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**COSATU/ANC WORKSHOP ON
WORKER RIGHTS AND THE NEW CONSTITUTION**

**26 September 1991
Johannesburg**

WORKER RIGHTS AND THE NEW CONSTITUTION

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BILL of RIGHTS

AGENDA

8h30 - 8h45	Opening <i>Zola Skeyiya</i>
8h34 - 10h30	A new constitution for a new society <i>Dullah Omar, ANC</i> <i>Sam Shilowa, COSATU</i>
1030 - 11h00	Tea
11h00 - 13h00	Rights: Fundamental individual, political and gender rights <i>Albie Sacks, ANC</i> Socio-economic rights <i>Marcel Golding, COSATU</i>
13h00 - 14h00	Lunch
14h00 - 16h00	Trade union rights <i>Ebrahim Patel, COSATU</i> <i>Fink Haysom, ANC</i>
16h00 - 16h30	Tea
16h30 - 18h00	Constitution making process <i>Bulelani Ngcuka, ANC speaker</i> <i>Jay Naidoo, COSATU</i>

Const. must enable way for
socialism.

Open negotiations for an open
government.

Dem. processes for a dem. constit.

Summary of comments by Cosatu on ANC Bill of Rights proposals

While the constitution of a country sets out the powers of the government, the way it functions and the manner in which it is chosen, a bill of rights (as part of the constitution) sets out the rights of the citizens of the society. The ANC's Legal and Constitutional Committee has published a draft Bill of Rights for a new South Africa. The draft consists of sixteen clauses or articles. These are as follows:

Article	1	General
	2	Personal rights
	3	Political rights
	4	Freedom of speech, assembly and information
	5	Rights of association, religion, language and culture
	6	Worker rights
	7	Gender rights
	8	Disabled persons
	9	Children
	10	Social, educational, economic and welfare rights
	11	The economy, land and property
	12	Environmental rights
	13	Affirmative action
	14	Positive action
	15	Limitation
	16	Enforcement

Cosatu's Worker Rights Committee held a number of workshops which went through the document. This report summarises the main points of the workshops.

1. Cosatu supports some fundamental features of the bill of rights, such as :
 - the incorporation of worker rights
 - the incorporation of social, economic, gender and environmental rights
 - the need for affirmative action in the society, in areas of race, gender and class.
2. Cosatu supports fundamental human rights principles, such as:
 - freedom of speech, assembly, association and information
 - a multi-party democracy, based on free, regular elections, and one person one vote.

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3. Cosatu proposes amendments and additions to the draft bill, as follows:

3.1. Article 1 (On general principles)

Spell out the importance of a strong civil society (trade unions, civics, consumer and environmental groups).

3.2. Article 2 (Personal rights)

The right of life not to be phrased in a manner which precludes the right to abortion.

We support the manner in which the right to privacy clause is phrased in that it does not prevent campaigns by trade unions for access to company financial and other information.

3.3. Article 3 (Political rights)

The right to a referendum, whereby the state shall be required to submit current or proposed legislation to a nation-wide ballot, on request of an appropriate number of voters by petition, and be required to accept the outcome of such referendum, to be included in the bill.

3.4. Article 4 (Freedom of speech)

On a free press:- the restriction on registration of newspapers to be lifted

- the current press monopoly to be dismantled
 - access to public media for all viewpoints especially during elections
 - public control (including trade union representatives) of publicly owned media
 - state support for the starting up of newspapers, to encourage access by the public to a range of different views.

On the right to information:-

- Add "workers" to the group of citizens and consumers who are entitled to information access
- Expand the access to state documentation, with regulation in law for documents which contain state secrets
- Require the state to secure the opinion of a broad cross section of society on any proposed law.

3.5. Article 5 (Rights of association, religion, language and culture)
Require English and the mother tongue to be taught at school, and used in the public service.

3.6. Article 6 (Worker rights)
Unions to function independantly of the state, employers and political parties.

Workers must not be victimised for taking part in trade union activities.

Collective agreements at industry level to be binding on employers and workers.

COSATU Position on Essential Services and the Right to Strike

As adopted at 4th National Congress

1. All workers have the fundamental right to strike.
2. Only workers in certain essential jobs, as defined by the unions and negotiated with employers, may have restrictions on this right. Any limitation on this right shall involve only essential jobs, defined as those jobs which if not done will lead to the loss of human life.
3. Disputes involving such workers should be referred to compulsory arbitration.

Equal access to employment rights need to be phrased in a manner which will not imply the prevention of closed shop agreements, or the encouragement of the use of scab labour.

3.7. Article 11 (The economy, land and property)
The constitution shall require the state to encourage collective forms of ownership.

Trade unions to be entitled to participate in economic decision-making.

3.8. Article 15 (Limitations)
Limitations on labour rights ought to be spelt out in the Bill of Rights, and shall not be subject to governmental definition. Worker rights shall not to be capable of suspension, even during a state of emergency.

3.9. Article 16 (Enforcement)
The proposed constitutional court should have a trade union nominee on it.

Article 5 (Rights of association, religion, language and culture)
Respect English and the mother tongue to be taught at school and
used in the public service.

Article 6 (Workers' rights) 2. Workers
Unions to function independently of the state, employers and
political parties.

Article 7 (Workers' rights) 3. Workers
Workers must not be victimised for taking part in trade union
activities.
Article 8 (Workers' rights) 4. Workers
Collective agreements at industry level to be binding on
employers and workers and relevant agencies at sector

Article 9 (Workers' rights) 5. Workers
COSATU Position on Essential Services and the Right to Strike
As adopted by the National Congress of Trade Unions in 1985

Article 10 (Workers' rights) 6. Workers
All workers have the right to strike in support of their
interests.
Article 11 (Workers' rights) 7. Workers
Only workers in certain essential jobs, as defined by the unions and negotiated
with employers, may have a restriction on this right. Any limitation on this right
shall involve only essential jobs, which if not done will lead
to the loss of human life.

Article 12 (Workers' rights) 8. Workers
Disasters involving a loss of workers should be treated as compulsory arbitration.

Article 13 (Workers' rights) 9. Workers
Equal access to employment rights must be provided in a manner
which will not involve the prevention of closed shop agreements, or the
encouragement of threats of such actions.

