



AMNESTY INTERNATIONAL AND AMDISS MEMORANDUM

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SOUTH SUDAN: SUBMISSION FOR CONSIDERATION BY THE CONSTITUTION REVIEW COMMISSION ON THE REVIEW OF PROVISIONS ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN THE 2011 INTERIM CONSTITUTION OF SOUTH SUDAN

As South Sudan approaches independence on 9 July 2011, Amnesty International and the Association for Media Development in Southern Sudan (AMDISS), urge the Interim Constitution of South Sudan Review Commission to strengthen South Sudan's commitment to human rights by including all economic, social and cultural rights as enforceable human rights in South Sudan's interim constitution.

Under international human rights law, States must progressively realize economic, social and cultural rights within the maximum of available resources. Economic, social and cultural rights are enshrined in the International Covenant on Economic, Social and Cultural Rights (ICESCR). The ICESCR recognizes and guarantees, among others, the following rights, which are summarized as follows:

- The right of everyone to the opportunity to gain their living by freely chosen or accepted work and to just and favourable conditions of work (Articles 6 and 7)
- The right of everyone to form trade unions and join the trade union of his choice, including the right of trade unions to function freely and the right to strike (Article 8)
- The right to social security (Article 9)
- Protection and assistance of the family, which is the natural and fundamental group unit of society, including special protection to mothers during a reasonable period before and after childbirth and on behalf of all children and young persons (Article 10)
- The right to food (Article 11)¹
- The right to adequate housing (Article 11)
- The rights to water and to sanitation (Article 11)²

- The right to the highest attainable standard of health (Article 12)
- The right to education (Articles 13 and 14)
- The right to take part in cultural life and to benefit from scientific progress (Article 15)

The African Charter on Human and Peoples' Rights (ACHPR) contains several economic, social and cultural rights including:

- The right to work under equitable and satisfactory conditions, including equal pay for equal work (Article 15)
- The right to enjoy the best attainable state of physical and mental health (Article 16)
- The right to education (Article 17)
- The right to freely take part in the cultural life of one's community (Article 17)
- The right to protection of the family (Article 18)
- The right of the aged and disabled to special measures of protection (Article 18)
- The right to shelter and housing (Articles 14, 16 and 18)³
- The right to food (Articles 4, 16 and 22)⁴
- The right to a general satisfactory environment favourable to the development of all peoples (Article 24).

Sudan became party to the ICESCR and the ACHPR in 1986. International human rights treaty bodies have considered the issue as to whether the treaty obligations of a State also apply to a State that has secured its independence from the former State. The Chairs of the UN Human Rights Treaty Bodies have stated that States securing independence from others are automatically bound by obligations under international human rights instruments entered into by those states and that respect of their obligations should not depend on a declaration of confirmation.⁵ The Human Rights Committee, the treaty body for the International Covenant on Civil and Political Rights, has explained the rationale for such a view:

The rights enshrined in the Covenant belong to the people living in the territory of the State party. The Human Rights Committee has consistently taken the view, as evidenced by its long-standing practice, that once the people are accorded the protection of the rights under the Covenant, such protection devolves with territory and continues to belong to them, notwithstanding change in government of the State party, including dismemberment in more than one State or State succession ...⁶

Although the above statement was made in relation to the ICCPR, the rationale applies equally to other international human rights treaties.

Amnesty International and AMDISS call upon the Government of South Sudan to make a formal declaration upon its independence, that it succeeds to the human rights treaties to which Sudan is a party. Such a declaration of succession was made by several other States that secured independence from other States, such as Croatia, Macedonia and Bosnia-Herzegovina.

Provisions in the 2005 Interim Constitution

The 2005 Interim Constitution of Southern Sudan (the 2005 Interim Constitution), the 2005 National Interim Constitution and the Comprehensive Peace Agreement (CPA) provide the basis for the Government of South Sudan, established in 2005.

Following a referendum held in January 2011, South Sudan will gain independence from Sudan on 9 July 2011. On 21 January 2011, a South Sudan presidential decree was issued, appointing a Technical Committee to Review the Interim Constitution of Southern Sudan. The committee was tasked with drafting a 2011 Interim Constitution of South Sudan, based on the 2005 Interim Constitution.

