

21/2/19/1/16

CONSTITUTIONAL ASSEMBLY

**CONSTITUTIONAL COMMITTEE
SUB-COMMITTEE**

**THEME COMMITTEE FOUR
FUNDAMENTAL RIGHTS**

**REPORT ON LABOUR
RELATIONS**

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THEME COMMITTEE 4
-FUNDAMENTAL RIGHTS

SCHEMATIC REPORT ON
LABOUR RELATIONS

N O	CONSTITUTIONAL PRINCIPLES	ISSUES	NON - CONTENTIOUS ASPECTS	CONTENTIOUS\ OUTSTANDING ASPECTS	REMARKS
1.	II	Nature of right (Application of Constitutional Principle II)	Right to be included.	The ACDP proposes a biblical interpretation of work, advocating a return from the "dehumanising of the working relationship to a position where the worker is not just an economic entity". <i>Outstanding</i> ¹ .	

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

N O	CONSTITUTIONAL PRINCIPLES	ISSUES	NON - CONTENTIOUS ASPECTS	CONTENTIOUS\ OUTSTANDING ASPECTS	REMARKS
2.		Content of right	Section 27 with certain exceptions to be retained.	<p>Section 33 (5) application to this right should be scrapped, and 27 (3 & 4) to be amended regarding "bargain collectively" and "colective bargaining". There should be no mandatory requirement for collective bargaining - DP.</p> <p>Other rights already protect the rights elaborated in s27, "it may be unnecessary to enact any protection of the rights elaborated upon in s27" - DP.</p> <p>The right to fair labour practise should be spelt out more clearly, and the lock out should not be permitted - PAC.</p> <p>Other rights important to workers such as right to living wage, right to acts such as the Basic Conditions of Employment Act, also to be prescribed - PAC.</p> <p>Section 27 (5) to be deleted and right should take into account the role of NEDLAC and other emerging labour legislation - ANC, NP, PAC.</p>	

N O	CONSTITUTIONAL PRINCIPLES	ISSUES	NON - CONTENTIOUS ASPECTS	CONTENTIOUS\ OUTSTANDING ASPECTS	REMARKS
				<p>Section 27 (4) needs to be reconsidered to take into account the rights of workers in essential services for a negotiating forum - ANC, FF, NP</p> <p>Right of work cannot be justiciable and thus clause should include phrase which states "Every person shall have right to work ... in so far as existing conditions of employment permit" - FF</p>	
3.		Application of the right (Nature of Duty)	The State must ensure compliance and respect the exercise of the right.	State must criminally prosecute offences on part of employer and on part of employee in accordance with biblical precepts - ACDP.	
4.		Application of the right (To common and customary law)	Shall apply to common law and customary law.	No law should be above God's biblical principles - ACDP	

N O	CONSTITUTIONAL PRINCIPLES	ISSUES	NON - CONTENTIOUS ASPECTS	CONTENTIOUS\ OUTSTANDING ASPECTS	REMARKS
5.		Application of the right (Duty on Private Actors)	All persons must respect the exercise of the rights.	<p>Right applies vertically and horizontally - ACDP</p> <p>A negative duty exists on the employer, through law to ensure that workers enjoy these rights - ANC</p> <p>Private sector employees and employers not bound directly - NP</p>	
6.		Bearers of the right	Natural persons and juristic persons (where applicable) are the bearers of these rights.		
7.	Section 33	Limitation of right	Right subject to limitation	<p>The right shall not preclude such limitation which would limit or restrict or curtail the right to strike in essential services and the National Defence Force, subject to the existence of alternate mechanisms for dispute resolution - ANC, FF, NP.</p> <p>The right to join trade unions to be limited in the Defence Force - ANC.</p>	

THEME COMMITTEE 4 FUNDAMENTAL RIGHTS

REPORT ON LABOUR RELATIONS

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 society²:

- 2.1 Individuals
- 2.2 Organisations
- 2.3 Government structures\ institutions

3. Technical Committee reports:

None to date

4. Relevant Constitutional Principles

II

2 A complete listing of all submissions received from the public and civil society is included in the document entitled "Public Submissions". The document is being circulated separately.

PART II

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

1.1 Non-contentious Issues

1.1.1 The right to be included in the Constitution.

1.2 Outstanding Issues

1.2.1 The ACDP proposes a biblical interpretation of work, advocating a return from the "dehumanising of the working relationship to a position where the worker is not just an economic entity".

2. CONTENT AND SCOPE OF THE RIGHT

2.1 Non-Contentious Issues

2.1.1 Section 27 with certain exceptions to be retained.

2.2 Outstanding³ Issues

2.2.1 Section 33 (5) application to this right should be scrapped, and 27 (3 & 4) to be amended regarding "bargain collectively" and "collective bargaining". There should be no mandatory requirement for collective bargaining - DP.

2.2.2 Other rights already protect the rights elaborated in s27, "it may be unnecessary to enact any protection of the rights elaborated upon in s27" - DP.

2.2.3 The right to fair labour practise should be spelt out more clearly, and the lock out should not be permitted - PAC.

2.2.4 Other rights important to workers such as right to living wage, right to acts such as the Basic Conditions of Employment Act, also to be prescribed - PAC.

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.

2.2.5 Section 27 (5) to be deleted and right should take into account the role of NEDLAC and other emerging labour legislation - ANC, NP, PAC.

2.2.6 Section 27 (4) needs to be reconsidered to take into account the rights of workers in essential services for a negotiating forum - ANC, FF, NP

2.2.7 Right of work cannot be justiciable and thus clause should include phrase which states "Every person shall have right to work ... in so far as existing conditions of employment permit"
- FF

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

3.1 Non-contentious Issues

3.1.1 The State must ensure compliance and respect the exercise of the right.

3.1.2 Outstanding issues

3.1.3 State must criminally prosecute offences on part of employer and on part of employee in accordance with biblical precepts - ACDP.

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.

4.2 Outstanding Issues

4.2.1 No law should be above God's biblical principles - ACDP

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

5.1 Non-contentious issues

5.1.1 All persons must respect the exercise of the rights.

5.2 Contentious\ Outstanding Issues

5.2.1 Right applies vertically and horizontally - ACDP

5.2.2 A negative duty exists on the employer, through law to ensure that workers enjoy these rights - ANC

5.2.3 Private sector employees and employers not bound directly - NP

6. BEARERS OF THE RIGHT

6.1 Non-contentious Issues

6.1.1 Natural and juristic persons (where applicable) are the bearers of the right.

7. LIMITATION OF THE RIGHT

7.1 Non-contentious Issues

7.1.1 Right is subject to limitation

7.2 Contentious\ Outstanding Issues

7.2.1 The right shall not preclude such limitation which would limit or restrict or curtail the right to strike in essential services and the National Defence Force, subject to the existence of alternate mechanisms for dispute resolution - ANC, FF, NP.

7.2.2 The right to join trade unions to be limited in the Defence Force - ANC.

