

Inkatha Freedom Party

IQembu lenkatha Yenkululeko

THEME COMMITTEE No. 4
ON FUNDAMENTAL RIGHTS

FIRST REPORT ON
CONSTITUTIONAL PRINCIPLE 111

Constitutional Principle II requires that the Constitution contains provisions which protect fundamental human rights. As per the approved work program, further submissions to this Theme Committee will analyze the characteristics and wording of the specific fundamental rights as well as their possible suspension and/or limitation. Therefore, this submission shall focus only on the characteristics of the Chapter on Fundamental Rights as a whole and on its justiciability.

THE BILL OF RIGHTS IN THE CONSTITUTION

1. The Constitution shall not provide for less human rights protection than what it is provided for in Chapter 3 of the interim constitution.
2. In its Constitution, South Africa shall commit itself to recognize, protect and promote all internationally recognized human rights as they are expressed in (a) prevailing trends of modern constitutions, (b) international declarations and covenants on human rights and (c) international treaties of general or regional application.
3. All recognized human rights shall be regarded as fundamental human rights.

NATURE OF THE BILL OF RIGHTS:

- I. The Bill of Rights shall have horizontal application in addition to vertical application.
2. The applicable test shall require that the Bill of Rights is extended to all significant legal relations which are under the control of the State.

3. The Bill of Rights shall be entrenched in the national constitution but shall be implemented exclusively by provincial legislation and executive action with respect to the matters of provincial competence (i.e.: employment/labor, health, education, welfare, environment et cetera).

The IFP makes this submission under protest, for the Constitutional Committee should withhold consideration of the matters covered in this report and further development of the work program so as to allow international mediation to take place.

The national government might have the power to coordinate this implementing role of Provinces. The jurisprudence of the Constitutional Court will also give a uniform interpretation of the applicable constitutional parameters.

EVOLUTIVE CLAUSE, OPEN LIST OF RIGHTS

I The Constitution shall make provision for the updating and evolution of human rights

protection, which are historically an ever changing field of law.

2. The following constitutional text ought to be considered:

Human rights in the Constitution 2

All fundamental human rights and all those other rights which are inherent to fundamental human needs and aspirations as they evolve with the changes and growth of society, and as they will be recognisable on the basis of the principles underlying the provisions of this constitution, are hereby entrenched in this constitution and in their essential content shall not be modified by virtue of constitutional amendments.

JUSTICIABILITY OF FUNDAMENTAL RIGHTS

1. All fundamental human rights shall be fully justiciable.
2. For specific rights which require implementing action on the side of the government justiciability will also be determined by the actual wording of such rights and to a great extent may depend on the provisions of the legislation required to fulfil and implement such rights.
3. Justiciability of rights is also intrinsically limited by the fact that the Constitution recognizes conflicting rights, such as the right to privacy and the right to freedom of information and media.

3. The Constitution must contain a general provision guiding constitutional adjudication. The following text ought to be considered:

16. Justiciability of rights

- All rights and freedoms recognised and guaranteed under this constitution shall be justiciable to the fullest practical and reasonable extent. In the case of a violation of the rights and freedoms recognised and guaranteed under this constitution any aggrieved party shall be entitled to be heard by a court of record on the basis of urgency and, upon showing a prima facie violation of rights, shall be granted preliminary relief pending the final disposition of the case.

FUNDAMENTAL RIGHTS AND CONSTITUTIONAL AMENDMENTS

1. The essential content of fundamental rights shall not be modified by virtue of constitutional

1. All constitutional text in this submission consists of excerpts from the draft constitution of the Federal Republic of South Africa, submitted by the IFP to the World Trade Centre in June 1993.

2. Any constitutional amendment shall be approved by special majorities and with special procedures, including separate approvals and a cooling-off period.

RESIDUAL RIGHTS OF THE PEOPLE

1. The Constitution shall entrench the principle of freedom as the fundamental principle underlying the legal system. The following text should be considered:

11. Rule of Freedom

- All conduct and activities which are not prohibited shall be permitted. The Republic of South Africa may prohibit and regulate conduct and activities for a demonstrable State's interest founded on public interests and welfare.

