

SOUTH AFRICA JULY 1992

1. Two and a half years have passed since Nelson Mandela was released in order that he might lead the ANC in negotiations with the minority government of South Africa, formed from the National Party, the white led, multi-racial but predominantly white party.
2. After a long period of preparation, the negotiations finally began in November 1991 and were concentrated largely on peripheral, preparatory issues on which a fair measure of agreement has been achieved. Compromises were made on both sides, the most significant being on the part of the National Party, which, after a long period of international pressure and increasing isolation, recognised their need to surrender total power and move towards a democratic constitution. In furtherance of this objective they accepted that there should be universal suffrage and elections on a common roll giving the vote to all races. After initial opposition they also reluctantly accepted the ANC's demand that they should not be allowed to participate as both referee and player in the forthcoming negotiations and that the playing field should be levelled by the election of a constituent assembly and the formation of an interim government which would prepare a new permanent constitution for the country. Much of the recent discussion has concentrated on the detailed planning of these developments.
3. It has been assumed that before the next elections are due in 1994 the constituent assembly will have been elected and, working with the interim government, will have drawn up and passed into law a new permanent constitution for South Africa, which if supported in the country, would be introduced in 1994 after a two year transitional period.
4. All parties have agreed on the need for a bill of rights, proportional representation, an independent judiciary and a mixed economy.
5. The ANC for their part have made compromises, particularly on the economic side and although insisting on the need for substantial redistribution have come to accept a large measure of private enterprise to maintain the support of the wealth providers, many of whom are white, and to give confidence to investors from overseas.
6. From the start of the negotiations, the NP appear to have been intent on restructuring South Africa as a Federation with a view to fragmenting black political power at the centre whereas the ANC preferred the country to continue as a unitary state with a strong central government. In a move towards compromise however the ANC appear to have accepted the need for strong regional authorities with a measure of autonomy and with Parliamentary sovereignty limited by powers vested in the Supreme Court.
7. It is on this issue however, concerning the nature of the new permanent constitution, that there has been a fundamental disagreement between the ANC and the NP supported by Inkatha. The NP is intent on limiting the power of a future black majority in the lower house and protecting the status quo from radical change. They want a constitution with complicated arrangements for protecting minorities from domination by the majority through an upper house in which minority groups would have veto powers and through a collegiate cabinet, drawn from all parties, which

would have to reach agreement by consensus on the model of the Swiss Constitution. Not unnaturally the ANC want majority rule without too many restrictions on their powers.

8. The second plenary session of the CODESA talks in mid April deadlocked on this issue. The government insisted that a Senate packed by minority parties should exercise veto powers over constitution drafting and that the constituent assembly itself should take decisions only with a 75% majority. The ANC negotiators appeared almost ready to move from their preferred figure of a 2/3 majority to 70% to achieve a compromise but when that failed to produce agreement they withdrew to their original figure.

9. The talks stalled and it seemed that de Klerk wished to delay a resumption in order to improve the NP's electoral prospects in the country.

Mandela on behalf of the ANC walked out of the negotiations and proceeded to plan mass action in the streets.

10. In their efforts to achieve a compromise, it seemed that both parties felt they had made too many concessions to the other side and decided to withdraw in order to consolidate their political base. In a speech in Parliament in April de Klerk declared his non negotiable endorsement of federation. The OAU Chairman, Nigerian Foreign Minister, Ike Nwachukwu, on a visit to South Africa in May, was however angrily criticised by ANC constitutional experts when he spoke in favour of federalism. The ANC spokesman said the federal argument was used to preserve white interests in South Africa as it would deny the majority the power they needed for reconstruction and redistribution. It would also lock wealth in white hands as the PWV region, the industrialised zone centred on Johannesburg, would remain under white domination.

11. The fundamental issue, for which at present no solution appears to be in sight, is that the country's whites, represented mainly by the National Party, want to retain the main share of power in the post apartheid South Africa whereas the blacks, represented mainly by the ANC, after being deprived for so long of any share of political power, not unnaturally want to seize the main levers of control.

12. To preserve their strength and indeed to arm themselves for the negotiations in this critical point, both sides have seen the need to strengthen their power base as they face awkward dilemmas. Mandela's dilemma is that, with the lack of any progress on the main point of disagreement, he is battling to hold an increasingly militant ANC rank and file on the negotiation track. His decision to break off the talks was therefore a desperate measure to prevent a massive split in his party between those who support negotiations and those who wish to seize power by force. De Klerk's dilemma is that on the one hand he would like to establish political control over the security forces, but on the other hand he knows that in the last resort he would have to rely on them if the negotiations failed to achieve a settlement.

13. International pressure on both sides to resume the talking is intense but internally, a catalyst is needed to restart the process. This might best take the form of a comprehensive set of proposals from one side or the other which would take account of the fears of both sides and suggest ways to overcome them.

