

2/21/9/1/10

**CONSTITUTIONAL ASSEMBLY**

**CONSTITUTIONAL COMMITTEE  
SUB-COMMITTEE**

**THEME COMMITTEE FOUR  
FUNDAMENTAL RIGHTS**

**REPORT ON FREEDOM OF  
ASSEMBLY, DEMONSTRATION AND  
PETITION**

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**THEME COMMITTEE 4**  
***-FUNDAMENTAL RIGHTS***

**SCHEMATIC REPORT ON**  
**FREEDOM OF ASSEMBLY, DEMONSTRATION AND PETITION**

N O	CONSTITUTIONAL PRINCIPLES	ISSUES	NON - CONTENTIOUS ASPECTS	CONTENTIOUS\ OUTSTANDING ASPECTS	REMARKS
1.	II	Nature of right (Application of Constitutional Principle II)	The rights to freedom of assembly and demonstration are universally accepted fundamental rights.	The right to petition is not a fundamental rights - FF	
2.		Content of right	The rights are essential for the democratic functioning of a constitutional state. They must however, be exercised peacefully and unarmed.	Picketing in labour disputes should be dealt with in the rights and freedoms concerning labour relations - FF <i>Outstanding</i> <sup>1</sup> .	
3.		Application of the right (Nature of Duty)	The State must respect and protect the exercise of the rights.		
4.		Application of the right (To common and customary law)	Shall apply to common law and customary law.		
5.		Application of the right (Duty on Private Actors)	All persons must respect the exercise of these rights.		

1. It should be noted that items marked "*Outstanding*" do not signify contention amongst political parties. 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
6.		Bearers of the right	Natural persons are the bearers of these rights.	Juristic persons should be included - DP, NP, ACDP.	
7.	Section 33	Limitation of right	Right can be limited	<p>The actual wording of the right should be a limitation in itself eg. peaceful and unarmed - ACDP.</p> <p>The rights may be limited provided the limitations are reasonable and justifiable in an open and democratic society - ANC &amp; FF (in respect of the right to demonstration only).</p> <p>The rights may be limited only if "necessary in a democratic society, in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others" and the prevention of commercial and community disruption - FF (in respect of freedom of association only).</p> <p>The general limitations clause to apply - DP</p>	

N O	CONSTITUTIONAL PRINCIPLES	ISSUES	NON - CONTENTIOUS ASPECTS	CONTENTIOUS\ OUTSTANDING ASPECTS	REMARKS
8.		Other		The rights may only be suspended in a State of Emergency and under judicially controlled circumstances - ANC	

# **THEME COMMITTEE 4 FUNDAMENTAL RIGHTS**

## **REPORT ON RIGHT TO FREEDOM OF ASSEMBLY, DEMONSTRATION AND PETITION**

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 society<sup>2</sup>:**

- 2.1 Individuals (in alphabetical order)
- 2.2 Organisations (in alphabetical order)
- 2.3 Government structures\ institutions (in alphabetical order)

**3. Technical Committee reports:**

None to date

**4. Relevant Constitutional Principles**

II

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2 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 rights to freedom of assembly and demonstration are universally accepted fundamental rights.
  - 1.2 **Contentious issues**
    - 1.2.1 The right to petition is not a fundamental right - FF.
2. **CONTENT AND SCOPE OF THE RIGHT**
  - 2.1 **Non-Contentious Issues**
    - 2.1.1 The rights are essential for the democratic functioning of a constitutional state. They must, however, be exercised peacefully and unarmed.
  - 2.2 **Outstanding<sup>3</sup> Issues**
    - 2.2.1 Picketing in labour disputes should be dealt with in the rights and freedoms concerning labour relations - FF
3. **APPLICATION OF THE RIGHT (Nature of the duty on the state)**
  - 3.1 **Non-contentious Issues**
    - 3.1.1 The State must respect and protect the exercise of the rights.
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.

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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.



**5. APPLICATION OF THE RIGHT (Duty on private actors)**

**5.1 Non-contentious issues**

5.1.1 All persons must respect the exercise of the 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 should be included - ACDP, DP, NP.