The 2011 Interim Constitution is scheduled to be approved by the Southern Sudan Legislative Assembly by 25 April, for adoption on 9 July 2011. It will be in place for the undefined transitional period, until a permanent constitution is agreed. During the undefined transitional period, it is essential that economic, social and cultural rights are fully included within Part Two of the Bill of Rights.

The 2005 Interim Constitution already provides for some economic, social and cultural rights within Part Two of the Bill of Rights. Specifically:

Article 20. Women

4. All levels of government in Southern Sudan shall:

- (c) provide maternity and child care and medical care for pregnant and lactating women.

Article 21. Rights of the Child

1. Every child has the right: ...

(c) to know and be cared for by his or her parents or legal guardian;

(d) not to be subjected to exploitative practices or abuse, nor to be required to serve in an army nor permitted to perform work which may be hazardous or harmful to his or her education, health or well-being;

(f) to be free from corporal punishment and cruel and inhuman treatment by any person including parents, school administrations and other institutions;

(g) not to be subjected to negative and harmful cultural practices which affect his or her health, welfare and dignity.

3. All levels of government in Southern Sudan shall accord special protection to orphans and other vulnerable children; child adoption shall be regulated by law.

Article 33. Right to Education

1. Education is a right for every citizen and all levels of government in Southern Sudan shall provide access to education without discrimination as to religion, race, ethnicity, HIV status, gender or disability;

2. All levels of government in Southern Sudan shall promote education at all levels and shall ensure free and compulsory education at the primary level; they shall also provide free illiteracy eradication programmes.

Article 34. Rights of Persons with Special Needs and the Elderly

(1) All levels of government in Southern Sudan shall guarantee to persons with special needs participation in society and the enjoyment of rights and freedoms set out in this Constitution, especially access to public utilities, suitable education and employment.

(2) The elderly and persons with special needs shall have the right to the respect of their

dignity. They shall be provided with the necessary care and medical services as shall be regulated by law.

Article 35. Public Health Care

All levels of government in Southern Sudan shall promote public health, establish, rehabilitate and develop basic medical and diagnostic institutions and provide free primary health care and emergency services for all citizens.

Recommended Provisions to Include in the 2011 Interim Constitution

In addition to the rights expressed in the 2005 Interim Constitution of Southern Sudan, the review process offers an important opportunity to ensure comprehensive protection of economic, social and cultural rights in South Sudan.

Amnesty International and AMDISS urge the Interim Constitution of South Sudan Review Commission to supplement the economic, social and cultural rights contained in the Bill of Rights of the Interim Constitution with the following rights, as defined in the ICESCR and ACHPR:

- The right of everyone to the opportunity to gain their living by freely chosen or accepted work and to just and favourable conditions, including equal pay for equal work
- The right to social security
- The right to food
- The right to adequate housing
- The rights to water
- The right to sanitation
- The right to take part in cultural life and to benefit from scientific progress
- The right to a healthy environment

In addition, two provisions of the Interim Constitution require strengthening:

- Article 29 provides for the right to form or join trade unions. It is necessary to strengthen this provision by providing in more detail for the right of trade unions to function freely, including the right to strike, as provided for in Article 8 of the ICESCR
- Article 35 should clearly recognize the right to the highest attainable standard of physical and mental health, in line with Article 12 of the ICESCR and Article 16 of the ACHPR. Article 35, as presently formulated, only provides a right to free primary health care and emergency services. In line with international law, the Article should provide for the right to affordable secondary and tertiary treatment, which the State should take steps to ensure to the maximum of its available resources.

Comprehensive protection of all economic, social and cultural rights in the new interim constitution is essential for the following reasons:

- i) protection of economic, social and cultural rights in the Interim Constitution would help ensure that South Sudan realizes its obligations to respect, protect and fulfil economic,

social and cultural rights. It would provide a way to guarantee that legislation and policy measures give full effect to economic, social and cultural rights. The Interim Constitution would therefore be an important tool to protect human rights and reduce levels of poverty in the country.