14. Neither side can live with a deeply divided party unless and until a real prospect of agreement with the opposition is in sight. Once the outlines of full agreement can be perceived, however, both sides can afford to lose their more extreme adherents - and must be ready to do so - as together they will have secured something of immense benefit and importance to offer to the whole electorate. Recent opinion polls appear to have shown that most South Africans would prefer power sharing to early black majority rule. One must assume therefore that, behind the scenes, both sides are working on possible ways to achieve a compromise between their conflicting aims on this point. The first one to find a solution to the problem will provide the catalyst and earn his place in the history books.

15. It is fortunate that, at this critical time in the country's history, both white and black groups have outstanding leaders. The prospect of a real political settlement is therefore better than ever before - and it falls to one or other of the leaders to take the necessary initiative that will lead to a breakthrough. A point has been reached where both men have to show the full range of their leadership qualities.

16. In one country after another in Africa black leaders have shown a readiness to forgive past injustices and to take the initiative in promoting reconciliation between the races. It would be fitting if one of them could now do the same in South Africa, where there has been the greatest injustice of all, and even more appropriate if it could be done by Nelson Mandela who has survived 27 years in prison because of his struggle for the blacks and has emerged to lead the negotiations on their behalf. It is because of my admiration for him and because of my dislike of the type of constitution that the NP have been advocating that I offer my suggestions to him and his party on the best way forward.

17. I think the first step should be for Mandela to ask de Klerk for a strictly confidential talk, without prejudice, to discuss the outline of a new constitution that would enable power to be shared between blacks and whites in a way likely to be acceptable to both sides.

18. When the talks are resumed, a choice will have to be made whether to begin again at the point where they were deadlocked, taking advantage of the concessions made by both sides, or to go back to the drawing board and start afresh.

19. The first course might seem the more suitable and the more likely to stimulate early progress. I would however strongly advise Mandela to reject this course and propose a fresh start and I say this for three reasons:

- i) De Klerk reluctantly accepted the ANC's demand for a constituent assembly, elected on a common roll and a short interim government leading to a new permanent constitution as he assumed he would be able to keep his Upper house vetoes both in the constituent assembly and in the new constitution. If he has to abandon his vetoes, as I believe he should, I think that in return, the ANC should agree to surrender their proposed procedure which is causing uncertainty and fear among the whites and is, I believe, harmful for other reasons.

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In the talks, to date, neither side has really wanted a level playing field. The NP originally wanted one that favoured the whites; the ANC now wants one that favours the blacks, through their expected majority in the proposed constituent assembly. My proposals which follow are designed to postpone the negotiations for a new permanent constitution for South Africa for 10 years and meanwhile to give both sides the chance to work on the playing field together to ensure that it is in a suitable condition for the final round of talks when the time comes.

ii) The direction in which the talks were leading, if continued, would have involved an unduly long delay, probably two years or more, before a new constitution could be agreed and a political settlement achieved. All this time, the economy would stagnate because of the lack of a political settlement, unemployment would increase and violence could be expected to continue. In concentrating on a new permanent constitution, the parties have been attempting to go too far, too fast with the result that real progress has been much too slow. If they would now set their sights on a transitional constitution only, agreement could be achieved more quickly and easily and better progress made in building the new South Africa.

iii) The direction of the talks has also led to uncertainty and fear on both sides and it was fear that led to deadlock. The whites turned away from the talks because they were afraid that, in barely two years, they might be confronted by black majority rule, something they had told their followers was not on. The blacks on the other hand were afraid that they might be moving towards a new permanent constitution, only capable of change by a 75% majority, under which a black majority in Parliament would be obstructed at every turn, and for the foreseeable future, by minority groups, in particular by the whites and the hated Inkatha.

20. In view of these worries and the unresolved contest for power between blacks and whites the question both the NP and ANC must ask themselves is whether there can be any feasible compromise capable of removing fear on both sides, except by equal power sharing during a long transition.

21. Equal power sharing could be achieved if arrangements were made for an approximately equal number of blacks and whites to be elected to Parliament in a transitional constitution, the government at any one time being formed as a result of alliances between parties leading to a coalition capable of securing a majority in the house. (Appendix A sets out my own proposals for equal power sharing between blacks and whites in a 10 year transitional constitution in a way that would avoid giving undue influence to the small group of Indian and Coloured MPs who would otherwise hold the balance of power.

22. My proposal is that Mandela should invite de Klerk to abandon for ever his struggle for a federal constitution, with the proposed minority vetos, on the grounds that it would lead to weak, decentralised government, when the need is for a strong central one to tackle South

Africa's enormous problems, that it would lead to unconscionable delays in decision making when the need is for urgent action in every branch of government to reduce some of the glaring inequalities in South African society, without destroying the country's economy and, above all, that it would lead to perpetual conflict between an upper house dominated by minorities, and a lower house controlled by the majority, when the need, as never before, is for co-operation between the leaders of the two main racial groups in the exercise of power.