**7. LIMITATION OF THE RIGHT**

**7.1 Non-contentious Issues**

7.1.1 Right can be limited.

**7.2 Outstanding Issues**

7.2.1 The actual wording of the right should be a limitation in itself eg., "peaceful and unarmed" - ACDP.

7.2.2 The rights may be limited provided the limitations are reasonable and justifiable in an open and democratic society - ANC & FF (in respect of the right to demonstration only).

7.2.3 The rights may be limited only if "necessary in a democratic society, in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others" and the prevention of commercial and community disruption - FF (in respect of freedom of association only).

7.2.4 The general limitations clause to apply to this right - DP

**8. OTHER ISSUES**

8.1 The rights may only be suspended in a state of emergency and under judicially controlled circumstances - ANC.

## **ADDENDUM**

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**PARTY SUBMISSIONS**

**- ACDP**

**AFRICAN CHRISTIAN DEMOCRATIC PARTY  
SUBMISSION TO THE CONSTITUTIONAL ASSEMBLY  
THEME COMMITTEE FOUR**

**FREEDOM OF DEMONSTRATION &  
PETITION**

Content of the Right

The ACDP proposes that section 16 of the Constitution remain as stated.

"Every person shall have the right to assembly and demonstrate with others peacefully, and to present petitions."

This right is intrinsically linked to the political and social values of a democratic society, and invests in the individual, the power to resist measures which may be deemed undemocratic.

The right, as worded, promotes healthy and peaceful protest, with the least amount of injury to the demonstrator, and requires of the authorities, a dignified response in handling the right in question.

It is imperative that as much assistance is given to protesters, by the State, in order that the right of peaceful demonstration and petitioning be made possible.

The ACDP is of the opinion that the dignity of the person is protected through the needs of this right.

If a demonstration intends to be provocative or induce violence or hatred, and where the security of the State and lives of the community threatened, the right should be withdrawn.

The right to assembly or to have public meetings is also subject to such stringent measures, with regards to the prohibition of arms or any type of weapon.

**Any form of strike action or demonstration, that leads to violence should be penalised and the cost of damages incurred by such action should be paid for by those responsible for the creation thereof.**

**Any strike action or picketing that has as it's aim, the breakdown of political stability, or to bring the economy to it's knees, should be deemed as undermining State security and be classified as illegal. However, State security cannot be used as an argument against strikes where flagrant corruption, or dictatorial relationship are the order of the day.**

**The ACDP proposes that the resources of an independent public protector system, or similar persons, be made available to mediate on issues relating to demonstrations and petitioning. This will provide recourse to petitioners and protesters, and ensure uninterrupted functioning of the broader social machinery.**

### **Application of the Right**

#### **2.1 Nature of the duty to be imposed on the State**

**A democratic society demands democratic responses from the State. It is the duty of the State to regulate that the right, as worded, is complied with, and to ensure that the right is not negatively infringed upon those of others. The content of the right implies morality and peace and this should be adhered to.**

#### **2.2 Application of the right to common law and customary law**

**In principle, the right should apply to both common and customary law.**

**2.3 Should the right under discussion impose a constitutional duty on actors other than the State?**

No. The right to freedom of choice is an individual responsibility, eg. closed-shop, and the right under discussion is dependent upon such criteria as they present themselves.

That the right is constitutional, strengthens the democratic principles upon which our society is based.

**2.4 Who should be the bearers of the right?**

This right should apply to both individuals and juristic persons.

**2.5 Should the right under discussion be capable of limitation by the legislative?**

No right is absolute, nor can it be arbitrarily exercised. The right, as is worded, provides it's own specific limitation of being 'peaceful and unarmed', and should be imposed as such.

