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## THOUGHTS ON HOW TO BUILD A NATION -AND A LASTING CONSTITUTION

BY

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Looking at history, three factors have been decisive in the formation of nations. The first has been conquest, which has brought about the forceful amalgamation of different communities; if, after conquest, there has been a non-discriminatory inclusion, and intermarriage, of people from all conquered communities into all the layers of society, particularly into the ruling layers of society, then conquest ceases to be a sore point, to be revenged, and a new national consciousness, in time, emerges; however, if there has never been an integration of the conquerors and the conquered, particularly at the ruling layers of society, then there is no united national consciousness; the conquered and conquerors interact as different communities within the same society; and the conquered people remain with a wounded pride, and wounded humanity, which become the basis for a future nationalist movement of the oppressed community. As a result of European conquest of Africans, accompanied by white supremacy, South Africa is in the latter category.

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The second factor has been the emergence of close economic interdependence of many clans, tribes, villages, towns and cities, forming a large economic network, a national economy. This economic interdependence tends to change the self-identity of the people within this network, and becomes a basis for the emergence of a broader Nation-State. The success of this process is not automatic. Ethnic or class oppression may complicate and actually retard the process of nation-formation, and may even breed multi-nationalisms. This factor is also strongly active in our case, fueling the flames of nationalism, as well as the tendency, in some quarters, to deny the relevance of nationalism.

The third case is the effort to create a new nation, and write a new constitution, through peaceful give-and-take, in a negotiated forum, as a by-product of a struggle for democracy, equality, and freedom. This is the road of negotiations. This has occurred either after the defeat of the old, oppressive, ruling order, by the oppressed (in which case there is then convened an assembly of the "people", who are to democratically write a new constitution); or when the struggle between the oppressive, ruling order and the oppressed has reached a stalemate, or when both communities realize that further armed conflict, at this point, shall do more harm than good, that it shall bring about mutual destruction 'too ghastly to contemplate.' The major, organized, warring sides then agree on the principle of a negotiated settlement of the problem, i.e., on the need to negotiate the formation of a new nation, and the writing of

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a new constitution. Most political parties and movements, in South Africa, principally the ANC, INKATHA, and the ruling, white, National Party, have agreed that South Africa is in the latter situation, and have started the process of negotiations, hence CODESA.

Note that the success of this process is not automatic: it may succeed, it may fail. It is important to realize that all the three factors, mentioned above, as having been decisive in the formation of nations, are very active forces in the South African situation. This is what adds extreme complexity to our situation, calling for profound wisdom, humanism, boldness, and tactical flexibility, on the part of the leadership of society.

The conquest of Africans, and white supremacy, left the masses of African people with a deeply wounded pride and humanity, a sore wound which translates itself politically as African Nationalism. African Nationalism is a living factor in our political process. Afrikaner intellectuals are, therefore, much more realistic, than liberal or left-wing white scholars, in their assertion that the key forces at work in the politics of this country are African Nationalism and Afrikaner Nationalism.

African Nationalism is all the more alive, as the final conquest of Africans is a relatively recent historical event. Countless African men and women are still alive, whose grandparents fell in the

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heroic efforts to ward off conquest by Whites. All this moving drama is still alive in the historical memory and folklore of masses of African people, particularly in the historical memory of peasant and semi-peasant Africans in rural and urban South Africa. This is the basis of the Africanist spirit of PAC and AZAPO; it is a strong, currently ignored, sentiment also within ANC, and is in the souls of ordinary members of INKATHA. You cannot be an indigenous African and not have this feeling. It is very important and incumbent upon all of us to guide this feeling along humanistic channels. Whites, Indians, and Coloureds should not fear, and seek to undermine, this feeling. The degradation of Africans by white supremacy also distorted the humanity of Whites, and of every other group that looked down upon Africans. Therefore, the raising of Africans to full human stature is a pre-requisite to the raising of Whites, Indians, and Coloureds to full human stature. Unity in brotherhood and sisterhood, and peace, among Africans, is a pre-requisite to forging unity in brotherhood and sisterhood, and peace, principally between Africans and Whites, and between Africans, Whites, Indians, and Coloureds, in general.

