

MEMORANDUM FOR PRESENTATION TO SIR LEON BRITTAN  
FROM THE UNITED KINGDOM

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AND PRESIDENT OF INKATHA FREEDOM PARTY

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Sir Leon, I welcome you to Ulundi. South Africa is passing through a politically important phase in the transition to democracy and first-hand information really is needed before one can pass judgement on what is happening.

The press and the media generally are not only four or five steps behind what is really happening, but the reports on constitutional developments in South Africa are woefully lacking. :

I do not know how many people in the world have been deceived by the glowing reports of achievements at the World Trade Centre negotiations, but from the people I speak to, these reports not only have created over-expectations, but they have created expectations of that which will not work even if they were assessed realistically.

Sir Leon, I have only got a short space of time in which to say a lot, and I will therefore paint a picture in very broad strokes and leave it to you, Sir, to narrow discussion down to  
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areas in which you are particularly interested.

The IFP left the Negotiating Forum because the process was fatally flawed and we just could not remedy its maladies from within. The whole process was designed to be a unifying process. It should have been based on true multi-partyism. Every political party and organisation, and every government and administration should have been made to feel that they were contributing to the emergence of the constitution which would end up being a document to inspire people to develop a national will to make democracy work.

Instead we had CODESA in which the ANC could not get its way and ended up walking out of the process because it was defeated democratically. The ANC now gives us a different story, but I urge you, Sir Leon, to take the trouble to read the transcripts of what Mr Mandela said at the end of CODESA 1 in his address to the Plenary Session in December 1991.

He clearly spelt out that if the ANC's proposals for Working Group 3 were rejected, the  
ANC would withdraw their support for all the agreements reached in all the other Working Groups. They did not get their way, and right at the very beginning of CODESA 1I, the

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ANC attempted to set up mechanisms of manipulation in the Daily Management Committee and in the Management Committee.

When they failed here again because they could not command the necessary democratic support for what they were attempting to do, they withdrew and took to the streets in mass action. : :

Following their withdrawal they confronted the South African Government with a fourteen-point ultimatum and set about organising rolling mass action. Their threat and boast was that if the South African Government did not accede to their demands they would break the country's economy and bring the Government to its knees before 1992.

Faced with this threat, the Government capitulated and wooed the ANC back into the process. Finally Mr de Klerk signed the Record of Understanding with Mr Mandela on the 26th of September 1992 which committed the Government to support the ANC's Constituent Assembly demands and its political approach to the transition to democracy.

Ever since then the Government and the ANC have agreed to what should be done in their own private bilaterals, and then moved together to force their decisions on the Negotiating Council at the World Trade Centre.

True multi-partyism was destroyed in the process. The IFP, the KwaZulu Government, Bophuthatswana, Ciskei and AVU delegations together represented anything between 40% and 50% of South Africa's future voters. Their voice was not heard. Their proposals were ignored and their objections were pushed aside.

They demanded that the form of state be decided first, and once we had decided whether we were going to have a federal future or a unitary future we could have isolated the constitutional principles which would best suit the democracy that was wanted.

The IFP, the KwaZulu Government, Bophuthatswana, Ciskei and AVU delegations also demanded that reduction in violence be treated as a highest need, and that the question of dealing with violence be put right at the top of the negotiating agenda.

Negotiations themselves proceeded to ride rough-shod over these proposals and desires as the Government and the ANC manipulated the process to force a two-phase development towards democracy on the Negotiating Council. The ANC's desire for a Constituent Assembly was supported by the Government against solemn undertakings to us that they would never do so.

We reject the notion of an elected Constituent Assembly becoming the country's Constituent Making Body (CMB). It is a bizarre approach to constitutional writing. It has only been tried twice in constitutional history since World War II - once in India and once in Namibia.

We reject an elected Constituent Assembly becoming a CMB, and we reject the notion of a ruling political party being left to take charge of the writing of a constitution for the future South Africa. Constitutions should be about maximising the liberties of the people and minimising the powers of the state. Ruling parties can not be expected to write constitutions which do this to the detriment of their own power advantages.

We demanded a federal future for this country because South Africa is a plural society and no highly centralised political system will ever produce the national unity in which people will develop a national will to make the constitution work for democracy.

Again and again we protested in the Negotiating Council as the South African Government and the ANC contrived agreements for a two-phase process and the election of a Constituent Assembly-type government.

There was no willingness to pause and hear what we said. There was not even one debate on the form of state. The Negotiating Council was never given the opportunity to choose between federalism and unitarianism. The Technical Sub-Committee on Constitutional Matters was finally instructed to draft a constitution for an interim period in a resolution adopted by the Negotiating Council. We rejected that resolution and again our objections were pushed aside and the process went on to give effect to a course of events which were pre-determined by the Record of Understanding signed in September last year.

We said enough is enough. The resolution instructing the Technical Sub-Committee on Constitutional Matters to draft a constitution we rejected in principle, and the decision by the Negotiating Council, which we rejected, to set a date for an election before any constitution had even been written, was just too much. Nothing we had done in the process had any effect. The only democratic alternative to us was to step out of the process and to raise democratic opposition to what was happening inside it from without.

