

# **INKATHA FREEDOM PARTY**

THEME COMMITTEE No. 4  
SUBMISSION FOR BLOCK No. 2

ON

**HUMAN DIGNITY**  
**RIGHT TO LIFE**  
**PRIVACY**

## **HUMAN DIGNITY**

The notion of human dignity should be entrenched in the constitution as:

- (a) a fundamental parameter against which the actual protection of human rights is to be assessed;
- (b) a qualification of the constitutionally mandated social goals of the state;
- (c) a recognition of the individual nature of human rights protection and of the preeminence of the individual over society;
- (d) a broadening of the scope of human rights protection to encompass the consideration of personal aspects of human experience (the bridge between law and pietas)

Dignity is a philosophical concept. In order to be accommodated within a constitution it must be qualified as "social dignity" so as to transform it into a social concept which can be taken into account in the process of constitutional adjudication as an interpretative parameter (i.e. the "perception of the relevant segment of our society at this juncture of its development").

In a constitution the most relevant aspect of social dignity is related to the determination of tests and parameters employed in the structuring of the "substantive equality" clause. Reference is made to our submission on Equality in which we have proposed that social dignity be a parameter of equality (i.e. equal social dignity ... irrespective of social status).

Social dignity may also be mentioned in the Preamble. Reference is made to the text of the IFP proposed preamble previously submitted which even if it does not contain the word "dignity" it subsumes that notion within other relevant constitutional notions employed therein.

Social dignity may also be mentioned in the sections on "Inherent Rights and Obligations" and "State Obligations". Reference is made to the text of the IFP proposal with respect to these two sections which were previously submitted and which even if they do not contain the word 'dignity' they subsume that notion within other relevant constitutional notions employed therein.

Social dignity is relevant with respect to the right to "Privacy" (see *infra*) which ought to be characterised also as "personal dignity".

Dignity is also relevant with respect to family rights in which "both spouses shall have equal rights, obligations and dignity". With respect to family relations, the "dignity" aspect covers important constitutionally sensitive aspects which are not catered for merely in terms of "rights and obligations".

## PRIVACY

'Everyone shall have the right to the protection of privacy, of his or her personal life, of his or her domicile, and to protection of his or her personal dignity and reputation'.

1. Please note in addition to the broad notion of "privacy" this text identifies four specific sensitive areas of constitutional protection.
  - 1.1 "Personal life" relates to the IFP proposed notion of an area of constitutionally protected autonomy for individuals, and social, cultural and economic formations defined by the interests that people acting alone or with others may regulate and administer by themselves and in respect to which government does not have a compelling public need to intervene. In simpler words, an area in which the individual is King!
  - 1.2 "Domicile" is preferable to "residence" as it indicates the place where a person conducts his/her private life.
  - 1.3 The constitutional entrenchment of the notion of "reputation" is fundamental and ties with matters to be discussed in further blocks related to freedom of the media.
  - 1.4. "Personal Dignity" is to be protected in all cases. even outside one's own "domicile" or "personal life", for instance in the job place.

“All private communications and all aspects of private life shall be protected”.

“Search and seizure may be allowed only on the basis of a warrant issued on the basis of corroborated allegations. and in the cases and with the guarantees established by the law. Personal search shall be allowed as an incident to a legitimate arrest and detention”.

The "search and seizure" clause could be part of the "privacy" clause rather than the "liberty" clause since it is more a limitation of the right to privacy than of the freedom from unwarranted arrest.

"Anyone has the right to access the information collected on him or her by the Government or by private data or information banks."

This provision can be found in several modern constitutions (see 1978 Constitution of Spain or the US 1974 Privacy Act) and reflect a fundamental need in a society in which the life of people are increasingly controlled by information management and distribution.

- 1.5 Aspects related to intelligence and security services have been dealt with in Theme Committee No. 6.4. This Theme Committee should propose the text of the right to privacy, and if any exceptions are carved to accommodate intelligence and security services such proposals would come from Theme committee No. 6.4 and would operate and be assessed against the right to privacy as developed in this Theme Committee. At this juncture, we see no need to carve very dangerous exceptions in a very sensitive area such as privacy.

- 1.6 In the work schedule no provision has been made for Family Rights and the Freedom of Procreative Choice which the IFP requested to be tabled on our agenda. Since these two fundamental rights are related to the right to Privacy, we are now submitting our proposals. Incidentally, the IFP rejects the placement in the work schedule of the issue of abortion under the item "Right to Life" which is quite outcome-manipulative.

### **Family rights**

Individuals have the right to join in marriage in accordance with the rituals and with assumption of the obligations and privileges of their choice.

However, spouses shall have equal rights, obligations and dignity.

Both parents shall share responsibility for the upbringing, formation and education of the children even if born outside wedlock.

The law shall ensure that comparable rights and social protection shall be extended to children born outside wedlock as them, shall be recognised to children born in wedlock.

Both parents have the right and the duty to exercise joint custody of the children unless a court otherwise decides in the interest of the children and on the basis of the specific circumstances of the case.

Both parents have the right and the duty to choose an acceptable formation and education for their children.

### **Procreative Freedom**

All people who so desire shall enjoy freedom of procreative choice, including the right to receive sexual education, to use contraception and terminate unwanted pregnancy when safe.

Anyone who finds these practices objectionable shall have the right to protect his or her own sphere of interests from any of these practices and from the exposure thereto.

As a note on our position on procreative freedom the following should be noted:

- a. The constitution should reflect the fact that the best way of preventing abortions is sexual education and contraception, so that abortion is a last resort.
- b. No woman would seek to have an abortion if she can avoid it.
- c. The choice is not between having or not having abortions in our country, but it rather is between having legal or illegal abortions.
- d. Abortion is a highly emotive issue and like most other organisations the IFP is deeply divided about it. This issue is not reconcilable because what is a fundamental right to some is a fundamental crime for others. For those who believe in pluralism and freedom the only solution is to allow each group to live by its own code of conduct and morality, without anyone being allowed to impose his/her views on others. No one should be forced or even pressurised to have or administer an abortion, and for this reason the second part of our proposal would prohibit the advertising [procurement] of abortions

or even recommending it during medical consultations, also allowing doctors to refuse to administer one. However, our proposal also allow abortions for those who consider it a fundamental right.

- e. In almost all countries of Western democracy abortion is considered a fundamental right and those who hold this belief consider it to be a form of social violence in the extreme to turn a right into a crime.
- f. Technically, there are no middle ground solutions regarding the imposition of any common rule or standard. for abortion may not be half fundamental right and/or half a fundamental crime at the same time. The only possible solution is a personal solution to be found in the freedom and in the conscience of any woman concerned.

## **RIGHT TO LIFE**

1. The Republic shall acknowledge and recognise that all individuals have the natural right to life, liberty and the pursuit of happiness. and to the enjoyment of the rewards of their own industry as inherent rights
2. The physical and psychological integrity. of an individual shall be inviolable.
3. No one shall be authorised to inflict any type of violence on another individual or to take a life.
4. Capital punishment and any form of physical or psychological torture and punishment shall not be allowed.
5. No one shall be submitted to unusual or cruel punishment and all punishments shall aim at the personal and social rehabilitation of the person.
6. During imprisonment juvenile delinquents shall be kept separate from other delinquents and so shall men from women.
7. Failure by a public official to report any and all instances of physical or psychological violence on a person deprived of his or her liberty shall be a criminal offence.
8. The IFP position on capital punishment is fully detailed and motivated in the enclosed document.
9. The issue of euthanasia should be determined by means of constitutional interpretation or legislation, since in this rapidly changing subject matter there are no clear cut situations or principles which we can confidently propose.