

INTERVIEW P O'MALLEY WITH ALBIE SACHS ON 11 NOVEMBER 1994

POM Albie, maybe you could more or less take up from where we left off the last time. I think we left off at the point where we were talking about the ... deadlock breaking mechanisms and talks had come to a halt.

AS You have left out a huge interview I did that went on for several hours, the second interview where we were proclaiming success and there had been a whole basket of issues resolved and we had agreed on the constitution, we had a constitution text and it was full steam ahead towards the elections. If you recall I did two fairly substantive interviews with you. The first one was after the breakdown and the second one was after the success. This third interview I'm giving you now is looking back. It's not on your recorder but you will notice I am wearing a tie for the first time and that's not unconnected with the fact that I was recently appointed to the Constitutional Court in terms of the constitutional text that we were speaking about previously and to some extent it inhibits me in the sense that there are a large number of matters I can't really comment on now because they might form the subject of litigation in the future and it would be inappropriate for me to express a personal view.

What I think I can deal with is to more or less complete the picture up until the elections because I think our last interview in this room would have been I guess in November last year, almost exactly one year ago and what followed after that was a really nerve wracking period where the ANC and the then government had agreed, the Negotiations Council had agreed and the what's called the world outside was very happy. We literally danced in the corridors at about four or five in the morning, very tired but with a renewal of energy because we felt success at last. But of course there were major groupings outside of the Negotiating Council and they were now attacking the whole agreement from different points of view and the whole Freedom Alliance, I forget

exactly what it was called, was set up which ranged from Inkatha to Ciskei, Bophuthatswana government and various sections of the Afrikaans speaking right wing forming an alliance that was held together on the basis of opposition to the agreement achieved at Kempton Park. And now the question was how to respond to all those different groups. I think other historians can help you with the details of what happened. It all seems like very ancient history now although it was only a year ago because at the very last minute Inkatha came in, that was absolutely nerve wracking and also at the last minute an agreement was found with the grouping headed by Constand Viljoen. That severely divided the Afrikaans speaking right wing and that was coupled with the crackdown on the whole AWB group that was going to physically challenge the elections. The result was the elections took place in a manner that many of us had predicted. It wasn't a miracle, we had worked for it, we believed in it over decades, we had used our brains, we had put in an enormous amount of effort and we had made the appropriate accommodations. If that's a miracle, well so be it, it's not my understanding of the term miracle. But it seemed to turn the country around and to a large extent validated the lack of popular involvement, transparency at the different phases in a retrospective way and I think overwhelmingly there has been huge satisfaction in the country that the elections did take place and there was so much participation and that they were as orderly as they were despite all the hitches and glitches and problems and so on and that the government of national unity is working reasonably well. I can say that without prejudicing my status as a member of the Constitutional Court. By all accounts it's working reasonably well. Individual liberties has reasonable legitimacy in the broad population. It's so

What might be of interest to you is just a little personal footnote on the origin of the concept of the reconstruction and development and I think it's quite important to see where it came from because what we had in South Africa was three processes emerged at the same time and were inter-related. The one was the universal suffrage that brought

democracy, the other was the concept of constitutionalism, protection of individual rights and language and cultural rights. These are frequently put forward as mutually antagonistic concepts, that the whole idea of constitutional rights in the Bill of Rights is anti-majoritarian and on the contrary, or the converse is that majority rule is anti individual rights. I think it's extremely important that in South Africa both stemmed from the same process and each reinforced the other. It would not have been possible to agree to the protection of fundamental rights if the fundamental right to universal suffrage hadn't been incorporated within it. The idea of giving protection to property rights, to freedoms of speech and assembly and so on which were seen as to some extent designed to ensure that the existing patterns of press ownership and the freedoms that the whites had enjoyed in the political process would be maintained. That could not have been agreed to if it wasn't part and parcel of the package of universal suffrage. On the other hand the people who until then had been resisting universal suffrage in a single country would not have agreed to the vote for all if there hadn't been these fundamental guarantees built in. So it was not as though the question of individual rights emerged as a separate, antagonistic, contradictory programme to the emergence of majority rule or the broad democratic principles of democratic government. They came in together, as it were they marched through the door together. They held each other's hand, each reinforced the other and that's quite important in diminishing the potential for stress and conflict between these two kinds of views. It means that constitutionalism and the Constitutional Court and the concept of the Bill of Rights and individual liberties has considerable legitimacy in the broad population. It also means that the principles of universal suffrage are associated by the so-called minorities not with domination and repression and the kind of blind overweening rule by one group against another, but associated with the very carefully tailored, elaborately worked out set of constitutional checks and balances. the NEC because now it

So those are two elements that emerged at the same time that really create the basic texture of the constitutional arrangements together with certain protections of job security and possibilities of an amnesty for those guilty of crimes under the apartheid set-up.

But there's a third element that was also built in and that relates to the government of national unity. And, as indicated in my previous interview, that was possibly the most contentious area of debate, certainly from the ANC side and on the other hand when that was resolved, when that was agreed to, it opened the highway to the final settlement.

Now I don't think that I, in my last interview, told you about the debate we had in the National Executive Committee of the ANC on the question of the government of national unity. If I did I'll be repeating myself and it might be interesting for you to compare the two and pick up all the little discrepancies. Some of what I say is well known and well documented and some of it mightn't be on the record yet and represents my personal recollection of this very, very key discussion.