A constitutional guarantee of economic, social and cultural rights would require respect for these rights. For example, it would require that people are protected from being forcibly evicted from their homes without complying with international standards, such as due process and adequate alternative housing or compensation. It would require steps to ensure that third parties respect economic, social and cultural rights, for example through regulation of private businesses to ensure that employers provide fair conditions of work for employees. It would require progressive steps – using the maximum available resources – to ensure that everyone is able to access the rights to education, food, water, housing and health, putting priority on achieving the minimum essential levels of each of these rights for all.

ii) inclusion of economic, social and cultural rights in the Interim Constitution would reflect South Sudan's commitment to the universality and indivisibility of all human rights and to the realization of all human rights, including those of primary importance to those living in poverty. It would make tangible the commitment by 170 States, at the Vienna World Conference on Human Rights of 1993 which stated that "All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis." South Sudan's new Interim Constitution could send an important signal to other States in Africa and globally, that it is now time to protect all forms of human rights, as a goal in itself and as tool to eradicate poverty.

iii) inclusion of these rights in the Constitution increases the role of South Sudanese institutions in securing economic, social and cultural rights, making justice more accessible for the people of South Sudan. On the basis of the African Charter on Human and Peoples' Rights, individuals, groups and civil society organisations in South Sudan will be able to seek a remedy for alleged violations of their economic, social and cultural rights from the African Commission on Human and Peoples' Rights, if there is no effective remedy locally. Guaranteeing economic, social and cultural rights in the South Sudan Interim Constitution makes justice more accessible and ensures that South Sudanese institutions have the opportunity to address and resolve allegations of violations of economic, social and cultural rights before they are brought to the international level.

iv) inclusion of these rights will bring South Sudan's Interim Constitution in line with the growing trend among many countries which have recently revised their Constitutions and recognize that economic, social and cultural rights are enforceable. Countries from all regions: Asia, the Americas, Africa and Europe and at various levels of development guarantee the protection of economic, social and cultural rights in their Constitutions. The attached Annex provides excerpts from the Constitutions of countries in all global regions.

Most recently, Kenya's new Constitution, adopted following a constitutional referendum in August 2010, recognizes the rights to housing, sanitation, food and freedom from hunger, water, social security, education and health, with the latter right specifically including reproductive health care. It states that a person shall not be denied emergency medical

treatment.

Kenya's Constitution, like that of South Africa, explicitly recognizes that the State obligation is to progressively realize economic, social and cultural rights to the extent of a State's ability. Thus, while there remains a positive obligation to take steps in a non-discriminatory manner, if the right is claimed before the Courts, the State has the opportunity to demonstrate that it cannot fulfil the right due to lack of availability of resources. However, it must show that in its allocation of resources, it is giving "priority to ensuring the widest possible enjoyment of the right or fundamental freedom having regard to prevailing circumstances, including the vulnerability of particular groups or individuals." Any court reviewing State action on the allocation of available resources can only interfere with such a decision in the case of a clear violation; it will not be able to do so "solely on the basis that it would have reached a different conclusion."

ANNEX: EXAMPLES OF CONSTITUTIONAL PROVISIONS ON ENFORCEABLE ECONOMIC, SOCIAL AND CULTURAL RIGHTS

This Annex provides a selected list of countries that include enforceable social and economic rights - housing, food, health, education, social security, water, sanitation and work. This list is not comprehensive, but includes examples of countries from each region.

AFRICA

South Africa (1996)⁷

Article 26. Housing

1. Everyone has the right to have access to adequate housing.
2. The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.
3. No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.

Article 27. Health care, food, water and social security

1. Everyone has the right to have access to
 - a. health care services, including reproductive health care;
 - b. sufficient food and water; and
 - c. social security, including, if they are unable to support themselves and their dependants, appropriate social assistance.
2. The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights.
3. No one may be refused emergency medical treatment.

Article 28. Children

1. Every child has the right
 - a. to a name and a nationality from birth;
 - b. to family care or parental care, or to appropriate alternative care when removed from the family environment;
 - c. to basic nutrition, shelter, basic health care services and social services;
 - d. to be protected from maltreatment, neglect, abuse or degradation;
 - e. to be protected from exploitative labour practices;
 - f. not to be required or permitted to perform work or provide services that
 - i. are inappropriate for a person of that child's age; or
 - ii. place at risk the child's well-being, education, physical or mental health or spiritual, moral or social development;
 - g. not to be detained except as a measure of last resort, in which case, in addition to the rights a child enjoys under sections 12 and 35, the child may be detained only for the shortest appropriate period of time, and has the right to be
 - i. kept separately from detained persons over the age of 18 years; and
 - ii. treated in a manner, and kept in conditions, that take account of the child's age;
 - h. to have a legal practitioner assigned to the child by the state, and at state expense, in civil proceedings affecting the child, if substantial injustice would otherwise result; and

- i. not to be used directly in armed conflict, and to be protected in times of armed conflict.
2. A child's best interests are of paramount importance in every matter concerning the child.
3. In this section "child" means a person under the age of 18 years.

