

CONSTITUTIONAL ASSEMBLY

**THEME COMMITTEE 4
FUNDAMENTAL RIGHTS**

**REPORT AND EXPLANATORY
MEMORANDUM ON
THE RIGHT TO LANGUAGE AND
CULTURE**



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THEME COMMITTEE 4
-FUNDAMENTAL RIGHTS

SCHEMATIC REPORT ON
LANGUAGE AND CULTURE



N O.	CONSTITUTIONAL PRINCIPLES	ISSUES	NON - CONTENTIOUS ASPECTS	CONTENTIOUS\ OUTSTANDING ASPECTS	REMARKS
1.	II, III, XI, XII, XIII	Nature of right (Application of Constitutional Principle II)	The right to use the language and participate in the cultural life of one's choice is a universally accepted fundamental right.		
2.		Content of right	This right protects the freedom of persons to use the language of their choice and to participate in a cultural life they freely choose.	Outstanding¹ Issues The right to instruction in the language of choice, and to establish educational institutions based on a common culture, language or religion [s.32 (b) and (c) of the interim Constitution] be included within the scope of this right - DP. Matters to be dealt with elsewhere in	

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.

N O.	CONSTITUTIONAL PRINCIPLES	ISSUES	NON - CONTENTIOUS ASPECTS	CONTENTIOUS\ OUTSTANDING ASPECTS	REMARKS
				the Constitution: the official languages at national and regional levels, the creation of conditions for their equal use and enjoyment; the right to communicate in the courts and with government in one's own language; mechanisms to promote the development of all official languages and other languages used by communities in South Africa - ANC; FF.	
3.		Application of the right (Nature of Duty)	<p>This right imposes the following duties on the State:</p> <ul style="list-style-type: none"> - to respect this right by refraining from interference in the legitimate enjoyment of cultural life by individuals; - to protect individuals against the violation of these rights by other persons. - to create conditions which promote the equal use, enjoyment and development of all languages and cultures in South Africa. 		
4.		Application of the right (To common and	Shall apply to common law and customary law.		

N O.	CONSTITUTIONAL PRINCIPLES	ISSUES	NON - CONTENTIOUS ASPECTS	CONTENTIOUS\ OUTSTANDING ASPECTS	REMARKS
		customary law)			
5.		Application of the right (Duty on Private Actors)	All persons shall respect the exercise of these rights.		
6.		Bearers of the right	Natural persons are the bearers of the right.	Juristic persons and lawful cultural associations, can also be the bearers of the right - DP, NP, FF.	
7.	Section 33	Limitation of right	All the parties, with the exception of the Freedom Front, submitted that this right should be subject to limitations by law. The Freedom Front does not support the application of either a general limitations clause or state of emergency provisions to "the exercise of language and cultural rights <u>per se</u> ".	<p>The exercise of cultural rights shall be limited to the extent that they do not violate other fundamental rights such as the rights to equality, dignity and security of the person of all men, women and children.</p> <p>Outstanding Issues</p> <p>Criteria for limitation:</p> <ul style="list-style-type: none"> - all efforts should be made to avoid hegemony by one group over another - ACDP - limitations that are reasonable and permissible in an open and democratic society based on freedom and equality - ANC. - the criteria in the present s.33 should apply; an internal limitation of 	

N O.	CONSTITUTIONAL PRINCIPLES	ISSUES	NON - CONTENTIOUS ASPECTS	CONTENTIOUS\ OUTSTANDING ASPECTS	REMARKS
				<p>"reasonably practicable" might be necessary to the rights in s.32(b) and (c) - DP</p> <p>- the criteria in the present s.33 should apply; additional limitations of "practicality" on the rights conferred by s.3(3) and (6) of the interim Constitution - NP</p>	

THEME COMMITTEE 4 FUNDAMENTAL RIGHTS

REPORT ON LANGUAGE AND CULTURE

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, III, XI, XII, XIII

1 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 use the language and participate in the cultural life of one's choice is a universally accepted fundamental right.

2. CONTENT AND SCOPE OF THE RIGHT

2.1 Non-Contentious Issues

2.1.1 This right protects the freedom of persons to use the language of their choice and to participate in a cultural life they freely choose.

2.2 Outstanding³ Issues

2.2.1 The right to instruction in the language of choice, and to establish educational institutions based on a common culture, language or religion [s.32 (b) and (c) of the interim Constitution] be included within the scope of this right - DP.

2.2.2 Matters to be dealt with elsewhere in the Constitution: the official languages at national and regional levels, the creation of conditions for their equal use and enjoyment; the right to communicate in the courts and with government in one's own language; mechanisms to promote the development of all official languages and other languages used by communities in South Africa - ANC; 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.

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

3.1 Non-contentious Issues

3.1.1 This right imposes the following duties on the State:

3.1.1.1 to respect this right by refraining from interference in the legitimate enjoyment of cultural life by individuals;

3.1.1.2 to protect individuals against the violation of these rights by other persons.

3.1.1.3 to create conditions which promote the equal use, enjoyment and development of all languages and cultures in South Africa.

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 shall respect the exercise of these rights.

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 and lawful cultural associations, can also be the bearers of the right - DP, NP, FF.

7 LIMITATION OF THE RIGHT

7.1 Non-contentious Issues

7.1.1 All the parties, with the exception of the Freedom Front, submitted that this right should be subject to limitations by law. The Freedom Front does not support the application of either a general limitations clause or state of emergency provisions to "the exercise of language and cultural rights per se".

7.2 Contentious Issues

7.2.1 The exercise of cultural rights shall be limited to the extent that they do not violate other fundamental rights such as the rights to equality, dignity and security of the person of all men, women and children.

7.3. Outstanding Issues

7.3.1 Criteria for limitation:

7.3.1.1 all efforts should be made to avoid hegemony by one group over another - ACDP

7.3.1.2 limitations that are reasonable and permissible in an open and democratic society based on freedom and equality - ANC.

7.3.1.3 the criteria in the present s.33 should apply; an internal limitation of "reasonably practicable" might be necessary to the rights in s.32(b) and (c) - DP

7.3.1.4 the criteria in the present s.33 should apply; additional limitations of "practicality" on the rights conferred by s.3(3) and (6) of the interim Constitution - NP