Basically, as I recall, there were two NEC meetings that dealt extensively with the question of the government of national unity. The first one, if I recall correctly, took place in Durban and there was a document that had emerged from a document that Joe Slovo had originally prepared that had now been modified and transformed and so on.

POM This was the power sharing document?

AS Yes, yes. Now the word 'power sharing' was never popular in ANC circles but if you want to refer to it that way, the government of national unity document, and that document was sent in revised form after the almost famous debate between Joe Slovo and Pallo Jordan resulted in new formulations, in a document that was sent out to the regions, was discussed, hotly debated and came back now to the NEC because now it

wasn't simply a question of broad philosophical positions. A formulation had been agreed to between the South African government, the SAG, and the ANC negotiators that could provide the foundation of constitutional settlement and general elections but it presupposed agreement on a government of national unity and the question was: would the NEC as the highest organ of the ANC in between conferences authorise and give a mandate to the negotiators to proceed along those lines? It wasn't just a question of general view or willingness or authorising the negotiators to explore. It was not committing the organisation to the concept in an institutionalised form. In response and then some people are waiting to see which way the argument will

I seem to recall the meeting of the NEC taking place in one of these Hillbrow hotels in Johannesburg, it was the Johannesburger. We started maybe at half past eight or nine in the morning, it was a Monday morning, and it was going to be a three day NEC meeting and three hours were set aside for the debate on this question. About thirty or forty hands shot up right from the beginning. Whoever was in the Chair tried to speed matters up but it was quite clear that everybody wanted to have their say. So when the deadline came, say at twelve o'clock, it was agreed to carry on till one. By one o'clock it was clear when we broke for lunch that there was more than enough speaking to be done until the end of the day and then the matter would be reviewed again. As it turned out somebody kept a count, sixty two out of about eighty five members of the NEC spoke and some weren't even present. It was almost every single person there and the very top leadership didn't speak, the officials, frequently they didn't take part in these debates. The idea was that they would listen to the members of the NEC and not take personal stands. So it was really one person one voice, virtually. It was very clear from the beginning that we felt the weight of the decision and the tension was quite high. I would say the majority of the early speakers were vehemently against the idea, more or less on the basis that we had fought for decades for majority rule, we couldn't concede on that principle. We

could make all sorts of concessions on all sorts of questions but to give a veto to de Klerk, to be sitting in government with him after all this time was just, it just stuck in people's throats. There were also lots of critiques of the process, the feeling that somehow the membership hadn't been fully and adequately consulted and the argument was the membership was against this kind of proposal being made. There were arguments the other way but I would say by lunch time the majority - but that frequently happened - a proposal is put to the NEC and it's mainly the critics who are the first ones to raise their hands and then you get a move the other way sort of in response and then some people are waiting to see which way the argument will go. I recall my hand went up fairly early on. I felt I had the answer, a way of bridging the different positions, but there I was number forty something on the list. I had to wait my turn. The idea was that each speaker would have two minutes and we found that when speakers only had two minutes they spoke much better than when they had five minutes. They really focused, they really worked on the essence of what they had to say and all the fripperies and preambles and qualifications were eliminated. My recollection is that the quality of the debate was exceptionally high. There was no straight demagoguery, there was no tub thumping, nothing like that at all. That wouldn't have been permissible and acceptable, it would have been seen as very bad NEC conduct. It was accepted that there were deep philosophical, historical, political questions to be resolved and if people argued with the motion that was permissible but it wouldn't be simply at the level of sloganeering and so on, so that didn't apply at all. I think by that evening someone leaked to the press and most of us were convinced. So it comes to tea time and I don't seem to be too low down on the list. I think it was Jacob Zuma who used to keep a tally, one of his tasks was to note the speakers and invite each one although he didn't actually necessarily chair the sessions, and by then the NEC had decided that Mandela shouldn't chair all these sessions because he would get very tired and the NEC wanted him to listen and pick up what people were saying and

not have the burden of actually inviting X to speak or Y to speak and so on. So I forget exactly who was chairing but I do recall, I seem to recall that it was Zuma who had the tally of the speakers and I was wondering if I would be called that day. I was fairly sure that I would be and, as I say, I thought I had the solution to the problem and it would save quite a lot of time if only people would let me have my say, but of course I had to stay in the queue. I remember about half past five Zuma said 'The next four speakers are -' and I think I was about the fourth of the next six speakers. I should have made it but someone had an announcement to make and somebody else raised some point of order on something or another and it turned out we had to stop at six, I think Mandela had to be somewhere, the guillotine came down just before me and there I was the whole day, sitting on tenterhooks, ready to come up with what I thought would be the solution. It turned out for the best. I remember I went upstairs that night, I was in that hotel, the Johannesburger - not one of the most brilliant hotels in Johannesburg - a lot of traffic, a tiny little room and I rested for a bit and then I decided to jot down a few notes, have a good sleep and then prepare for my two minutes. In two minutes you've got to say it all, pare it really down to the bone. And I was ready. So we all come in in the morning. Meanwhile the press have been saying that great conflict in the ANC, split impending between those who want a negotiated settlement and those who completely reject the idea of a government of national unity. We all looked a bit fresher the next morning and again that feeling of 'How the hell are we going to turn this matter around?' on education and health and it's going to be to our advantage to have them in government.