Article 29. Education

1. Everyone has the right
 - a. to a basic education, including adult basic education; and
 - b. to further education, which the state, through reasonable measures, must make progressively available and accessible.
2. Everyone has the right to receive education in the official language or languages of their choice in public educational institutions where that education is reasonably practicable. In order to ensure the effective access to, and implementation of, this right, the state must consider all reasonable educational alternatives, including single medium institutions, taking into account
 - a. equity;
 - b. practicability; and
 - c. the need to redress the results of past racially discriminatory laws and practices.
3. Everyone has the right to establish and maintain, at their own expense, independent educational institutions that
 - a. do not discriminate on the basis of race;
 - b. are registered with the state; and
 - c. maintain standards that are not inferior to standards at comparable public educational institutions.
4. Subsection (3) does not preclude state subsidies for independent educational institutions.

Kenya (Adopted by referendum in 2010)⁸

Economic and social rights

43. (1) Every person has the right—
- (a) to the highest attainable standard of health, which includes the right to health care services, including reproductive health care;
 - (b) to accessible and adequate housing, and to reasonable standards of sanitation;
 - (c) to be free from hunger, and to have adequate food of acceptable quality;
 - (d) to clean and safe water in adequate quantities;
 - (e) to social security; and
 - (f) to education.
- (2) A person shall not be denied emergency medical treatment.
- (3) The State shall provide appropriate social security to persons who are unable to support themselves and their dependants.

Application of Bill of Rights

20. ...

- (5) In applying any right under Article 43, if the State claims that it does not have the resources to implement the right, a court, tribunal or other authority shall be guided by the following principles—
- (a) it is the responsibility of the State to show that the resources are not available;

(b) in allocating resources, the State shall give priority to ensuring the widest possible enjoyment of the right or fundamental freedom having regard to prevailing circumstances, including the vulnerability of particular groups or individuals; and

(c) the court, tribunal or other authority may not interfere with a decision by a State organ concerning the allocation of available resources, solely on the basis that it would have reached a different conclusion.

Mozambique (1990)⁹

Article 85. Right to Remuneration and to Safety at Work

1. All workers shall have the right to fair remuneration, rest and vacation and to retirement in accordance with the law.
2. Workers shall have the right to protection, health and safety at work.
3. Workers may be dismissed only in the cases and in accordance with the terms provided for by law.

Article 88. Right to Education

1. In the Republic of Mozambique, education shall be a right and a duty of all citizens.
2. The State shall promote the extension of education to professional and continuing vocational training, as well as equal access to the enjoyment of this right by all citizens.

Article 89. Health

All citizens shall have the right to medical and health care, within the terms of the law, and shall have the duty to promote and protect public health.

Article 90. Right to a Balanced Environment

1. All citizens shall have the right live in a balanced environment and shall have the duty to defend it.
2. The State and the local authorities, with collaboration from associations for environmental protection, shall adopt policies to protect the environment and shall promote the rational use of all natural resources.

Article 91. Housing and Urbanisation

1. All citizens shall have the right to a suitable home, and it shall be the duty of the State, in accordance with national economic development, to create the appropriate institutional, normative and infra-structural conditions.
2. The State shall also be responsible for funding and supporting the initiatives of the local communities, the local authorities and the people, in order to promote private and co-operative construction as well the accessibility of home ownership.

Article 95. Right to Assistance of the Disabled and the Aged

1. All citizens shall have the right to assistance in the case of disability or old age.
2. The State shall promote and encourage the creation of conditions for realising this right.

Senegal (Adopted by referendum in 2001)¹⁰

Article 8

The Republic of Senegal guarantees to all citizens their individual fundamental freedoms, economic and social rights as well as group rights. These freedoms and rights are: Civil and political liberties, freedom of opinion, freedom of expression, press freedom, freedom of

association, freedom to hold meetings, freedom of movement, freedom to protest, cultural freedoms, religious freedoms, philosophical freedoms, union freedoms, freedom of enterprise, the right to education, the right to literacy, the right to property, the right to work, the right to health, the right to a healthy environment, and the right to a variety of information. These freedoms and rights shall be exercised under the conditions provided by law.

