

DP Submission

F 1

1/5/3

MEMORANDUM RE DUE PROCESS

The Democratic Party advocates the inclusion of a due process clause in the Constitution.

It does so for a number of reasons.

First, the wording of section 25 of the Constitution confines the many procedural rights set out in that section to three classes of person: detained, arrested and accused persons. The commitment to due process goes wider than the entitlements of those classes of persons. This matter has already occasioned difficulty in the Constitutional Court where, in relation to extra-curial proceedings, the Court has had to find a residual content to section 25. See the matter of Ferreira v Levin.

In the second place, the concept of due process is not confined to criminal proceedings or matters ancillary to such a process. One of the peculiarities of the Constitution is that it appears to afford no rights of due process in civil proceedings. That is an omission that requires curing.

Thirdly, the due process clause is an important residual provision that commits our society to proper process. It has often correctly been pointed out that

fundamental rights are largely the rights of process. The residual aspects of a due process clause give useful support to a cluster of other rights in the Constitution, without redundancy. Such rights include rights in the sphere of labour relations and administrative justice to name but two.

The right may be widely framed as follows: All persons shall enjoy the right to due process of law.

D UNTERHALTER

Chambers
Johannesburg
5 February 1996