Article 14 (The economy, trade and property)
The constitution shall require the state to encourage collective
forms of ownership.

Article 15 (The economy, trade and property)
Trade unions to be entitled to participate in economic decision-
making.

Article 16 (Enforcement)
The proposed constitutional court should have a trade union
state of emergency.
Article 17 (Enforcement)
Rights and shall not be subject to governmental definition.
Workers' rights shall not be subject to suspension, even during a
state of emergency.

Article 18 (Enforcement)
The proposed constitutional court should have a trade union

Draft Workers Charter Report

COSATU June 1991

A. PROCESS

1. Introduction

At the COSATU Congress in July 1989 a resolution was adopted to conduct a campaign which would culminate in the adoption of a Workers Charter.

Given the current political developments within the country, this campaign has become more urgent. A Workers Charter is needed to focus the demands of workers in the making of a new constitution.

2. Process

The Workers Charter Committee has held a number of meetings and joint workshops with affiliates and regions.

Some affiliates have also conducted workshops at national and regional level. Seminars were held in all COSATU regions and in some areas repeated at a local level.

In August 1990, there was a Workers Charter Day where workers were asked to hold factory meetings to discuss their demands for a Workers Charter. Some affiliates organised activities such as human chains to popularise the Workers Charter.

At the Workers Charter Conference held in November 1990, we discussed many demands to be included in the Workers Charter and also focused on those demands we would like to see in a new constitution. There was broad consensus on a set of demands.

The demands for inclusion in a new constitution were finalised at the March 1991 Campaigns Conference.

3. What is the Workers Charter?

Over the year, a consensus developed on how we see a Workers Charter. We see it as a manifesto setting out all short and long term demands and rights which workers in general are struggling for.

We can divide into four areas what a Workers Charter should include:

- * Trade union rights to be incorporated in a new constitution.
- * The general provisions of a new constitution.
- * Socio-economic rights in the post apartheid South Africa.

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* International conventions to be signed by the new government.

We no longer believe, as stated in ANC Constitutional Guidelines of 1988, that a Workers Charter should be an appendix to a new constitution.

4. Relationship between COSATU Workers Charter and Southern African Social Charter

COSATU has been involved in a process with other trade unions in Southern Africa in formulating a Southern African Social Charter. A draft was approved on 16 March 1991. The objective of the Charter is to protect all workers in the Southern Africa region through a bill specifying their rights.

The draft charter must be discussed and endorsed by the national trade union centres before finalisation. We have included sections of this Southern African Social Charter in this document.

B. CONTENT OF WORKERS CHARTER

What follows is a compilation of all the demands, documents and discussions which have been held about the Workers Charter.

In some instances we have indicated the source of the demand e.g. Workers Charter Conference, other charters etc. We have also tried to identify the areas where further discussion is needed.

1. Preamble

The following ideas should be included in a preamble:

- * Future lies in the hands of the working class.
- * Capitalism responsible for poverty, unemployment.
- * Need to strive for socialism.
- * Oppression and exploitation must be abolished.
- * Workers can only be effective if well organised and united.
- * Workers are crucial to the liberation movement.
- * Independence of working class organisation.
- * An injury to one is an injury to all.

2. Trade Union/ Organisational Rights

2.1. Organisational rights

Workers should have the following rights:

2.1.1. Freedom of Association

- * The right to form and join trade unions without victimisation or interference.

- * The right to organise freely.
- * The right to hold meetings without restriction.
- * The right to publish and distribute media without restriction.
- * The right for migrant workers (including workers from other countries) to join trade unions without any hindrance.

2.1.2. The right to collective bargaining on all social and economic issues affecting workers.

- * Access by officials to work places.
- * Recognition of shop stewards.
- * Stop order facilities.
- * The right to information on financial information, companies future plans and other areas as determined by organised workers. (progress report).
- * The right to distribute union publications.
- * The right to participate in decision making.
- * The right to information (Worker Charter Conference)
- * The right to determine the level of bargaining - either plant, company, local, regional, industry or national. (Progress report)
- * Centralised bargaining should be a right (Progress Report)

2.1.3. There should be no legal duty to bargain - rather rely on rights to collective bargaining. (See Campaigns Conference decisions - September 1990)

2.1.4. * Closed shop:

Law should not prohibit the rights of trade unions and employers to enter into closed shop agreements.

2.1.5. * Labour/industrial courts

- * There should be special labour or industrial courts.

For further discussion:

How should judges be appointed:

- * Trade unions should have the right to veto over the appointment of judges to such courts.
- * There should be mutual agreement on appointment of judges between trade unions and employers.
- * The state should consult and have the majority consent of the trade union movement (Progress report)

2.1.6. Registration

For further discussion:

Should trade unions need to register/certify with the state and should such

certification/registration be based on the requirement of non-racialism and should racially exclusive trade unions be entitled to these rights of organisation?

2.1.7. The following organisational rights must be included in a new constitution:

- * The full right to organise including the necessary facilities.
- * No victimisation or interference in trade union organisation.

2.2. Strike rights

2.2.1. Workers should have the following strike rights:

- * The right to picket.
- * The right of access to company premises and facilities and the right to hold ballots on these premises.
- * Scabs to be outlawed.
- * No dismissals during strikes.
- * No interdicts and other legal action.
- * Right to strike funds.
- * No evictions from company accommodation during a strike.
- * The right to call boycotts.
- * The right to hold sympathy strikes.
- * No state intervention during strike action.
- * The right to simple and quick procedures for legal strike action.

2.2.2. Workers should have the right to strike on all issues - including political issues. Even under a State of Emergency, the state should not be able to prevent procedural industrial action. (Workers Charter Conference report)

2.2.3. The full right to strike and picket should be included in the constitution.
(Workers Rights in a new constitution document)

2.2.4. Essential services must be narrowly defined and decided on together between workers and employers. We should not talk about essential services but about essential jobs - those jobs which will result in death or serious injury if they are not done.

Areas for further discussion

- * On the right to picket we need to discuss further what does picketing mean and what is the purpose of picketing.
- * What kinds of provisions should be made for unprocedural strikes.
- * Whether managements should have recourse to lock outs during industrial action.
- * How to define an essential service/job: Should it be decided by collective bargaining or defined by legislation.

