

09/06/95

NATIONAL PARTY PRELIMINARY SUBMISSION

THEME COMMITTEE 1

Block 6

Item 8: Citizenship

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ITEM 8: CITIZENSHIP

1. Introduction

1. Section 5 of the Constitution of the Republic of South Africa, Act 200 of 1993 ('the Constitution') establishes a South African citizenship. The fundamental right guaranteed in section 20 provides that every citizen shall have the right to enter, remain in and leave the Republic, and that no citizen shall without justification be deprived of his or her citizenship.

2. Constitutional Principles

2.1 Constitutional Principle I provides inter alia that the new Constitution shall provide for one sovereign state and a common South African citizenship.

2.2 Constitutional Principle II provides that everyone shall enjoy all universally accepted fundamental rights, freedoms and civil liberties, which shall be provided for and protected by entrenched and justiciable provisions in the Constitution, which shall be drafted after having given due consideration to inter alia the fundamental rights contained in the Constitution.

2.3 Constitutional Principle III provides inter alia that the new Constitution shall prohibit all forms of discrimination and shall promote equality.

3. Citizenship

3.1 Legislation which governs aspects of citizenship is subject to the provisions of sections 5 and 20, as well as the preamble which states that all South Africans shall be entitled to a common South African citizenship in a sovereign and democratic constitutional state. Section 5 recognizes

citizenship in its true constitutional sense. It confirms the relationship between the individual and the sovereign state.

This implies that the state has certain responsibilities vis-d-vis that individual, and it confers certain competencies, powers and rights on that individual. It also places a limited number of obligations on the individual. In essence, it determines the status of that individual in respect of the state itself as well as other citizens. Section 8 of the Constitution in general prohibits any form of discrimination, and different 'classes' of citizenship are consequently not allowed.

3.2 Citizenship also includes the right of an individual to decide on a change of citizenship for him- or herself

3.3 Citizenship also implies the right to a passport and in general the right to be assisted by South African diplomatic representatives outside of the national territory where possible and practicable. Rights to citizenship also imply that the state cannot bar any citizen from leaving or re-entering the national territory. No citizen can be forced to live in exile.

3.4 Section 6 of the Constitution provides that a citizen shall have the right to vote in elections at all levels of government.

3.5 Citizenship can be acquired in a number of ways, of which birth is indirectly referred to in section 30(1)(a) of the Constitution (the rights of children to a name and nationality) and which is probably the most important one. It is submitted that the acquisition of citizenship by birth within the national territory should be guaranteed in the Constitution. The difference in the concepts of 'nationality' and 'citizenship' should be borne in mind: the former refers to membership of a particular state vis-à-vis the international community, and the latter refers to the status of an individual vis-à-vis his or her own state and its citizens. Other ways of acquiring citizenship should continue to be prescribed by ordinary legislation.

3.6 It is submitted that the principles of the present sections 5 and 20 be retained in the constitutional text subject to paragraph 3.5 above.

3.7 It is furthermore submitted that the reasons supporting the entitlement of non-citizens (i.e. a person with rights to permanent residency) to vote existed initially, are no longer valid and that political rights be restricted to citizens only. Section 21 of the Constitution limits the right to vote to citizens only, and it is submitted that this principle should be extended in the constitutional text as well as other legislation. Provision should however be made for persons with rights to permanent residency to acquire full citizenship if they are currently not able to do so.

3.8 Provisions restricting eligibility for political or public office to citizens only should be retained.

ITEM 9: SUFFRAGE

1. Introduction

Section 6 of the Constitution provides that every person who is a citizen or a person who in terms of legislation has been accorded the right to exercise the franchise, who is older than 18 years and who is not subject to disqualifications prescribed by law, shall be entitled to vote in elections for government at all levels. Section 21 guarantees the right of every citizen to take part in the activities of a political party, to campaign on behalf of political parties, to freely make political choices, to vote in secret and to stand for election to public office.

2. Constitutional Principles

2.1 Constitutional Principle I provides that the Constitution shall provide for a democratic system of government, and Constitutional Principle II states that everyone shall enjoy all universally accepted fundamental rights, freedoms and civil liberties.

2.2 Constitutional Principle VIII provides that there shall be representative government embracing multi-party democracy, regular elections, universal adult suffrage, a common voters' roll, and, in general, proportional representation.

3. Suffrage

3.1 Citizenship confers certain rights, as well as responsibilities, on a person. One of the rights so conferred is the right to vote. On the other hand, it also implies that the state may, for example, require of the citizen an oath of allegiance or a duty to help to defend the national territory and its inhabitants against foreign armed aggression. It could therefore be argued that a citizen's rights in this respect represent the one side of the coin, whereas the citizen's responsibilities represent the other. It is therefore untenable that a person who holds right to permanent residency should have the 'advantages' of citizenship, but not its 'disadvantages'. It is therefore submitted that citizenship should be a prerequisite for the franchise in respect of national and provincial level of government.

3.2 At local level of government, the question of rights and duties of citizens become less important as the issues decided at that government level pertain to the day-to-day running of a limited number of matters. Government at local level is primarily involved with the supply of services, and the interests of voters focus on these services rather than

their status vis-d-vis the state. It follows therefore that the interests of persons in respect of local government ought to be the decisive principle, and not citizenship. It is therefore submitted that different requirements, for example such as permanent residency, may be provided for at local government level.

3.3 A vote should always be an informed choice, and a general age limit should therefore be prescribed. International practise supports the notion of age restrictions and it is therefore submitted that the constitutional text regulate the matter. Other minimum requirements, for example citizenship in respect of the right to vote at national and provincial level, should also be prescribed in the Constitution. It is therefore submitted that, in addition to the submissions under paragraphs 3.1 and 3.2 of this Item, a minimum age of 18 years be prescribed in the constitutional text.

3.4 Given the spirit and purport of the Constitution, it is submitted that grounds for disqualification be incorporated into the constitutional text. This would ensure uniformity and would remove any perception of manipulation of requirements by political parties. It is submitted that the present grounds for disqualifications contained in section 26 of the electoral Act 202 of 1993 should be retained in principle, except for paragraph (d) thereof, which should be amended to include any convicted prisoner irrespective of the crime committed or the sentence imposed.

3.5 Subject to the decision in principle on the question of referenda, dealt with under Item 7 of Block 6 of this Committee under the heading 'Representative Government', it is submitted that the requirements in respect of suffrage with regard to referenda should be the same as those required in respect of elections.

NATIONAL PARTY (NP)