Now it's important to mention it's not the first hard issue that the NEC had had to decide and we had found on other questions you talk through, you talk through, you talk through until you can find a basic consensus. Nobody is completely happy, that is the point of consensus, that's the difference between consensus and unanimity, nobody is completely happy but you feel you've got a core that does

accommodate the different positions more or less well, that you can go along with them, that you can vote for. So we were still feeling our way towards that. So now we're all a little bit fresher and I stand up and this is more or less what I said. It's going to take longer than two minutes I think, but I only had two minutes. Sometimes you squeeze an extra few seconds. I said,

"Comrades, there is something seriously the matter. We are about to get general elections, one person one vote, for the first time in South Africa. The thing we spent our whole lives fighting for, we went to jail for, we went into exile for, we were tortured for, and I don't see a single happy face in the room. What's wrong? We are going to achieve our life's goal and everybody is downhearted. And that's because we see the government of national unity as being a mechanism to give a veto to those who have supported the whole racist regime all these years. And so we are going to achieve our life long goal but we are going to be frustrated at the last minute. There is another way of looking at a government of national unity. If we conceive of it as a government of national unity and reconstruction then we don't lose by having the Nats in the government, we actually gain because we are going to need several years to transform the institutions of government. We are going to have to put in place provincial government, completely new structures. We're going to have to transform the civil service. We're going to have to transform the army. We're going to have to transform education and health and it's going to be to our advantage to have them in government so that we can lock them in and prevent them from sabotaging and we can achieve the transformations we want more effectively if they are in the government of national unity than if they are outside in opposition. So far from a government of national unity then being a block on the kinds of transformations we want it actually becomes the facilitator and the engine for

achieving that." development then people could go along with it.

And suddenly everybody started smiling and the whole meeting just relaxed. I remember Cheryl Carolus standing up shortly afterwards, I'm sure she changed her speech, to say "Following on what Comrade Albie has said, if we can built on that - ". And I said what we need to do now instead of arguing the metaphysics of this kind of government or that kind of government, let's start mobilising the membership of the ANC around the programme of reconstruction that we want so that we go into the elections with a mandate and that we galvanise the whole country towards reconstruction so that's on the agenda. What we want then is an IGUR, the Interim Government of National Unity and Reconstruction. Shortly afterwards Kader Asmal spoke and he said he would just like to make a small amendment because the government of national unity - I said we need a programme of reconstruction that will be now the heart of the new government and that will be a mandate which will have to guide the new government so that the national unity is around reconstruction, it's not opposed to reconstruction - and he said "Let's make it reconstruction and development and let's start planning and I suggest that this is where the big all-in conference over reconstruction so that our membership is mobilised around that rather than worrying about who will be in the Cabinet and so on". Then people said OK, this perspective was acceptable. Everybody agreed, there was no fighting from either one side or the other, but they were worried about the minority veto and we spent of the day discussing how to prevent the government of national unity being subjected to a veto of the minority while acknowledging that participating in the government had to mean something. We spent the rest of the day and we spent months afterwards right until the very end of negotiations trying to come up with a formula for selecting the Cabinet members, how decisions ought to be taken and so on. But it was clearly understood that there would not be a minority veto built into the constitution. Once that was understood and once the government of national unity would be committed to

reconstruction and development then people could go along with it. ... that gave the security to the National Party people and those whom they represented that they would be a Well that was the consensus that emerged from that meeting. I remember at the end of the second or the third day when we finished the journalists were all waiting, and diplomats, outside. There was a big crowd and somebody said to me "Well, was there a fight, was there a fight?" And I had a big smile on my face and I said "Wait and see". "How was the meeting?" I said, "It was a wonderful meeting", and they were all anticipating a terrible crisis. In fact at the end of that meeting we sang Nkosi Sikelel' for the first time I think since the Congress or since the very first meeting of the ANC. There was such a sense of achievement that we had worked our way through this very, very hard dilemma and come up with something that we could all feel enthusiastic about, that we spontaneously sang the anthem at the end. It wasn't the normal thing where everybody is rushing to catch their planes to get home. Normally the NEC meetings end with everybody in a big hurry. We always exceed our time and we're always late for whatever else we have to do. On this occasion we sang the anthem and we came out together, the press conference was held, the press were astonished to find that far from being a split - enthusiasm for the way the President was installed, the inauguration of POM Probably disappointed. participation of all the different sectors of South African society and then the broad AS I think many were disappointed. It was quite interesting to see the difference between, if you like, the real patriots in the deep sense who were happy to see something that is good for the country ... and those who want a nice quick sensational story. But maybe some of them were disappointed that they didn't get their sensation but I like to think that all of them were happy as South Africans that we were going to get a country. ... of reconstruction. And the reconstruction had to be such that the majority of people And that really was the critical meeting, I would say, of the whole negotiation process, resolving that balance because in the end that was the balance between one

constitution and two. It was the final piece in the two-phase process that gave the security to the National Party people and those whom they represented that they would be a steady transitional process not only governed by principles but governed by institutions and that they would have a key role in government, they would know what was going on and through the strength that they felt they had in the civil service and in the army and the Police Force they now felt sufficiently secure to go along with eventual majority rule. From the ANC side the feeling was: if you come to think of it it's much better to lock them into government than to have them outside sabotaging, undermining everything. I certainly felt that from our Mozambican experience where Frelimo had been in power and ran the army, ran the Police Force, ran what was left of the civil service, but just couldn't manage the process and the opposition then took the form of civil war and undermined everything and set them back terribly. So I was all the time looking in that way for ways and means of drawing on the best resources of the country, finding as much common ground as possible and not saying the interests of the one necessary involved the destruction of the interests of the other.