* What alternative dispute resolving mechanisms should there be in the case of essential services/jobs?

3. Role of trade unions

- * The right of trade unions to be independent from the state, bosses or political parties must be respected. Trade unions should be democratically controlled by their members. (Worker rights in a new constitution)
- * All workers should have the right to establish, and subject only to the rules of the trade union concerned, to join trade unions of their choice, without prior permission from employers and the state.
- * No laws shall be passed which restrict trade unions from participating in any lawful political activities.
- * Trade union organisation shall be based on the principles of "one industry - one union" and "one country - one federation". (SACP Draft Worker Charter)

Areas for further discussion

- * Should the Workers Charter say anything about the role of trade unions in tripartite structures like the NMC?
- * Should the Workers Charter say anything about mechanisms which are needed to ensure trade union independence from the state and political parties?
- * Should the Workers Charter say anything about whether union officials or office bearers can simultaneously hold office in government (or political party) structures as an individual or as a political party representation.

4. Democratic rights

- * One person one vote in a unitary South Africa.
- * Any person can stand as candidate in elections.
- * Accountable government.
- * There must be a Bill of Rights.

The constitution should contain provisions such as:

- * The right to a referendum to overturn unpopular laws or to require the passing of certain laws.
- * The right to information
 - * There must be a constitutional duty on the government to reply to any question

tabled in parliament.

- * All proposed laws must be timeously tabled for public comment, and organisations must have the right to have their views on such bills tabled in parliament.

- * Certain types of information must be tabled in parliament regularly.

- * All state documents, including secret ones, should be released, perhaps after the expiry of a certain period of time.

- * Laws on privacy should not prevent the right of the public to information which it has a legitimate interest in e.g. trade union requests for collecting bargaining information.

- * **Media**

- * Radio, television and newspapers must not be controlled by the state.

- * Organisations of civil society must have free and equal access to all media.

- * Steps shall be taken to break the existing media monopoly by big business and the state. (SACP Draft)

- * There should be no censorship (Progress Report).

- * Terms of offices of executive officers should be limited.

- * There should be protected/ entrenched clauses in the constitution so that the government is not able to suspend worker rights even in a state of emergency.

- * There must be a special constitutional court that protects the constitutional rights of people against abuse by the government. Trade unions must be able to nominate representatives/ judges to such an important political court.

- * Labour legislation need to add clause on how see legislation - consulted with trade union movement whose views on such proposed legislation should be timeously tabled in parliament.

- * Right to establish political funds to advance working class interests (Progress Report)

Areas for further discussion

- * In a referendum should all laws be subject to recall or should some laws not be subject to being overruled in a referendum?

- * How many signatures should be required for a referendum to be called?

- * Who should appoint the judges of a constitutional court and what should be their composition (male/female, black/white etc.)

5. Working and Living Conditions

5.1. Right to a Living Wage

- * Every adult person has a right and duty to work. A new state should, as a matter of priority, work to create economic conditions in which jobs are available to all. Until

this is achieved the state shall ensure that social support is provided for the unemployed and members of their families. (SACP draft workers charter).

* Any form of discrimination based on race, colour, sex, creed, religion, physical disability, marital status or nationality should be prohibited at the workplace. (Southern African Social Charter)

* The state and all social institutions should be under a constitutional duty to eradicate racial discrimination in all its forms and to take active steps to eradicate, speedily, the economic and social inequalities produced by racial discrimination (ANC's Constitutional Guidelines)

* The prohibition of child labour and all forms of forced and semi-forced labour. (Southern African Charter)

* There should be equal pay for equal work/value. There should be equal access to promotion, training and recruitment. (Workers Charter Conference)

* One agreed grading system for each industry and eventually a grading system that stretches across industries. (Wage Policy workshop)

* Special attention should be paid to redressing the oppressive situation involved in farm work, domestic service and those trapped in bantustans (SACP Draft Charter.) There should be laws to assist weaker sectors who can't achieve improvements in wages through collective bargaining alone. (Wage policy workshop)

* Wage increases should be more than the inflation rate. (Workers Charter Conference)

* Paid time off on commemoration days.
(Workers Charter Conference)

Areas for further discussion

* Should there be a national minimum wage, a sectoral minimum wage or no minimum wage.

5.2. Right to family life and social security

- * Right to affordable housing
- * Right to adequate retirement benefits - include assistance with funerals by the state, free graves (Progress Report)
- * Right to adequate medical care.
- * Right to adequate public transport.
- * Right to full maternity and paternity rights.
- * Minimum annual leave.

- * Days off for child care.
- * Social leave - right to paid time off to deal with family problems eg funerals.
- * A maximum 40 hours week. Need to work out how it relates to contracts of fixed duration, seasonal work, part-time work, temporary work, weekend work, night work and shift work (European Social Charter).
- * Recreation facilities. (Progress Report)

* All legislation and labour practices which prevent or interfere with the right of families to live together shall be outlawed. (SACP draft workers charter). All laws which restrict the right of people to live where they choose should be abolished (SACTU draft charter).

* Migrant labour should be phased out or in cases where it is unavoidable, provision shall be made for family accommodation during any period of service exceeding three months.

* Child care should be available for the children of working parents.

* There must be full maternity and paternity leave.

5.3. Right to education, training and skills upgrading

- * All workers - not just artisans - must be trained.
- * Trade unions must play a central role in human resource development. State and bosses have a responsibility to training and upgrading.
- * All workers should have the right to paid leave for education and training.
- * Formal education should be free and compulsory to the highest level the economy can afford. (Training principles)
- * Education should be non-sexist. (Workers Charter Conference) Women shall have the right to train for any job they wish.
- * All workers should have the right to retraining if new technologies make it necessary. (Progress Report)
- * Special training projects are needed to help workers who have suffered from racial or sexual discrimination in the past (Progress report).

5.4. Right to job security

- * Need to ensure that workers have adequate rest and leisure, giving workers the opportunity to develop their talents and skills unrelated to their specific jobs. This will encourage the all-round development of the worker (SACTU draft workers charter).
- * Retrenchments, sub-contracting and temporary employment should only take place in

negotiations with the trade unions.