19th April 1995

[DEMON.WPS]

**- ANC**



# **PRELIMINARY SUBMISSION OF THE AFRICAN NATIONAL CONGRESS- BLOCK 2 -**

## **A. FREEDOM OF RELIGION, BELIEF, and OPINION.**

**1. These rights are part of a cluster of core rights dealing with freedom of expression, association, language, culture and information. At the epicentre of the rights dealt with under section 14(1) of the Interim Constitution is the right to religion. We believe that the right to freedom of opinion and academic freedom are best dealt with under freedom of expression.**

**The ANC believes that there shall be freedom of worship and tolerance of all religions. Places associated with religious observance shall be respected and none shall be barred from entering them on grounds of race. Inherent in these rights is the recognition and acceptance of diverse beliefs. We propose the following formulation:**

**" Everyone shall have the right to freedom of conscience, religion, thought, or belief."**

**We have no objections to the provisions as set out in sections 14(2) and 14(3) of the Interim Constitution.**

### **2. Application of the Right:**

**2.1 There shall be a positive duty to ensure that the rights are protected where violation occurs.**

**2.2 The freedom of religion, belief, and thought invariably impact on customary and religious rites and the laws as they apply to such customs and traditions.**

**2.3 The rights shall bind all individuals, institutions, and structures.**

**2.4 Natural persons shall be the bearers of the right.**

**2.5 The "holding" of a belief or thought (religious or otherwise cannot be limited. The manifestation of the belief or thought can under reasonable circumstances be limited in an open and democratic society. Such limitations may be permissible in order to give effect to other rights in the constitution particularly the right of equality.**

### **B. FREEDOM OF ASSOCIATION:**

**The right of freedom of association includes the right to join religious, social, cultural, political bodies and to join trade unions, and to form and participate in non-governmental organisations. This core of rights protects free and fair political activity and impacts directly on labour law. Article 20 of the Universal Declaration of Human Rights, Article 22 of the International Covenant on Civil and Political Rights specifically deal with this right.**

**Given South Africa's history, there is concern that the right to freedom of association can be used as a shield that protects privatised apartheid or gender discrimination. In our view a strong "Equality" clause and a provision similar to section 33(4) in the Interim Constitution which specifically deals with the validity of laws designed to prohibit discrimination by private clubs, associations, or individuals is adequate to counter such threats. The right may be formulated as follows:**

**" Every person shall have the right to freedom of association"**

## **2. Application of the Right.**

**2.1 The state shall have a duty to protect the right against violation.**

**2.2 The right includes the rights of association with religious, customary or cultural institutions.**

**2.3 It shall bind private institutions, individuals and social structures.**

**2.4 Natural persons or natural persons as a group or collective e.g. a church organisation or labour union.**

**2.5 The usual criteria in an open and democratic society. However, where the association is of a political nature the limitation shall occur under stricter conditions. In addition, a provision similar to section 33(4) in the Interim Constitution should be a specific constitutionally permitted provision.**

## **C. THE RIGHT TO ASSEMBLE, DEMONSTRATE AND PETITION.**

**1. These rights too are inter-related with freedoms of expression, free and fair political activity and other similar rights. All men and women shall have the right to assemble peacefully and without arms, and to submit petitions for the redress of grievances and injustices.**

**The exercise of the right occurs with due and proper consideration for the peace, safety and security of other people. Hence the qualifications of "peaceful" and "unarmed" assembly or demonstration. This right also finds expression in Article 20.1 of the U.N. Declaration of Human Rights.**

**The presentation and receiving of petitions has been frequently used in organised political activity in the past and continues to be an effective mechanism to articulate grievance or express support or opposition.**

## **2. Application of the Right.**

**2.1 The state shall protect the right.**

**2.2 The right applies at all levels of civil society.**

**2.3 All persons, institutions and structures are bound by the right.**

**2.4 Natural persons shall be bearers of the right.**

**2.5 See 2.5 above.**

**2.6 Suspension under state of emergency under judicially controlled circumstances can occur.**

**The formulation of this right as it appears in the Interim Constitution is accepted.**

- DP

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**Demokratiese Party**  
**Democratic Party**