And just looking back now, by and large the huge enthusiasm for the way the President was installed, the inauguration of the President, the participation of all the different sectors of South African society and then the broad agreement on the Reconstruction and Development programme, I think has justified, well I intuitively felt that the answer to these problems would never be found in political philosophy and metaphysical disputes about democracy. The answer would be found in a set of institutions that balanced out, not balanced out, that integrated majority rule and checks and balances and individual protections but related them to an ongoing programme of reconstruction. And the reconstruction had to be such that the majority of people would feel their life is going to get better and the minority would feel that it's actually in their interests to see black advancement, to see construction of houses, to see

electrification, to see education and health opening up because it would give them a more secure position in the total society, that there was no inherent conflict between the interests of the white minority and the black majority. On the contrary it was important for the black majority to feel that the whites were contributing their skills, their know-how, their capacities, positively and not undermining the process in a negative sense. It was important for the whites to feel that black advancement, technical advancement, better health facilities, construction of physical habitats, that would give more security and more economic growth in the country and would actually help secure the position of the whites. And if they could work together, it wasn't simply a sentimental thing, though sentiment was important against the background of the tension and the hatreds of the past, it would actually be the foundation of a shared common citizenship, working together to solve concrete problems rather than debating the pros and cons of various forms of democracy.

POM Most people four years ago would not have been able to foresee that there would in fact be a government of national unity in place in South Africa. The differences between the two sides seemed almost insurmountable. What

POM characteristics, values, personalities allowed this to happen, act as a catalyst so that eventually you could emerge from disagreement and both sides search and find that common ground?

AS Well I've prepared some notes - others don't trust him because we had an agreement that he wouldn't raise

POM Some reflections on the negotiations process?

AS Yes, that deal with the technical aspects. If I can just summarise some of the main points there. The negotiation process evolved, it certainly wasn't based on any international model and from that point of view itself can't serve as a model for other countries. It evolved out of our situation, out of what we used to call 'the balance of

forces', but also a whole variety of institutional mechanisms had to evolve and none of them could have been predicted. It wasn't just the government of national unity. Even the modalities of negotiations couldn't have been predicted and weren't predicted. And if we had tried to say in advance, this is the way it's going to go, I think both sides would have rejected it.

Personalities played a certain role but I think the commentators have grossly exaggerated the importance of personalities. Chemistry I think played almost no role at all. If anything the chemistry wasn't good, certainly at the very top level. At one stage Mandela used to telephone de Klerk and he would announce at NEC meetings "I've just spoken to de Klerk on the telephone". Nobody liked that. The NEC didn't like it. He felt the NEC would be happy that he had somehow managed to resolve certain questions. They didn't like that. And in the end he used that method very, very rarely, very rarely indeed. I think he was genuinely extremely stunned by what he regarded as a personal betrayal before CODESA 1 which he referred to in his famous speech. I think I said at the time that was the end of white domination.

POM Could you just recall -

AS Right at the end when everything was finished he stood up on a matter of national importance and he said "This man is not a person of honour and I am not surprised the Conservative Party and the others don't trust him because we had an agreement that he wouldn't raise certain questions and he raised them". It was about MK. I think from then onwards Mandela felt he had gone out of his way to work together on a one to one basis with de Klerk in the national interest and he felt very betrayed. From then onwards he used it but only occasionally and from then onwards it was very much more a question of processes in motion and so on. There is no doubt about it that that decision that step

Cyril and Roelf should be the only authorised persons to negotiate on each side, the channel, played also a very, very important role. But that wasn't simply based on chemistry. I don't know what Roelf's chemistry is. He's a very low key person who hides what's happening to the CO2 and so on inside himself, and that's one of his strengths, very, very steady, laconic and understanding the importance of managing the process. And Cyril for his part is an absolute master negotiator with a lot of experience in the negotiations in very difficult circumstances under pressure. So it was important that the two of them conducted the proceedings otherwise you get all sorts of processes happening, parallel, often in contradiction to each other and sometimes there are leaks to the press and things get really messed up. But as I say, that wasn't based on personal characteristics. That was based on a decision. From an institutional point of view it was absolutely vital to have the process under control and proper channels. It so happened that each side had very steady persons fulfilling that position and I don't think that was an accident and clearly Cyril had the confidence of the other side and Roelf, of all the negotiators I think had the confidence of the ANC.

POM Do you think that has, just like a side off, I don't know whether you can discuss it or not but I'll ask you anyway, that because Cyril had the confidence of the other side and that he was seen by the more radical elements in the ANC as selling out, I could never understand why the Youth League could back Mbeki over Ramaphosa for Deputy President ... He's at home in board rooms and elegant clothes and food and the other one still lives in Soweto, kind of hovers back and forth.

