

**MINORITIES AND DEMOCRACY****THE CONSTITUTION, MINORITIES AND A NEW SOUTH AFRICA****POLITICAL MINORITIES**Introduction

The acceptance that South Africa shall be a united, non-racial, non-sexist democracy opens up the way for the first time for real constitutional debate. The issue of group rights no longer clouds the discussion. We are in the realm of constitutional rights, not of rights for this or that racial or ethnic group. The danger is that the old group rights idea will continue to stalk us in a new form, diverting our attention from the search for true constitutional mechanisms. We are concerned that much of what is presented as the protection of political minorities would be little more than group rights wearing less dis-respectable clothes. Coded language sometimes replaces the overt racism of the earlier period. We welcome the abandonment of race classification in the constitution and hope that those who have moved forward will follow through and place their full trust in constitutionalised democracy. It is not enough to be two thirds or three quarters democratic. Although constitutions need to be all embracing and sensitive to the interests and feelings of the whole population, they cannot be based on what would amount to a form of conceptual power sharing between democratic and anti-democratic ideas.

We feel that political minorities in South Africa have an important active and constructive role to play in the life of the nation. They can and should exercise influence, retain their independence and be a lively part of the new constitutional structure without the concept of minority rights once more becoming a euphemism for minority privileges. We are not dealing with groups that are poor, powerless and marginalised in society. We are concerned with sections of the population that are relatively affluent, educated and in a strong social position. They have the right to take their place in the mainstream of future society, but not the right to enjoy privileges or a special position.

As far as the protection of cultural, language and religious rights as such is concerned, there is no problem. The ANC believes that the diversity of South African culture needs not only to be protected but to be valued and promoted. The variety of faiths and beliefs is part of our very nature. The nation can only be stronger if its texture is enriched. We do not believe in the idea of a single master or dominant culture into which all have to be assimilated. We do not favour the obliteration of languages, beliefs or community life. What is fundamental is the basic equality of all persons independently of their culture, language or belief. Culture should never be used as an instrument of domination, oppression or division. It should cease to be a means of setting group against group, or to be used as a pretext for keeping the majority on the margins of public or economic life.

Culture should insert itself in democracy rather than oppose itself to it. Whatever the position might be in other countries, any attempt to equate political rights and cultural rights in South Africa can only be damaging to both. The question of the rights of political minorities is a political question

not a cultural one and has to be answered in the context of guaranteeing democracy and not in the framework of guaranteeing cultural rights.

### Democracy

The word "democracy" derives from the proposition that 'the people' must govern their own country. We cannot do better than quote Lincoln's famous phrase : We want government of the people, for the people, by the people. The ANC believes that a democratic system requires institutions and practices that will encourage and promote the fullest participation by citizens in the decision making processes. We also believe that democracy requires a context of fundamental values and procedures within which "the people" govern. Such context consists of the rules in terms of which the will of the people is determined and articulated. Thus, democracy requires a free political climate, a capacity to oppose majority positions, and an independent judiciary to ensure that the rules are maintained. At the heart of democracy, however, is the requirement that in general terms the majority viewpoints must prevail.

It is also our belief that democracy will stagnate without an active and vibrant opposition. In this sense political minorities have a vital role to play in a democratic society. Majorities become minorities and visa versa. There can be majorities at the centre who are minorities in the regions or at local level. The minority of today can become the majority of tomorrow. Fluidity and the capacity for change in response to the will of the people is the key element.

### The role of political minorities

Effective government is not possible without an acceptance of the principle that the elected representatives of the majority should, in the context of respect for fundamental rights and freedoms, have the right to make decisions affecting the political life of the nation. The minority on the other hand, should have the right to organise and participate in elections and in this way become the majority. It also has an important role to play in expressing minority opinions and in challenging and exposing government abuse of power. Both the majority and the minority have the potential to abuse their powers and must be restrained by the constitution. The majority should not be able to ride roughshod over the constitutional rights of citizens and the minority should not have the power to prevent the government from legislating. Political minorities thus play a vital role as the opposition in legislatures and in society generally in keeping the government of the day on the tracks of democratic rule. More specifically, the role of a political minority or an opposition may and should involve the following roles:

- i. To present and articulate alternative views.
- ii. Examine and debate government programmes and policies and thereby influence them.
- iii. Improve the details of legislation.
- iv. Expose errors, corruption, misrule and arbitrary action by the government and the administration.
- v. Ensure that the checks and balances in the constitution are operable and functional.
- vi. Present the option to the citizens at large of an alternative government thereby conferring choice upon the citizens in

regard to the way in which their aspirations can be politically fulfilled.

