

PRELIMINARY SUBMISSIONS OF AFRICAN NATIONAL  
CONGRESS ON BLOCKS TWO AND THREE - THEME  
COMMITTEE 4.

FREEDOM AND SECURITY OF THE PERSON

Content of the Right

The right is described under Section I I of Chapter 3 of the Interim Constitution. Section I I (1), apart from guaranteeing the freedom and security of the person, also deals with the right not to be detained without trial. In our view, implicit in the content of (or antecedent to) freedom and security is the right not to be subjected to arbitrary arrest, which shall invariably violate the freedom and security of the person. Articles 3 and 9 of the Universal Declaration of Human Rights and Article 9(1) on the International Covenant on Civil and Political Rights deals with Section I I (1) of the Interim Constitution in similar terms. We prefer the formulation of the right as follows:

Everyone has the right to freedom of security of person. No one shall be subjected to arbitrary arrest or detention.

This is a broader formulation in that it covers both the element of arrest and detention and is also specific in that it relates to the arbitrariness of any arrest and detention.

Section 25 deals extensively with the rights of detained, arrested and accused persons.

Our understanding of the freedom and security expressed in this right is that it is not exclusively physical and deals with the broader mental and spiritual freedom of expression, religion, belief, opinion and conscience. Security of the person shall cover among other things, the physical, mental and psychological integrity of the human being that must be secured or guarded from torture and other forms of degrading, cruel or inhuman treatment.

Section I 1 (2) outlaws cruel punishment., treatment and torture. The right is similar to that of Article 7 of the International Covenant on Civil, and Political Rights. It has been refined in that it specifically excludes torture of any kind, including mental and emotional torture. It is our view that the integrity, dignity and security of the person can be further protected by adding the following to Subsection I 1 (2).

No one shall be subjected without his or her free consent to medical or scientific experimentation.

The above mentioned rights are fundamental and have to be protected. Their significance can be best understood against the background of the arbitrary arrests, detention without **trial**, and torture,, in various forms perpetrated against political activists who fought for the "freedom and security of the person".

### Application of the right

*2. 1. There shall be a positive duty on the state.*

*2.2. The right shall apply at all levels of civil society.*

*2.3. Yes, it should. It should apply horizontally and among thirdparties inter se.*

*2.4. Natural persons*

2.5. *Only in terms of the provisions relating to rights being reasonably and/or necessarily limited in an open and democratic society.*

## FREEDOM OF EXPRESSION

### Content of the right

The right is set out under Section 15 of Chapter 3 of the Interim Constitution. It is our view that the establishment of the Independent Broadcasting Authority which secures impartiality of state media deals adequately with the concern of state financed or controlled media. Therefore, we are of the opinion that subsection (2) should not be included in the Bill of Rights.

The right to freedom of expression is closely related to free political activity. It is one of the foremost fundamental civil and political human rights that is universally accepted. It is advisable that the right should be reformulated to provide constitutional protection from racist, sexist or hate speeches calculated to cause hostility and acrimony, and, racial, ethnic or even religious antagonism and division. The right correctly includes artistic expression and scientific activity. The word "research" seems somewhat restrictive and could be substituted with the word "activity" which shall in any event, include research.

The following formulation of Section 11 (1) is suggested:

- 1). Every one shall have the right to freedom of speech and expression, which shall include freedom of the press and other media, and the freedom of artistic creativity and scientific activity
  
- 2). Any speech, expression or advocacy of national, racial, ethnic, religious or other forms of hatred that constitutes incitement to racial, ethnic or gender discrimination, hostility or violence is forbidden

We draw your attention to our comments in respect of 15(2), but state that, if at all included, it should be formulated as follows:

All media shall express a diversity of opinion.

The effect of this reformulation is to guide the media to reflect the diversity of opinion and thereby contribute to the social and cultural welfare of the country as a whole.

## Application of the right

2. *1. There shall be a positive duty on the part of the state when such rights are suppressed.*
  
- 2.2. *The right shall apply to all levels of civil society.*
  
- 2.3. *The right shall apply horizontally subject to the usual limitations.*
  
- 2.4. *Natural persons shall be the bearers of the right.*
  
- 2.5. *As under 2.5. of the Right to Freedom and Security above.*

## RIGHT TO ACCESS TO INFORMATION

## Content of the right

The primary objective of this right is to provide persons with the right to obtain information from state organs at any level of government; this is consistent with a transparent and accountable administration (government) in an open and democratic society. It is our view, firstly, that the information must be provided in the exercise or protection of rights and that the right should bind private institutions and other legal persons.

In so far as the state is concerned, sensitive information may be protected in terms of the general limitation clause. This will also apply to state security or law enforcement details. Private institutions or juristic persons such as companies will obviously be protected by the limitation clause, as well as the law in so far as it has a bearing on this aspect. The right shall obviously be read with the right of privacy.

The importance of this right must be seen against the backdrop of clandestine and secret methods of the past regime and the systematic concealment of relevant information. We therefore propose a construction which may be formulated as follows:

Everyone shall have the right of access to all information held by the state or any of its organs at any level or by social organisations or institutions in so far as such information is required for the actual or potential exercise or protection of any of his or her rights.

### Application of the right

*2. 1. A positive duty is imposed on the state.*

*2.2. The right shall be subject to the reasonable limitations and shall apply to both common and customary law.*

*2.3. The right shall apply horizontally.*

*2.4. Natural persons shall be the bearers of the right.*

*2.5. As in 2.5. under the Right to Freedom and Security above.*



