

PRELIMINARY ANC SUBMISSION
THEME COMMITTEE 4 - FURTHER SOCIO-ECONOMIC RIGHTS

The ANC believes that the wide-scale injustices and inequalities of the past require the inclusion of particular socio-economic rights in a South African Bill of Rights. The inclusion of such rights within a Constitution records a country's vision and aspirations for the future. The new Bill of Rights cannot therefore shy away from including within the scope of its protection, fundamental rights, which while posing difficulties in enforcement reflect important principles in the promotion of a society based on justice and equality, a society which seeks to redress the imbalances of the past.

1. Content of the rights and their formulation

A. Right to Shelter

A right to shelter is a fundamental human right which we believe entrenchment to be entrenched within the Bill of Rights in that this would place an important duty upon the state, which within the limits of its reasonable resources, would have to provide adequate shelter for all South Africans. In complying with its obligations in terms of this right, the state should aim at expanding the quality and extent of housing in our country - and it is to this extent that the right is an aspirational one.

A right to housing has been accorded the status of a fundamental human right in Covenants such as that on Economic, Social and Cultural Rights, which requires in terms of Article 11 that states "take appropriate steps to ensure the realisation" of the right of every person to an adequate standard of living, including "...housing, and the continuous improvement of living conditions".

As the ANC, we believe that this right contains the following elements:

1. No person shall be unlawfully evicted from accommodation occupied by him/her without the legal process having been invoked and a court order obtained.
2. No person shall be evicted from public land unless consideration has been given to the availability of alternative accommodation.
3. The state shall be obliged, within the limits of its available resources, to provide adequate shelter for all.
4. Every person shall have equal access to all measures of state assistance in the provision of adequate shelter.

B. Right to Health Care

A right to health care is, we believe, an essential component to the free and full exercise of many other fundamental human rights contained within a Bill of Rights. For, this is the right which aims to protect life and to provide all people with the capacity to enjoy life to its fullest.

Precedence for such a right exists under international law. The African Charter states in Article 16 that "(e)very person shall have the right to enjoy the best attainable state of physical and mental health", with states being required to "take the necessary measures to protect the health of their people and to ensure they receive medical attention when they are sick". The International Covenant on Economic, Social and Cultural Rights recognises in Article 12 "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health". The European Social Charter guarantees that "(a)nyone without adequate resources has the right to social and medical assistance" and "in the case of sickness", to the care necessitated by his (or her) condition".

We are of the view that this right contains the following elements:

- 1 . Every person shall have equal access to medical services and medical attention in the event of sickness.
2. The state shall, within the limits of its available resources, be under an obligation to expand the accessibility and quality of medical services to all.

C. Right to Social Assistance, Food and Water

South Africa is a country marked by vast inequalities in wealth and access to social services, water and food. Apartheid limited social welfare assistance to vast numbers of South Africans on the basis of race. In addition, racial discrimination led to massive social and economic breakdown in vast areas of our country, the results of which are felt to this day. It is therefore our firm belief that rights to social assistance, food and water be included within the Bill of Rights.

The rights envisaged are clearly identified as fundamental human rights under International Law. For example, the Universal Declaration of Human Rights states in Article 25(1) that "(e)veryone has the right to ... food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability ... old age or other lack of livelihood in circumstances beyond his (or her) control". The International Covenant on Economic, Social and Cultural Rights requires that states in terms of Article 11 "take appropriate steps to ensure the realisation" of the right to every person to an adequate standard of living, including "adequate food, clothing and housing, and the continuous improvement of living conditions". The Covenant recognises in Article 11 "the fundamental right of everyone to be free from hunger", setting out measures necessary to ensure the

realisation of such right. In addition, this Covenant declares in Article 9 that everyone shall have the right "to social security, including social assistance".

It is our view that this right contains the following elements:

- 1 . Every person unable to support him/herself has access to appropriate social welfare assistance.
2. Every person has a right of access to clean water and sufficient food (or to be free from hunger).
- 3 . The State is obliged to take all reasonable steps, within the limits of its available resources, to ensure that every person is provided with appropriate social welfare assistance, clean water and sufficient food.

2. Application of the clauses

- 2.1 The state and its organs have a duty to protect and enforce the provisions of the above clauses.
- 2.2 All citizens shall be the bearers of the rights.