23. A predetermined, equal number of blacks and whites in Parliament could be achieved under a communal franchise but it would necessitate the common roll, which gives the blacks an electoral advantage, being surrendered by the ANC in return for the major concession which I have proposed should be sought from the whites. A common roll is however an essential, eventual requirement for the building of a truly democratic state and I would suggest to Mandela that he should agree to its temporary suspension but only for the period of the transitional constitution. This would be an important concession on the part of the ANC but less far reaching than that sought from the whites.

24. To achieve a future for this country on the basis of a federal constitution with veto powers for minorities and a collegiate cabinet, reaching decision by consensus, has been the cherished aim of the National Party for many years. What bait can be offered to induce them to abandon this much favoured concept?

25. With the ANC negotiating for a short transition leading to majority rule the National Party, during recent months, appear to have been looking for adherents from other racial groups to boost their electoral prospects. They have assumed Inkatha to be with them but they have wooed the Indians and Coloureds, members of the Democratic Party and a section of the black population, on the assumption that they would be competing for power with the ANC. At best they have hoped for sufficient backing to form a government, with the ANC in opposition. At worst they have counted on achieving an opposition alliance strong enough to prevent the worst excesses they fear from an ANC administration.

26. Earlier in the negotiations, however, it became clear that de Klerk's most favoured options were a long, ten year transition in an alliance with the ANC and this package is precisely what I think the ANC should offer him to break the deadlock and extract the proposed major concession from him. I further suggest to the ANC that, apart from their use as a bargaining counter, these proposals would also serve their own best interests.

27. Under the equal power sharing arrangement in Parliament, proposed in appendix A, the whites would have a slight numerical advantage over the blacks during the first five years of the 10 years transition. They could also count on support from Inkatha, Conservative Party members and, as at present, a likely majority of Indian and Coloured MPs. With these and perhaps half of the Democratic Party, they would probably be in a position to form the first government but it is difficult to believe there would be peace in the country or rapid progress in creating a fairer society with such a conservative administration, confronted by a powerful opposition composed of the ANC, SACP, PAC and other radical elements, all of whom

would experience extreme frustration at the outcome of the negotiations and feel drawn towards extra parliamentary action to hasten the dawn of the democracy.

28. It is not impossible, albeit highly unlikely, that an ANC alliance might obtain sufficient support in a 50:50 black/white Parliament to form the first administration during the transitional constitution. If they did so, however, they would certainly face a strong opposition, capable of forming an alternative government and they would take over full responsibility for the conduct of affairs at a time when it would be difficult to satisfy even the most reasonable expectations of their followers in a short time scale. None of their leaders would have had experience in Government or Parliament. Their relations with the security forces would be bedevilled by suspicion on both sides and overseas investors would tend to wait on the side lines to see how things developed before committing funds to boost South Africa's economy. If they were to assume power in these conditions, the ANC might risk a dramatic loss of support from which they might not easily recover.

29. If, however, the ANC were to offer the NP an alliance, probably as the junior partner in a coalition government, for the first five years of the transitional constitution, they would be seen to have put the country first as there is no doubt that a government formed from such an alliance would be strong enough to tackle the country's problems, commanding support as it would from the vast majority of the inhabitants of all races and giving the maximum confidence to overseas investors capable of reviving South Africa's flagging economy.

30. At the end of the first five years of the transition, there would be fresh elections and subtle changes would be seen in the political environment. The blacks would gain the slight numerical advantage over the whites in Parliament and their leaders, no longer untried, would have been shown from experience in Parliament and the Coalition government to be capable politicians and administrators, every bit as good as their white colleagues. By then, also, another change of great significance would be seen on the horizon. After a further five years, the transitional constitution would come to an end, to be replaced by a new permanent constitution negotiated and promulgated towards the end of the second five year period. As a result of the agreement which I have proposed should now be negotiated between Mandela and de Klerk, the communal franchise would fade away and be replaced by a common role, virtually assuring the blacks a majority in Parliament.

31. Experience in neighbouring Botswana in the 1960's showed clearly that it is at this point in the transition, when majority rule can be seen to be coming, that the whites begin to realise that their security is dependent on the satisfaction of the wishes of the black majority and not on entrenched provisions in the constitution to obstruct them.

32. At the start of the second five year period Coalition government could continue if that were the desire of the parties. Alternatively, at the end of the first five year period there might be manoeuvring for the sole exercise of power by the ANC and NP with various alliances but, in that case, to the great advantage of the state, there would be an inherent tendency towards political stability as the two main parties would be

competing for power by recruiting adherents from the centre ground in the political spectrum - from the Democratic Party, from Inkatha and from the Indian and coloured communities.

33. I have not commented on the position of President and Prime Minister in the proposed transitional constitution, a subject which would need to be carefully considered. I have not considered it but will nevertheless end this paper by expressing my own firm wish. I would like Mandela to become President and de Klerk Prime Minister. It would be for the constitutional experts to advise on the allocation of powers to them and between them but I believe nothing could do more for the success of the transition than the sight of these two outstanding leaders working together for South Africa.

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