AS Yes, I think that's a totally different question. That's politics and I might say that's one reason why, although it was hard for me to resign from the NEC and effectively step

out of political life, exceptionally hard, that made it a little bit easier. When you get the kinds of things you get in political organisations all over the world where people build up constituencies and who knows how it's done. If you look for sheer logic in terms of political principle you don't get very far. In any event, I would say Cyril had pretty strong main stream support. He's a natural consulter. Somebody once said to me, in fact it was Pallo Jordan said to me, that Oliver Tambo was a natural democrat and I would agree with that. OR was a natural democrat. He really wanted to bring everybody in because he believed that's the way you get the best result. Cyril, I would say, is a natural consulter on the basis that you're more likely to get an agreement that will stick and that you can sustain afterwards if you involve the membership. He learnt that through the Union process. So it's not necessarily based on democracy in general, it's based on sustainability and managing the process. And so he did a lot to explain positions, to bring membership in. He took very few unilateral positions himself. He almost always got mandates. So he really was just the manager, he wasn't the actual director of the process and it really was the NEC at all critical moments that took the basic decisions. A bilateral would be a political meeting that could involve I don't know how it worked on the other side. I suspected, I'm convinced of this, that all NEC meetings were bugged and that the top leadership of the NP got the full proceedings of all our discussions and I like to think that they benefitted from that in the sense that they realised that open discussion leads to consensus and actually strengthens an organisation rather than the leader coming along, pushing a line and dragooning everybody and then it's undermined in all sorts of secret and not so secret ways. So I certainly got the impression towards the end the Nats were having much more open discussion themselves to try and come up with consensus positions. the Negotiating Council. No, the text would go to the Technical Committees and the Technical So it wasn't Roelf and Cyril who master-minded the process or who negotiated the whole thing. They were the steady

managers from each side to ensure that the process didn't undermine the process, if you know what I mean. Then the channel was broadened out through the bilaterals. Bilaterals played a very key role. The bilaterals were seen as political negotiations between the ANC and the government to solve the problems at a political level and to come up with a text and each bilateral would be tailor made to meet the particular situation. The individuals involved, the form that it took would depend very much on the issues. Now all these things emerged from the process, even the term bilaterals. I think it was first used right at the beginning, before CODESA 1, but it became almost institutionalised towards the end. The term 'channel' was used. We referred it to the 'channel'. The channel was different from a bilateral and sometimes you would get lost. But that was very, very important managing.

POM The channel being?

AS The channel was a negotiating formation, if you like, around a table between the two sides to resolve questions. A bilateral would be a political meeting that could involve - a channel was a fairly permanent thing. So it was a negotiation commission on the ANC side, supplemented, and then the government had some of their advisers and they formed a team on the other side and then the channel would sub-divide into groups on local government, on the army, on the Police Force, on whatever. Those were the channels. They weren't bilaterals. Bilaterals had to try and resolve the question at the political level. The channels had to try and negotiate a text that would be acceptable and then you would have a plenary of the channel as it were to try and resolve the whole matter and if they could agree then the text would go to the Negotiating Council. No, the text would go to the Technical Committees and the Technical Committees would come out with a formulation that would then go to the Negotiating Council.

Now all this emerged over a long period of time. It had nothing to do with chemistry or personalities, not too much to do with the international interest and pressures and so on. By then I think the Nats got a tremendous fright after the death of Chris Hani. Before that it was the mass action which really changed the whole balance in the country so now they were looking for the best formula to hang on in there, as it were, but I don't think they were looking any more to control the whole process and to emerge as the governors with the ANC as junior partners. And from the ANC side, I've already told you about our discussion on the political question of the government of national unity and I suppose what helped was now the security on both sides was working together quite a lot and they faced a common threat from the right wing, to a certain extent possibly from Inkatha as well. So instead of the then government lining up with Inkatha against the ANC there was much more working together between ANC security, government security, to protect the elections. So I wouldn't say full trust and confidence developed but at least a means of working together at institutional level between different sectors.

The forums played a very important role, Education Forum, Health Forum, Housing Forum, on a non-partisan basis achieving common goals and common outlook and bringing different streams together, the statutory, the non-statutory, the NGOs, the political formations. I think that was very important as a kind of ballast to keep the balloon from flying out completely. All these factors, rest and the whole debate on regionalism is transformed just by that. Certainly after Chris was killed and that sense that if we don't get an agreement the country is just going to go to pieces was extremely salutary in a very negative sense. It's a process that's under way. The old army has accepted

POM I spent eight months here last year, this year, and I've come back after four months and I subscribe to at least two clipping services that I receive in the States, just to keep pace with what's going on out here, and you see week after week headlines - horrific levels of violence, a serious

crime every 17 seconds, part of the MK being in rebellion, SDUs still roaming the townships and acting as gangs, the seeming inability of the Police to bring crime under control or Mandela declaring or saying that the Police have declared war on the ANC, the strikes, random strikes. One gets the impression that the social fabric of the country is very tenuous and is in danger of collapsing. You may have had a successful political transformation but the transformation on the social side has not yet occurred at all, it still leaves a lot to be desired.

