

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

FREEDOM OF ASSOCIATION

Content of the Right

Section 17 of the Constitution reads that "every person shall have the right to freedom of association."

The inclusion of this right is both constitutionally correct, yet politically controversial. It is dependent upon the character of our nation to allow this right as long as the rights of others are not infringed, or the stability of society attested.

Freedom of association or dissociation is a democratic right that caters for respect of individual privacy and for institutional cohesiveness and freedom.

As regards all rights, responsibility and the collective value to uphold the goodwill of all people are the cornerstones for effective exercise and manifestation of fundamental rights. The founding of voluntary or statutory associations rest on the assumption that individual and community (association) rights are protected, and that the fundamental rules that hold these diverse sectors together are the basic human values of love, respect, honesty, truthfulness, accountability and a divine spiritual bond.

Society demands that laws which encourage justice, transparency, peace, morality and social upliftment, should be maintained. These are requirements for social stability and neighbourliness. The right to freedom of association is limited to these.

The ACDP warns that unbridled rights that destroy family values infringe upon reasonable and acceptable social divergences or undermine moral defensible democratic tolerances, such as pornographic syndicates, drug cartels, Satanic and cultic worshipping, subversive groups, etc., are associations that work against the requirements of societal norms.

Insofar as clubs have the legitimate right to operate uninterrupted of state intervention, the right to freedom of association provides no shield behind which activities of an inhuman racist or discriminatory nature can be justified,

However, we are of the belief that freedom of association does not involve an absolute right. All forms of association are regulated according to checks and balances, which afford clubs and organisations, the protection to determine rules and mandates specific to them or their operations. We believe that ail associations should be voluntary and not enforceable, unless the State invokes such measures that are prerequisites for State security and national defence.

The ACDP views closed-shop arrangements as an infringement on an employee's right to dissociation. The worker should be entitled to decide whether or not to join up with a trade union. Any rights taken away from a worker because of dissociation is discriminatory and should constitute an unfair labour practice. Whereas a non-member stands to benefit through the collective bargaining position of the trade union, arrangements can be made between these parties where benefits can be equally shared.

The ACDP, therefore, agrees with the right as stated, that "every person shall have the right to freedom of association," which also means the right to freedom of dissociation. We also wish to include that:

"No restriction may be placed on the exercise of this right, other than those which are prescribed be 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. This Article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right." (The Fundamental Covenant on Civil and Political Rights. Article 22.2)

## Application of the Right

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

The right suggests that there shall be individual and social protection against State interference.

The right further guarantees that the citizens shall enjoy access to privacy.

The State's interference to infringe upon this right should be cautious, yet objectively applied, where such infringement is deemed appropriate. It is appropriate when the moral and ethical codes of good citizenship and public order is threatened. It is also appropriate in instances, where the government seeks to usurp absolute power.

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

The ACDP position is clear that where the constitutional contents or application of any right is interpreted or stated to contradict moral biblical principles or the violation of biblical rule and so contained in any common or customary law, this will be opposed.

However, the right to freedom of association should be a cornerstone of society, and should be included to both common and customary law.

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

Yes, insofar as the constitution has a fixed moral content, and conforms to moral, biblical principles, it is submitted that, as equal subjects before God and His authority, all citizens are benefited with responsibilities to assume this right.

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

This right is applicable to both natural and juristic persons. With regards to the benefit of privacy and exclusivism, in the case of juristic persons, clarification may be processed through the activity of court procedures.

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

Section 33 (4), which appeals to take steps to prohibit 'private discrimination' as well as a person's basic right to equality, provides satisfactory grounds for limitation. The moral appropriation of the right will determine as well the limitation imposed.

19 April 1995