

2/14/14/25

CONSTITUTIONAL ASSEMBLY

**THEME COMMITTEE 4
FUNDAMENTAL RIGHTS**

REPORT:

17. ECONOMIC ACTIVITY

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THEME COMMITTEE 4
-FUNDAMENTAL RIGHTS

SCHEMATIC REPORT ON
ECONOMIC ACTIVITY

N O	CONSTITUTIONAL PRINCIPLES	ISSUES	NON - CONTENTIOUS ASPECTS	CONTENTIOUS\ OUTSTANDING ASPECTS	REMARKS
1.	II	Nature of right (Application of Constitutional Principle II)	Right is not a universally accepted fundamental right (All but one party supported the exclusion of this clause in the Theme Committee).	The right is "enjoined to the value of human dignity and underscores the morality of the work ethic." - ACDP Section 26 as it now stands should be retained - NP	
2.		Content of right		Clause is "either too vague to be meaningful, or it is so broad that it will impact on every aspect of human territory" - ANC It is "doubtful as to whether any meaningful protection is afforded by the inclusion of this right" - DP The DP propose a new clause under the heading "Entitlement to the Essentials of Life": (1) "Every citizen shall be entitled to the food and water necessary for survival; to shelter from the elements; to basic health care; to a basic education; and to a clean and healthy environment; (2) It is the province of parliament... to decide how these entitlements are to be realised..."	

N O	CONSTITUTIONAL PRINCIPLES	ISSUES	NON - CONTENTIOUS ASPECTS	CONTENTIOUS\ OUTSTANDING ASPECTS	REMARKS
				<p>A Bill of Rights enacting such a clause, would acknowledge also that the manner in which entitlement is realised is a matter for the legislature and the executive" - DP.</p> <p>Right "goes too far and may limit unnecessarily the state's regulation of the economy - PAC</p> <p>One aspect of Section 26 (1) of the Interim Constitution, ie. the right to "pursue a livelihood anywhere in the country may accommodated under the freedom of movement - PAC</p> <p>Present wording of section 26 to be retained - NP.</p> <p>Support economic activity as long as it is dictated by "certain moral imperatives" and does not subscribe to exploitative, questionable or immoral economic practises" - ACDP.</p> <p>Suggest addition to section 26 (2) of words "equal" and "dignified" - ACDP.</p>	

N O	CONSTITUTIONAL PRINCIPLES	ISSUES	NON - CONTENTIOUS ASPECTS	CONTENTIOUS\ OUTSTANDING ASPECTS	REMARKS
3.		Application of the right (Nature of Duty)		<p>State to act with "restraint on interfering with economic activity" - ACDP, NP.</p> <p>State to ensure favourable climate exists where economic freedom and investment is guaranteed - ACDP</p> <p>State to act to ensure that free exercise of this right - NP</p>	
4.		Application of the right (To common and customary law)	Shall apply to common law and customary law.		
5.		Application of the right (Duty on Private Actors)		<p>To apply horizontally and vertically - ACDP.</p> <p>The right applies vertically against the state. Other rights eg right to healthy environment, may impact on right to economic activity - NP</p>	
6.		Bearers of the right		Natural persons and juristic persons are the bearers of the right - ACDP, NP .	

N O	CONSTITUTIONAL PRINCIPLES	ISSUES	NON - CONTENTIOUS ASPECTS	CONTENTIOUS\ OUTSTANDING ASPECTS	REMARKS
7.	Section 33	Limitation of right		<p>Limitation to apply on economic activities of "questionable moral and origins of pornography, drug cartels, corrupt and fraudulent engagements, etc" - ACDP</p> <p>Subject to limitations as imposed in section 33 - NP.</p>	

THEME COMMITTEE 4 FUNDAMENTAL RIGHTS

REPORT ON RIGHT ON ECONOMIC ACTIVITY

This report is drawn up on the basis of submissions received from political parties, organisations of civil society and individuals; the public participation programme and other activities of the Constitutional Assembly.