Constitution of Côte d'Ivoire (2000)¹¹

Article 6

The State shall ensure the protection of children, the aged and the handicapped.

Article 7

Every individual shall have the right to develop fully his or her personality materially, intellectually and spiritually. The State shall ensure that all citizens have equal access to health, education, culture, information, professional training and employment...

ASIA

Indonesia (As amended by 2002)

Article 28C

(1) Every person shall have the right to develop him/herself through the fulfilment of his/her basic needs, the right to get education and to benefit from science and technology, arts and culture, for the purpose of improving the quality of his/her life and for the welfare of the human race.

(2) Every person shall have the right to improve him/herself through collective struggle for his/her rights to develop his/her society, nation and state.

Article 28H

(1) Every person shall have the right to live in physical and spiritual prosperity, to have a home and to enjoy a good and healthy environment, and shall have the right to obtain medical care.

(2) Every person shall have the right to receive facilitation and special treatment to have the same opportunity and benefit in order to achieve equality and fairness.

(3) Every person shall have the right to social security in order to develop oneself fully as a dignified human being. ...

Article 31

(1) Every citizen has the right to receive education.

(2) Every citizen has the obligation to undertake basic education, and the government has the obligation to fund this.

(3) The government shall manage and organise one system of national education, which shall increase the level of spiritual belief, devoutness and moral character in the context of developing the life of the nation and shall be regulated by law.

(4) The state shall prioritise the budget for education to a minimum of 20% of the State Budget and of the Regional Budgets to fulfil the needs of implementation of national education. ...

Article 34

(1) Impoverished persons and abandoned children shall be taken care of by the State.

(2) The state shall develop a system of social security for all of the people and shall empower the inadequate and underprivileged in society in accordance with human dignity.

(3) The state shall have the obligation to provide sufficient medical and public service facilities.

(4) Further provisions in relation to the implementation of this Article shall be regulated by law.

Thailand (2007)¹²

Section 49

A person shall enjoy an equal right to receive education for the duration of not less than twelve years which shall be provided by State thoroughly, up to the quality, and without charge. The indigent, disabled or handicapped, or destitute person shall enjoy an equal right under paragraph one and shall be supported by State to receive equal education with other persons. The education and training provided by professional or private organization, alternative education of the public, self-directed learning and lifelong learning shall get appropriate protection and promotion from State.

Section 51

A person shall enjoy an equal right to receive standard public health service, and the indigent shall have the right to receive free medical treatment from State's infirmary. The public health service by the State shall be provided thoroughly and efficiently. The State shall promptly prevent and eradicate harmful contagious diseases for the public without charge.

Section 52

Children and youth shall enjoy the right to survive and to receive physical, mental and intellectual development potentially in suitable environment with due regard to their participation. Children, youth, women and family members shall have the right to be protected by State against violence and unfair treatment and shall have the right to medical treatment or rehabilitation upon the occurrence thereof. An interference and imposition of rights of children, youth and family members shall not be made except by virtue of the law specially enacted for the maintenance of family institution or utmost benefit of such person. Children and youth with no guardian shall have the right to receive appropriate care and education from the State.

Section 53

A person who is over sixty years of age and has insufficient income for living shall have the right to welfare, public facilities and appropriate aids from State.

Section 54

The disabled or handicapped shall have the right to get access to, and to utilize of, welfare, public facilities and appropriate aids from State. A person of unsound mind shall have the right to appropriate aids from State.

Section 55

A person who is homeless and has insufficient income for living shall have the right to appropriate aids from State.

Mongolia (1992)¹³

Article 16

The citizens of Mongolia shall be guaranteed the privilege to enjoy the following rights and freedoms: ...

- 2) Right to healthy and safe environment, and to be protected against environmental pollution and ecological imbalance. ...
- 4) Right to free choice of employment, favourable conditions of work, remuneration, rest and private enterprise. No one shall be unlawfully forced to work.
- 5) Right to material and financial assistance in old age, disability, childbirth and child care and in other circumstances as provided by law;
- 6) Right to the protection of health and medical care. The procedure and conditions of free medical aid shall be defined by law.
- 7) Right to education. The State shall provide basic general education free of charge. Citizens may establish and operate private schools if these meet the requirements of the State.

AMERICAS

Brazil (1988, as amended by 2006)¹⁴

Article 6

Education, health, work, habitation, leisure, security, social security, protection of motherhood and childhood, and assistance to the destitute, are social rights, as set forth by this Constitution.

