

2/2/1/09/1/8

CONSTITUTIONAL ASSEMBLY

**CONSTITUTIONAL COMMITTEE
SUB-COMMITTEE**

**THEME COMMITTEE FOUR
FUNDAMENTAL RIGHTS**

REPORT ON ENVIRONMENT

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THEME COMMITTEE 4

-FUNDAMENTAL RIGHTS

**SCHEMATIC REPORT ON
ENVIRONMENTAL RIGHTS**

N O	CONSTITUTIONAL PRINCIPLES	ISSUES	NON - CONTENTIOUS ASPECTS	CONTENTIOUS\ OUTSTANDING ASPECTS	REMARKS
1.	II	Nature of right (Application of Constitutional Principle II)	Parties did not specifically address the issue as to whether this right was "a universally accepted fundamental right" for the purposes of Constitutional Principle II. However, there was consensus that environmental rights are internationally recognised, and through them other universally recognised rights essential to the health, development and well-being of people are protected. They should therefore be protected in the final Constitution.		

NO	CONSTITUTIONAL PRINCIPLES	ISSUES	NON - CONTENTIOUS ASPECTS	CONTENTIOUS\ OUTSTANDING ASPECTS	REMARKS
2.		Content of right	The scope of the right includes, the right to an environment which is not detrimental to the health of people.	<p>Outstanding Issues¹ <u>Right should be formulated to:</u></p> <ul style="list-style-type: none"> - include a positive duty on the state to prevent the pollution and degradation of the environment, and to promote the sustainable use of natural resources and the environment in the development process - ANC, PAC - make reference to a "clean and healthy environment." - DP, PAC - include a reference to the "well-being" of people as per s.29 of the interim Constitution - NP, ACDP - read: "Every person shall have the right to an environment which is not detrimental to the <u>public</u> health or well-being." - FF. <p>Provisions should be made for procedural protections such as the right of access to information against the state and private parties, administrative justice and due process of law- ACDP,ANC,NP</p>	

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.

NO	CONSTITUTIONAL PRINCIPLES	ISSUES	NON - CONTENTIOUS ASPECTS	CONTENTIOUS\ OUTSTANDING ASPECTS	REMARKS
3.		Application of the right (Nature of Duty)	The right should impose a duty on the state to adopt the necessary laws, policies and regulatory framework through which the rights of all persons to an environment not detrimental to their health can be protected from violation both by State organs and private parties.	The state should be under a positive duty to protect and to promote the sustainable use of natural resources and the environment for the development of all persons - ANC, PAC - <i>Outstanding</i>	
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 are bound to respect this right.		
6.		Bearers of the right	Natural persons are the bearers of the right.	Juristic persons should also be the bearers of the rights - ANC A collective right - PAC, NP Right restricted to citizens - DP.	

N O	CONSTITUTIONAL PRINCIPLES	ISSUES	NON - CONTENTIOUS ASPECTS	CONTENTIOUS\ OUTSTANDING ASPECTS	REMARKS
7.	Section 33	Limitation of right	The rights should be subject to limitation.	<p>Outstanding Issues <u>Criteria for limitation:</u></p> <p>Section 33 of Interim Constitution - ACDP, NP</p> <p>Limitations consistent with an open and democratic society based on freedom and equality - ANC</p> <p>Justifiability: decisions which are reasonable and practicable - DP</p> <p>Reasonable limits to allow for economic development in order to meet the basic needs of the populace - PAC.</p>	

THEME COMMITTEE 4 FUNDAMENTAL RIGHTS

REPORT ON ENVIRONMENTAL 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):

- 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. 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 Parties did not specifically address the issue as to whether this right was "a universally accepted fundamental right" for the purposes of Constitutional Principle II. However, there was consensus that environmental rights are internationally recognised, and through them other universally recognised rights essential to the health, development and well-being of people are protected. They should therefore be protected in the final Constitution.

2. CONTENT AND SCOPE OF THE RIGHT

2.1 Non-Contentious Issues

2.1.1 The scope of the right includes, the right to an environment which is not detrimental to the health of people.

2.2 Outstanding³ Issues

2.2.1 The right should be formulated to include a positive duty on the state to prevent the pollution and degradation of the environment, and to promote the sustainable use of natural resources and the environment in the development process - ANC, PAC

2.2.2 The right should be formulated to make reference to a "clean and healthy environment." - DP, PAC

2.2.3 The right should be formulated to include a reference to the "well-being" of people as per s.29 of the interim Constitution - NP, ACDP

2.2.4 The right should reformulated to read: "Every person shall have the right to an environment which is not detrimental to the public health or well-being." - FF.

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 Provisions should be made for procedural protections such as the right of access to information against the state and private parties, administrative justice and due process of law - ACDP, ANC, NP.

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

3.1 Non-contentious Issues

3.1.1 The right should impose a duty on the state to adopt the necessary laws, policies and regulatory framework through which the rights of all persons to an environment not detrimental to their health can be protected from violation both by State organs and private parties.

3.2 Outstanding Issues

3.2.1 The state should be under a positive duty to protect and to promote the sustainable use of natural resources and the environment for the development of all persons - ANC, PAC

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

4.1 Non-contentious Issues

4.1.1 The right shall 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 are bound to respect 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 Contentious\ Outstanding Issues

6.2.1 Juristic persons should also be the bearers of the rights - ANC

6.2.2 A collective right - PAC, NP

6.2.3 Right restricted to citizens - DP.

7. LIMITATION OF THE RIGHT

7.1 Non-contentious Issues

7.1.1 The rights should be subject to limitation.

7.2 Outstanding Issues

7.2.1 Criteria for limitation:

7.2.1.1 Section 33 of Interim Constitution - ACDP, NP

7.2.1.2 Limitations consistent with an open and democratic society based on freedom and equality - ANC

7.2.1.3 Justifiability: decisions which are reasonable and practicable - DP

7.2.1.4 Reasonable limits to allow for economic development in order to meet the basic needs of the populace - PAC.

