

THE CONSTITUTIONAL PROTECTION OF MINORITIES

- (1) A democratic constitution, incorporating inter alia a justiciable and entrenched bill of rights, proportional representation and separation of powers will ensure that minorities are guaranteed civil, political and property rights but it must also simultaneously ensure that the majority has the power to govern in accordance with the law and the constitution.

- (2) A constitution which completely emasculates the majority by minority vetoes and other devices cannot be described as democratic in either substance or ethos but could be aptly described as a system of loser keeps all! Thus there is no alternative to majority consent, but the constitutional secret is to avoid a system that produces racially or ethnically defined majorities and minorities. Taking into account the political and constitutional history of South Africa this may be inordinately difficult to bring about. Racially defined majorities and minorities could also lead to frustration and destabilization. It is therefore essential that the major political forces reach out to persons beyond their traditional support.

- (3) The N P's constitutional proposals endeavour to protect minorities by providing for inter alia a collective Presidency, the chairmanship of which is to rotate, and is to be constituted by three people who will respectively be the leaders of the largest parties in the Lower House. It is based to some extent on the Swiss Federal Council or Cabinet, according to which there is a rotating Presidency and the leading political parties are represented in the executive. Parliament will not be able to pass a vote of no confidence in any individual member of the Presidential troika, but only in the collective Presidency. The manifestly undemocratic nature of this paradigm becomes clear by considering a hypothetical numerical example. If a majority party were to obtain 70% of the vote it would be outnumbered two-to-one in the Presidency and a party coming a poor third, say with 10% of the vote, would have the same presidential power! A further hypothetical example illustrates the anomalous consequences of the NP's model.

Assume Party A wins 70% of the votes cast in a general election, Party B 20% and Party C 10%, and the voting pattern is approximately the same in all regions. This will mean that although Party N and Party I only together have less than half A's support they will have double its representation in the Presidency and the Senate!

- (4) Institutionalized coalition government would discredit genuine coalition government, which is an important and useful political device. Democratic government is inextricably intertwined with majority rule. A democratic constitution and the bill of rights are designed to ensure that the majority acts in a lawful and accountable way, but it should in no way obstruct the leaders of the majority from effectively carrying out policies for the benefit of the majority. The bill of rights, the devices of separation of powers and regional government, proportional representation and an independent judiciary are the constitutional instruments employed to protect minority interests within a democratic body politic.
- (5) In Western Europe a multi-party constitutional system is entrenched, not a system of multi-party executive government. Coalition governments invariably flow from the electoral and political processes and not from constitutional compulsion. They are entered into in a completely voluntary way by political parties who use the coalition mechanism to promote their peculiar interests. Switzerland is very much the exception and this is a result of convention and not law. It is sui generis. Mandatory, as opposed to voluntary coalition, could cause unbearable frustration for the majority party and its constituency and could be an invitation to unconstitutional conduct.
- (6) However an institutionalized coalition cabinet may have

considerable merit as part of an interim *government* which could amount to a government of National Unity. Such a government could by agreement between the main political contenders continue for a certain period after the inception of the new constitution. Ultimately however the country will have to be governed in terms of both the constitution and democratic majority rule, which does not exclude voluntary coalition governments and a government of National Unity. Such majority rule should however develop in a way that it is inclusive and not exclusive. The majorities and minorities involved in the democratic body politic should not be racially defined or exclusive, but inclusive. This should facilitate effective government and vigilant opposition, which is also essential for good and just administration.

GED 1992.