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ROUGH DRAFT WORKING PAPER SIX.

prepared by students in London

GENERAL

A ot fo :

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

or No individual or group shall be subjected to discrimination, domination or abuse on the

basis of race, colour, sex, language, religion, political opinion, social origin, property, birth or other status.

2. All men and women have the right to the highest attainable standard of living.

Article 2 PERSONAL RIGHTS

.. Every person has the right to life.
- No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

5. No one shall be subjected to arbitrary arrest, detention or exile.

executions shall take place.

6. No one shall be subjected to slavery or servitude.
- Labour. The right of everyone to work under just and favourable conditions shall be guaranteed.
g- The dignity of all persons shall be respected. Everyone has the right to a fair trial.

SL. No one shall be subjected to arbitrary arrest, detention or punishment.
inhuman or degrading treatment or punishment.

6. Everyone has the right to the highest attainable standard of living.
protection by law against violence, harassment or abuse or
the impairment of his or her dignity.

= on. all Laws and Customs

7. No person shall be arrested or detained for any
purpose without being informed of the reasons for the arrest and of his or her rights.
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.

i 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 at 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 caste. a ih 2 IR
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ool The privacy of the home shall be respected, save that reasonable steps shall be permitted to prevent

domestic violence or abuse.

z_ 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. Ey

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. nia

o5 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. : :

ri 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.

2% 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. : 5

0

article 8. POLITICAL RIGHTS

1. There 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 voter's 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 9. 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... See

5. 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.

6. 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 10. Rights of Association, Religion, Language and Culture

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

25 There shall be freedom of worship and tolerance of 7 all religions. No state or official religion shall be ~ asstablished.

~ Zz. 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 Lo furthering the objectives of this Constitution, nor from bearing witness and commenting on the actions of the state. : Te

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 afisiicalialine

sindebele, sâ\202~pedi, Sesotho, Siswatil, Setswana afrikaans, English, , Tsonga [Shangaan], Venda, Xhosa, and ZC. : He oS

6. \ Respect for all = encouraged by the State ich Is further thei development, especially in education, lierature and the media, and to prevent the use of any i languages for the purpose of domination or : â\200\224 7

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â\200\234division,

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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. =

â\200\230a subYect to the availability of public and private resources, and limitations of reasonableness, piimary and secondary education should wherever possible be offered in the language or languages of preference of the z pudents 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. Spotting, 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. 7%

Article 0 Workers's 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's claims, shall be guaranteed. : 5

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 4 GENDER RIGHTS

1. Men and women shall enjoy equal rights in all areas of public and private life, employment, education and within the family.

2. Discrimination on the grounds of gender, single parenthood 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 to 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 202 Disabled Persons

1. There shall be no discrimination against disabled
persons.

On salelation shall Si ovoids Es fori he 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.

1. All children shall have nels rdid hit ofan amal, ho
health, to security, education and equality of treatment.

5. The State shall, to the maximum of its available
resources, seek to achieve progressively the EL
realisation of these rights.

a Ne enildi shall gultel dis crinl nation ass enjoy
privileges on hha ground siog race, coNouia gender,
language, creed, legitimacy ont hells hatdsolmniisiois has
parents. no

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

Ot - 1 - Aaa

Article 1 Social, educational, economic and welfare
rights. (2,

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d.. The State, shall, to the maximum of its available
resources, undertake appropriate legislative and executive
action in order to~ guarantees the progressive realisation
of basic social, suena ie: economic and welfare rights
for the whole Se

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} no . Eg eB 2
2 such State action shall establish standards and

procedures whereby all men, women and children are he
guaranteed by law a progressively expanding astrormor {aap
enforceable minimum rights, with special attention to = oe
nutrition, shelter, health care, education and income.

le. In order to achieve a common platform olrichts 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. :

NCS y

oo 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 ro their
materialisation.

(55 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
Col donaal SN assistance. :

thy SUIRUFion

YY \ N â\200\2247 tn order to guarantees the right of freedom from
= hunger, the State shall establish-mechanisms Tor ansu rnd.

the rod sive Introduction of minimum standards of
nutrition throughout the country, with special AER

- ool and school feeding. rT rd Fr

oy i Tar : AN PO EMM

â\200\235 Tn order to guarantee the right to shelter, the 4
State shall, in collaboration with private bodies =

dismantle compounds, single-sex hostels and other forms of

: _) accommodation associated with the migrant labour systems

Aaal embark upon and encourage an extensive programme of house-

\ ~ building, ensure that persons are not evicted from their

N she\rafes 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.

