

MARCH 23 1992 .

REVISED SUBMISSIONS: NATIONAL PEOPLE'S PARTY

GROUP AND MINORITY RIGHTS - SOME KEY ISSUES

1. GROUP RIGHTS OR MINORITY RIGHTS?

THE PHRASE "GROUP RIGHTS" HAS ACQUIRED A SOMEWHAT UNFAVOURABLE CONNOTATION IN SOUTH AFRICA, LARGELY BECAUSE OF ITS ASSOCIATION WITH THE PROTECTION OF WHITE INTERESTS. IN ONE SENSE, HOWEVER, "GROUP RIGHTS" HAS THE ADVANTAGE THAT IT IS NOT LIMITED TO CATEGORIES OF PERSONS WHO ARE IN A MINORITY POSITION : THE MOST NOTABLE EXAMPLE IS THAT OF WOMEN, WHO ARE NUMERICALLY IN THE MAJORITY WORLD-WIDE, BUT WHO NEVERTHELESS MAY BE SAID TO ENJOY "MINORITY STATUS" BECAUSE OF DISCRIMINATION IN GENERAL FIELDS.

2. THE DEFINITION OF A GROUP

IT MUST BE REMEMBERED THAT THERE ARE TWO BASIC CATEGORIES OF GROUPS : THOSE THAT MAY BE VOLUNTARILY FORMED, SUCH AS POLITICAL PARTIES, RELIGIOUS BODIES, EVEN TRADE UNIONS, AND INVOLUNTARY GROUPS OR CLASSES : MEN AND WOMEN, RACE GROUPS, THE AGED, THE DISABLED, EVEN THE LEFT HANDED! ONLY THE RIGHTS OF VOLUNTARILY FORMED GROUPS CAN BE PROTECTED VIA THE RIGHTS OF FREEDOM OF ASSOCIATION.

CLARITY MUST BE OBTAINED ABOUT THE KIND OF GROUP ONE IS TALKING ABOUT IN A PARTICULAR CASE.

3. TRADITIONAL DEFINITION OF MINORITIES

SUCH ATTENTION AS HAS BEEN DEVOTED TO THE PROTECTION OF MINORITIES IN INTERNATIONAL LAW, HAS FOCUSED ON RACIAL MINORITIES. THIS ISSUE IS ALSO CLOSELY LINKED WITH THAT OF SELF-DETERMINATION, WHICH IS THE MAIN PLATFORM OF WHITE CONSERVATIVES.

A VERY SIMPLE MEANS OF PROTECTING RACIAL MINORITIES (AND CERTAIN OTHER GROUPS, BOTH VOLUNTARILY AND INVOLUNTARILY FORMED) IN A CONSTITUTION, IS BY WAY OF A NON-DISCRIMINATION CLAUSE PROVIDING THAT NO-ONE MAY BE DISCRIMINATED AGAINST ON THE GROUND OF HIS/HER RACE, SEX, RELIGION, CREED ETC. THIS FORM OF "NEGATIVE" PROTECTION, WHICH WILL ALMOST CERTAINLY BE INCLUDED IN A SOUTH AFRICAN BILL OF RIGHTS, CAN GO A LONG WAY BUT MUST ALWAYS BE INTERPRETED IN THE CONTEXT OF A CLAUSE GUARANTEEING FREEDOM OF ASSOCIATION (WHICH WILL EQUALLY CERTAINLY BE IN THE BILL OF RIGHTS).

FREEDOM OF ASSOCIATION WITH WHOM ONE PLEASES IMPLIES THE FREEDOM NOT TO ASSOCIATE, AND A DECISION NOT TO ASSOCIATE WITH SOMEONE COULD CONCEIVABLY ENTAIL DISCRIMINATION BASED ON A RACE, IN PARTICULAR. IT WOULD PROVE DIFFICULT TO RECONCILE THE TWO PRINCIPLES IF THE NON-DISCRIMINATION CLAUSE IS MADE APPLICABLE TO PRIVATE INDIVIDUALS AND BODIES AS WELL AS TO OFFICIAL AND SEMI-GOVERNMENT BODIES. IF ONLY THE STATE IS OBLIGED NOT TO DISCRIMINATE, VEILED DISCRIMINATION COULD RESULT FROM THE RECOGNITION OF THE FREEDOM TO DISSOCIATE.