20.04.1995

**CONSTITUTIONAL ASSEMBLY**  
**THEME COMMITTEE 4**  
**FUNDAMENTAL RIGHTS**

**DEMOCRATIC PARTY SUBMISSION ON:**

**3.1 : FREEDOM OF RELIGION**

**3.2 : FREEDOM OF ASSOCIATION**

**3.3 : FREEDOM OF DEMONSTRATION**

**FREEDOM OF RELIGION, BELIEF AND OPINION**

**1. Content of the Right**

**1.1 Section 14 of the Constitution reads:**

- "(1) Every person shall have the right to freedom of conscience, thought, belief and opinion, which shall include academic freedom in institutions of higher learning.
- (2) Without derogating from the generality of subsection (1), religious observances may be conducted at state or state-aided institutions under rules established by an appropriate authority for that purpose, provided that such religious observances are conducted on an equitable basis and attendance at them is free and voluntary.
- (3) Nothing in this Chapter shall preclude legislation recognising-
- (a) a system of personal and family law adhered to by persons professing a particular religion; and
- (b) the validity of marriages concluded under a system of religious law subject to specified procedures."

The Democratic Party supports the broad nature of the rights entailed in the provisions of Section 14. However, we believe that they need to be rearranged fundamentally.

For example, we are of the view that freedom of conscience and religion, thought, belief and opinion should appear together with the provisions of free expression and speech. Likewise, we believe that the right to freedom of peaceful and unarmed assembly and to peaceful association could all be contained under a similar right, in other words, the right to fundamental freedoms.

In place of the current formulations of Section 14 (freedom of religion, etc), Section 17 (freedom of association) and Section 18 (freedom of demonstration, we would propose the following:

## 1.2 Right to Fundamental Freedoms

Every person shall have the right to:-

- (1) Freedom of conscience and religion, and consequently, the State shall not favour one religion over another:
- (2) Freedom of speech, thought, belief, opinion and expression, including freedom of the press and the other media of communication. In respect of the excise of its control, if any, over any public media, the State shall ensure diversity of expression and opinion:
- (3) Freedom of peaceful and unarmed assembly:
- (4) Freedom of peaceful association, subject, however, to the provisions of (the equality clause):

We strongly believe, in addition, that the provisions in Section 14, as currently worded, protecting academic freedom are extremely valid and important. However, we question whether they would not be better placed together with the rights to education contained in Section 32 of the Interim Constitution.

Wherever the academic freedom clause is placed in the final constitution, we strongly believe that the right to academic freedom needs to be contained in the Charter of Rights. We believe a formulation, slightly expanded on the present one, could read as follows:

- (1) The freedom to study, learn and teach shall be guaranteed.
- (2) The state shall not try to shape education or culture in accordance with any particular political or ideological commitment.
- (3) The academic freedom of every university and similar institution of higher learning shall be guaranteed.

As regards the right to education. South Africa has a multitude of religious faiths and beliefs. One of the fortunate aspects of our history and tradition as a nation has been the presence of a great deal of religious tolerance.

However, freedom of conscience, religion and belief must be interpreted in the light of all the provisions of the Bill of Rights, and especially the limitation and equality clauses.

The Democratic Party supports a broad general formulation and believes it is the role of the courts to give practical effect and content to the right. We would, therefore, propose that instead of the somewhat tortuous formulation in the Interim Constitution that a broadly based right of religious freedom, together with its companion rights be formulated, along the lines suggested above.

As regards the necessity for a specific clause enshrining the right to academic freedom, we regard the light of learning as the torch of democracy. True learning, independent of political control, is the nemesis of tyranny. Recognizing that, the authors of apartheid twisted education into a means of repression. Never again can that be permitted. Democracy means that decisions are taken by persuasion, rather than coercion. True persuasion can only take place in a culture which respects learning. Unless learning flourishes, therefore, democracy cannot be attained. And without freedom, learning cannot flourish. The Bill of Rights should seek to guarantee the freedom and independence of learning.

During apartheid, among those who most constantly kept alive the idea of democracy, and indeed the values affirmed by any future Bill of Rights were the independent universities. They became, in consequence targets for oppression. The Bill of Rights should seek to put them, and all institutions of higher learning like them, beyond further interference.

The formulation of the rights proposed in respect of freedom of peaceful and unarmed assembly and association will be dealt with separately below.

### 1.3. Application of the Right

A positive duty is imposed upon the State to adhere to the rights contained herein and not to interfere with either the belief of religious freedom, the belief and practice and propagation of religious viewpoints, nor the rights of academic freedom.

### 1.4 Constitutional Duty on Other Actors

Clearly, these rights would be appropriate for horizontal application, subject to suitable limitation in the appropriate clause.



