

CLARIFYING OUR APPROACH TOWARDS MINORITY RIGHTS.

Minority rights as a species of collective/group rights

Minority rights are a species of group rights, an issue that has been a source of great controversy in recent times. In my view, the way in which this has been approached has not always been with sufficient clarity.

The approach adopted has had the unfortunate consequence that rejection of attempts to perpetuate apartheid through use of the term 'group rights' has led people to reject not only perpetuation of apartheid, but a species of rights that may be meaningful and necessary. That is, while we have correctly rejected what De Klerk calls 'group rights', but which in fact refers to group *privileges*, we have also apparently dismissed any category of collective rights

Relevance to nation-building

This is a crucial question not only in the present phase of our struggle when we are debating alternative options and setting out and organising people around positions for possible negotiations. It is also important for the future nation that we wish to build.

We need to understand whether or not the concept of minority rights stands in contradiction to that of a nonracial democratic state. And I think it is in regard to such questions that there has tended to be a kneejerk reaction [because the government uses a term, we must reject it. This instead of the more creative response, examining the term and breathing a progressive meaning into it] Consequently we have failed to engage on issues that are very important.

Much of the discussion conflates [treats as if they are the same] distinct questions

I want to suggest that we are talking about three distinct issues:

- a. Minority privileges that are *depicted as rights*
- b. Constitutional provisions structured on a group basis
- c. Minority rights, i.e. legitimate rights to have certain interests held in common, protected

In regard to *minority privileges, depicted as rights*, we need to reject these not only because they constitute an illegitimate privilege, but also because they are disguised behind words, seeking to conceal their true character.

Tied to the plea for group privileges (called 'rights') there is very often an attempt to depict the argument as founded on the right to self-determination. In the nineteenth century, insofar as the principle of self-determination had developed, as the principle of nationality, it was ethnically based and did often refer to nationalities locked up within Empires. But contemporary international law distinguishes between minority protection, which generally refers to ethnically related groups and self-determination, which refers to a territorially based unit. Within such a territorial unit it is the inhabitants who are the people who exercise the right of self-determination. So the argument for group privileges fails on this ground as well.

In regard to *constitutional provisions structured on a group basis*, we may be dealing with a phenomenon, presented honestly with a view to seeking a solution that takes adequate account of the complex 'racial mix' that comprises SA. There are many such schemes, such as consociationalism. Such schemes tend to treat ethnic characteristics as primary political characteristics on the basis of which people are always assumed to act politically i.e. the Afrikaners are Afrikaner political animals and their political identity is totally subsumed within their ethnic and linguistic character. The same would go for all the African 'nations'

Even where the motive for such thinking may be quite legitimate, we must nevertheless reject such schemes as a basis for a future nonracial democracy.

Constitutionalising ethnic qualities is to freeze them and in fact introduce a greater rigidity than actually exists. The character of the various groups within SA are a result not only of developments within each group, but also of the relationship between such groups and other groups that go to make up SA. We see this in all our languages, how Zulu incorporates phrases like ngokwata pas twalufu or ibhulukwe while English and Afrikaans incorporate hamba! and many other phrases.

Cultures are in any case dynamic, even when considered internally. It is important to encourage such dynamism, since it is essential to creativity

Turning to minority rights, a special form of group rights, I want to argue that protection is not only legitimate but essential to any democratic state. Such rights in fact find expression in both the Freedom Charter and the ANC Constitutional

guidelines. Amongst the many references in the Charter, I quote:

'ALL NATIONAL GROUPS SHALL HAVE EQUAL RIGHTS!'

Although there is a degree of imprecision about the use of the word 'national', it is clear that the Charter has in mind the rights of all the groupings, 'ethnic', religious, cultural, which go to form the South African people:

'There shall be equal status in the bodies of state, in the courts and in the schools for all national groups and races;

'All national groups shall be protected by law against insults to their race and national pride;

'All people shall have equal rights to use their own language and to develop their own folk culture and customs;....'

Under other headings one finds:

'The law shall guarantee to all [the following individual and collective rights] to speak, to organise, to meet together, ... to worship and to educate their children;...'

'The government shall discover, develop and encourage national talent for the enhancement of our cultural life;...'

The guidelines leave no doubt as to the validity of collective rights of both the people as a whole and distinct segments of the people:

'National Identity

(g) It shall be state policy to promote the growth of a single national identity and loyalty binding on all South Africans. At the same time, the state shall recognise the linguistic and cultural diversity of the people and provide facilities for free linguistic and cultural development.'

Such rights also continue to find recognition in international law instruments, for example in Article 27 of the International Covenant on Civil and Political Rights of 1966, which states:

'In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.'

The International Convention on the Elimination of All Forms of Racial Discrimination, adopted a year earlier states in Article

1(4):

'Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or 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 shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.'

