

NATIONAL PARTY SUBMISSION

THEME COMMITTEE 4

BLOCK 3. SERVITUDE AND FORCED LABOUR

1 Content of the rights

1.1 The two rights involved here, namely servitude or slavery on the one hand, and forced labour on the other, are not in dispute. They prohibit human beings from being used or traded as objects of property and from being kept in captivity for such purposes and for the purposes of forced labour. They prohibit the violation of the right to occupational freedom and they protect a person from being forced to perform unjust or oppressive work, or work involving unavoidable hardship, against his or her will. No open democratic society can countenance such practices and both rights should be guaranteed and protected in the Constitution.

2 Application of the rights

2.1 Nature of duty on state

The two rights could be distinguished. With regard to servitude, the state must refrain from instituting any practice, law or other action that amounts to, promotes, or condones servitude in any form. As a matter of fact, it could well be argued that no situation in which this right could be limited lawfully under section 33(1), can really be contemplated in a modern democratic society. With regard to forced labour, please refer to paragraph 2.5 below, where it is argued that some exceptions of lawful limitations may exist. Of course, with the exception of those cases, the state should be bound to respect and protect the rights.

2.2 Application to common and customary law

The rights should apply to common law and customary law.

2.3 other actors bound

On the one hand, the state as primary institution bound by these rights, may not adopt legislation dealing with private relations which allows for servitude or forced labour. In other words, the state cannot make a law in terms of which private person may follow these practices. That law will be unconstitutional and, in this sense, the rights will apply horizontally it could also be argued that

the state's duty to protect persons against the violation of these rights could include a duty to protect the individual against any abuse by anybody else and that legislation expressly prohibiting servitude or forced labour in any form by any other actor might be promulgated. In view of the remarks in paragraph 2.5, regulatory legislation in respect of forced labour may also become necessary.

2.4 Bearers of the rights

By the nature of the rights all natural persons should be the bearers of these rights.

2.5 Limitation of the rights

As argued above, we find it difficult to contemplate a situation in which the freedom of servitude could be limited lawfully, in other words, in a manner which would be reasonable, justifiable in an open and democratic society based on freedom and equality, and necessary. on the other hand, it seems as if freedom of forced labour is capable of being limited lawfully. In view of certain provisions of the International Covenant on Civil and Political Rights (Article 8) and the European Convention for the Protection of Human Rights and Fundamental Freedoms (Article 4), at least military service, performance of labour by prisoners as part of a lawful sentence by a court of law, and civil service during an emergency or disaster, could serve as examples of the lawful limitation of the right.

3 Wording

We believe that the present wording of section 12 of the interim Constitution 1993, should be retained.