## **1.5 Bearers of the Right**

Clearly, a meaningful right to religious freedom should exist for both individual citizens and to institutions which practice both the expression of religious viewpoints (churches, synagogues, mosques and temples) and related juristic persons. In respect of the right to academic freedom, we believe that institutions, such as universities and technikons, should be able to enforce the right against individuals or the State itself.

## **1.6 Limitations**

The right to freedom of religious expression and belief and opinion and academic freedom should be subject to reasonable limitations in a properly formulated limitations clause, such as that provided for in the Interim Constitution in terms of Section 33.

## **FREEDOM OF ASSOCIATION**

Section 17 of the Interim Constitution provides:

"Every person shall have the right to freedom of association".

## **2.2 Content of the Right**

Freedom of association is a general capacity of citizens to join, without interference from the State or others, in associations, in order to attain various ends. This is an uncontroversial right which should be supported. For the reasons stated under 3.1 (freedom of religion) we believe this more properly belongs together with citizens rights to fundamental freedom and that would be the proper place for the right to appear.

In order to allay any fears, whether legally founded or not, that freedom of association could be used as a shield behind which privatised racism or discrimination can take place, we have proposed that freedom of peaceful association should be made subject to the provisions of the equality clause. In any event this is probably unnecessary since the constitution will be read as a whole (in other words, the equality clause will be read together with all other clauses such as that providing guaranteed right to association). It might be as well to dispel any fears on this count by making such provision explicit.

## **2.3 Application of the Right**

A positive duty is imposed on the State which is apparent from the wording of the clause.

## **2.4 Application of the Right to Common/Customary Law**

We believe that freedom of association is a fundamental democratic right which should, subject to resolution on the debate on the horizontal application of the Bill, be made applicable to the common law and customary law as well.

## **2.5 Bearers of the Right**

Both natural and juristic persons should enjoy the right to freedom of association primarily because the rights of association itself implies a collectivisation of individual rights, such as the formation of organisations and associations to advance a particular cause. It would be unduly limiting and ineffectual if the right were to be confined to natural persons only.

## **3. FREEDOM OF DEMONSTRATION**

Section 16 of the Interim Constitution provides:

"Every person shall have the right to assemble and demonstrate with others peacefully and unarmed, and to present petitions."

### **3.1 Content of the Right**

The Democratic Party regards the right to demonstrate, subject to the limitations contained in the above clause, as being fundamental and of social value to our democratic society. This is particularly true in South Africa, with our long history of public demonstrations against oppressive rule. However, like all rights, the right to demonstrate is subject to limitation. Aside from reasonable restrictions which the government would be able to place on demonstrations in order to maintain public order, which are provided for in terms of the general limitation clause of the Interim Constitution (Section 33), we particularly approve of the constitutional requirement (in terms of the current formulation) that any assembly or demonstration be both "peaceful" and "unarmed". Since a lawless or armed assembly of persons would completely negate the democratic and constitutional rights of others, and all too unfortunately in the recent history of South Africa has often become the norm of public demonstrations, we believe these limitations to be both necessary and democratic. These limitations are also consistent with similar provisions in other human rights instruments.

### **3.2 Application of the Right**

The bearers of the right should be natural persons and juristic persons (collectivised associations of persons who are likely to demonstrate with a common objective in mind).

**3.3 Limitation of the Right by the Legislators**

This matter has been dealt with under the Content of the Right.

**3.4 Application of the Right to Common/Customary Law**

The Democratic Party believes that this right should be applicable in terms of both the common law and customary law.

- FF



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## FREEDOM FRONT

### THEME COMMITTEE 4 (FUNDAMENTAL RIGHTS)

#### SUBMISSIONS ON FREEDOM OF DEMONSTRATION AND PETITION

##### 1. Content of the right

- 1.1 Section 16 of the transitional Constitution provides:  
"Every person shall have the right to assemble and demonstrate with others peacefully and unarmed, and to present petitions".

The Freedom Front is of the opinion that the above-mentioned three rights, formulated without qualification, should be qualified as set out below.