- vii. Block amendments to the constitution where more than a simple majority is required.

#### The protection of political minorities

The statement that political minorities must be protected confuses two principles and does so at the risk of undermining both. On the one hand, cultural, religious and ethnic minorities should be protected against abuse or discrimination. This is where the Bill of Rights has a particularly important role to play. On the other hand, parties that lose elections should have a guaranteed right to oppose the majority. We do not regard this latter right as protection of a political minority, but rather as guaranteed space for opposition political minority positions should have the right to campaign freely with a view to one day becoming the elected majority. What some refer to as political minorities should rather be referred to as the political opposition.

In this respect we feel that there should be certain guaranteed rights for all parties, whether large or small. Since it is the smaller parties who are the most vulnerable, the effect of the basic guarantees of freedom of association and expression is to secure constitutional rights for smaller or opposition parties.

The protection of political minorities should accordingly occur through the fullest and most vigorous promotion and protection of freedom of association including the institutions necessary for a multi-party democracy. Furthermore, such classic democratic freedoms as freedom of expression,

freedom from arbitrary arrest, freedom of movement and the right to free assembly should be secured in a constitutionally copper bottomed way.

We might add our support for the strong development of the right to information so that the opposition as well and the public in general know the truth about how the country is being governed. There is far too much secrecy in our society, far too much use of government money for party political ends, far too much surveillance of citizens and disinformation.

All the above rights and freedoms, adequately protected by an independent judiciary guarantee the rights of political minorities.

The system of proportional representation provides another. It enhances the protection of political parties by guaranteeing a certain and proportional support and representation in all the legislative organs. Taken together with the doctrine of separation of powers, it ensures that all political minorities will be adequately represented in the decisive branch of government, namely the legislature. As far as the executive is concerned, the system of proportional representation lends itself to the development of coalitions and alliances.

The acknowledgment that government operates at regional and local levels as well as at the centre, is another constitutional fact that guarantees a role for political minorities. In many countries in the world parties that are in opposition at the centre, are at the helm of regional or local government. This means that winning or losing national elections is not of total or overwhelming importance for the future of political minorities. By functioning as the majority in regional and local government, they gain experience for possibly being in the central government at a later stage, keep up party morale and make a

direct contribution to the life of the country.

Finally, the fullest constitutional protection of civil society and its institutions allows all members of a society the right to engage in the diverse activity taking place in that society with only those limitations which are consistent with an open and democratic society. In such circumstances it is even open to cultural, linguistic and religious minorities, as well as other interest groups, economic or otherwise, to associate and influence the political processes. In other words, inasmuch as there is an overlap between a cultural/religious/language minority and a political minority, the promotion of a free civil society enhances the institutions with which the political minority is associated without identifying the two.

#### Dangers of enforced coalitions/powersharing/minority vetoes

A case can be made out for prescribed patterns of coalition in the transitional stage from apartheid to democracy. Confidence-building measures can only assist democracy, not retard it. What is in issue now however is, what general constitutional principles should be enshrined in and not contradicted by the new constitution itself.

In this respect we feel that enforced coalitions would be confidence-destructive, unworkable and damaging to the very idea of constitutional government. It would create a kind of multi-party, One Party State. It would rob society of the political dynamic, fluidity and flexibility that it needs. It would paralyse government. It would generate constant friction and set the parties at each other's throats rather than encourage them to work together in the national interest. Parties should be enabled to work together or oppose

each other on the basis of choice rather than because of prescription. Where it is clearly in the national interest for parties to work together, and where good political leadership manifestly requires such co-operation, then any coalition that results will be firmly based, correspond to objective reality and have every chance of success. Where, however, the will to work together does not exist, any forced marriage can only be disastrous. Power-sharing should not be given a sacramental character.

