

VOLKSTAATRAAD

SUBMISSION TO THEME COMMITTEE 4

THE RIGHT TO LIFE

A. PRINCIPLES

1. As currently formulated, the right is too wide. It is vague and creates uncertainties. An example is whether or not the death penalty is permitted.
2. It is even possible that self-defence resulting in the death of an individual may be questioned.
3. In our view, these problems may be resolved by wording the provision in such a way that the emphasis falls on the protection of life. This also emphasise the duty resting on the state to protect the lives of the innocent in preference to those of criminals.

B. PROPOSAL FOR CONSTITUTIONAL WORDING

Every person shall have the right to the protection of his or her life.

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EQUALITY

(Hierdie dokument is ook in Afrikaans beskikbaar)

A. PRINCIPLES

1. The principle of equality before the law as embodied in section 8(1) of the interim Constitution is accepted.
2. The prohibition of discrimination principle underlying section 8(2) of the interim Constitution is likewise accepted but subject to the principle of the self-determination of peoples, the right to freedom of association, and the individual's right to his or her own language, culture and education.
3. Note is taken that group interests or rights already underlie the provisions of section 8(3)(a) of the interim Constitution. If group rights have been accorded protection, it is logical that peoples' rights should likewise enjoy protection.
4. So-called affirmative actions aimed at replacing one group within the public service or holding public posts with another racial group without regard being had to individual circumstances and

qualifications is regarded as a violation of the prohibition on discrimination embodied in the interim Constitution.

5. Affirmative action is regarded as permissible only if a specific individual can show that another individual has been advantaged at his/her expense on the ground that he/she is of a different racial group. Affirmative action may only take place to correct the situation of a specific individual who is able to show that he/she was personally discriminated against. The test relates to the circumstances of an individual, namely, the individual who suffered discrimination or the individual who benefited from discrimination, and not to whether discrimination has in the past been practised against a specific race group as a whole. The replacement of one racial group with a different racial group on a purely quota basis, is nothing less than blatant racial preferment and discrimination and conflicts with the essence of the principle of non-discrimination as a fundamental right.
6. A programme of affirmative action threatens the individual rights of those not qualifying as beneficiaries under the programme and cannot be reconciled with fundamental rights. Such a programme can be only a temporary measure and should be completed within one Year. The concept of affirmative action should not be incorporated in the new Constitution.
7. Individual cases of affirmative action must be dealt with by legal process and should not take place on the basis of discretionary government action.
8. Section 8(3)(b) should not be included in the new Constitution as the process it envisages should already have been completed before the new Constitution comes into operation.

B. PROPOSAL FOR CONSTITUTIONAL WORDING

1. Every person shall have the right to equality before the law and to equal protection of the law.
2. No person shall be discriminated against, directly or indirectly, and, without derogating from the generality of this provision, on one or more of the following grounds in particular: race, gender, ethnic or social origin, colour, age, disability, religion, conscience belief, culture, language, political or tribal affiliation.
3. The principle of non-discrimination in par 2 is subject to the principle of the selfdetermination of peoples, the right to free association and the right of the individual to exercise his or her own language, culture, traditions and education within group context.
4. In the event of unfair discrimination, a court of law may, in addition to any other remedy, issue an order for affirmative action against the State.
5. Until the contrary is shown, prima facie proof of discrimination on any of the grounds mentioned in par 2, is regarded as sufficient proof of unfair discrimination as envisaged in that paragraph.