By reason of the fact that one has to do with three rights in the present context it is not feasible to attempt to give an exposition of the content of 'the right'. The content of the various rights will appear from the discussion under 1.2 below.

##### 1.2 Controversial issues

###### The right to assemble peacefully

The International Covenant on Civil and Political Rights 1966 provides in article 21 that no restrictions may be placed on the exercise of the right of peaceful assembly 'other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others'.

The restrictions referred to above reflect rules of international law generally accepted, as the above-mentioned Covenant is an international instrument

reflecting the views of the majority of states in the world. These restrictions on the right accordingly form part of 'universally accepted fundamental rights' within the meaning of Constitutional Principle II in Schedule 4 of the transitional Constitution.

The Freedom Front proposes that identical or similar restrictions should be introduced into the new Constitution, using the present section 16 as a basis. We are of the opinion that such restrictions are necessary in the public interest. Contemporary South African events have shown that large assemblies of people cannot be effectively controlled. Breaches of the peace, public violence and criminal actions by some flow from such assemblies, unless strict controls are exercised.

The restrictions proposed by us above ought to cover also state security and disruption of commercial and community life. An extended wording of the restrictions mentioned above may, therefore, be necessary to cover these cases. As far as picketing is concerned, we suggest that it should be dealt with not in the context of this right, but in the context of fundamental rights relating directly to labour relations (at present section 27 of the transitional Constitution), as the latter should be dealt with in one 'package'.

We would like to stress that the word "unarmed" should be retained in a future bill in respect of this right, as a potential breach of the peace or the invasion of private rights would otherwise be much more likely.

#### The right to demonstrate

The Freedom Front submits that the internationally accepted right of demonstration is closely allied to the right of peaceful assembly. Presumably because of this reason it is mentioned in section 16 of the transitional Constitution, together with the right to assemble. It is difficult, however, to draw a line between the two in particular circumstances.

An assembly is not necessarily a demonstration: it may have the purpose of a public discussion by persons not necessarily holding the same opinions. An assembly may, therefore, prove to be not be partisan in nature or aimed at the furthering of sectional interests. A demonstration is, however, partisan by its very nature. On the other hand, a demonstration will not necessarily imply an assembly of persons: it may be manifested by a single person or a small group of persons.

The significance of distinguishing between assemblies and demonstrations is that the latter are more likely to lead to a breach of the peace or public violence, and should

therefore perhaps be subject to different types of restrictions. Subject to this distinction our comments above relating to the right of peaceful assembly, together with the proposed restrictions relating to such peaceful assembly, are also applicable to peaceful demonstrations.

We would like to stress that the word "unarmed" should be retained in a future bill in respect of this right, as a potential breach of the peace or the invasion of private rights would otherwise be much more likely.

### The right to present petitions

The practice in South Africa is that the exercise of a right of assembly and demonstration is often accompanied by the presentation of petitions to government officials.

The 'right' to present petitions, however, is not a universally recognised fundamental human right. The Freedom Front sees no need for the bill of rights to confer such a right. Consideration of a petition by the authorities will almost inevitably take place after a protest march or demonstration and not during it. There is no justification, in our view, for linking a right to petition authorities to a right of peaceful assembly or demonstration. If such a right were to be acknowledged, it would create the impression that there is an onus on the authorities receiving the petition to give effect to demands contained in it, which may be quite unjustified. Such an act is confrontational and not in the interest of amicable resolution of any differences that may exist in this connection.

## 2. Application of the right

### 2.1 Nature of the duty to be imposed on the state

The nature of the duty (in the sense of its scope and ambit) appears from paragraph 1.2 above.

### 2.2 Application of the right to common law and customary law

The Freedom Front is of the opinion that the above-mentioned proposals relating to this part of the proposed bill of rights is in conformity with the rules of South Africa's common law. We do not anticipate any conflict between this statutory right and the broad principles of the common law in this regard. If necessary, however, common law rules in this context may supplement the statutory provisions contemplated.

As far as indigenous law (customary law) is concerned we propose that the indigenous law should be repealed to the

extent of any conflict. Our motivation is that the right of peaceful assembly is a phenomenon of modern society and should therefore be seen in the context of contemporary conceptions of human rights as opposed to traditional or customary concepts.