Experience in other countries has shown that where cleavages are so profound as to prevent the emergence of any shared agreement to work together, no amount of constitutional prescription can remedy the defect. The constitution can encourage working together; it cannot create the will to cooperate. Attempts to establish power sharing by constitutional prescription where the will to work together does not exist, appear invariably to have failed. The experience of Cyprus, the Lebanon and Northern Ireland are sad cases in point. The recent disintegration of Yugoslavia is another.

It is illusory to think that the constitution can create a will to co-operate. We are not saying that it was the existence of power sharing constitutional devices that led to the collapse of government in the above countries. We do feel, however, that enforced power-sharing did nothing to save those countries, and in fact did a disservice by giving the illusion that the fundamental question of the country belonging to all could be solved by constitutional manipulation.

Successive governments have always told us what we can and what we cannot do. The majority of South Africans are tired of being dictated to. We want a constitution that will free us and one that will tell us what our choices should



be.

The people of our country want the freedom to choose their government; they do not expect the constitution to choose their government for them or to dictate how the government should be chosen. Once this basic right is guaranteed by the constitution, then the question of freely chosen partnership at government level becomes easier to solve. If the majority then chooses to work with and be influenced by the minority, this is not a denial but rather an expression of majority rule. In the circumstances of South Africa such an outcome is far more likely if the majority feels it is making the choice freely, and far less probable if the majority feels that, contrary to normal constitutional principles, the issue is being forced upon it.

The ANC does not support constitutional devices which would have the effect of frustrating the essential element of democracy so fundamentally that it would be impossible for the will of the majority to be articulated through the political structures. In this regard the proposals which would subject majority parties to the requirement that they obtain the consent of minority parties as a constitutional principle would be a destructive element in the constitution. In summary, the ANC believes that checks and balances in a constitution which would have the effect of conferring collegial power to minority parties pose the following dangers to the operation of a democratic constitution.

- i. The principle of an active and vibrant opposition would be undermined thus rendering dysfunctional the checks and balances in the constitution.
- ii. The government would become a form of political monopoly,

effectively a one party system. The experience of one party states, notwithstanding the intentions of its architects, has not served democracy well.

- iii. The exercise of executive authority would become difficult if not ineffective; we would be making South Africa ungovernable through the constitution.
- iv. The devices would lead to constant friction and confrontation as the majority would find its aspirations constantly thwarted. The resulting antagonism could lead to increasing hostility towards minorities thus undermining the very purpose for which the participation of political minorities in government has been proposed.
- v. Compulsory coalitions would lead to coalitions not based on mutual interest or arising from the need and circumstances of South Africa but on enforced and inappropriate cohabitation.
- vi. Organic and viable political options, corresponding to the fluctuating needs of the situation, would be excluded. In the case of Namibia, President Sam Nujoma invited, as he was entitled to do, the DTA to join the first independence government. The DTA thanked him for the invitation, but, as they were entitled to do, refused the offer, indicating that they preferred to be in opposition and prepare for becoming a majority party after the second elections. If enforced power sharing had been required by the constitution, then Nujoma would have been obliged to have the DTA in his cabinet, and the DTA would have been forced to accept.

The ANC does not oppose the formation of voluntary coalitions which may be

formed for entirely laudable and appropriate reasons. Indeed in many countries in the world, coalition government is the rule rather than the exception. The essence of the matter however is that the coalitions are voluntary. One looks in vain to the constitutions to find any prescription that obligates their creation. Even in countries like Switzerland, the power sharing arrangements come about through convention rather than prescription. We feel it is misleading and damaging to point to countries such as Germany, Austria and Denmark, which have long had coalition governments as examples of constitutionalised power sharing. What is required is not a constitution that compels power sharing. What is required is not a constitution that compels power-sharing but one that places no obstacles in the way of voluntary power sharing. We should never be faced with having to choose forever and ineluctably between competitive parliamentary politics and shared responsibility for government.