Majority rule and minorities

We are striving for universal suffrage, or as the Freedom Charter puts it, a situation where The People Shall Govern. But the people is not only the majority. It also includes minorities, people who are in the minority for all sorts of reasons e.g. language, religion, ethnic group, culture etc.

This is to speak of the people in two senses:

a. The majority who are the most powerful group, for example, because they support a ruling party, also includes within itself minorities

b. The minority who may actually oppose the 'People's will' in the sense of not voting for the ANC or whatever, are still part of the South African nation of the future, and if there are amongst such people a large number with specific group characteristics they are entitled to protection.

This refers to protection of rights, not privileges or abuses. Fascists may be a minority but granting them rights to expression and organisation is to go beyond the scope of freedom and give opportunities for the destruction of freedom.[See the International Conventions cited above]

Nonracialism and the building of a new nation

I have made repeated reference to the building of a new SA nation and the struggle for liberation is in a sense part of a process of nation building. At the core of the new nation we are trying to build now and in the future is nonracialism and democracy. It is very important to see these values as embodying everything of value that does already exist in SA, not as dissolving everything into a specific narrow identity.

What I mean is that nonracialism does not put an end to the specific identity of different groups. We are creating a new unity, of all the peoples who make up SA. We are not trying to

turn everyone into one ethnic group, although the culture of SA will be primarily African in character.

The way I see it is that there must be a distinction between *identity*, which tends to refer to a situation where the specific character of all groups dissolve into one [although this is not what is intended in the use of this term in the quotation from the guidelines earlier in this paper]; and

unity, which refers to a process where all groups are brought into a common framework with the majority, African people

In this process the distinct minority groups are Africanised, in that we are all enriched by sharing with our African brothers and sisters, and consequently influenced by them. In the same way, our presence in this unity, has and always will have an influence on the character of the African people.

Cultures are interpenetrated by one another and our job in the future is to ensure that this leads to a progressive, democratic result.

When we say that cultures must be respected and developed, as the Charter does, we are not thinking of an uncritical Verwoerdian invocation of so-called traditional values. We need to develop a cultural policy which gives us criteria in regard to all aspects of SAn reality, criteria which will enable us to decide what to encourage and how, what to discourage and by what methods

Nonracialism does not remove every difficulty

Even at this very moment there is a fetishisation of nonracialism as if organisation on that basis removes all sorts of problems. We have in the UDF various organisations that have been formed to serve specific communities e.g. JODAC, TIC and Afrikaanse Demokrate.

In all of these cases we have only had limited success in achieving our goals within these specific 'ethnic' communities for which the organisations were created. The problems that we have do not disappear with the transformation of any of these organisations into an ANC branch, i.e. as part of a nonracial organisation. The problems remain and it is essential to consider what impact, such a transformation will have on our capacity to overcome the organisation limitations that we have had until now.

So nonracialism I am saying remains at the centre of the value system that binds the democratic movement and its conception of the future SA. But it does not dissolve all other qualities that find expression in present-day SA, through various 'minority groups.'

Individual rights

By saying this I am not rejecting individual rights. This may seem superfluous, but I mention this because there is a tendency to counterpose collective rights to individual rights. We are not for one or the other. *We are for both.*

A language is a right of an individual but it can only be exercised collectively, or as a group right. The same goes for other areas of culture and religions and for rights of groups like trade unions and women to organise themselves

The danger of the mechanistic and one-sided approach which simply says we are for individual rights and against group rights, is that we are not engaging in debates over cultural issues that are of vital importance now and in the future.

What are the futures of the various languages of South Africa? Are we debating this or attempting to acquire the competence to do so or are we leaving this to the one section of the population, the Afrikaans-speaking whites, who continually run debates around this question in the columns of newspapers?

Many languages of the African people have hardly been reduced to writing and where there is a literature, publication has virtually been restricted to works acceptable to the Bantu education department for their syllabi. We need to be discussing what needs to be done to draw on the richness of these languages, how their qualities can be promoted etc

We also need to consider this question if we are to tackle the question of People's Power seriously. Empowerment is meaningless if you cannot understand what is going on in the areas where you wish to exercise your power. Illiteracy is obviously a crucial barrier to actual empowerment. But, beyond that, the fact that much of the media generally is in English and Afrikaans makes it very difficult for large sections of our population to understand their world, and where they have the opportunity, to exercise their power most effectively.

The question of the future of Afrikaans is very important and needs very careful attention from all progressives. Afrikaans is not only the language of oppression, the language spoken by most police and SADF and prison warders.

It is also a language of liberation, used by many coloureds, Africans and whites as a tool in the struggle for democracy.

Afrikaans needs to be South Africanised, that is, it must lose its image as the language of a section of white SA and become

truly part of the new national entity we are striving to create

Conclusion

Basically we must reject apartheid whether it calls itself group rights or anything else. At the same time, within our struggle and the new SA there must be room for minority rights, within the framework of majority rule, where the people create, through their own power, the new SA where peace and justice will reign
