

24 - 25 FEBRUARY 1992

CODESA WORKING GROUP 2

KEY ISSUES TO BE ADDRESSED:
(SEE AGENDA)

1. INTRODUCTION:

The identified issues should not be seen as completely distinct and isolated. Viewed in a wider perspective the identified issues represent aspects of a search for a meaningful and enduring process for the democratisation of the whole South African Society in all spheres of life, namely the political sphere, the socio-economic sphere and the religious/cultural sphere. A meaningful and enduring process of democratisation can only be attained if the interests, needs and values of all components of society are harmonized.

In analysing and considering the identified issues due regard should therefore be given to the tenets of democracy. It is only when democracy is not only viewed as merely a concept, but as something that permeates and animates the minds and lives of all sections of society, that long-lasting peace and prosperity will be achieved.

2. THE MEANINGFUL PARTICIPATION OF POLITICAL MINORITIES: THE POLITICAL SPHERE.

The question of participation in the political process is a reflection of the whole question of democratisation. Participation in the political process by all sections of society is the very essence of democracy. The real question is however, the mechanisms for ensuring such participation.

In considering the question of minorities one is immediately confronted by a definitional problem. While some authorities define minorities in terms of numerical inferiority and the possession of certain characteristics such as language, culture and religion others defined minorities in terms of non-dominancy or inferiority in regard to political, social and cultural matters. It is mainly for this reason that certain people see the need for protecting minorities against deprivation, prejudice or discrimination by the majority as paramount.

The view taken in this brief is that the need for the protection of political minorities should be based on the necessity to prevent the abuse of power by the majority against minorities in participation in the political process.

It is our view that the protection of political minorities need not be constitutionally entrenched.

However, such participation in the political process may take place by agreement.

Political participation may also be effectively protected through political rights, such as the right freely to form political parties, to be members of such parties, to practice political convictions in a peaceful manner and to be nominated and elected to legislative, executive and administrative office.

It should therefore be pointed out that the question of political minorities can only be satisfactorily resolved in a democratic political framework in which human rights and fundamental freedoms, equal rights and status of all citizens, the free expression of all and the implementation of legal rules that place restraints on the abuse of governmental power are fully recognized and entrenched in the Constitution. This should be supplemented by fostering a spirit of political and social tolerance and a common nationality.

3. ECONOMIC FREEDOM, GOVERNMENTAL INTERVENTION AND ECONOMIC SYSTEMS:
THE ECONOMIC SPHERE.

The economy of a society is its life. Without the free participation of all in the economic sphere the country as a whole will suffer.

The submission made in this brief is that economic freedom should be secured in an entrenched and justiciable Bill of Rights. This should however, not be done in the sense of enforcing positive obligations against the state but rather in the negative sense that legislative and executive acts shall not infringe economic freedom.

Governmental intervention should be minimal and confined only to instances where it will be for the benefit of society as a whole or to enable people disadvantaged for historical reasons to be on an equal footing with other people.

The question of economic systems hinges mainly on ideological considerations. In recent times however, the trend has been to follow a free-market economy or some form of a mixed economy. The view expressed in this brief is that in the formative stages of a South African Society a mixed economy should be adopted.

4. ACCOMODATION OF THE DIVERSITY OF LANGUAGES, CULTURES AND RELIGIONS:

This aspect is closely related to the question of groupings. Our view is that language, cultural and religious interests are best accomodated by their protection in an entrenched and justiciable Bill of Rights. This is a trend common to the Constitutions of the major countries of the world and also finds expression in the Universal Declaration of Human Rights.

Language: We therefore say that there should be freedom of language and that no language should be prohibited and there should be no discrimination on the ground of the use of a language e.g. Venda language.

Culture: The right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits should be reconized and respected by all. The emphasis here is that the right to culture should be protected as an individual right and not as a group right. This does not mean however, that the culture of a group should not be respected; on the contrary all cultures should exist harmoniously.

Religion: The right to freedom of religion and to manifest one's religion or belief in teaching, practice, worship and observance should be acknowledged without any limitations.

5. THE BILL/CHARTER OF FUNDAMENTAL RIGHTS:

5.1 Nature and scope:

We are for a Bill of Rights based on universally recognised principles of human rights and this should form an integral part of the new constitution.

Whilst there are problems surrounding the content of such a bill, we believe that it should also guarantee all South Africans against the violations of human rights associated with petty and grand apartheid in this country.

Such rights will inter-alia include, human dignity and equality before the law, right to life, right to liberty, right to privacy, right to property, freedom of expression, and freedom of association.

5.2 Affirmative action:

Affirmative action becomes necessary where there is a need to secure the advancement of certain groups of individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms.

Our position in this brief is that the legislature should be empowered to introduce by legislation programmes of affirmative action and vote funds therefor as may reasonably be necessary to ensure through education and training, financing programmes and employment that all citizens have equal opportunities of developing and realising their natural talents and potential to the full. Any form of affirmative action should however, be continued only until it ceases to be necessary.

5.3 Second General Rights:

We need further particulars on this topic before we could formulate any intelligible response.

6. THE ROLE OF TRADITIONAL LEADERS: THE POLITICAL SPHERE:

The role of traditional leaders is a significant aspect of African political life, especially in the rural areas.

The question which arises is at what level of government should traditional leaders play a role; the central level, the regional level or the local level?

Our position in this paper is that the role of traditional leaders should be confined mainly to the local level where, by virtue of their proximity with their subjects, they can play a meaningful and constructive role.

The major reasons militating against the participation of traditional leaders at the central and regional levels are the following:

1. traditional leaders, by virtue of their unifying role should be non-partisan;
2. their power-base is mainly localized and traditional.

This does not mean however, that traditional leaders should not make any contributions at the regional and central level, but any role at central level by traditional leaders should be based on principles of party politics rather than on the very fact of traditional leadership.

7. SELF-DETERMINATION: POLITICAL SPHERE:

The question of self-determination as it is presently debated is associated with the question of secession and partition.

Self determination is a right which is recognized in international law. However, self-determination is an aspect which is only exercised by a nation and not by a particular race. Nationhood implies a common territory and any claim for self-determination by a group (either racial or ethnic) within that nation amounts to a claim for secession or partition.

In International law a group (racial or ethnic) can only claim secession, and only through negotiation, if it is oppressed. The Afrikaner for instance cannot at this stage claim to be oppressed. With regard to Black people as a whole once South Africa is fully democratized oppression will no longer be an issue.

In the final analysis the opinion offered is that the principle of self-determination should be viewed as applying to the whole South African nation.

What should rather be fostered is to allay the fears of those people who feel threatened, and as a result seek partition or secession under the guise of self-determination. A solution to this problem is the effective protection of the attributes such as language, culture and religion in an entrenched and justiciable Bill of Rights.

VENDA GOVERNMENT

/smm.

.....o0o0o0o...