ON THE OTHER HAND, IT MAY BE BETTER NOT TO INTERFERE WITH PRIVATE INDIVIDUALS AND BODIES TOO MUCH, AND RATHER TO PERMIT SUCH GROUPS TO ESTABLISH THEIR OWN EXCLUSIVE SCHOOLS, CLUBS ETC THAN TO COMPEL THEM TO ASSOCIATE WITH PERSONS OF ANOTHER RACE, RELIGION OR LANGUAGE GROUP. EVEN SO, DELIBERATELY OFFENSIVE CONDUCT WHICH ANY RACE, LANGUAGE OR RELIGIOUS GROUP MAY FIND HURTFUL OR INSULTING, WILL HAVE TO BE PROSCRIBED (THOUGH PROBABLY NOT IN THE CONSTITUTION BUT IN ORDINARY CRIMINAL LAW).

4. POSITIVE PROTECTION OF MINORITIES

THE NEGATIVE PROTECTION OF SUBSTANTIAL MINORITIES OR GROUPS WILL NOT RAISE TOO MANY CONSTITUTIONAL PROBLEMS. IT MAY PERHAPS BE MENTIONED THAT THE IDEA OF A GROUP OF MINORITY SHOULD NOT BE TAKEN TO EXTREMES- LEFT HANDERS SHOULD NOT NEED SPECIAL CONSTITUTIONAL PROTECTION, FOR EXAMPLE.

"POSITIVE" PROTECTION, WHICH GIVES CERTAIN GROUPS SPECIAL PRIVILIGES NOT ENJOYED BY OTHER GROUPS, CAN INDEED CAUSE PROBLEMS, WHETHER THE GROUPS ARE VOLUNTARILY OR INVOLUNTARILY FORMED. OBVIOUSLY THERE CAN BE SPECIAL PRIVILEGES FOR CHILDREN, THE AGED AND THE DISABLED WITHOUT THIS GIVING RISE TO DIFFICULTIES, BECAUSE SUCH PRIVILEGES WILL NOT BE SEEN BY THE REST OF THE COMMUNITY AS UNFAIR OR THREATENING.

THE SAME CANNOT BE SAID OF SPECIAL PRIVILEGES FOR CERTAIN RACE GROUPS, IN PARTICULAR. I AM REFERRING SPECIFICALLY TO PROPOSALS THAT WHITE VOTERS PRINCIPLE REMAINS : IF WE REALLY ALL ARE JUST PEOPLE, WITHOUT REGARD TO COLOUR OR RACE, AND NOT INDIVIDUALS BELONGING TO A GROUP, THEN WHAT?

ONE CANNOT BE JUST A PERSON FOR ONE PURPOSE AND, SAY, A BLACK PERSON FOR ANOTHER PURPOSE UNLESS ONE ACKNOWLEDGES THE REALITY OF GROUPINGS AND INTEREST GROUPS, MINORITIES, ETC.

6. THE PROTECTION OF POLITICAL MINORITIES

IF FREEDOM OF POLITICAL ACTIVITY AND THE FORMATION OF POLITICAL PARTIES AND ALLIANCES IS FULLY RECOGNISED, POLITICAL MINORITIES NEED HAVE NOTHING TO DO WITH RACE OR ETHNICITY PER SE. IF SUCH A POLITICAL GROUP IS IN THE MINORITY, ITS INTERESTS CAN BEST BE PROTECTED BY A SYSTEM OF PROPORTIONAL REPRESENTATION, PARTICULARLY IN THE LEGISLATURE. THEN EACH GROUP OR PARTY WILL BE REPRESENTED IN PROPORTION TO THE SUPPORT ENJOYS AMONG THE PUBLIC. IDEALLY, THE SYSTEM SHOULD BE WEIGHTED SLIGHTLY TO FAVOUR THE SMALLER RATHER THAN THE LARGER PARTIES, BUT NOT TO GIVE INSIGNIFICANT OR EVEN SIGNIFICANT MINORITIES A VETO OVER THE WISHES OF THE MAJORITY.

IN THEORY THERE SHOULD BE NOTHING TO PREVENT THE FORMATION OF RACIALLY-BASED POLITICAL PARTIES AS LONG AS THE DIVISION IS NOT ENFORCED AS IT WAS IN SOUTH AFRICA BY THE PREVENTATION OF POLITICAL INTERFERENCE ACT. THAN A WHITE POLITICAL PARTY WOULD BE PERFECTLY LEGITIMATE, BUT COULD NOT PRESUME TO SPEAK ON BEHALF OF ALL WHITES, SINCE IT COULD NOT PROVE THAT ALL THE WHITES VOTED FOR IT. IT CAN THEREFORE BE PREDICTED THAT SECTARIAN GROUPINGS WILL GRADUALLY BECOME LESS IMPORTANT IF THE CONSTITUTION PROVES SUCCESSFUL.