2.3 Should this right impose a constitutional duty on actors other than the State?

The Freedom Front is of the view that there is a constitutional duty in this regard not only on the State but also on all inhabitants of the country. The proper exercise of this right can be effected not only when the State allows freedom of assembly but also when private persons allow it and do not disrupt such assemblies.

2.4 Who should be the bearers of the right?

Naturally juristic persons cannot exercise this right, which is by its nature confined to natural persons. All citizens and lawful inhabitants of the country should possess this right. In the case of persons performing essential services, however, a right of peaceful assembly (just like the right to strike) should be formulated in such a way that it is not capable of being used as a pretext for dereliction of their duties by such persons, as such conduct is against the public interest.

2.5 Should this right be capable of limitation by the legislature?

The Freedom Front believes that the right of peaceful assembly should be capable of limitation by the legislature only to the extent permitted by international law, as reflected in the exceptions to this right referred to in paragraph 1.2 above.

2.6 Other issues

The Freedom Front is convinced that the public interest requires that freedoms of assembly, demonstration and petition should not be permitted by the constitution in respect of 'essential services' in a wide sense. Special statutory provision should be made for the airing of grievances by soldiers, the police, medical personnel, etc., so that military discipline, law and order, the maintenance of health services, etc. can at all times be kept intact.



- NP

# NATIONAL PARTY PRELIMINARY SUBMISSION

## THEME COMMITTEE 4

### BLOCK 5 ITEM 11: FREEDOM OF ASSEMBLY DEMONSTRATION AND PETITION

#### 1 Content of the Right

The right to Freedom of Assembly, Demonstration and Petition is succinctly embodied in Section 16 of the Constitution 1993, as follows:

"Every person shall have the right to assemble and demonstrate with others peacefully and unarmed and to present petitions".

This provision accords with the Universal Declaration of Human Rights (1948) of the United Nations Organisation which provides that "everyone has the right to freedom of peaceful assembly and association" (article 20), Article 29 of the same Declaration provides that in exercising such right and freedom, everyone shall only be subject to such limitations as give due recognition and respect to the rights and freedoms of others and of meeting the just requirements of morality, public order and general welfare in a democratic society.

The essential content of the right is therefore that every person should be constitutionally entitled to assemble with others peacefully and unarmed for the purpose of demonstration and should further have the right to present petitions to those in authority.

## 2 Application of the right

### 2.1 The Nature of the duty imposed on the State

The State has a duty not to interfere with a peaceful, unarmed demonstration. It is also duty bound to receive petitions from individual persons assembled with others. On the other hand, the State is under a duty to protect and secure the lives and property of those affected by the demonstration, whether they are participants, on-lookers or members of the local community.

### 2.2 Common Law and Customary Law

The right should be applied to common law and customary law.

### 2.3 Actors other than the State

The right to assemble and demonstrate applies primarily and historically between individuals and the State vertically.

However, by its nature the application of the right may involve actors other than the State, e.g. employees against management; or students against staff etc.

### 2.4 Bearers of the Right

Natural persons are the bearers of this right.

In addition where and to the extent that the nature of the right permits, juristic persons are also bearers of this right.

2.5 Limitation of the Right

To the extent that the State is under a duty to protect and secure the lives and property of natural and juristic persons and the State during demonstration, it is obligated to regulate the right to demonstrate by legislation. However, such legislation must always be subject to the criteria laid down by Section 33 of the Constitution 1993.

2.6 Wording

The wording of Section 16 of the Constitution 1993 should remain unamended.

**- PAC**

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24 April 1995

## **PRELIMINARY SUBMISSION OF THE PAC ON FREEDOM OF DEMONSTRATION AND PETITION**

### **Content**

The Right of every person to assemble and demonstrate with others peacefully and unarmed and to present petitions.

### **Other Aspects**

1. S16 of the Interim Constitution seem to deal adequately with this freedom.
2. It is not absolute, i.e., it can be limited and even suspended during times of state of emergency.
3. It binds both the State and private persons and bodies. This suggests that it applies vertically and horizontally.

R K Sizani - MP