- * Job guaranteed during detentions and political violence.
- * Extended sick leave and no job loss due to sickness.
- * Production to be planned to avoid job loss and to create new jobs - unions to be involved in this planning at all levels.
- * There should be no overtime - rather more jobs should be created.
- * Full job security for women on maternity i.e. women workers shall be guaranteed the right to return to their jobs at the same rate of pay after maternity leave.
- * The right to be protected against unfair dismissal and the right to reinstatement. (Progress Report)
- * Living benefits for all unemployed people (Worker rights in a new constitution)
- * An adequate pension on retirement, provided either by the state or relevant enterprise.
- * The pensionable age should be 55 years for both men and women.

Areas for further discussion

- * Should shift work be abolished or shortened?
- Should there be a 30 hour week for strenuous work?

5.5. Right to healthy and safe working conditions

- * The right for workers to live and work in a healthy environment, requiring government action to implement suitable environmental policies (Southern African Social Charter)
- * The state should provide accessible and safe health care.
- * An affirmative health education programme is needed.
- * Abortion should be legalised. (Workers Charter Conference)
- * Something about AIDS
- * Those injured at work shall receive proper compensation for themselves and their families (SACP)
- * Provision shall be made for the rehabilitation of all disabled workers including, where necessary, the provision of alternative employment (SACP)

5.5.2. Areas for further discussion

- * Free pap smears - should something be included?

6. Economic rights

- * We are striving for worker ownership and control of and in a socialist economy or state. The following will lead to the realisation of this:
 - * Forms of collective ownership including nationalisation.
 - * Trade union participation in economic planning and implementation at national, industrial and local levels.
 - * Trade unions should have the right to negotiate the use of profits, investment decision and job creation projects.
 - * Economy should work within a system of democratic planning by the state, involving producers and consumers through the organs of civil society.
 - * Redistribution of wealth for the benefit of people as a whole. Need to correct the economic imbalances imposed by racial domination. More particularly, steps should be taken to do away with the white monopoly of ownership and managerial control (SACP Draft Workers Charter).
 - * Land Reform - redistribution of land.
 - * Access to full information on the economy.
 - * Full employment economy. The state should use its resources and power to promote economic growth and the creation of employment.
 - * Greater worker control: Active participation in the planning and running of enterprises by workers at the point of production and through their trade unions.
 - * Right to control prices (Progress Report)
 - * Anti-trust legislation (Southern African Social Charter)
 - * Democratic forms of management e.g. the right to elect managers and make them accountable to workers.

<u>Areas for further discussion</u>
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|---|
| <ul style="list-style-type: none"> * Whether the state should control and regulate the market. |
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7. Gender

- * The constitution must recognise the fundamental equality between men and women in marriage, in employment and in society.
- * The state must embark on a programme of affirmative action to correct past discrimination suffered by women. (Workers rights in a new constitution)
- * Marriage laws must give women equal rights before marriage, in marriage and in the dissolution of marriage.
- * Domestic work should be a dual responsibility.
- * The state should take responsibility for child care. There should be adequate paternity and maternity leave.
- * There should be non-toleration of rape, battery, abuse, harassment.
- * Gay rights.
- * Fair taxation based on responsibilities of individual. No additional tax for married women (Progress Report).
- * Banning of dangerous contraceptives. (Progress Report)
- * Abortion to be legalised and carried out on demand(Progress Report).
- * It should be the duty of the state, trade unions, workers, political parties and all other mass and social organisations to ensure women's participation at leadership, management and other levels to take measures, including educational campaigns to combat all forms of male chauvinism both in the home and outside. (SACP)
- * Code of Conduct banning discrimination on basis of sex (Progress Report).

<u>Areas for further discussion:</u>

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|--|
| <ul style="list-style-type: none"> * The role of lobola and polygamy. |
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8. International rights

- * ILO Conventions and recommendations should be ratified and implemented by all governments in the region. (Southern African Social Charter)
- * Freedom of movement, residence and employment through out the region.
- * Migrant workers and their families should have the freedom of movement, residence and employment throughout the region (Southern African Charter)
 - * The right for migrant workers within the region to transfer without restrictions their wages and other benefits to their home country. The practice of short term and temporary employment contracts which force workers to return home in order to be re-engaged anew must be phased out. (Southern African Social Charter)
- * Trade union and worker rights must be guaranteed throughout the region to prevent unscrupulous employers and governments exploiting lower labour standards and the

practice of "social dumping".

C. WAY FORWARD

1. Affiliates

Affiliates must discuss this document. They should:

- * Raise other issues which should be included.
- * Look at the areas which need further discussion

We also need to decide what Congress should say about unresolved issues.

2. Congress resolutions

We suggest that there should be Congress resolutions on:

- * Principles to be contained in a Workers Charter.
- * Process of adopting a Workers Charter.
- * Process of ensuring our demands for a new constitution are included in ANC drafts.

FORWARD TO A CONSTITUENT ASSEMBLY!

FORWARD TO WORKERS RIGHTS IN A NEW CONSTITUTION

This document was adopted as a set of demands for COSATU's Constitutional Campaign at the COSATU Campaign's Conference from 8 - 10 March. The Conference agreed that the contents of this document need to be popularised and that workers need to discuss this document with members while collecting signatures for the ANC Signature Campaign for a Constituent Assembly and Interim Government.

A. COSATU demands a Constituent Assembly

COSATU believes that the constitution must be drawn up a democratic way.

This means:

- * The delegates to a Constituent Assembly must be elected in a one person one vote election.
- * These delegates must draw up the constitution.
- * The proceedings of the Constituent Assembly must be public.
- * Regular report backs to the people from the Constituent Assembly must be given.
- * Mandating forums must operate all the time to discuss the constitution.

B. The process of arriving at a Constituent Assembly

- * We need to build a **broad patriotic front** to ensure the greatest possible unity within the anti-apartheid movement.
- * There should be an **interim government** to ensure that the existing government stands down and allows the Constituent Assembly to meet in an atmosphere of relative peace and fairness.
- * We need an **All Party Congress** to ensure agreement on the steps towards a Constituent Assembly

C. COSATU wants a democratic constitution

1. COSATU wants trade union rights in the constitution including:

- * The full right to strike and picket
- * The full right to organise - including the necessary facilities.
- * There must be no victimisation or interference in trade union organisation.