#### General approach to political minorities

In the ANC's view, it would be most unfortunate to conceive of the term political minorities as being a polite or euphemistic reference to racial or ethnic minorities. The whole current evolution has in fact been to move away from ethnically based political formations towards interest based ones. The ANC has for many years been fully open to all South Africans and ever since 1955 has accepted the non-racial principles of the Freedom Charter as its guiding star. The National Party and the IFP have also thrown open their ranks to all South Africans. Since it has no longer been limited by the Prohibition of Political Interference Act, the DP has also ceased to be a racially exclusive party. The very proceedings at CODESA indicate that broad alliances are being formed with areas of overlap the zones of disagreement. South African politics

is beginning to normalise itself and we should encourage that process.

Further possible constitutional role for political minorities

Political minorities could be represented as of right on all party committees of the legislature scrutinizing legislation, appointments, the operation of institutions, and could serve on a number of other governmental and parastatal boards and commissions, including the electoral commission. Such a view would be consistent with the principle that government should be open and the opposition should be fully participative in the shaping of legislative policy and in the exercising of supervision of the legislature. Such details should of course be developed by the constitution-making body, but are dealt with here to indicate the vibrant role political minorities can play without subverting the democratic process.

**CULTURAL, RELIGIOUS AND LINGUISTIC MINORITIES IN A CONSTITUTIONAL STATE**

We are for the strong protection of linguistic, religious and cultural communities through the constitutionalisation in a judicially supervised Bill of Rights. In addition, we believe the constitution should guarantee that the members of cultural communities shall

- i. enjoy without qualification all the entitlements of citizenship;
- ii be entitled to equal treatment before the law;
- iii not be discriminated against on the basis of cultural membership;

iv                    be entitled to associate to promote the interests of their members in a constitutionally recognised space.

There is an unfortunate tendency in debates on this matter to counterpose individuals and communities. The individual rights incorporated in a bill of fundamental rights are in fact vitally important to communities seeking to advance their collective needs. While rights protect the autonomy of individuals they are also a means of securing collective ends. Freedom of association, for example, is in this sense a collective right.

We therefore are in agreement with the South African Law Commission that rights, including those essential to community life, should be formulated and exercised as individual rights.

It does not follow, however, that there is no space in the constitution for the concept of communities. We are against group rights in the sense of basing political rights on membership of groups. We are strongly opposed to the idea of community being used to maintain privilege for a few and to lock up the riches of the country in small affluent areas while the majority of the people live in squalor and deprivation. Yet we are not against the idea of free association and of groups of people identifying themselves as linguistic, cultural or religious communities. Nor do we oppose the idea of groups working together outside of the State and outside of political parties to serve their common interests. On the contrary, we strongly support the idea of women's, trade union and resident organisations representing the interests of their members, just as we firmly favour promotion of language, free cultural and religious expression in a united South Africa.

The 1978 UNESCO Declaration on Race and Racial Prejudice is only one example of a trend to recognise the needs of distinct communities. The Declaration affirms the right to be different, the right to cultural identity; it forbids forced assimilation; and it stresses the need for affirmative action in favour of disadvantaged groups. There is nothing inherently objectionable in the notion of creating individual rights which address the needs of such specific communities.

Within the framework of a colour-blind constitution which grants equal rights to all and embodies the notion of a free civil society, there is scope for developing mechanisms for enhancing community expression and for ensuring that the constitution and government are sensitised to the needs of communities. It could be provided for, for instance, that at the standing committee stage of the legislative process, communities have the right to be heard on matters affecting their interests, rights and legitimate expectations. The same would apply to all the interest groups mentioned above.

They could also have standing and a right to invoke activity by institutions which are set up to monitor human rights abuses (the Ombud, Human Rights Commission). This idea could possibly be developed to include statutory bodies or parliamentary commissions with a special responsibility for safeguarding and promoting language, religious and cultural rights.