The point remains, however, that, at this point, we have not defeated the Whites, as a community, more specifically, the White State. Therefore, calls, at this time, for an immediate transfer of power from the "racist white regime" to the people, smack of adolescent militancy; the same goes for demands for a transfer of power from the "racist white regime" to the people, as a condition

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for participating in negotiations. Power from the oppressors to the oppressed is not transferred the way ownership of a house is transferred from one person to another. It is a result of struggle, military and otherwise. Most political organizations, in South Africa, as already stated above, have concluded that it is, at this point, wiser to search for a peaceful settlement, through negotiations.

It is very clear that, at this moment, the military balance of power, between the organizations of the African people, on one hand, and the White State, on the other hand, overwhelmingly favours the White State. On the other hand, the leadership of the white community, and of the white state, realized that the continuation of armed conflict is harming the economy and sense of security, and that the military balance of power would, in the long run, shift in favour of the African people. The options are quite clear, hence CODESA.

The refusal of PAC and AZAPO to enter the present negotiation process is very much tied up with the issues of (a) transfer of power from the "white regime" to the people; and (b) the Constituent Assembly. The Constituent Assembly, elected on the basis of one person, one vote, with no consideration of race or class, with the majority having the dominant role in writing the new constitution, would, of course, amount to the surrender of power by the De Klerk government. Indeed, the demand is often made

that De Klerk must hand over power to the democratic majority.

De Klerk, of course, is simply the head of the White State, which is the State, first and foremost, of the white community; and every State is based, first and foremost, on military force.

The fact remains that the oppressed people, through their liberation movements, have not defeated the armed forces of the White State. In fact, the balance of power still overwhelmingly favours the armed power of the White State.

The demand for the immediate transfer of power to the democratic majority amounts, in fact, to demanding that the White State must surrender its power to African people without the armed forces of the White State having been defeated. We expect the fully armed and powerful white State to hand over power to the oppressed much as a rich philanthropist donates money to the poor. One is astonished by this demand, in such circumstances, and wonders whether one is not face-to-face with wild adolescent dreaming! We must be clear about the options before us: either we opt to continue the armed struggle, even in circumstances, such as now, when the balance of military power is overwhelmingly in favour of the White State, and we shall suffer the greater losses, when the war really gets going; or we opt for peaceful politics, including negotiations. But we cannot say that we are ready to enter negotiations, on condition that the "white regime" hands over power to the oppressed people, when we have not physically defeated the

White State. From the point of view of realistic politics, this is illogical.

There are, for us, at present, two roads leading to real democracy, and solution of the nationalist aspiration of African people:

- 1) the direct route: this is by means of a physical, military defeat of the armed forces of the White State, or of the armed white community, by the armed forces of the oppressed community, principally the armed might of the African community. Through this direct road, the leaders of the victorious African people capture control of the power of the State from the defeated white community, and proceed to create a new State and to restructure society.

Everyone agrees, however, that we are nowhere near such a possibility, at this moment, and probably shall be no near such a victory for some years to come, given the overwhelming military might of the white community and of the white State, at this moment. At best, at this moment of relative powerlessness of the African people, in relation to the White State, the armed struggle, conducted by the liberation movements of the African people, can only consist of isolated, guerilla attacks and planting of bombs in police stations, etc., which, certainly, can create an atmosphere of insecurity for whites, and for the oppressed people, engaged in their



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daily activities. An armed struggle is really an armed struggle when at least 15 to 20 percent of the population of society is participating in it, not when it is confined to just the trained soldiers, be they 5, or 10, or 20 thousand. We are not at the stage when the masses of African people are militarily trained, as the masses of white males are, or organized into local, reserve, military combat units, as the white community is. The route of armed struggle for the African people, in present circumstances, as the route to liberation, is tactically illogical and unwise.