- * A separate labour court on which trade union nominees sit.

2. COSATU wants trade union independence

The right of trade unions to be independent from the state, bosses or political parties must be respected. The state should not have the right to interfere in the constitutions of trade unions. Trade unions should be democratically controlled by their members.

3. COSATU wants an accountable government

This can be ensured by provisions in the constitution such as:

*** Referendum**

The Constitution must give the people the right in a referendum to overturn unpopular laws or to require the passing of certain laws.

*** Right to information**

Government information should be accessible to the people.

*** Media**

Radio, television and newspapers must not be controlled by the state. Mass organisations such as trade unions should have free access to the media.

*** Terms of office**

There should be limited terms of office for heads of government such as a President.

*** Protected clauses in the Constitution**

The government must not be able to suspend worker rights protected in a constitution, even in a State of Emergency.

*** Constitutional Court**

There must be an independent court that protects the rights of people in the constitution.

4. COSATU wants a democratically planned economy

The constitution should provide that:

- * The state can intervene in the economy so that it serves all the people.
- * Trade unions participate in economic planning.

The constitution should enable the people to fight for:

- * Collective ownership.
- * Worker control in the factories, mines and shops.
- * Full employment.

- * Living benefits for all unemployed people
- * Fair distribution of wealth and land.

5. COSATU demands equality between men and women

- * The constitution must recognise fundamental equality between men and women in marriage, in employment and in society.
- * The state must embark on a programme of affirmative action to correct past discrimination suffered by women.

D. Getting worker rights into a new constitution

- * COSATU's demands for a worker rights in a new constitution should also be taken to the tripartite alliance and the alliance should be asked to endorse these demands.
- * COSATU should also use the Broad Patriotic Front to put forward and publicise our demands for a new constitution and seek to gain greater consensus for these demands.

- * Living benefits for all unemployed people
- * Fair distribution of wealth and land

3. COSATU demands equality between men and women
 The rights of women should be equal to those of men in all spheres of life. The constitution should ensure that women have the same rights as men in all spheres of life. The constitution should ensure that women have the same rights as men in all spheres of life. The constitution should ensure that women have the same rights as men in all spheres of life.

D. Getting worker rights into a new constitution

- * COSATU's demand for a worker's right to strike is a key demand. The right to strike is a key demand. The right to strike is a key demand. The right to strike is a key demand. The right to strike is a key demand.
- * COSATU should also use the broad banner of the right to strike to get forward and push our demands for a new constitution and to get worker demands for new demands.

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E. The right to strike

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F. The right to strike in the Constitution

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G. The right to strike

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4. COSATU wants a democratically elected government

The constitution should provide that

- * The state can intervene in the economy to ensure that the basic needs of the people are met.
- * Trade unions participate in economic planning.

The constitution should enable the people to have the right to

- * Collective ownership.
- * Worker control in the factories.
- * Full employment.

THE JOINT REPORT OF COSATU WORKERS CHARTER/LRA
COMMITTEES ON THE WORKERS CHARTER

SEPTEMBER 1990

1 COSATU'S CONSTITUTION WORKSHOPS

South Africa's new constitution will contain a range of issues which will not specifically concern the trade union movement, but which affects all workers as citizens. COSATU could either comment exhaustively on each possible constitutional point, or seek to identify those issues where trade unions and organized workers have a special interest or a special contribution to make.

A series of constitution workshops have been held in recent months by COSATU. In the course of these workshops, a number of areas were identified where COSATU ought to formulate views on the constitution. Many of these areas are covered by the broad headings of the Constitutional Guidelines, but a number of new areas of rights in the constitution have emerged.

It was agreed that COSATU confine its input in the constitutional debate to a few, well-thought out areas, and that we then pursue these issues vigorously, both within our membership and within the alliance and together with other forces.

2 PROPOSED PRIORITY AREAS

It is proposed that we concentrate our main discussion and input into four areas of the constitution. These are:

- (a) worker rights;
- (b) rights of civil society;
- (c) the economy; and
- (d) the constitution, generally.

2.1 Worker organization rights

The key emphasis of COSATU ought to be to secure the right to strong and independent organization in the constitution. The rights need to be sufficiently general to be suitable for the country's constitution, and will not limit more detailed and specific rights which can be included in the laws of the country. It is proposed that we secure the following rights.

- 2.1.1 The right to independent trade unions. All workers shall have the right to establish, and subject only to the rules of the trade union concerned, to join trade unions of their choice, without prior permission from employers or the state.

All workers shall be protected from victimization on the grounds of trade union membership or activities.

Worker organizations shall have the right to draw up their own constitutions and rules, to elect their representatives in full freedom, to organize their administration and activities and to formulate their activities, without direct or indirect interference from political parties, state organs or enterprises, whether public, private or mixed.

No laws shall be passed which restrict trade unions from participating in any lawful political activities.

No person shall hold dual appointment as officer of the state and as a trade union official.

2.1.2 **The right to trade union organization.** Trade unions and employers, both private and public, shall have the right to bargain collectively on all social and economic matters affecting workers.

Majority trade unions shall be afforded reasonable organizational facilities by employers, which shall include:

- rights of access to enterprises
- union subscription deduction facilities
- recognition of shop stewards
- rights to distribute union publications
- rights to reasonable disclosure of financial information.

No laws shall prohibit the rights of trade unions and employers to enter into closed shop agreements.

Special labour/industrial courts shall be established to determine matters of law and equity which arise between employers and workers, and trade unions shall have the right to veto over the appointment of judges to such labour/industrial courts.

DISCUSSION: Should trade unions need to certify/register with the state, should such certification/registration be based on the requirement of non-racialism and should racially exclusive trade unions be entitled to these rights of organization?

2.1.3 **The right to strike and picket.** All workers shall have the right to strike without fear of dismissal, and to picket, in pursuit of their social and economic interests, subject to the right being regulated by law, subject only to a limit in respect of essential services, the interruption of which endangers life, health or the personal safety of the whole or part of the population, provided that such essential services workers shall have the right to have their disputes resolved by compulsory arbitration.