PART I

MATERIAL CONSIDERED BY THE THEME COMMITTEE

1. Submissions received from political parties (in alphabetical order):

- ACDP
- ANC
- DP
- FF
- NP
- PAC

2. Submissions received from the public and civil society¹:

- 2.1 Individuals (in alphabetical order)
- 2.2 Organisations (in alphabetical order)
- 2.3 Government structures\ institutions (in alphabetical order)

3. Technical Committee reports:

None to date

4. Relevant Constitutional Principles

II

2. This section will be completed once all the submissions received have been processed.

PART II

1. NATURE OF THE RIGHT (Application of Constitutional Principle II)

1.1 Non-contentious Issues

1.1.1 Right is not a universally accepted fundamental right. (It should be noted that only one party [NP] in the Theme Committee stated their support for the inclusion of this clause).

1.2 Contentious\ Outstanding² Issues

1.2.1 The right is "enjoined to the value of human dignity and underscores the morality of the work ethic." - ACDP

1.2.2 Section 26 as it now stands in the Interim Constitution should be retained.

2. CONTENT AND SCOPE OF THE RIGHT

2.1 Contentious\ Outstanding Issues

2.1.1 As it stands it is "either too vague to be meaningful, or it is so broad that it will impact on every aspect of human territory" - ANC

2.1.2 It is "doubtful as to whether any meaningful protection is afforded by the inclusion of this right" - DP

2.1.3 The DP propose a new clause under the heading "Entitlement to the Essentials of Life":

(1) "Every citizen shall be entitled to the food and water necessary for survival; to shelter from the elements; to basic health care; to a basic education; and to a clean and healthy environment;

(2) It is the province of parliament... to decide how these entitlements are to be realised..."

2. It should be noted that items marked "*Outstanding*" do not signify disagreement amongst political parties or contention. Parties felt that these matters could best be dealt with at the level of the Constitutional Committee, where negotiation could take place.

A Bill of Rights enacting such a clause, would acknowledge also that the manner in which entitlement is realised is a matter for the legislature and the executive".

2.1.4 Right "goes too far and may limit unnecessarily the state's regulation of the economy - PAC

2.1.5 One aspect of Section 26 (1) of the Interim Constitution, ie. the right to "pursue a livelihood anywhere in the country may accommodated under the freedom of movement - PAC

2.1.6 Present wording of section 26 to be retained - NP.

2.1.7 Support economic activity as long as it is dictated by "certain moral imperatives" and does not subscribe to exploitative, questionable or immoral economic practises" - ACDP.

2.1.8 Suggest addition to section 26 (2) of words "equal" and "dignified" - ACDP.

3. APPLICATION OF THE RIGHT (Nature of the duty on the state)

3.1 Outstanding Issues

3.1.1 State to act with "restraint on interfering with economic activity" - ACDP, NP.

3.1.2 State to ensure favourable climate exists where economic freedom and investment is guaranteed - ACDP

3.1.3 State to act to ensure that free exercise of this right - NP

4. APPLICATION OF THE RIGHT (To common and customary law)

4.1 Non-contentious issues

4.1.1 The right must apply to the common and customary law.

5. APPLICATION OF THE RIGHT (Duty on private actors)

5.1 Outstanding Issues

5.1.1 To apply horizontally and vertically - ACDP.

5.1.2 The right applies vertically against the state. Other rights eg right to healthy environment, may impact on right to economic activity - NP

6. BEARERS OF THE RIGHT

6.1 Outstanding Issues

6.1.1 Natural persons and juristic persons are the bearers of the right - ACDP, NP .

7. LIMITATION OF THE RIGHT

7.1 Outstanding Issues

7.1.1 Limitation to apply on economic activities of "questionable moral and origins of pornography, drug cartels, corrupt and fraudulent engagements, etc" - ACDP

7.1.2 Subject to limitations as imposed in section 33 - NP.