AS I don't think that's the broad view and by broad view I mean really broad view, millions of people living in the townships, at the symbolic level the change has been spectacular and the sudden gush of affection and love for Mandela coming from large sections of the white community has been quite spectacular. And that's very important nationally, for everybody to feel we have a common symbol and head of government who is internationally admired and respected and it helps to unite the whole South African people, not because of him but black South Africans for the first time see whites expressing admiration, love, respect for a black leader. It's never happened before, there has just been disdain. The institutions of government are working manifestly pretty well. Parliament functions, the standard functions, the Cabinet is meeting, provincial governments are being set up. A lot of people have been amazed at how strongly the ANC Premiers in the provinces are pushing for more powers, more money and all the rest and the whole debate on regionalism is transformed just by that, it's much less metaphysical than it was before. The army is undergoing transformation. It seemed absolutely impossible before. There are MK Generals and Lieutenants now. There's a process that's under way. The old army has accepted Modise and Kasrils as the political leaders. Modise and Kasrils have accepted ... and the others as the military commanders and, of course, Mandela is the commander of the whole thing. The Police Force is undergoing a lot of transformation. It comes out in all sorts of ways from

seminars for human rights and so on but I don't think that's the most important thing. The most important thing is the establishment of different relationships with the community and there have been some quite spectacular breakthroughs particularly on the East Rand which was the worst area with even IFP and MK and provincial Premiers and all the others, the Premier and the others all riding up and down the streets together in areas where there was civil war until very, very recently. And everybody acknowledges that the levels of political violence have reduced quite spectacularly. There is still some in Natal, a little bit elsewhere but much less than there was before. The National Party and others accepting the need for massive programmes. The right wing at one stage were threatening to plunge the country into a general strike and create total mayhem. Their main leadership, through Constand Viljoen and others, accepts the importance of negotiated settlements and actually is working very warmly and closely with the ANC government. So far from being a threat they have actually become supporters of transformation, the Reconstruction and Development Programme and even going along with land reform. So that's been a huge gain. in the townships.

As far as the IFP is concerned there are still all sorts of currents and tensions, things flare up and so on but Mangosuthu Buthelezi is playing his role in the government of national unity. He is certainly being much more ebullient and quieter and less tense and his critics say less paranoid than he had been before. It's not stable, stable, stable but it's certainly a lot better than it was before April. to demonstrate and to go on strike and to say their piece in all sorts of ways however inconvenient it

POM I did an interview with him about two weeks ago and it was a pretty different kind of interview than we had done in previous years. He actually answered questions. nk, I don't

AS Quite. So that signifies something and quite a lot is happening on the ground in KwaZulu/Natal in spite of the fact that they still can't get a seat of government, things

aren't functioning. A lot of operations on a day to day basis are proceeding. Of course the whole position of the King there has also altered the balance quite significantly in that province.

I think the other huge gain for the country has been the acceptance of the RDP and that is based on a new found balance between the ANC, the Trade Union movement that played a very big role in drafting the RDP and now has Jay Naidoo and Alec Irwin playing key roles in government, accepting financial discipline on the one hand and everything that goes with that and business and the National Party and others accepting the need for massive programmes of transformation in this country.

And I think, again, these two things work well together. You will get more reconstruction if you get an economy that really grows and develops, otherwise you can have two or three years of massive spending and everything crashes afterwards. On the other hand we won't have an economy and we won't have a country if we don't have equalisation and improve the lives of people in the townships.

The strikes, many of them have been very disheartening in the sense they are wild cat strikes with poor leadership that actually weaken the position of the strikers because it's badly managed with sometimes impossible demands, then they climb down afterwards. What has been a huge gain is the whole way, by and large, in which the Police get involved, it's totally different. We want a country where people are free to demonstrate and to go on strike and to say their piece in all sorts of ways however inconvenient it might be, without each time feeling that you are threatening the whole fabric of society. So the very things that you point to as being indicators of collapse I think, I don't want to turn it round completely and say they are proof and no more of how healthy the democracy is, but they are signs of the kind of pluralism that we want.

Another very great positive aspect that commentators have commented on, have referred to and I don't think I'm breaching my judicial neutrality by picking that out, is the way in which Parliament has opened up its proceedings. The term 'transparency' is now used as the measure for everything. Anything that is done behind closed doors is now a violation of what has become the new norm in South Africa and there are some quite inventive procedures in Parliament that are genuinely involving a lot of people and genuinely functioning quite well.

POM I think that is the one word that South Africa has given the world, 'transparency', never heard it before I came here.

AS Really? and then we walk down The Avenue to the South African Parliament and to look at the exhibits in Parliament and there's so much history there. In every person, there's a

POM Yes, never. And now I'm using it myself all the time. partly you feel you are looking at South Africa in terms of

AS No that came from Gorbachev. He was searching for glasnost and openness, transparency. would say are irreversible gains

POM In the States they just continue to call it glasnost. it has become the symbol that the business community is comfortable

AS OK. In any event it's something a lot of us pushed for very hard in the ANC. In the early years of working out basic constitutional principles and thinking about how Parliament would work and making Parliament strong viz a viz the presidency, that's why we opposed a directly elected

POM President because then we think you're either in gridlock or Parliament is a rubber stamp and so we wanted the President to emerge from Parliament and this interactive relationship to be established and we wanted Parliament - three years ago we were running documents with this in - Parliament to have strong committees directly accessible to the public, to

AS bring the public and the community into the whole parliamentary debate. Then what was very, very nice was the very South African way in which Parliament emerged with its own personality and a new culture of speaking in debate and dress and fun and naturalness. Within the government of

national unity one could have had a totally suffocated institution. On the contrary it's got much more real vitality than the old polarised Parliament had before and to a certain extent more unpredictability. you can for as long as you can and you don't concede anything. And he was

