

2/4/14/31

CONSTITUTIONAL ASSEMBLY

**THEME COMMITTEE 4
FUNDAMENTAL RIGHTS**

REPORT:

***23. OTHER SOCIAL AND ECONOMIC
RIGHTS***

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THEME COMMITTEE 4

-FUNDAMENTAL RIGHTS

**SCHEMATIC REPORT ON
OTHER SOCIAL AND ECONOMIC RIGHTS**

N O	CONSTITUTIONAL PRINCIPLES	ISSUES	NON - CONTENTIOUS ASPECTS	CONTENTIOUS\ OUTSTANDING ASPECTS	REMARKS
1.	II	Nature of right (Application of Constitutional Principle II)	Internationally recognised social and economic rights are universally accepted for the purpose of Constitutional Principle II.		

N O	CONSTITUTIONAL PRINCIPLES	ISSUES	NON - CONTENTIOUS ASPECTS	CONTENTIOUS\ OUTSTANDING ASPECTS	REMARKS
2.		Content of right	<p>The 'Bill of Rights' should contain a justiciable core of social and economic rights which are essential to civic equality and the enjoyment of civil and political rights;</p> <p>These rights should be carefully drafted in a way that ensures:</p> <p>(a) that they do not place an obligation on the state which cannot be fulfilled in terms of its resources and capacity;</p> <p>(b) that they preserve the distinction between the roles of the judiciary and the legislature. This entails ensuring that the legislature is given the main responsibility for elaborating and implementing the rights, with the courts possessing the necessary powers of review;</p>	<p>The following "other" social and economic rights should be considered for inclusion in the 'Bill of Rights':</p> <ul style="list-style-type: none"> - social welfare/security-ANC,PAC - a minimum standard of living-NP - protection against arbitrary evictions and demolitions-ANC, PAC - food and water - DP, NP - "a right of access to land based on affirmative action" - PAC <p>The right to 'basic education' and to 'a clean and healthy environment' should be included along with the other social and economic rights in an "Entitlement to the Essentials of Life" clause - DP;</p> <p>The courts should be given the power to review the legislature and executive's decisions and choices in respect of these rights on the basis of their justifiability: "A decision which is reasonable and practicable and which respects the limitations on the resources available to realise the relevant entitlement, shall be considered justifiable" - DP.</p>	

N O	CONSTITUTIONAL PRINCIPLES	ISSUES	NON - CONTENTIOUS ASPECTS	CONTENTIOUS\ OUTSTANDING ASPECTS	REMARKS
			<p>(c) that the main duty on the state is to provide opportunities and remove constraints which prevent access to social and economic rights in South Africa.</p> <p>Among the common "other" rights suggested for inclusion by the parties are: rights relating to housing/shelter and health-care.</p>		
3.		Application of the right (Nature of Duty)	The state shall respect, protect, promote and fulfil the negative and positive dimensions of the rights.		
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)	All persons shall be under a duty to respect these rights		
6.		Bearers of the right	Only natural persons		

N O	CONSTITUTIONAL PRINCIPLES	ISSUES	NON - CONTENTIOUS ASPECTS	CONTENTIOUS\ OUTSTANDING ASPECTS	REMARKS
7.	Section 33	Limitation of right	The rights should be capable of limitation.		

THEME COMMITTEE 4 FUNDAMENTAL RIGHTS

REPORT ON OTHER SOCIAL & ECONOMIC RIGHTS

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):

- ANC¹
- DP
- IFP²
- NP
- PAC

2. Submissions received from the public and civil society:

- 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

1 Have made a submission, but have indicated that they may wish to make more detailed submissions on the rights not presently included in Chapter 3 of the Interim Constitution.

2 Have indicated in their First Report on Constitutional Principle II (January 1993) that they support the inclusion of social and economic rights in the Constitution.

PART II

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

1.1 Non-contentious Issues

1.1.1 Internationally recognised social and economic rights are universally accepted for the purpose of Constitutional Principle II.

2. CONTENT AND SCOPE OF THE RIGHT

2.1 Non-Contentious Issues

2.1.1 The 'Bill of Rights' should contain a justiciable core of social and economic rights which are essential to civic equality and the enjoyment of civil and political rights;

2.1.2 These rights should be carefully drafted in a way that ensures:

(a) that they do not place an obligation on the state which cannot be fulfilled in terms of its resources and capacity;

(b) that they preserve the distinction between the roles of the judiciary and the legislature. This entails ensuring that the legislature is given the main responsibility for elaborating and implementing the rights, with the courts possessing the necessary powers of review;

(c) that the main duty on the state is to provide opportunities and remove constraints which prevent access to social and economic rights in South Africa.

2.1.3 Among the common "other" rights suggested for inclusion by the parties are: rights relating to housing/shelter and health-care.

2.2 Contentious\ Outstanding³ Issues

2.2.1 The following "other" social and economic rights should be considered for inclusion in the 'Bill of Rights':

- social welfare/security - ANC, PAC
- a minimum standard of living - NP
- protection against arbitrary evictions and demolitions - ANC, PAC
- food and water - DP, NP
- "a right of access to land based on affirmative action" - PAC

2.2.2 The right to 'basic education' and to 'a clean and healthy environment' should be included along with the other social and economic rights in an "Entitlement to the Essentials of Life" clause - DP;

2.2.3 The courts should be given the power to review the legislature and executive's decisions and choices in respect of these rights on the basis of their justifiability: "A decision which is reasonable and practicable and which respects the limitations on the resources available to realise the relevant entitlement, shall be considered justifiable" - DP.

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

3.1 Non-contentious Issues

3.1.1 The state shall respect, protect, promote and fulfil the negative and positive dimensions of the rights.

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

4.1 Non-contentious issues

4.1.1 Common law and customary law shall be subject to these rights

3. 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.

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

5.1 Non-contentious issues

5.1.1 All persons shall be under a duty to respect these rights

6. BEARERS OF THE RIGHT

6.1 Non-contentious Issues

6.1.1 Only natural persons

7. LIMITATION OF THE RIGHT

7.1 Non-contentious Issues

7.1.1 The rights should be capable of limitation.