2.2 Rights of civil society

A truly democratic society is one where the state is not only democratic, but where a number of independent organizations have the right to exist through which ordinary people can raise their demands (trade union, civics, etc). These organizations need to be independent from the state and political parties, and

should be able to challenge the state where it acts against the interests of the people. When a great deal of economic power remains concentrated in a few private hands for the foreseeable future, independent organizations will further need to challenge and check the exercise of private power. The constitution must recognize their independence, and must empower these organizations.

2.2.1 **Right to a referendum.** A right to a referendum is a provision in the constitution whereby the people can in a direct vote overturn unpopular laws. The constitutions of Italy and Switzerland for instance have such provisions. For example if there was such a provision in England, the trade unions could through a referendum seek to overturn all the anti-union laws passed by Thatcher's government. A referendum needs a minimum number of signatures in a petition before a government is forced to have a referendum.

COSATU should require a referendum provision in the country's constitution, and give attention to the following:

- * How many signatures should be required for a referendum to be called? (Italy's

constitution requires 500 000 signatures out of a population of 57 million.)

- * which laws should not be subject to being overruled in a referendum (tax laws, international treaties)?

2.2.2

Right to information

One important way of workers preventing the misuse of power is through the right of the public to know the details of the state's activities and also the exercise of employer power. The government is kept in power on the mandate of the people, and through the taxes of the people, and should not run an administration that is secret and beyond the scrutiny of ordinary people.

Employers ought not to be allowed to engage in activities which may, for example, endanger the health of the people or damage the environment, under the guise of the right to privacy. The constitution needs to ensure the public's right to information, in at least the following ways:

2.2.2.1

There must be a constitutional duty on the government to reply to any question tabled in parliament.

2.2.2.2 All proposed laws must be timeously tabled for public comment, and organizations must have the right to have their views on such bills tabled in parliament.

2.2.2.3 Certain types of information must be tabled in parliament regularly (the current government, for example, must table information on certain detentions under the Public Safety Act for instance - we would need to broaden this very substantially to activities other than merely detention).

2.2.2.4 The release of all state documents, including secret ones, perhaps after the expiry of a certain period of time.

2.2.2.5 Laws on privacy ought not to prevent the right of the public to information which it has a legitimate interest in (trade union requests for collective bargaining information, environmentalist groups to the hazards associated with certain products).

2.2.3 Access to media

Workers and their organizations have little access to the mass media in South Africa. The electronic

media (television and radio) is largely in the hands of the state, while the print media (newspapers) are controlled by one of four newspaper giants owned by the large monopolies. The cost of setting up a major newspaper is beyond the capacity of worker organizations. The constitution of a new South Africa should accordingly not only guarantee a free press (free from state control) - which could well mean a press beyond the reach of workers - but also guarantee access to such media. We need to discuss the following:

- * What should be the public's access to state media?
- * What should be the public's access to privately owned media?

2.2.4 Collective rights

There is a preoccupation in current debate to define the rights of individuals, but unless the notion of collective rights are recognized in the constitution, it may well result in constitutionally protected individual rights being used by the courts to strike down collective interests.

The relationship between the state and mass organization need to be thought through too. On the one hand we seek to secure rights of organizations to power - this may take the form of special commissions like a labour commission, or a women's commission with some access to government. On the other hand, we seek to maintain the independence of organizations from the state, and are concerned at an over-institutionalized relationship between the two.

The issues for discussion are:

- * What are the ways of securing the right of independent organizations to exist and struggle for their aims?
- * How can the constitution empower these independent organizations so that they have a real capacity to fight, and not merely a right on paper?
- * To what extent should the constitution institutionalize the relationship between organization and the state?

- * Should the constitution prescribe for example the right of organizations to state funds?

2.3 Economic rights

The main economic rights which the constitution ought to protect are the following:

- 2.3.1 The promotion of forms of collective ownership of enterprises.

The state shall in statute promote and encourage enterprises which are under collective ownership.

- 2.3.2 Greater worker control in all enterprises.

No property laws shall restrict the right of trade unions to require from employers a significant role for workers in the decision-making of private, mixed and public enterprises.

- 2.3.3 Trade union involvement in economic planning and decision-making at national and local level.

Collective bargaining shall not be limited in such a manner that trade unions are restricted from involvement in economic planning within industry.

The state shall consult the trade union movement in the formulation of its economic strategy, and trade unions shall have access to the various committees of state which implement national economic strategy.

2.3.4 Commitment to a full employment economy.

The state shall use its resources and power to promote economic growth, and the creation of employment.

2.4 The constitution generally

2.4.1 A new constitutional court. The courts will play an important role in the new South Africa. They will have massive powers in interpreting the constitution and laws and in enforcing the rights of people. The best worker rights in the world, in the hands of anti-worker judges will amount to nothing. We should give as much attention therefore to the democratising of courts as we give to the inclusion of our rights in law.

We inherit too a legacy of judges appointed by the apartheid government over the years. Each of the current judges were appointed by the cabinet of an all

white party, and reflect this by the fact that they are all white and male (with one exception). These judges - although they may be very good at commercial law, tax cases, etc - are very conservative. It may be necessary to retain them for those kinds of cases, but it will be very dangerous to give them the power to interpret our constitution.

COSATU should demand that there be a special constitutional court, which will protect the constitutional rights of the people against abuse by the government. We need to discuss:

- * Who should appoint such judges and what should be their composition (male/female, black/white, etc)?

2.4.2 **Entrenched clauses in the constitution.** A constitution can have certain entrenched clauses, which make it very difficult for government to change. This limits the power of government to take away rights which we have struggled for, and it limits the damage an anti-worker party can do if it should be elected at some stage to government.

A further concern is the right of parliament to suspend basic rights of people through declaring a

state of emergency. A ruthless government can smash the protections and rights in the constitution, through invoking emergency powers in the name of a state of emergency. There are two debates. Should the constitution disallow a suspension of the constitution? Or should it make provision for emergencies but ensure basic protections such as the courts monitoring detentions, etc, and that basic worker rights ought not to be suspended (as is the case now). We need to discuss:

- * Where the basic worker rights need to be changed, what mechanisms should be used - a vote in parliament or the consent of the majority of the trade union movement?

- * Should we allow the constitution to be suspended? If so on what conditions?

