

2/4/4/4/21

**CONSTITUTIONAL ASSEMBLY**

**THEME COMMITTEE 4  
FUNDAMENTAL RIGHTS**

**REPORT:**

***13. RIGHT TO PROPERTY***

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**THEME COMMITTEE 4**  
***-FUNDAMENTAL RIGHTS***

**SCHEMATIC REPORT ON THE**  
**RIGHT TO PROPERTY**

N O	CONSTITUTIONAL PRINCIPLES	ISSUES	NON - CONTENTIOUS ASPECTS	CONTENTIOUS\ OUTSTANDING <sup>1</sup> ASPECTS	REMARKS
1.	II	<b>Nature of right (Application of Constitutional Principle II)</b>	Right to property is a fundamental human right.	The right to property is not a universally accepted fundamental right - PAC.	
2.		<b>Content of right</b>	The right is essential in a constitutional state - subject to the PAC's questioning of this right. (See above)	The State should not own land - ACDP.  Clarity is needed on why the right to dispose of property should be qualified - FF.  The right to inherit property should be recognized - NP	
3.		<b>Application of the right (Nature of Duty)</b>	The State must respect and protect the exercise of the right.		
4.		<b>Application of the right (To common and customary law)</b>	Shall apply to common law and customary law.		
5.		<b>Application of the right (Duty on Private Actors)</b>	All persons must respect the exercise of this right; that is the right must apply horizontally.		

N O	CONSTITUTIONAL PRINCIPLES	ISSUES	NON - CONTENTIOUS ASPECTS	CONTENTIOUS\ OUTSTANDING <sup>1</sup> ASPECTS	REMARKS
6.		Bearers of the right.	Natural and juristic persons		

N O	CONSTITUTIONAL PRINCIPLES	ISSUES	NON - CONTENTIOUS ASPECTS	CONTENTIOUS\ OUTSTANDING <sup>1</sup> . ASPECTS	REMARKS
7.	Section 33	<b>Limitation of right</b>	<p>The right is not absolute and may be limited.</p> <p>Taking of property should be accompanied by compensation to be decided by a court of law.</p> <p>Land shall be restored to those who were unjustly deprived of their land by a Land Claims Court.</p>	<p>Taking of property should be accompanied by compensation to be decided by legislature taking into account certain principles - PAC.</p> <p>There is no agreement on the precise nature of the limitations that may be imposed. The following are some of the views that have been advanced that are not supported by all parties:</p> <p>The right to property shall not be interfered with 'otherwise than in accordance with a law of <b>general application</b>' - DP. This would involve an amendment to the present s 28(2).</p> <p>The taking of property shall be in the '<b>public interest</b>' - ANC.</p> <p>The taking of property shall be for a <b>public purpose</b> - NP.</p> <p>The taking of property shall be accompanied by <b>just compensation</b> - ANC, PAC, DP.</p>	

N O	CONSTITUTIONAL PRINCIPLES	ISSUES	NON - CONTENTIOUS ASPECTS	CONTENTIOUS\ OUTSTANDING <sup>1</sup> . ASPECTS	REMARKS
				<p>The taking of property shall be accompanied by full compensation which shall be just and equitable - NP</p> <p>Affirmative action is a factor to be considered in the process of taking of property - ANC, PAC.</p> <p>Regulating the use of property in the public interest for the environment or the <b>health or safety of the public</b> is not to be construed as a taking of property rights - ANC.</p> <p>Family owned property may not be expropriated - ACDP.</p> <p>Compensation is to be expeditiously determined and made - NP.</p>	

# **THEME COMMITTEE 4 FUNDAMENTAL RIGHTS**

## **REPORT ON RIGHT TO PROPERTY**

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 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



## **PART II**

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

#### **1.1 Non-contentious Issues**

1.1.1 The right to property is a universally accepted fundamental right.

#### **1.2 Contentious Issues**

1.2.1 The right to property is not a universally accepted fundamental right - PAC.

### **2. CONTENT AND SCOPE OF THE RIGHT**

#### **2.1 Non-Contentious Issues**

2.1.1 The right is essential in a constitutional state - subject to the PAC's questioning of this right. See 1.2.1

#### **2.2 Contentious\ Outstanding<sup>1</sup> Issues**

2.2.1 The State should not own land - ACDP.

2.2.2 Clarity is needed on why the right to dispose of property should be qualified - FF.

2.2.3 The right to inherit property should be recognized - NP

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

#### **3.1 Non-contentious Issues**

3.1.1 The State must respect and protect the exercise of the right.

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1. 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.

**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 Non-contentious Issues**

5.1.1 All persons must respect the exercise of this right; that is the right must apply horizontally.

**6. BEARERS OF THE RIGHT**

**6.1 Non-contentious Issues**

6.1.1 Both natural persons and juristic persons are the bearers of the right.

**7. LIMITATION OF THE RIGHT**

**7.1 Non-contentious Issues**

7.1.1 The right is not absolute and may be limited.

7.1.2 Taking of property should be accompanied by compensation to be decided by a court of law.

7.1.3 Land shall be restored to those who were unjustly deprived of their land by a Land Claims Court.

**7.2 Contentious\ Outstanding Issues**

7.2.1 Taking of property should be accompanied by compensation to be decided by legislature taking into account certain principles - PAC.

7.2.2 There is no agreement on the precise nature of the limitations that may be imposed.— The following are some of the views that have been advanced that are not supported by all parties:

7.2.2.1 The right to property shall not be interfered with 'otherwise than in accordance with a law of **general application**' - DP. This would involve an amendment to the present s 28(2).

7.2.2.2 The taking of property shall be in the '**public interest**' (ANC).

7.2.2.3 The taking of property shall be for a **public purpose** - NP.

7.2.2.4 The taking of property shall be accompanied by **just compensation** - ANC, PAC, DP.

7.2.2.5 The taking of property shall be accompanied by **full compensation** which shall be just and equitable - NP.

7.2.2.6 Affirmative action is a factor to be considered in the process of taking of property - ANC, PAC.

7.2.2.7 Regulating the use of property in the public interest for the environment or the **health or safety of the public** is not to be construed as a taking of property rights - ANC.

7.2.2.8 Family owned property may not be expropriated - ACDP.

7.2.2.9 Compensation is to be expeditiously determined and made - NP.

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.