

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 associations

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.