2) The second is the indirect road, which is resorted to when conditions for a direct military assault, which can end in victory, are not present or favourable to the oppressed. The key process, on this road, is taking every opportunity to quietly, but certainly, build up the intellectual, organizational, and military strength of the oppressed people, to the extent that the balance of power between the oppressors and the oppressed changes in favour of the oppressed. All this is in preparation for the next attempt to win liberation. In the South African situation, negotiations is precisely such an indirect route to the total liberation of the African people. The indirect route is, indeed, longer; but it saves the lives of the oppressed, and allows for

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the building up of their strength. Should our leadership and tactics be wise, we should make sure that our people receive military training, as all white males do; that African people are put in important positions in the military and other Civil Service institutions of the State; that agricultural, industrial, educational, and intellectual development of our people is accelerated, with the financial and State support which white farmers, white business people, white workers, and white students received under white supremacy; that the health of our people is secured, etc., etc. All this shall, in time, decisively change the balance of power in our favour, at the same time that we shall be strengthening ourselves by winning the confidence of more and more Whites, and transforming their suspicious, hostile, or racist attitudes towards African people.

The major mistake made by people opposed to negotiations is the assumption that the negotiated settlement of our problem shall be the final solution of the South African problem of white conquest and white supremacy. It shall be nothing of the sort. A negotiated settlement shall be only a phase in the long process of emancipation struggle. We have been forced to enter into this process, for the reasons given above. Our tactic here should be to achieve such a settlement as shall enable us to increase our strength, to put our fingers on the levers of power, and change the

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balance of power in our favour, for the next phase of the struggle for emancipation; and if we are wise and humanistic enough, the next phases shall not, and need not, involve military force at all, not more than the physical force involved in the citizens' payment of taxes to the State.

Now to CODESA. The most serious problem with the presently constituted CODESA is that it is made up only of political parties and leaders of political movements.

What is the best way of formally putting together a nation, and writing an effective, long-lasting, and revered constitution? Let us look at the writing of the US Constitution, which has stood the test of time better than any other constitution in the world today. Who were selected to gather in Philadelphia, in 1787? The 55 delegates charged with this awesome duty were leading citizens of the 13 states, including, but not exclusively, politicians.

This was a very sound instinct, even though some sectors of the society (e.g. slaves, and women) could not be recognized as leading citizens: for that reason, the issue of slavery, and status of Afro-Americans, almost tore the Constitution apart; and the issue of abortion, and of other women's rights, are causing major constitutional strains in present-day USA.

The crucial point here is that all the major constituencies and

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sectors of "civil society" must participate directly in the deliberations on the official making of a new nation, and in the writing of the new constitution. Yes, all major constituencies of "civil society," including politicians and political parties; but under no circumstances must this task be left solely in the hands of politicians. All sectors of society must, through their delegates, participate directly in this process, so that all sectors of society assimilate acceptance and respect for the new constitution, and develop a conscience about it. Politicians, and political parties, are singularly unqualified to accomplish this task. Why?

- 1) In every society in the world, the majority of society members are not members of political parties. The same applies in our case. The totality of all the active and registered members of all the political parties and movements that were at CODESA, combined, would not make up even a third of the total adult population of South Africa. The total membership of political parties is not inclusive enough, for the consensus needed in deciding constitutional issues. Again, consider the US rule. The US Constitution cannot be changed by Congress alone, as representative as it is. Amendments to the Constitution must be ratified by three-fourths of all the States. The point here, again, is that as many of the various sectors of "civil society" must be involved ("civil society" referring to all the various sectors, excluding the State). The

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principal point here is that what is needed is not "sufficient consensus" of political figures in CODESA, but "sufficient consensus" of the various sectors of the whole society, which is infinitely more inclusive than all loyalties to political parties and movements put together; and this consensus is crucial, not only in altering an already written constitution, but in the very process of writing that very constitution.

2) Political parties, and politicians, were created solely for struggling to capture, or to influence, the power of an already existing State. Their record in history as creators of a State, and writers of constitutions, has been singularly bad, for the very simple reason that, by nature, they are extremely sectional, and selfish, each party after power for itself, either by itself or in alliance with another or other parties. It is striking that pleas were repeatedly made to members of CODESA to rise above narrow interests of political parties, and think of the interests of the entire nation. That, of course, is possible, but very rare, just as the plea that business people should rise above narrow profit interests, and think first of national interests, often meets with little success. This emphatically does not mean that there are no individual political leaders who are real statesmen, who rise above the temptation to work for selfish ends of amassing power

