

**21 April 1995**  
**PRELIMINARY SUBMISSION OF THE**  
**AFRICAN NATIONAL CONGRESS**  
**THEME COMMITTEE FOUR**

Life

**1**     **Content**

**1.1**    Introduction

The ANC regards the right to life as the single most important pillar upon which all other rights are dependent. Without life, no rights can be enjoyed by human beings - the bearers of the rights contained in a Bill of Rights. Therefore the right to life is the first cornerstone of any Bill of Rights. Hence the importance attached by the United Nations to Articles 3 and 6 of the UDHR and ICCPR, respectively.

**1.2**    Capital Punishment

Capital punishment undermines the enjoyment of life by human beings as it gives the State an immoral and indefensible licence to commit a premeditated and cold-blooded murder in the name of the entire nation under the pretext of protecting society. Far from protecting society, capital punishment brutalises it. Society needs to be built on different values from those it condemns. If society condemns the act of murder by an individual or group of individuals, there is no way it can condone the murder committed by the State no matter how appealing the reasons cited for such an act might appear.

Capital Punishment has never been shown to have any special power to meet any genuine social need. Nor has it been proved as a deterrent. A survey conducted for the United Nations in 1988 on the relationship between the death penalty and homicide rates concluded that **"this research has failed to provide scientific proof that executions have a greater deterrent effect than life imprisonment. Such proof is unlikely to be forthcoming, The evidence as a whole still gives no positive support to the deterrent hypothesis"**.

The ANC holds the view that the only conclusive evidence available throughout the world is that the death penalty is applied disproportionately to the disadvantaged and the death sentence imposed on people at the lower end of the social scale who would not have faced the death penalty if they came from a more favoured sector of society.

Our country, South Africa, is a classical example of this disproportionate and discriminatory use of the death penalty. Many blacks lost their lives as a result of sentences passed by a predominately white judiciary. This is evidenced by the research carried out by Professor Barend van Niekerk of the University of Natal. His research has shown that black defendants stand a greater chance than white defendants of receiving the death penalty, especially when the victim is white. For example, between June 1982 and June 1983, of 81 blacks convicted of murdering whites, 38 were hanged; of 52 whites convicted of murdering whites, only one was hanged, None of the 21 whites convicted of murdering blacks were hanged, but 55 of the 2 208 blacks convicted of murdering blacks were hanged.

The ANC believes that there is no such thing as judicial truth and that the judicial system is free of errors. Capital punishment is irreversible by nature and offers no opportunity to rectify errors in judgement nor does it offer the victim a chance to rehabilitate.

In virtually every legal system, severest sanctions are provided for the deliberate and premeditated killing of another human being; but no killing is more premeditated or cold blooded than an execution, and just as it is not possible to create a death penalty system free of caprice, discrimination or error, so it is not possible to find a way to execute a person which is not cruel and degrading no matter what method of execution is used.

Apart from violating the right to life (section 9), the cruelty of the punishment would certainly be in violation of section 11 (2) of the interim constitution and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or punishment (1984), irrespective of the waiting period between the passing of the sentence and the actual execution.

### 1.3 Abortion

On the question of abortion, we believe that this is best dealt with through legislation. Already, there exists an Adhoc Committee on Abortion and Sterilisation. Public debate is currently engineered through this committee on the issue of abortion. We would however, like to stress that the Right to Life shall not preclude legislature from providing for and regulating the right to an abortion by legislation, which legislation shall be a product of vigorous public debate.

### 1.4 Euthanasia

Also with regard to the question of Euthanasia, the public debate currently going on in the country should take its course as there are moral, cultural, legal, ethical and medical issues involved.

#### 1.5 Other issues

It is the ANC's long held view that the right to life does not only refer to the right to the physical existence, but also the improvement of the quality of life itself. Hence our insistence on the constitutionally guaranteed minimum floor of socioeconomic rights so as to give meaning to life itself. This issue will be further developed in our submission on socioeconomic rights.

We also note the Indian Supreme Court decision in the case of the State of Himachal Pradesh vs Umed Ram Sharma in which it interpreted the right to life in such a way as to recognise certain social and economic rights.

#### 1.6 Proposed Formulation

Because the ANC believes that the right to life is inherent in every human being and that it is not a favour granted by the government or politicians to citizens for good behaviour and withdrawn at will for bad behaviour, we propose the following..

- 1) **Everyone has the right to life**
- 2) **No-one shall be arbitrarily deprived of his/her life**
- 3) **Capital punishment is abolished and no further executions shall take place**
- 4) **This should not preclude the legislature, if it so chooses, from providing and regulating the right to abortion**

## 2. Application of the Right

- 2.1 The State shall protect the right and not be allowed to violate it
- 2.2 The right applies to all levels of civil society
- 2.3 All persons, institutions and structures are bound by the right
- 2.4 Natural persons shall be the bearers of the right

- 2.5 This right should not be subject to limitations save those acknowledged in international law relating to war, rebellion, and the proportionate and necessary force in self-defence and defence of life.
- 2.6 The right to life is the supreme right from which no derogation is permitted even in time of public emergency.