3 OTHER SIGNIFICANT AREAS

In addition to the above priority areas, it is proposed we comment in five further areas, being the principles of state policy, the state/franchise, women, bill of rights/affirmative action and international.

3.1 The constitution ought to have a section setting out the principles of state policy, similar to the Namibian

constitution. These principles would guide the state in its policies and operation, and would include the promotion of the right to:

- * a living wage
- * social security
- * nutrition
- * education, training and skills upgrading
- * job security
- * healthy and safe working conditions
- * health care
- * recreation and facilities
- * a safe environment
- * parental facilities
- * shelter and decent housing.

These 'rights' are different to the normal constitutional provisions, in that they are not all capable of enforcement in courts of law, but their inclusion will tend to require the state in statute and operation to promote them. For example, the right to a living wage is unenforceable in law, but a state commitment thereto will require the state to promote, for example, strong trade unions and national collective bargaining, unemployment insurance, training programmes, etc.

3.2 The state/franchise

The issues to be addressed in this area of the constitution are summarized below:

- 3.2.1 **The courts.** Who should select the judges, and should this be left solely to the governing party in parliament?
- 3.2.2 **Election of a state president.** Should the state president be elected directly by the people, or by the members of parliament?
- How many terms of office as president ought a single person to be entitled to stand for?
- 3.2.3 **Constitutional model.** Do we want a Westminster or a bill of rights system of government?
- 3.2.4 **Levels of government.** Should decision-making power be concentrated in parliament, or shared with local government?
- What sort of decisions should local government be able to make?

Should labour regulations and laws be decentralised and differ from place to place, or be the same for the country as a whole?

- 3.2.5 **Forms of representation in parliament.** Should we have constituency or proportional representation in parliament, or should we have a mixture of both?

Should voters have the right to recall an MP during the term of their office?

- 3.2.6 **Chambers of parliament.** Should we have two chambers of parliament? If yes, on what basis will the second chamber be elected?

3.3 Women

We are investigating which provisions exist in other constitutions protecting the rights of women.

3.4 Bill of rights/affirmative action

- 3.4.1 **Discrimination.** Workers have been victims of racial and sexual discrimination. It is not sufficient for the new constitution to outlaw discrimination - it must have ways of overcoming the effects of decades of discrimination, and means of ensuring an end to discrimination. We must consider the following issues:

* How does the constitution outlaw racial and sexual discrimination?

* What mechanisms should be created to enforce this?

* What commitments to affirmative action are required?

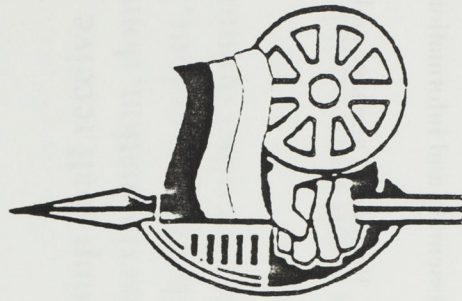
3.4.2 **Child labour and forced labour.** The constitution ought to prohibit the economic exploitation of children, and the use of forced labour.

3.4.3 **Freedom of speech, assembly, movement and association.** COSATU should endorse these fundamental rights, but ensure that they are not drafted in a manner which limits or frustrates collective rights. Freedom of association ought not to prohibit the closed shop for instance.

3.5 International

There are a number of conventions of the International Labour Organisation (ILO) which would need to be signed by a democratic government. These conventions include matters such as freedom of association, farmworker rights, regulation of night shift work, etc. A convention only becomes binding on a state once it has been signed by the government of that country.

A Bill of Rights for A New South Africa



A Working Document by the
ANC CONSTITUTIONAL COMMITTEE

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1

**A BILL OF RIGHTS FOR A
DEMOCRATIC SOUTH AFRICA -
WORKING DRAFT FOR CONSULTATION**

**Article 1.
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, creed, political or other opinion, birth or other status.
3. All men and women shall have equal protection under the law.

Article 2. PERSONAL RIGHTS

The Right to Life

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.

The Right to Dignity

4. No-one shall be subjected to slavery, servitude or forced labour, provided that forced labour shall not include work normally required of someone carrying out a sentence of a court, nor military service or national service by a conscientious objector, nor services required in the case of calamity or serious emergency, nor any work which forms part of normal civil obligations.
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.

The Right to a Fair Trial

8. There shall be no detention without trial.
9. No persons shall be arrested or detained for any purpose other than that of bringing them to trial on a criminal charge.
10. 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.
11. Bail shall be granted to awaiting-trial persons unless a court rules that in the interests of justice they should be kept in custody.
12. No-one shall be deprived of liberty or subjected to other punishment except after a fair trial in public by an independent court.
13. Trials shall take place within a reasonable time.

14. Everyone shall be presumed innocent until proven guilty.

15. 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.

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

17. 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.

18. 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.

19. Accused persons 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.

20. 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.

21. 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.

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

23. Juveniles shall be separated from adult offenders.

The Right to Judicial Review

24. 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.

The Right to Home Life

25. No-one shall be deprived of or removed from his or her home on the grounds of race, colour, language, gender or creed.
26. The privacy of the home shall be respected, save that reasonable steps shall be permitted to prevent domestic violence or abuse.
27. People shall have the right to establish families, live together with partners of their choice and to marry.
28. Marriage shall be based upon the free consent of the partners, and spouses shall enjoy equal rights at and during the marriage and after its dissolution.

The Right to Privacy

29. 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.
30. 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 auth-

Just prevent info. to w/men)

orised by law in circumstances that would be acceptable in an open and democratic society.

The Right of Movement

31. 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.

The Right to Conscience

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

Article 3.

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 4.

FREEDOM OF SPEECH, ASSEMBLY AND INFORMATION

1. There shall be freedom of thought, speech, expression 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.

Public TV body
with Tol regard

workers

Article 5.

RIGHTS OF ASSOCIATION, RELIGION, LANGUAGE AND CULTURE

Freedom of Association

[Not relevant to this document] 1. There shall be freedom of association, including the right to form and join trade unions, religious, social and cultural bodies, and to form and participate in non-governmental organisations.

Freedom of Religion

2. There shall be freedom of worship and tolerance of all religions, and 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.