[In addition, in February 3, 2010, the Brazilian Congress approved Constitutional Amendment 047/2003 to incorporate the right to food into Article 6 of the national constitution].

Article 196

Health is a right of all and a duty of the State and shall be guaranteed by means of social and economic policies aimed at reducing the risk of illness and other hazards and at the universal and equal access to actions and services for its promotion, protection and recovery.

Article 203

Social assistance shall be rendered to whomever may need it, regardless of contribution to social welfare and shall have as objectives:

- I - the protection of the family, maternity, childhood, adolescence and old age;
- II - the assistance to needy children and adolescents;
- III - the promotion of the integration into the labour market;
- IV - the habilitation and rehabilitation of the handicapped and their integration into community life;
- V - the guarantee of a monthly benefit of one minimum wage to the handicapped and to the elderly who prove their incapability of providing for their own support or having it provided for by their families. As set forth by law.

Article 205

Education, which is the right of all and duty of the State and of the family, shall be promoted and fostered with the cooperation of society, with a view to the full development of the person, his preparation for the exercise of citizenship and his qualification for work.

Colombia (1991)¹⁵

Article 51

All Colombian citizens are entitled to live in dignity. The state will determine the conditions necessary to give effect to this right and will promote plans for public housing, appropriate systems of long-term financing, and community plans for the execution of these housing programs.

Article 48

... All the population is guaranteed the irrevocable right to social security. ...

Article 49

... Public health and environmental protection are public services for which the state is responsible. All individuals are guaranteed access to services that promote, protect, and rehabilitate public health...

Article 67

Education is an individual right and a public service that has a social function....

Article 366

The general welfare and improvement of the population quality of life are social purposes of the state. A basic objective of the state's activity will be to address unsatisfied public health, educational, environmental, and potable water needs. For this purpose, public social expenditures will have priority over any other allocation in the plans and budgets of the nation and of the territorial entities.

Constitution of Bolivia (Adopted by referendum in 2009)¹⁶

Article 16

I. Everyone has the right to water and food.

II. The State is under the obligation to guarantee food security, through the provision of healthy, appropriate and sufficient food for the entire population.

Article 17

Everyone has the right to receive universal, productive, free, comprehensive and intercultural education at all levels without discrimination.

Article 18

I. Everyone has the right to health.

II. The State guarantees inclusion and access to health for everyone without exception or discrimination. ...

Article 19

I. Everyone has the right to a home and decent housing that gives dignity to family and community life.

II. The State, at all levels of government, shall, through the provision of appropriate systems of funding, promote social housing schemes that are based on the principles of solidarity and fairness. Such schemes shall prioritize families with few resources, disadvantaged groups and

the rural area.

Article 20

I. Everyone has the right to universal and equal access to basic services for the provision of drinking water, sanitation, electricity, domestic gas, postal services and telecommunications.

...

III. Access to water and sanitation are human rights; they may not be subject to concession or privatization but are subject to a licensing and registration system, in accordance with the law.

Article 33

People have the right to a healthy, protected and balanced environment. ...

Article 46

I. Everyone has the right:

1. To decent work, together with occupational health, hygiene and safety, without discrimination and with fair, equitable and satisfactory remuneration or wages that will ensure a decent standard of living for themselves and their families.
2. To a stable source of work, under equitable and satisfactory conditions. ...

EUROPE

Portugal (as last amended in 2005)¹⁷

Article 63 (Social security and solidarity)

1. Everyone shall have the right to social security.
2. The state shall be charged with organising, coordinating and subsidising a unified and decentralised social security system, with the participation of the trade unions, other organisations that represent workers and associations that represent any other beneficiaries.
3. The social security system shall protect citizens in illness and old age and when they are disabled, widowed or orphaned, as well as when they are unemployed or in any other situation that entails a lack of or reduction in means of subsistence or ability to work.
4. All periods of work shall, as laid down by law, contribute to the calculation of old age and disability pensions, regardless of the sector of activity in which they were performed. ...

Article 64 (Health)

1. Everyone shall possess the right to health protection and the duty to defend and promote health.

2. The right to health protection shall be fulfilled:

- a) By means of a national health service that shall be universal and general and, with particular regard to the economic and social conditions of the citizens who use it, shall tend to be free of charge;
- b) By creating economic, social, cultural and environmental conditions that particularly guarantee the protection of childhood, youth and old age; by systematically improving living and working conditions and also promoting physical fitness and sport at school and among the people; and by developing both the people's health and hygiene education and healthy living practises.