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and wealth for themselves. Certainly there are, but we are talking about the general dangers before us. The tendency for each political party, world-wide, is to so load the dice that it falls in its favour, or in the favour of those who have formed an alliance. Consideration of serious national issues by political parties is likely to be interfered with by selfish, sectional consideration of power politics. Instead of a full, comprehensive, honest and clean discussion of the problems on the ground, the tendency is for the emergence of "deals" or special, behind-the-scenes deals between some of the participants, in order for "their" stand to be victorious. Whether true or mere perception, this problem which shall trouble any attempt at constitution-making solely by political parties. The furor which led to the PAC withdrawal from CODESA is merely one instance of this dilemma.

Therefore, a constitution written and agreed-upon solely by political parties and politicians is almost certain to be controversial and divisive from the very beginning, largely because it shall be the product of the deliberations of a mere fraction of society, and because of the distorting effects of power-politics among the political parties involved.

The type of Constituent Assembly often mentioned is equally not an answer to this problem, for the simple reason that it shall be

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political parties that shall field the candidates for election into the Constituent Assembly; and suggestion has already been made that the political party which wins the majority should have the dominant role in writing the constitution. The point to stress is this: What is needed in the writing of a constitution is the "sufficient consensus" of the entire differentiated society, so that the constitution can stand as the revered document of the entire society. "We, the People..." is the most fitting spirit of the first sentence of that document.

That is strikingly different from the formation of a government, as a result of that constitution. Any subsequent government shall then be the result of the struggle of political parties, and there, it is the "sufficient consensus" of the voting public, which may be 50 or 60 percent of the adult population of the society, even less, which designates the victor.

What I am proposing here is a form of Constituent or Constitutional Assembly, however not elected only on the basis of political affiliation, because that is not inclusive enough.

What then is the best forum for the official making of a new nation, and the writing of a new constitution? In our case, the question is, "What should be the constituent parts of CODESA?"

All the major constituencies of our entire society, of "civil

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society," should be directly represented in CODESA, and should participate in this most delicate and humanistic project. What are some of these constituencies?

- a) political parties
- b) the major religious bodies
- c) trade unions or the labour sector of society
- d) representatives of African rural society, either chiefs or other elected delegates from various villages.
- e) business farmers
- f) manufacturers and industrialists
- g) educators - universities, teachers, and other professions
- h) WOMEN
- i) sports bodies
- j) small business people
- k) students
- l) Kings and Queens

This is the crucial principle of representation in CODESA, which shall ensure genuine, society-wide "sufficient consensus," which shall produce a constitution that shall be likely to stand the test of time -that is, if we are really serious.

I can understand, of course, the reason for the current preference for political parties as sole participants in CODESA -that is the terribly mistaken opinion that it is the consensus and agreement of political parties, and of politicians, which are crucial in this



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process; and that it shall be easy to make compromises and deals between political leaders. The government, in particular, may feel this way. It may well be easy to make deals between political leaders; but what shall the people, and history, say about those deals? Think of the compromises, and agreements, and deals, that were made by Churchill, Roosevelt, Truman, Stalin, and De Gaulle, at the end of World War 2!

The most secure agreement, compromise, or deal possible, is not the one that shall arise from the deliberations of political leaders, no matter how awesome these leaders are; it is the agreement, compromise, or deal that shall be the result of the deliberations of the delegates of all the major constituencies of the entire society.

We must also guard against class prejudice, specifically the prejudice educated people have against people without certificates from tertiary institutions of education. For example, in the prayers at the opening of CODESA, one would have expected a prayer from the leader of the largest church in the country, ZCC. However, I suspect there was a class-based oversight here: members of ZCC are largely uneducated or semi-educated people! We must also realize that the solid base of this society is not Western, in culture, but is part of African civilization. Western culture, in terms of which we conduct our politics, is only a thin layer at the top of this society. If we are wise, we should be hoping for an

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organic, or planned, synthesis of precepts and norms from Western and African civilizations. This means, in addition, that proceedings of CODESA cannot be only in English and Afrikaans, for the greater bulk of our population does not understand these languages and these proceedings must not be held in secret.