Language Rights

5. The languages of South Africa are Sindebele, Sepedi, Sesotho, Siswati, Setswana, Afrikaans, English, Tsonga [Shangaan], Venda, Xhosa, and Zulu.

6. The State shall act positively to further the development of these languages, 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. The State shall promote respect for all the languages spoken in South Africa.

Creative Freedom

10. 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.

The Right to Sporting, Recreational and Cultural Activities

11. 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.

without fear of dismissal

Article 6.

WORKERS' RIGHTS

1. Workers shall have the right to form and join trade unions, and to regulate such unions without interference from the State. *employer or other parties*
2. Workers shall be free to join trade unions of their choice, subject only to the rules of such unions and to the principles of non-discrimination set out in this Constitution, and no worker shall be victimised on account of membership of a union. *set of rules*
3. The right to organise and to bargain collectively on any social, economic or other matter affecting workers' interests, shall be guaranteed.
4. In the furtherance of these rights, trade unions shall be entitled to reasonable access to the premises of enterprises, to receive such information as may be reasonably necessary, and to deduct union subscriptions where appropriate.
5. No law shall prevent representative trade unions from negotiating collective agreements binding on all workers *covered by* such agreements. *employer*
6. Workers shall have the right to strike under law *and* in pursuance of their social and economic interests subject to reasonable limitations in respect *of* *political* *rights*

6(2) or taking part in affairs of

of the interruption of services such as would endanger the life, health or personal safety of the community or any section of the population.

7. Workers shall have the right to peaceful picketing, subject only to such reasonable conditions as would be acceptable in a democratic society.

8. Trade unions shall have the right to participate in lawful political activities.

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

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

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

12. 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.

The closed shop - ought to be negotiable
separate Labour Court - with Union

Article 7.

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.

consulted on app of judges

Article 8.

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 9.

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.
5. Children are entitled to be protected from economic exploitation and shall not be permitted to perform work that is likely to be hazardous or harmful to their education, health or moral well-being.
6. It shall be unlawful to oblige children to work or perform services for the employers of their parents or other family members.

Article 10.

SOCIAL, EDUCATIONAL, ECONOMIC AND WELFARE RIGHTS

General

1. All men and women have the right to enjoy basic social, educational, economic and welfare rights.
2. The State, shall, to the maximum of its available resources, undertake appropriate legislative and executive action in order to achieve the progressive realisation of basic social, educational, economic and welfare rights for the whole population.
3. Such State action shall establish standards and procedures whereby all men, women and children are guaranteed by law a progressively expanding floor of enforceable minimum rights, with special attention to nutrition, shelter, health care, education and income.
4. In order to achieve a common floor 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.

5. The State may 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.
6. 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.

Freedom from Hunger

7. In order to guarantee the right of freedom from hunger, the State shall ensure the introduction of minimum standards of nutrition throughout the country, with special emphasis on pre-school and school feeding.

The Right to Shelter

8. In order to guarantee the right to shelter, the State shall, in collaboration with private bodies where appropriate, dismantle compounds, single-sex

hostels and other forms of accommodation associated with the migrant labour system, and embark upon and encourage an extensive programme of house-building.

9. The State shall take steps to ensure that energy, access to clean water and appropriate sewage and waste disposal are available to every home.

10. No eviction from homes or from land shall take place without the order of a competent court, which shall have regard to the availability of alternative accommodation.

The Right to Education

10. In order to guarantee the right to education, the State shall, in collaboration with non-governmental and private educational institutions where appropriate, ensure that:

there shall be free and compulsory primary education for all, with a school-leaving age of sixteen, there shall be progressive expansion of access by all children as a right to secondary education, there shall be progressive increase in access to pre-school institutions and institutes of vocational training and of higher learning,

there shall be increasingly extensive facilities to enable adults to overcome illiteracy and further their education.

11. Education shall be directed towards the full development of the human personality and a sense of personal 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.

The Right to Health

12. 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, preventative medicine and health care delivery to all.

The Right to Work

13. In order to guarantee increasing enjoyment of the right to work, the State shall, in collaboration

where appropriate with private bodies and non-governmental institutions:

make technical and vocational training available to all,

remove the barriers which 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.

The Right to a Minimum Income and Welfare Rights

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

15. 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 where appropriate with private bodies, establish a system of national insurance based upon contributions by employers, employees and other interested persons.

Article 11. 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. 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.

4. 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.

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

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

7. No persons or legal entities shall be deprived of their possessions except on grounds of public interest or public utility, including the achievement of the objectives of the Constitution.

8. 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.

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

10. In the case of a dispute regarding the amount of compensation or its mode of payment, provision

shall be made for recourse to a special independent tribunal, with an appeal to the courts.

11. 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, use or acquisition of property in accordance with the general interest, or to preserve the environment, or to regulate or curtail monopolies or to secure the payment of taxes or other contributions or penalties.

Article 12.

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. All men and women 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 Bill of Rights 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.

*Fund. workers' rts not to be
suspendable during Softmorg*

Article 16 ENFORCEMENT

General

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. *(Not entirely - only by judges)*
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, save that the Court shall have the discretion in appropriate

cases to put the relevant body or official to terms as to how and within what period to remedy the violation.

Human Rights Commission

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.

[Note: What about B.C. getting a treaty from interest groups - F.I.C., religious, long fibres]

→ involve ordinary people? TV remote

Ombudsman

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. In accordance with his or her findings, the Ombudsman may initiate legal proceedings, refer the matter for prosecution, negotiate a compromise, or make a report to the department or organ concerned containing recommendations 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.

(Working draft prepared by the Constitutional Committee set up by the NEC).

① Power - p. rts - 2) Rts in str. - adults

② Freedom / bread. Anti-discrim.

③ 4 Mechs - re-distr. Orgs civil society -
TV's, relig, citizens

Eq. prot.

Off-action - Ed, empl, land rts. Property res.

Exp floor - soc rts.

Equalisation.

Equal prot.
Justice

Expand floor -
Soc. Rts Com

Neg. rts.

3 classes of Property

Land

Rt to work -
trade
econ. act.

Need for soc.
workers' rts.

Workers orgs - part in econ decision.

State

Natli.

Civil society -

Control

Civil society -

Rt - in inform. p
Referendum
Press
Range of
views.

Assoc
Heard
Fund.

