

2/4/4/20

**CONSTITUTIONAL ASSEMBLY**

**THEME COMMITTEE 4  
FUNDAMENTAL RIGHTS**

**REPORTS:**

**12. RIGHT TO EDUCATION**



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

**SCHEMATIC REPORT ON**  
**THE RIGHT TO EDUCATION**



N O	CONSTITUTIONAL PRINCIPLES	ISSUES	NON - CONTENTIOUS ASPECTS	CONTENTIOUS\ OUTSTANDING ASPECTS	REMARKS
1.	II	Nature of right (Application of Constitutional Principle II)	Right to education is a universally accepted fundamental right, and should be entrenched and made justiciable in the final Constitution.		



N O	CONSTITUTIONAL PRINCIPLES	ISSUES	NON - CONTENTIOUS ASPECTS	CONTENTIOUS\ OUTSTANDING ASPECTS	REMARKS
2.		Content of right	The right should comprise the right of every person to basic education.	<p><b>Outstanding<sup>1</sup> Issues</b></p> <p>Whether basic education should be compulsory and free in general, or only free to those who cannot afford it - ANC, NP, PAC.</p> <p>The right should include the right of children to free and compulsory education until they have completed standard 10 or have attained the age of 18 years, whichever comes first (this right may be introduced by legislation in phases) - PAC.</p> <p>The right should include the availability of adult basic education for those who have not received a basic education - ANC.</p> <p>Education beyond basic education should be made progressively available and accessible to all within the means and resources available to the state - ANC</p>	

<sup>1</sup> 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.



N O	CONSTITUTIONAL PRINCIPLES	ISSUES	NON - CONTENTIOUS ASPECTS	CONTENTIOUS\ OUTSTANDING ASPECTS	REMARKS
		Content (cont)		<p>The inclusion of the right of equal access to educational institutions - not included in DP formulation of the right.</p> <p>Appropriate criteria for limiting admission to educational institutions should be specified in relation to the right of equal access to educational institutions - FF</p> <p>The proviso of "reasonably practicality" in relation to instruction in the language of choice is too broad, and permits "arbitrary discrimination" - FF.</p>	



NO	CONSTITUTIONAL PRINCIPLES	ISSUES	NON - CONTENTIOUS ASPECTS	CONTENTIOUS\ OUTSTANDING ASPECTS	REMARKS
		Content (cont)		<p><b>Contentious Issues</b></p> <p>The right to establish private educational institutions based on a common culture etc. confers on individuals the <u>liberty</u> to establish private educational institutions at their own expense (no duty of state subsidisation) - ANC, PAC.</p> <p>It should be formulated to impose an <u>obligation</u> on the State to establish educational institutions based on a common culture, language or religion - NP.</p>	
3		Application of the right (Nature of Duty)	The state must respect, protect and fulfil the various elements of the right to education as envisaged in paragraph 2, above.	Whether the state is under a duty to promote home-schooling through reducing home-educators' taxes - ACDP. .	
4.		Application of the right (To common and customary law)	Shall apply to common law and customary law.		



N O	CONSTITUTIONAL PRINCIPLES	ISSUES	NON - CONTENTIOUS ASPECTS	CONTENTIOUS\ OUTSTANDING ASPECTS	REMARKS
5.		Application of the right (Duty on Private Actors)	The right shall bind all those involved in the management and administration of educational institutions, as well as headmasters and teachers of schools. Where applicable, it shall also bind the governing bodies of private schools. All private persons and institutions are under a duty not to interfere with the free exercise of this right.		
6.		Bearers of the right	Natural persons are the bearers of the right.	<p>Educational institutions should also be the bearers of this right - ANC.</p> <p>Juristic persons should also be the bearers of this right - ACDP</p> <p>The right is restricted to citizens - DP</p>	