3. In order to ensure enjoyment of the right to the protection of health, the state shall be under a primary duty:

- a) To guarantee access by every citizen, regardless of his economic situation, to preventive, curative and rehabilitative medical care;
 - b) To guarantee a rational and efficient nationwide coverage in terms of healthcare units and human resources;
 - c) To work towards the public funding of the costs of medical care and medicines;
 - d) To regulate and inspect corporate and private forms of medicine and articulate them with the national health service, in such a way as to ensure adequate standards of efficiency and quality in both public and private healthcare institutions;
 - e) To regulate and control the production, distribution, marketing, sale and use of chemical, biological and pharmaceutical products and other means of treatment and diagnosis;
 - f) To establish policies for the prevention and treatment of drug abuse.
4. The national health service shall possess a decentralised and participatory management system.

Article 65 (Housing and urban planning)

1. Everyone shall possess the right for themselves and their family to have an adequately sized dwelling that provides them with hygienic and comfortable conditions and preserves personal and family privacy.
2. In order to ensure enjoyment of the right to housing, the state shall be charged with:
 - a) Planning and implementing a housing policy that is embodied in general town and country planning documents and supported by urban planning documents that guarantee the existence of an adequate network of transport and social facilities;
 - b) In cooperation with the autonomous regions and local authorities, promoting the construction of low-cost and social housing;
 - c) Stimulating private construction, subject to the general interest, and access to owned or rented housing;
 - d) Encouraging and supporting local community initiatives that work towards the resolution of their housing problems and foster the formation of housing and self-building cooperatives.
3. The state shall undertake a policy that works towards the establishment of a rental system which is compatible with family incomes and access to individual housing. ...

Ukraine (1996)¹⁸

Article 43

Everyone shall have the right to work, including a possibility to earn a living by labour that he freely chooses or to which he freely agrees. The State shall create conditions for citizens that will make it possible to fully realise their right to work, guarantee equal opportunities in the choice of profession and of types of labour activities, and implement programmes for vocational education, training, and retraining of personnel according to the needs of society.

...

Article 46

Citizens shall have the right to social protection including the right to financial security in cases of complete, partial, or temporary disability, loss of the principal wage-earner, unemployment due to circumstances beyond their control, old age, and in other cases determined by law. This right shall be guaranteed by the mandatory state social insurance based on insurance payments made by citizens, enterprises, institutions, and organisations, as well as by budgetary and other sources of social security; and by establishing a network of state, communal, and private institutions caring for incapacitated persons. Pensions and

other types of social payments and assistance that are the principal sources of subsistence shall ensure a standard of living not lower than the minimum living standard established by law.

Article 47

Everyone shall have the right to housing. The State shall create conditions enabling every citizen to build, purchase, or rent housing. Citizens in need of social protection shall be provided with housing by the bodies of State power and local self-government, free of charge or at a price affordable for them in accordance with law. No one shall be arbitrarily deprived of housing other than on the basis of the law pursuant to a court decision.

Article 48

Everyone shall have the right to a standard of living sufficient for themselves and their families including adequate nutrition, clothing, and housing.

Article 49

Everyone shall have the right to health protection, medical care and medical insurance. Health protection shall be ensured through state funding of the relevant socio-economic, medical and sanitary, health improvement and prevention programmes. The State shall create conditions for effective medical service accessible to all citizens. State and communal health protection institutions shall render medical care free of charge; the existing network of such institutions shall not be reduced. The State shall promote the development of medical institutions under all forms of ownership. The State shall provide for the development of physical culture and sports, and ensure sanitary-epidemic welfare.

Article 50

Everyone shall have the right to an environment that is safe for life and health, and to compensation for damages caused by violation of this right.

Article 53

Everyone shall have the right to education. Complete general secondary education shall be compulsory. The State shall ensure accessible and free pre-school, complete general secondary, vocational and higher education at the state and communal educational establishments; the development of pre-school, complete general secondary, extra-curricular, vocational, higher and post-graduate education, various forms of study; the provision of state scholarships and privileges to pupils and students. Citizens shall have the right to obtain free higher education at the state and communal educational establishments on a competitive basis. ...

