

NATIONAL PARTY

SUBMISSION TO CODESA WORKING GROUP 2
25 FEBRUARY 1992

THE MEANINGFUL PARTICIPATION OF POLITICAL MINORITIES

I

The National Party's position on this key issue is based on, and should be viewed within the framework of the points of departure of its guidelines on constitutional policy (Constitutional Rule in a Participatory Democracy Sept. 1991 page 1), namely that:

"A system must be sought which, inter alia

- * ensures that universally accepted values and norms in South Africa are maintained;
- * is based on universal franchise in a democratic structure of government;
- * is free from apartheid and discrimination in any form;
- * establishes an ordered and orderly society;
- * makes good government possible;
- * ensures justice for all;
- * promotes a market-orientated economy coupled with private initiative and social responsibility;
- * accomodates the cultural differences in South Africa;
- * enables all South Africans to share in peace, progress and prosperity."

II

In its submission to Codesa Working Group 2 on 17 February 1992 the National Party stated:

"6 A DEMOCRATIC STRUCTURE OF GOVERNMENT WITH MEANINGFUL PARTICIPATION OF POLITICAL MINORITIES

The Constitution should create a system based on universal adult franchise in a ^{sustainable} democratic structure of government. In view of the fact that South Africa has a plural society and that domination, in any form whatsoever, is unacceptable, the principle of fair treatment of, and effective participation by minorities must be embodied in our Constitution. In the constitutional field the political party is the most effective means of furthering the interests of people who naturally and voluntarily associate with another. The Constitution should, as far as practicable, and conforming with effective government, offer the opportunity for every viable political party to play an effective role in the legislative and executive organs at local, regional and central government levels."

We wish to elaborate on this statement as follows:

1. The National Party believes that "sustainable democratic structures" should not be equated with "simple ^{or unqualified} majoritarian rule". It is in fact not done in the constitutional systems of the greatest majority of the world's stable liberal democracies. In all these constitutions the exercise of governmental authority is limited in several respects through various principles contained in the concept of the constitutional state: the supremacy of the constitution, a justiciable charter of fundamental rights, the independence of the judiciary, mechanisms for the prevention of the abuse of power and maladministration, etc. While the National Party fully supports the inclusion of these restraints in a new constitution, we believe that the principle of meaningful participation must also be included in the constitution through various mechanisms and structures.

2. It is an indisputable fact that in many states with heterogeneous societies (be they heterogenous because of ethnic, religious, linguistic or even socio-economic factors), the mere introduction of liberal democratic constitutions with all the above mentioned safeguards, has failed either to prevent the suppression of minorities, or to allay their fears of suppression to such an extent that they refrain from engaging in destabilising activities. The particular causes of internal instability in all these instances vary and should not be oversimplified, but it certainly can be no coincidence that most of the world's "hottest spots" in terms of internal instability are states with heterogeneous societies.

3. We could have a long debate on whether the fear of domination of some of South Africa's ethnic, religious or linguistic minorities is realistic or not, but if we are to deal with our constitutional future in a responsible manner, the mere existence of such perceptions should be accepted as a reality which must be accounted for in a new constitution.

4. Examples of the succesful accomodation of political minorities in relatively deeply divided societies are indeed very few, and it should be conceded that societal divisions in these cases do not follow the same pattern as in South Africa. Although it would therefore be inappropriate to copy the detail of these models, we should draw inspiration from the fact that in these cases success has indeed been achieved. It is significant that most of the more or less successful cases, all to a certain extent provide examples of the application of the principle of meaningful participation of political minorities.

5. Before giving two examples of constitutional provisions in connection with minority representation on particularly the executive level, we wish to emphasise that it is not sufficient to merely make a study of the constitutional provisions as such. One should also look beyond these formal provisions and take note of certain constitutional conventions which exist in these systems. These conventions are as established as any of the conventions which constitute the bulk of the unwritten British constitutional system.

6. Article 86bis of the Belgian Constitution provides that apart from the prime minister, the cabinet should consist of an equal number of French speaking and Dutch speaking ministers. (A so-called "parity principle" also applies to the composition of the Arbitration Court, the College of Provincial Governors, the Executive of the Brussels Region, the appointment of secretaries of state, the Regional Economic Council of Brabant and the Executive College of the Brussels Metropolitan Area.) This provision does indeed not refer to representation by "minority political parties", but coupled with the system of proportional representation, this is exactly what has been achieved in practice - there are no national Belgian conservative, liberal and socialist parties, they are all split vertically into separate linguistic parties. South Africa's future political scene will probably be different, but the Belgian "parity principle" provides an example of a seemingly "undemocratic" measure (in terms of a majoritarian point of view) in order to sustain democracy and to stabilise society.

7. Article 96 of the Swiss Constitution provides that not more than one citizen of any canton may be elected as a member of the seven member cabinet. This formal provision does indeed not provide for minority political representa-

tion, but again one should look beyond the formal provision. A whole set of very strong conventions have been developed in this regard, e g the cabinet must include at least members from two non-German speaking cantons, the cantons Zürich and Bern each has at least one representative, and since 1959 the four major political parties have been represented according to the so-called magic formula of 2:2:2:1. Whenever faced with the question on why these rules and formulas are not entrenched in the constitution, Swiss politicians and constitutional lawyers usually give the same reply as their British counterparts: "These conventions have acquired a legitimacy and status which equals that of any formal constitutional provision."

8. The National Party proposes the formal inclusion of the principle of meaningful participation by political minorities through various means in a new constitution instead of relying on the development of appropriate conventions. Constitutional conventions are not mere ad hoc assurances and informal agreements; they usually acquired the status and legitimacy of justiciable constitutional provisions only after at least a couple of decades and their development usually had been accompanied by political tension and very often by instability. We should rather endeavour to reach consensus on appropriate measures to be formally included in the constitution.

9. The National Party obviously does not propose a single clause which literally reads that the principle of meaningful participation of political minorities be entrenched, but that the principle should be included through various provisions relating to mechanisms and structures in an entrenched constitution. The National Party's constitutional proposals contain various elements designed to accomodate this principle, including the

collegiate nature of the Presidency and^{of} regional executives, proportional representation at the various legislative levels of government, specific procedures in the various legislative bodies ensuring the continued relevance of political minorities, the constitutional autonomy of institutions of government at all three levels and the representation of regional interests in a second house of Parliament.