2. The Constitution shall entrench the principle that all powers of government derive from the people who are the depository of any residual power which is not exercised by the government. The following language ought to be considered:

1. Inherent Rights and Obligations

The Republic of South Africa acknowledges and recognises that all individuals have the natural right to life, liberty and the pursuit of happiness, and to the enjoyment of the rewards of their own industry; that all individuals are equal and entitled to equal rights, opportunities and protection under the law, and that all individuals have corresponding obligations to the Federal State and a general obligation of social responsibility to the people of the Federal Republic.

2. Source of Government

All political power is inherent in the people. All government originates with the people, is founded only upon their will, and is instituted only for the good of the people as a whole. Government shall respect and encourage the exercise of the power of the people to organise and regulate their interests autonomously.

DUTIES AND OBLIGATIONS

1. In addition to a Bill of Rights the constitution shall also contain a Bill of Duties and Obligation. Many aspects of the Constitution would reflect the presence of a Bill of Duties and Obligation.
2. The following provisions ought to be considered:

PREAMBLE

WE, the people of South Africa, mindful of our unique and diverse heritage, inspired by the desire to secure the blessings of democracy, freedom and pluralism for our and future generations, respecting the equality of all men and women, recognising the right of people to organise themselves in autonomy and independence at all levels of society, desiring, to ensure that individual rights and liberties are accompanied by obligations of social solidarity to others, determined to guarantee that the rights of all people are protected both as individuals and members of social and cultural formations, do now ordain and establish this constitution for the Federal Republic of South Africa to provide the people of South Africa and the member States with a Federal government to serve their individual and collective needs, wants and aspirations.

1. Inherent Rights and Obligations

The Federal Republic of South Africa acknowledges and recognises that all individuals have the natural right to life, liberty

and the pursuit of happiness, and to the enjoyment of the rewards of their own industry; that all individuals are equal and entitled to equal rights, opportunities and protection under the law, and that all individuals have corresponding obligations to the Federal State and a general obligation of social responsibility to the people of the Federal Republic. 2.- 58.

OBLIGATIONS AND DUTIES

59. Allegiance to the Constitution

All citizens shall have the duty to uphold this constitution and live by the rule of law. All those who hold any of the offices provided for in this constitution shall take an oath or a solemn affirmation to uphold and defend this constitution, obey the law and exercise their public functions with discipline and honour.

60. Contribution to Public Expenditures and Needs

- a. All citizens have the duty to contribute to the common needs and to public expenditure by means of their resources.
- b. The Federal Republic of South Africa shall encourage voluntary charitable activities and other forms of expression of social solidarity.

61. Military obligations

All citizens have the sacred duty to defend the territory of the Federal Republic of South Africa from any external enemy and from any threat to the enjoyment of freedom, democracy and pluralism in the Republic. 62. Duty to work

All capable citizens have the duty to contribute with their work and skills to the common development and growth of the Republic

63. Family duties

All citizens have the duty to provide moral and financial support to their spouses, to educate their children and to assist their parents when in need of care.

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LIST OF HUMAN RIGHTS

1. The Constitution shall list, entrench and protect at least the following rights and areas of constitutional protection:
 - Freedom of speech
 - Freedom of religion
 - Physical and psychological integrity

- Liberty
- Travel and movement
- Privacy

Assembly and association

Free enterprise

Contractual autonomy

Private property

Political rights

Freedom of the media

Freedom to access government information

Family rights

Cultural and traditions

Procreative freedom

Right to work

Free enterprise

Functional private property

Communal property

Right to education

Health care

Housing

Sanitation

Labor law and labor rights

Protection of women, senior citizens and youth

Autonomy of Universities, research, arts and culture

Autonomy of trade unions and political parties

Environmental rights

Cultural rights

Minority rights

Rights of ethnicity and self determination

Group rights

Autonomy of social and cultural formations

Pre-eminence of civil society

Preservation of traditional communities and role of traditional leaders