POM Allan Hendrickse made that very point yesterday, saying the openness and the mood ... in the House. In the old days they had to wear dark suits, white shirts and dark ties and now there are people around wearing no ties or jackets at all. of people who supported that position, that he had to be very persuasive and people had to think through, the

AS I love taking visitors to the South African National Gallery to look at the wonderful art work from all over the place and then we walk down The Avenue to the South African Parliament and to look at the exhibits in Parliament and there's so much history there in every person, there's a tremendous story from whatever side they are on, but partly you feel you are looking at South Africa in terms of appearance, dress, to a certain extent various languages are being used and all these I would say are irreversible gains for the country to the extent that there's certainly much more economic confidence, to the extent that Mandela has become the symbol that the business community is comfortable with, by and large the State institutions are comfortable with, and yet there's quite a lot of movement going on at the same time. I think there is a broad sense of general confidence. disappointed. After the Referendum I happened to be in London I was absolutely ebullient, I thought well

POM You mentioned that the decision on the government of national unity was the toughest the NEC had to face, but that there were other tough decisions. Could you just enumerate what the most important of those tough decisions were? onstitution. And then I discovered at ... that really, and this I've dictated to you before, the

AS I mean there were loads and loads of decisions at every NEC and some of them just related to ongoing things at the time, others were of deeper significance. I know that the Congress in 1991, the position taken on sanctions was a very tough one and that's where Thabo Mbeki gave an absolutely

outstanding presentation and the great majority when he started were against him and people wanted to hold on to sanctions as a matter of principle. If they collapsed, well they collapsed but you fight as hard as you can for as long as you can and you don't concede anything. And he was saying it is much better to manage the process of dismantling sanctions and to get concrete gains step by step than to make it an all or nothing thing. I remember that as being a very crucial debate and he won over, he always had a core of people who supported that position, that he had to be very persuasive and people had to think through, the logic had to be good. It wasn't an emotional speech, it was a very logical well considered speech. That I recall as another critical one.

All the issues about suspending and resuming the negotiations. I've dictated elsewhere some memoirs on this and my own particular role in all that so I don't feel I can - what I'm giving you is for use.

POM It's for 1998 when the book is due to be published.

AS What follows now is off the record, it's for you and that's the bit on suspending negotiations. I remember it because I was the one who first proposed suspending negotiations after the breakdown of CODESA 2. Maybe I was personally particularly disappointed. After the Referendum I happened to be in London, I was absolutely ebullient, I thought well now the way is wide open. The Nats have got their mandate and we all want a country and we want to move to elections as quickly as possible and we're building all these checks and balances and safeguards and so on, we're going to get our constitution. And then I discovered at CODESA 2 that really, and this I've dictated to you before, the disagreement wasn't over the percentages, that was the formal issue. The disagreement was over power sharing as the Nats saw it and majority rule as the ANC saw it, majority rule with checks and balances built in. Two completely different concepts of government and how

government should work and the role and meaning of elections. And I felt that somehow we had been led along, and led along and led along for a long period of time, that the government was actually happy to have a breakdown provided it wasn't a complete breakdown, to be able to report progress and that they wanted to spin out the proceedings for several years while they could mess us up through the third force and the population generally would forget that these were uhuru elections and simply see a government that knows how to manage the affairs of government and the ANC in disarray pulling in different directions and I felt that was bad faith negotiations. I personally felt upset because I had after the Referendum, apart from other things, in a big meeting in London been extremely optimistic and enthusiastic and felt that there was a honest intent to settle measures and it was simply a question of finding the right kind of formulations. And also we made big concessions at CODESA 2, sufficient if the then government had wanted to, for them quite easily to have gone along and it was quite clear to me that they didn't want a settlement then. The mood in the country was very negative amongst ANC supporters. There was a general feeling that we were offering so much to the government, they weren't accepting it, they were leading us by the nose, that people didn't know what was happening anyhow and I just didn't see that we were getting anywhere by keeping the notion alive that negotiations were proceeding in an OK fashion. And I also felt from my experience as an Advocate in trials there becomes a time when you try to settle a case, you don't settle, you say 'See you in Court', and then you settle. But if you just carry on talking and talking and talking you're not getting anywhere, you actually undermine the possibilities of a settlement. Sometimes you have to step back and fight before you can resume negotiations again. So at an NEC meeting not long after, it might have been the first one, not long after CODESA 2 I stood up and I proposed that we suspend negotiations because there wasn't good faith on the part of the government but that we make the resumption of negotiations conditional on

