

DEMOCRATIC PARTY

29.03.95

CONSTITUTIONAL ASSEMBLY: THEME COMMITTEE 4
SUBMISSION BY THE DEMOCRATIC PARTY
SERVITUDE AND FORCED LABOUR AND FREEDOM AND
SECURITY OF THE PERSON

1. SERVITUDE AND FORCED LABOUR

The Democratic Party has already submitted its detailed viewpoint On this topic, under cover of submission on the Right to Human Dignity. Kindly refer to Party Submissions (green document) (unnumbered) dated 20 March 1995 at pp.25-26.

2. SECURITY OF THE PERSON

2.1 Content of the Right

We have already made submissions in respect of section 10 (Dignity) and we reiterate them here, Likewise, our standpoint on abortion is contained under cover of the same submission (see document, 20 March 1995 pp.26-27). We therefore discuss the meaning and content of section 11 - Freedom and Security of Person.

We are in respectful agreement with the generality and particularity afforded to detained, arrested and accused persons, save for the reasons noted below.

2.2 We believe that the wording of the Constitution should be rearranged to provide for a Right to Liberty, since the current composition of clauses 13 (which deals with searches and seizures under the Right to Privacy), and 11 (Freedom and Security of Person) should be recomposed to read:.

11. **Right to Liberty**

"Every person shall have the right:-

- 11.1 To liberty and security of person and shall not be deprived of such rights except in accordance with the law;
- 11.2 To be secure against unreasonable searches and seizures;
- 11.3 Not to be arbitrarily arrested, detained Or imprisoned;
- 11.4 Not to be subject to torture or to cruelty, inhuman or degrading treatment or punishment”

These are the essential core Of rights which a clause guaranteeing freedom and security of person should provide.

2.3 We do not understand why the Secretariat has placed section 25 under this head. The detailed rights of accused, detained and arrested persons require separate and particular attention. The Theme Committee should consider them only after general agreement on the above clause has been reached. For the purpose of the record, however, we are in general agreement with are in general agreement with the wording of the section 25, except for the provisions of section 25(2)(d) relating to bail.

2.4 While we believe that arrested persons are entitled to bail in carefully defined circumstances, we are extremely concerned with the extraordinary laxity of the lower courts in granting bail in clearly undesirable circumstances. Whether this is the fault of the general wording of 25(2)(d) or the failure of the courts or prosecuting authorities to apply properly the limitation clause (section 33), is unclear. We believe the matter is of sufficient importance

and urgency for the committee of experts to prepare an opinion and for this section to be considered afresh, so that a proper balance may be struck between the interests of society and the criminal justice system in the context of our crime-ravaged country on the one hand, and the individual bail applicant on the other.

3. **APPLICATION OF THE RIGHT**

Since the rights contained under section 11 (and 25) clearly empower individual human beings with specific rights and impose specific obligations on the State, an elaborate consideration of the questions posed is unnecessary (2.1-2.4).

However, (2,5) "should the rights under discussion be capable of "limitation" is adequately answered on the provisions of section 33 which invest these rights with a higher form of protection (see section 33(1)(aa). We believe this to be appropriate save and except in respect of the question of bail for the reasons stated above.