 - (iii) deduction of union subscriptions;

(iv) recognition of shop stewards.

(5) Workers shall have the right to strike. This guarantee shall not be limited by law, save as may be necessary in a democratic society. The law shall not permit disciplinary or other action being taken against a worker for the sole reason of his or her participation in a strike.

(6) This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the Defence Force or of the police.

Article 10 Gender Rights

(1) Men and women shall enjoy equal rights and treatment in all areas of public and private life.

(2) Discrimination on the grounds of gender, single parenthood, legitimacy of birth or sexual orientation shall be unlawful.

(3) There shall be equal pay for equal work, and equal access to work.

- (4) Positive action shall be undertaken by the State and other authorities, public and private, to overcome the disabilities and disadvantages suffered on account of past gender discrimination.
- (5) The law shall provide remedies for sexual harassment abuse or violence.
- (6) Educational institutions, the media, advertising and other social institutions shall be under a duty to discourage sexual or other types of stereotyping.

Article 11 Disabled Persons

There shall be no discrimination against disabled persons. Legislation shall provide for the progressive opening up of employment opportunities for disabled men and women, and for the removal of obstacles to the enjoyment by them of public amenities. Positive measures may be undertaken to provide equality of opportunity and the integration of disabled persons in all areas of life.

Article 12 Children

- (1) In all actions concerning children, whether undertaken by public or private welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

- (2) No child shall suffer discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, social origin, property, disability, birth or other status.

- (3) All children shall have the rights to a name, to health, to security, education and equality of treatment together with other rights enunciated in the International Convention on the Rights of the Child. The State shall undertake all appropriate measures for the implementation of the rights

recognised in this Convention. In regard to economic, social and cultural rights, the State shall, to the maximum of its available resources, seek to achieve progressively the full realisation of these rights.

Article 13 Social and Economic Rights

The State shall undertake to take steps, to the maximum of its available resources with a view to achieving progressively the full realisation of the rights which follow by all appropriate means, including legislative programmes and executive action.

- (1) a) The State shall recognise the right of everyone to an adequate standard of living for herself and himself and the family, including adequate food, clothing and housing and to the continuous improvement of living conditions.
- b) The State, recognising the fundamental right of everyone to be free from hunger shall take measures, including specific programmes, which are needed to improve methods of production, conservation and

distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing agrarian systems in such a way as to achieve the most efficient development and utilisation of natural resources, including land reform and redistribution.

(2) The State shall ensure the effective exercise of the right to protection of health. With this aim in view, it shall take appropriate measures either directly or in cooperation with public or private organisations designed:

a) to remove as far as possible the causes of

ill-health by adopting integrated policies for health care;

b) to provide advisory and educational facilities for the promotion of health and the encouragement of individual and collective responsibility in matters of health;

c) to reduce the still-birth rate and infant mortality and to provide for the healthy development of the child;

d) prevent, treat and control epidemic, endemic, occupational and other diseases;

e) towards the creation of a comprehensive national health service linking health workers, community organisations, State institutions, private medical schemes and individual medical practitioners to provide health care and hygiene education for all.

- (3) The State recognises everyone's right to shelter and housing. The State shall, in collaboration with private bodies, dismantle single-sex hostels, embark upon and encourage an extensive programme of house-building, ensure that persons are not evicted from their homes if reasonable alternative accommodation is not available for them and take steps to provide electricity, sewage removal and access to clean water to every home.

(4) a) Everyone shall have a right to education. Education shall be directed to the full development of the human personality and the sense of its dignity and shall strengthen respect for human rights and fundamental freedoms, promote understanding, tolerance and friendship among all South Africans and between nations.

b) The State recognises, with a view achieving the full realisation of this right, in collaboration with non-governmental and private educational institutions:

i) Primary education shall be compulsory and available free to all;

ii) Secondary education in its different forms, including technical and vocational education, shall be generally available and

accessible by every appropriate means, and in particular by the progressive introduction of free education;

iii) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular, by the progressive introduction of free education;

iv) Fundamental education shall be encouraged or intensified as far as possible for those persons or who have not received or completed the whole period of their primary education through the adoption of special schemes to combat illiteracy and to promote adult education.

v) The necessity for positive measures to remove the legacy of racial and gender discrimination.

(5) Everyone has the right to work which includes the right of everyone to gain a living by work which is freely chosen or accepted. The State will take appropriate steps to safeguard this right and recognise that the full realisation of this right shall include technical and vocational

guidance and training programmes, policies and techniques to achieve economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

(6) Everyone has the right to the enjoyment of just and favourable conditions of work which shall include, in particular:

a) Remuneration which provides all workers with a minimum, with:

i) Fair wages and equal remuneration for work of equal value, without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

ii) A decent living for themselves and their families in accordance with the provisions of the Constitution;

iii) Adequate levels of social security and social assistance.

- b) Safe, clean and healthy working conditions and work under conditions of dignity and with due respect for the environment
 - c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence. Workers shall be entitled to continued vocational training.
 - d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.
 - e) Information, consultation and participation which must be developed along appropriate lines.
 - f) Protection of children and adolescents, including vocational training, duration of work and restrictions on employment. Child labour shall be prohibited.
 - g) Protection of retired workers and disabled persons.
- (7) Everyone shall be entitled to social security, including social insurance.