

AFRICAN CHRISTIAN DEMOCRATIC PARTY

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violence or hatred, and where the security of the State and lives of the community are threatened, the right should be withdrawn.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 its aim, the breakdown of political stability, or to bring the economy to its 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 relationships 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, e.g. 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 its own specific limitation of being 'peaceful and unarmed', and should be imposed as such.

19th April 1995