N O	CONSTITUTIONAL PRINCIPLES	ISSUES	NON - CONTENTIOUS ASPECTS	CONTENTIOUS\ OUTSTANDING ASPECTS	REMARKS
7.	Section 33	Limitation of right	The right should be subject to limitations by the state on certain grounds.	<p><u>Criteria for limitation:</u></p> <p>Biblical Principles - ACDP;</p> <p>Reasonable and justifiable limitations in an open and democratic society based on freedom and equality; right to further education and to education in language of choice - subject to practicalities and resources of the state - ANC</p> <p>Justifiable decisions: decisions which are reasonable and practicable and respect resources limitations -DP</p> <p>In accordance with the general limitations clause; specific limitations of practicability in respect of s.32(b) and (c) and race in respect of s.32(c) - NP.</p> <p>Free and compulsory education can be introduced by legislation in phases - PAC</p> <p>One possible ground for limitation is limitation by reason of insufficient financial resources - FF.</p>	



# **THEME COMMITTEE 4 FUNDAMENTAL RIGHTS**

## **REPORT ON RIGHT TO EDUCATION**

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<sup>2</sup>:**
  - 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

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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 The right to education is a universally accepted fundamental right, and should be entrenched and made justiciable in the final Constitution.

### 2. CONTENT AND SCOPE OF THE RIGHT

#### 2.1 Non-Contentious Issues

2.1.1 The right to education should comprise the following elements:

2.1.1.1 The right of every person to basic education.

#### 2.1.2 Outstanding<sup>3</sup> Issues

2.1.3 Whether basic education should be compulsory and free in general, or only free to those who cannot afford it - ANC, NP, PAC.

2.1.4 The right should include the right of children to free and compulsory education until they have completed standard 10 or have attained the age of 18 years, whichever comes first (this right may be introduced by legislation in phases) - PAC.

2.1.5 The right should include the availability of adult basic education for those who have not received a basic education - ANC.

2.1.6 Education beyond basic education should be made progressively available and accessible to all within the means and resources available to the state - ANC

2.1.7 The inclusion of the right of equal access to educational institutions - not included in DP formulation of the right.

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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.



2.1.8 Appropriate criteria for limiting admission to educational institutions should be specified in relation to the right of equal access to educational institutions - FF

2.1.9 The proviso of "reasonably practicality" in relation to instruction in the language of choice is too broad, and permits "arbitrary discrimination" - FF.

## **2.2 Contentious Issues**

2.2.1 The right to establish private educational institutions based on a common culture etc. confers on individuals the liberty to establish private educational institutions at their own expense (no duty of state subsidisation) - ANC, PAC.

2.2.2 It should be formulated to impose an obligation on the State to establish educational institutions based on a common culture, language or religion - 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, protect and fulfil the various elements of the right to education as envisaged in paragraph 2, above.

### **3.1.2 Contentious Issues**

3.2.1 Whether the state is under a duty to promote home-schooling through reducing home-educators' taxes - 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.



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

### **5.1 Non-contentious**

5.1.1 The right shall bind all those involved in the management and administration of educational institutions, as well as headmasters and teachers of schools. Where applicable, it shall also bind the governing bodies of private schools. All private persons and institutions are under a duty not to interfere with the free exercise of this right.

## **6. BEARERS OF THE RIGHT**

### **6.1 Non-contentious Issues**

6.1.1 Natural persons are the bearers of the right.

### **6.2 Outstanding Issues**

6.2.1 Educational institutions should also be the bearers of this right - ANC.

6.2.2 Juristic persons should also be the bearers of this right - ACDP

6.2.3 The right is restricted to citizens - DP

## **7. LIMITATION OF THE RIGHT**

### **7.1 Non-contentious Issues**

7.1.1 The right should be subject to limitations by the state on certain grounds.

### **7.2 Contentious\ Outstanding Issues**

7.2.1 Criteria for limitation:

7.2.1.1 Biblical Principles - ACDP;

7.2.1.2 Reasonable and justifiable limitations in an open and democratic society based on freedom and equality; right to further education and to education in language of choice - subject to practicalities and resources of the state - ANC;



- 7.2.1.3 Justifiable decisions: decisions which are reasonable and practicable and respect resources limitations - DP
- 7.2.1.4 In accordance with the general limitations clause; specific limitations of practicability in respect of s.32(b) and (c) and race in respect of s.32(c) [see NP's proposed amended formulation] - NP.
- 7.2.1.5 Free and compulsory education can be introduced by legislation in phases - PAC
- 7.2.1.6 One possible ground for limitation is limitation by reason of insufficient financial resources - FF.