The gravity of our objections is underscored by our deep convictions that what the Government and the ANC are doing together will precipitate a civil war and the destruction of the prospects of a negotiated settlement. That provides the seriousness of our motivation to avoid that fate which few people really understand. I am not acting for my own good and I am not motivated by IFP party political interests.

The IFP's participation in future talks is dependent on whether the ANC and the Government are prepared to accept the requirement of federalism that powers of states or regions should derive immediately from the constitution and their legislatures, and must be able to implement those powers through their own legislation. It is our firm view that the list of powers vested in the hands of the regions must be such that real political power can be wielded at the regional level. This must include residual powers and all the powers which are highly politically charged. Only those powers which can not be adequately and properly performed at state level should be devolved to the Federal Government.

Of critical importance to us is that the exercise of powers must be autonomous. What this means is that they can not be subjected to the over-riding or concurrent powers of the central government. It is our view that our regions will not be able to exercise any true political autonomy if the constitution allows the central government to over-ride any decision of the regions. If we are to maintain the autonomy of the regions, this arrangement will need to be entrenched and written assurances be given that any future constitutional development cannot remove any powers of the regions.

If our constitution is to succeed in providing a framework in which justice is possible, then constitutional legality and the justiciability of the constitution must be guaranteed by a fully

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independent, fully jurisdictional and easily accessible Constitutional Court. This will prevent any ruling party from interpreting constitutional principles as it sees fit, which is a risk we would run if we allowed a Constituent Assembly to write our final constitution.

Totally unacceptable to us is the deadlock-breaking mechanism which is built into the draft constitution. According to this mechanism, South Africa's new constitution will ultimately be adopted by a 51 per cent majority of the Constituent Assembly. This mechanism renders totally useless the guaranteed built-in requirement of a 60 per cent majority which is needed at a referendum to pass the constitution. By including this mechanism in our constitution, all we will have is a mechanism which allows the government of the day to generate deadlocks in order to relieve itself of the restraints of constitutional principles and the limitations on the power of the central government.

While it is crucial that we agree on a constitution which delivers true democracy to our country, it is equally important that we underpin democracy with economic growth. For this we must ensure economic freedom. In a political democracy, it is accepted that the minority submit to the will of the majority. Because the majority could abuse their power, it is vital that our constitution be complemented by a Bill of Rights. It is through a Bill of Rights that the freedom of speech, association, religion and other rights cannot be constricted by popular vote. But if we are to secure for ourselves a prosperous future, then in addition to the safeguarding of individual rights, economic rights will also need to be protected. These rights include the freedom of contract and the right to own, use and exchange private property. In accordance with these economic rights each individual is free to make economic decisions based on his perceptions of his own interests and on the desire to maximise his own welfare.

The minute the state attempts to interfere with economic freedom then we are heading for disaster. Yet it is precisely under the guise of 'economic democracy' that the ANC and its allies are attempting to impinge upon the sphere of private economic action. Under the influence of COSATU and their Communist Party allies the ANC has consistently proposed and attempted to 'democratise' investment and employment decisions. They have continually interfered in the rights of companies, sanctimoniously saying that they are looking after the right of employees to be consulted in decision-making. In so doing they have removed more and more economic decisions from the realm of private choice. Dare any firm or individual resist their actions and they are labelled as supporting apartheid and resisting democracy. They are then targeted for strikes and consumer boycotts.

This is the tyranny that has become the norm in South Africa. It is this flagrant contempt for the rights of the individual that bodes ill for our ability to create economic growth and become a prosperous nation. Like so many other African countries, it is this fixation with the right of the state to interfere in private decision-making which will condemn us to further poverty.

If we are to create economic growth of a level sufficient for our growing population, then the new government will need to make it advantageous for both foreign and domestic firms to invest in our country. This demands creating an environment propitious for investment by lowering taxation levels, reducing the inflation rate and lifting exchange controls. On a fundamental level this is best done by providing an institutional framework which enforces the rules of voluntary exchange. If we are to create wealth, then we will need to encourage



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individuals to utilise their entrepreneurial capabilities. Effecting this demands economic freedom. It demands the lifting of restrictions on the rights of the individual.

Instituting wealth taxes and reconstruction levies, as the ANC intends to do, will drive us into further poverty. Unfortunately for our country, the ANC thinks that it can make noises about the nationalisation, reconstruction levies and the redistribution of wealth without t

his destroying the confidence of entrepreneurs and frightening away investors. The sooner they realise that it is only stringent exchange controls which keeps money in this country, the sooner they will stop making these destructive statements. Even though money is tied up in this country, this does not mean that it will be invested - witness the low levels of gross private investment. But then again the ANC might then impinge upon individual economic freedom by coercing individuals to invest their money, some way or another.

Today South Africa's economy stagnates, more than half of our population are without any

formal income, half of our population are illiterate and the same number without housing.

We desperately need economic growth. For that we need a speedy resolution to our constitutional dilemma. We in the IFP believe that the only way we will secure long-lasting peace and reconciliation is for us to agree on a federal system of government for our country

which acknowledges the rights of self-determination of our heterogeneous population.

Without this we run the risk of repeating the mistakes of our continent.