certain criteria being met that were manifestly reasonable and achievable and I think I mentioned things like - I was very angry that the last political prisoners hadn't been released and we all felt the same. We felt betrayed. They had gone on hunger strike, we had told them to abandon the hunger strike 'you are going to be released', and now it's two years later and they are still in jail and they are manifestly political prisoners. This wasn't good faith on the part of the government that had promised in the first year to remove the obstacles. The whole way they were treating Inkatha with the cultural weapons and the way the hostels were being used. These were manifest breaches of good faith. Those were the two items I mentioned. The third I suggested - something like the resignation of van der Westhuizen because that document had been leaked with his signature on and I said don't make it that the government has to agree to all the ANC's terms and conditions, then you don't get anywhere, but you break off negotiations, suspend negotiations until the signs have been given that they are serious and then you continue. I spoke in favour of it and the more, people referred to generally as the radicals on the NEC were very happy that I made these points because they wanted to make the points. I was seen as a dove, as a very sensible person who had always sustained negotiations, always argued the case for negotiations, always looking for a breakthrough. Some people were always finding breakthroughs, others were always finding traps. I was seeing possibilities in a proposal from the other side, if we take certain aspects we can turn it to our advantage rather than reject the whole thing out of hand. So they were quite happy and they lined up behind me and somebody else seconded my position. Then a lot of people came in opposing what I was saying and Mandela would keep a count and after several hours of discussion he said, it finished that evening, speaking to people in the dinner queue it was quite clear that if we had taken a vote the majority would have supported the motion. And I put it as a motion. I didn't want just a general discussion, but actually a motion from the NEC 'We suspend negotiations',

and we only resume if certain eminently achievable conditions were met. Mandela said, well we've had say 32 speakers and 23 opposed the motion, eight supported it 2, whatever it was, did half and half. He said "In the light of that comment Albie, are you insisting on the motion?" So I had to think very quickly and I knew that if we had insisted the motion would have been carried but it would have been say, 50/30, something like that. It really would have divided the organisation and it clearly wasn't the appropriate thing. We had to again talk the matter through, get a deeper consensus. And it's something when the President, having totted up everybody who had spoken and with his own authority, says "Do you really insist?" So I said "Mr President, my objective was to ensure a full and open debate on the question. That was my intention and it wasn't to divide the house, that wasn't the main point. So I'm not persuaded by the speakers that the arguments I raised were wrong or incorrect but I neither insist nor desist, but I'm willing to withdraw the motion." And the person who seconded me really went up and said "Well I accept the position of the majority and I withdraw the seconding." And then Mandela said, "But I've listened to what's been said and I take account of the points that have been raised." So that was just after CODESA 2. manifestly appropriate. The government couldn't use some propaganda

Then the mass action started, but without suspending the negotiations. I think that was the sequence. And then came Boipatong. We were touring the United States, the Constitutional Committee at that time and now Boipatong was so vivid and so terrible and the feeling of government ... either connivance or ... action was so powerful that now there was just overwhelming feeling that we had to suspend. But the mode that I had suggested was followed through in the sense that you don't just suspend and say until there is good faith on the part of the government and not carry on. You have to establish very realisable criteria, markers and I think a whole lot were laid down and in the end that became the basis of the negotiations about the resumption of talks, dependent upon those criteria being met and some

weren't met but people didn't insist on that. And in the end there were the three critical ones. And that was an interesting NEC because we were waiting to hear from the government and in the end who was going to back down on the release of the prisoners, the fencing of the hostels and the carrying of cultural weapons, so-called? And the NEC decided, no, we don't back down on that. There was tremendous pressure to compromise. The idea was that this was already a compromise because we had agreed to a whole lot of other things that the government wanted and we weren't pushing a whole lot of other things that we wanted. We're not backing down. We were very firm on that. And then I think at the end of the weekend it was de Klerk who backed down and that was seen as a terrible sign of weakness and the Record of Understanding was accepted and Inkatha got very upset because they weren't part of a three-way equal balance and if the pointing of Mandela's finger at de Klerk at CODESA 1 was the moment when, in symbolical terms, white domination came to an end, in negotiating terms de Klerk's giving way on those three points that were needed for the resumption of negotiations was, if you like, the procedural turning point when it just became clear they didn't have the clout and the capacity to sustain a well focused, well directed ANC insistence that that was manifestly appropriate. The government couldn't use their propaganda and their pressures and so on to resist anything of that kind.

POM Oh. Thank you very much for the time. If I interview
That was also the moment in which the channel between Cyril and Roelf really became firmly established and everything developed from that. After that confidence grew and grew and grew until we had the crisis over the government of national unity. The first crisis was of course the death of Chris Hani. The sequence, now this was after Chris's death wasn't it?

AG It is the most wonderful archive.

POM It would have been, yes. He died in April, this would be June of 1993.

END OF INTERVIEW.

AS No this was before that I think. This was after the mass action, it was still 1992. When did we break off negotiations? When was Boipatong?

POM 16th June 1993?

AS Boipatong was 1993, after Chris was killed?

POM Yes, he was killed in April.

AS So all that took place, so that means that a year passed before we actually suspended negotiations. And looking back now Mandela was right in the sense that to keep mass action going while there was still a channel meant that there was some control over the process, it didn't look as though mass action was intended to completely ... and violate and win power and also the ANC position might have been much weaker then than it became after Boipatong, after the mass action and all the other features that I think caused the diplomats and the others to say, well the future government is the ANC now. And that all took about a year, over a year, and then it was very striking to see. We've had other massacres in this country but the international response and reaction to Boipatong was very, very vocal and that was really a sign to the Nats that they weren't in control any more and they couldn't dictate the way issues would be seen.

POM OK. Thank you ever so much for the time. If I interview you when you're a member of the Constitutional Court I suppose it will be under different circumstances. I would like to do that and I'd like to keep you on the list of people that I'm running through to 1997. I'm paring the number down to about twenty people, I have to. I've had 120 ... it's totally out of control.

AS It's the most wonderful archive.

END OF INTERVIEW.