

FREEDOM FRONT

THEME COMMITTEE 4 (FUNDAMENTAL RIGHTS)

SUBMISSION ON SERVITUDE AND FORCED LABOUR

1. Content of the right

The concept 'Servitude' (also referred to as 'slavery' or 'serfdom') is a relic of the nineteenth century. The Congress of Vienna in 1815 condemned in principle the slave trade, which, together with the institution of slavery, was the object of a large number of international treaties and national statutes during the next hundred years.

The concept 'forced labour' is narrower than that of 'servitude': a person can be subject to forced labour although is not held in slavery or servitude. Nevertheless there is an overlap.

The subjection of one person to a state of servitude for the benefit of another is today prohibited by a universal accepted rule of customary international law and by the legal systems of many states.

The International Covenant on Civil and Political Rights 1966 contains the following brief prohibitions in article 8: '1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited. 2. No one shall be held in servitude'. The same article deals more extensively with forced or compulsory labour (see below).

It would serve no purpose to attempt to describe the content of the phenomenon of servitude: it is historically outdated. The content of the phenomenon of forced labour is, however, of contemporary significance. It could arise in the context of detention by administrative measures not authorised by a court of law.

Section 12 of the transitional Constitution reads: No person shall be subject to servitude or forced labour'. This provision is too cryptic, and should be expanded.

The Freedom Front submits that the prohibition of forced labour should be subject to the following qualifications:

- (i) labour reasonably imposed as a punishment for a crime by a court of law of competent jurisdiction, to be performed during detention pursuant to an order by such court;
- (ii) reasonable military or civilian national service (of equal duration), the individual concerned having a choice between the two on the basis of religious or conscientious objection;
- (iii) any service exacted according to law during a duly proclaimed state of emergency.

This proposal is substantially in agreement with article 8 of the International Covenant on Civil and Political Rights 1966, save that we cannot subscribe to the view that the exception should

extend to 'work or service which forms part of normal civil obligations', as this is too vague and opens the door for abuse.

2. Application of the right

- 2.1 The nature of the duty to be imposed on the state is that it should respect the content of the right as set out above and ensure its enforcement by independent courts of law.
- 2.2 The application of the right to common and customary law should be such that all rules of common and customary law in conflict with the right should be superseded by the provisions of the bill of rights in this regard.
- 2.3 In principle this right is, by its nature, applicable primarily to the vertical relationship (state versus subject). Any form of servitude or forced labour imposed by private citizens against one another should also be prohibited, but should rather be dealt with under the heading 'Freedom and security of the person'.
- 2.4 This right is not applicable to juristic persons. The bearers of the right should be all natural persons, citizens and aliens alike, and quite possibly even unlawful immigrants.
- 2.5 No, this right should not be capable of limitation by the legislature, as it would reduce the efficacy of the right as guaranteed in the bill of fundamental rights.