¹ Article 11 (1) of the ICESCR recognizes "...the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing...". The UN Human Rights Council regularly adopts resolutions that refer to the terms 'right to food' and 'right to adequate housing'. The UN Committee on Economic, Social and Cultural Rights has adopted General Comments on these rights; *The right to adequate food (Art.11)* General Comment 12, E/C.12/1999/5, 12 May 1999 and *The right to adequate housing (Art.11 (1))*, General Comment 4, 13 December 1991.

² In July 2010, UN General Assembly adopted Resolution 64/292 which "Recognizes the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights." Although the ICESCR does not explicitly refer to water and sanitation, its official

treaty monitoring body, the UN Committee on Economic, Social and Cultural Rights, has stated that the rights to water and sanitation are implicitly included within Article 11 of the ICESCR, which recognizes the right of everyone to an adequate standard of living. This is because the rights to water and sanitation are essential for survival and to live in dignity. See UN CESCR, *The right to water*, General Comment 15, E/C.12/2002/11, 20 January 2003 and *Statement on the Right to Sanitation*, UN Doc.

E/C.12/45/CRP.1, 19 November 2010. The Human Rights Council concurred with this view. On 30 September 2010 the Human Rights Council (where Sudan is a member) adopted by consensus Resolution 15/9 which: "Affirms that the human right to safe drinking water and sanitation is derived from the right to an adequate standard of living and inextricably related to the right to the highest attainable standard of physical and mental health, as well as the right to life and human dignity".

³ The African Commission on Human and Peoples Rights stated that the combined effect of Articles 14 (right to property), 16 (right to health) and 18 (1) (right to protection of the family) reads into the Charter the right to shelter or housing. *The Social and Economic Rights Action Center (SERAC) and the Center for Economic and Social Rights v. Nigeria*, Communication 155/96, decision made at 30th Ordinary Session, Banjul, The Gambia, from 13th to 27th October 2001, ACHPR/COMM/A044/1, para. 60.

⁴ In the case of SERAC and CESR v. Nigeria, *ibid*, paras. 63-5, the Commission noted that the right to food is implicit in the African Charter, on the basis of the argument by the communicants that it was contained in the right to life (Art. 4), the right to health (Art. 16) and the right to economic, social and cultural development (Art. 22).

⁵ Report of the Secretary-General, UN Doc HRI/MC/1996/2, 15 August 1996, para. 18.

⁶ HRC, *Continuity of obligations*, General Comment 26, **CCPR/C/21/Rev.1/Add.8/Rev.1**, 12 August 1997, para. 4.

⁷ <http://www.info.gov.za/documents/constitution/index.htm>

⁸ http://www.parliament.go.ke/index.php?option=com_content&view=article&id=83&Itemid=79

⁹ Unofficial translation available at:

http://www.chr.up.ac.za/images/files/documents/ahrdd/mozambique/mozambique_constitution.pdf

¹⁰ Unofficial translation available at:

http://www.chr.up.ac.za/images/files/documents/ahrdd/senegal/senegal_constitution_extracts.pdf. The

original French version is available at:

http://www.chr.up.ac.za/images/files/documents/ahrdd/senegal/senegal_constitution_french.pdf

¹¹ Unofficial translation available at:

http://www.chr.up.ac.za/images/files/documents/ahrdd/cotedivoire/cotedivoire_constitution_extracts.pdf

¹² Unofficial translation available at: <http://www.thailawonline.com/en/thai-laws/constitutions-of-thailand/87-constitution-of-thailand-be-2550-or-2007-.html>

¹³ Official English translation from the Mongolian Ministry for Foreign Affairs available at:

http://dipservice.mfat.gov.mn/index.php?option=com_content&view=category&id=4&Itemid=13&lang=en

¹⁴ Unofficial translation available at: <http://www.v-brazil.com/government/laws/title11.html>

¹⁵ Unofficial translation available at: http://confinder.richmond.edu/admin/docs/colombia_const2.pdf

¹⁶ Unofficial translation. The original Spanish original is available at:

<http://www.geocities.com/cpbolivia/texto2.htm>.

¹⁷ Official translation from the Portuguese Constitutional Court available at:

<http://www.tribunalconstitucional.pt/tc/en/crpen.html>

¹⁸ Official translation from the Ukrainian Presidency available at:

<http://www.president.gov.ua/en/content/constitution.html>