EO RCA TIDY :

8. In order to guarantees 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 ota cre n a8

of right to secondary education, snable adults to receive

basic education and overcome illiteracy, and SFM ere

onthe basisâ\200\224eofâ\200\224merit to institutions of vocational) or

higher learning. AN Cane

9 Education shall be directed towards the Full .

= development of the human personality and the sense of its

E> dignity, andiehallliain sat strengthening respect for human

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

Hk SRLS :

1.0% order to guarantee the right to protection of health, er 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 oo ye

COW Tp]

= hike oe order to guarantees the right to work, the State Eshall, In collaboration with private bodies and non-governmental institutions, make technical and vocational training available to all, remove the barriers which at

EETT keep large sections of thes population out of technical, professional and managerial positions, and promote public and other works with a view to reducing unemplo ment

enn

aE Ea to Arann 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 bensfits, compensation for in jury SS supa rannual i onan retirement pensions, the State shall, in collaboration with private bodies, establish a asystem of national insurance based Upon cont risuii ons bye Gans, employees and other interested persons.

Article 1% The Economy, Land and Property

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

mA man and wonenands YentullivScong tli sd bodies are entitled to the peaceful enjoyment of their - posessslions, | inzluding ihn s lant Erol Racal ral Eun on dispose of property in any part of the country without distinction based on race, colour, language, gender or creed.

: 3. The State in by legis lation al TOF regulate asâ\200\231
ir a ro ht Ak axa ihe he old\or [dispose
of proper tv ly itizens Arson th
Africa. % =

% All natural resources below and above the surface
area of the land, including the AE, Ang at Earns of
potential energy or minerals in the territorial waters,
the continental shelf and the exclusive economic zone of
south Africa, which ars not owned by any person at the
tima of coning Lato force otk this Constitution, shall

Â© belong to the State

&- The State shall have the right to ragulate the
exp hol Lat lonor natural resources, grant franchises and
determine royalties, subject to payment of pr ropriste x
compensation in the event of interference with any
lawfully vested interest.

0 Prowis ipA may be made by law. a pel)
control and disposi tion (of al Vast al oo

en at any time by the State

5. The State may by legislation take steps to overcome
â\200\230the effects of past discrimination ln relation to
enjoyment of property rights. :
& SO% CRAM NV EAN aw
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shall be no forced rm Poptations
from their homes or land on the basis of race, colour,
language, gendar or creed.

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Jo. Holness ons Nes asl entities shall be deprived of
their possessions except on, grounds of puldc interests on
public uti tity. \ AM 3, ra a al AR

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So. 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. Sock (Compensation ahall be Just Sarangi nko.
account the need to establish an sguitable balance a
the public interest and ths interest of those affect 2
~~ He NURQ ARONA "i 2

1812. In the case of B disputeâ\200\231 pli the AAT of =
compensation or its mode oT pay meni saa ain shall be]
made for recourse to fhe courts or t to a Land Commission,

presided over by a Supremeâ\200\224Court judge. to be established
by law, with an appeal to the courts.

in 1%. The preceding provisions shall not be interpreted
as in any way impeding the rah oft thal St at alle adopt
such measures as might be deemed necessary ln any
democratic society for the pantie), oh shal property

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

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3 /
Every man and woman shall have the right to -a

healthy and ecologically balanced environment and the duty
to defend it.

= an order To secure this right, the State, acting
through appropriate agencies and organs shall conserve,
protect and improve the environment, and in particular :

Y {

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 EPEC and renewal and ecological
sustainability

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

v. maintain 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. :

Sh LemSodamien also 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
mildly Dada

the state shall impose 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 Eoin undertaking which manifestly and

unreasonably causes Or threatens to cause irreparable damage to the environment.

article 14. Affirmative Action

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, Suffered by discrimination.

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Article 14. Positive Action. Laws

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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.

The rights and entitlements granted by the State shall be distributed on a non-racist and a non-sexist basis.

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.

As the State at all 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.

o. Such policies Neha 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.

Without interfering with its independence, and with
2 View to ensuring that as it becomes 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, 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 2.6 Limitations

1. 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 justified in an open and democratic society.

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 justified in an open and democratic society.

3. Any restrictions permitted under this 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.

aE Sm Ea REG Ty 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;

1900 am Tar =m precvicable, Nolen yan 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 the
provisions shall apply .

Article 18 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 Bill of Rights shall be binding
upon the State and organs of government at all levels and
where appropriate, on all State institutions and
Persons. .

4. All persons whose rights guaranteed them by
the Bill of Rights have been infringed or threatened,
shall be entitled to apply to the 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. :

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%. Parliament shall establish by legislation a Human Rights Commission to promote observance of human rights.

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

9. The Commission shall monitor proposed legislation to

With a view to reporting to Parliament 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 manner which respects 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.

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.

12. 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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