

CONFIDENTIAL

MEMORANDUM FOR DISCUSSION WITH PRESIDENT L MANGOPE, PRESIDENT
OF BOPHUTHATSWANA AND BRIGADIER GQOZO, CHAIRMAN MILITARY
COUNCIL OF STATE, CISCHE

BY MANGOSUTHU BUTHELEZI CHIEF MINISTER OF KWAZULU AND
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MBATHO, 2 APRIL 1992

President Mangope, I thank you for hosting this meeting. The affairs of men are at times settled when only a few come together with a deep historic sense of what has to be done and then set about doing it in a manner which gathers whole nations behind great causes.

The time is now right for this to happen in South Africa. I approach today's meeting with a sense that we could make it a very historically significant meeting.

Somewhere along the negotiation line, the course of events have to be halted and turned in the right direction. I believe that it is now time to do so.

We are witnessing a remarkable enthusiasm for change on the part of the Government of South Africa being thrown into political and constitutional adventurism. It is deep, political ineptitude now to plan for an elected National Assembly which the Government wants or an elected Constituent Assembly which the ANC wants. Nothing but deep tragedy could follow upon this course of events.

I speak in confidence today and therefore I speak plainly when I say that I am deeply disturbed by the extent to which there appears now to be contrived common cause between the South African Government and the ANC. The Government's shocking about-turn to agree with the ANC that we should have an elected Assembly to act as a constitution making body for South Africa must be challenged. In discussions with me the State President and Dr Viljoen assured me that there was no contrived unity between the Government and the ANC. I, however, cannot escape the perception that it must be thus.

When I look at what the ANC has been campaigning for and what the South African Government now proposes as transitional procedures, I see a joint commitment to produce a set of circumstances which would wreck the negotiation process and bring about a state of civil war.

From the point of view of law and constitutional history the proposals of the ANC and Government/National Party are obviously different but they none-the-less also exhibit striking similarities. One sees these similarities in the point of departure where both accept that the regions and states of South Africa will be created by a sovereign parliament in a unitary state. They assume that not only their creation, but their boundaries and powers, will be devolved from a basically unitary sovereign state.

We face fundamentally flawed political thinking when the Government thinks that all we need is a constitutionally entrenched vertical separation of the three tiers of government to protect regional interests. The devolution of power, from the government of the unitary state, down to second and third tier levels of government will not suffice.

Across the length and breadth of the world man-kind has, for more than a century of constitutional history, been discovering that the powers of majorities need to be circumscribed.

I never forget that Hitler was brought to power by a popular election and that he used majoritarian power to do what he subsequently did.

Throughout the last century of constitutional history, society after society, has found it expedient to move down a continuum away from majoritarian autocracy towards consensus dependant constitutions.

I am quite sure that if we are forced into a National Assembly or Constituent Assembly now, the present high levels of violence and the extent to which the politics of intimidation are being used, will produce greatly distorted results. It is only the ANC which commands forces of violence and intimidation who could benefit from holding an election now in the climate of intolerance which violence and intimidation are producing.

If the ANC gains the upper hand in an elected National Assembly or Constituent Assembly it would turn the Assembly into a one-party power base. The ANC would then have taken a giant stride towards its primary objective of winning proletariat victories needed to go on to mount a real struggle for a socialist future.

I do not trust the fine words with which the ANC now campaigns for an elected Constituent Assembly.

In the CODESA propaganda of the ANC it is stated "once elections have taken place for a Constituent Assembly the task of finalising issues such as the demarcation and powers of a new framework of regional government can be completed".

There lies the rub! That I cannot accept. That is debarring the main players from a contest and that is destroying integral parts of power bases on which we each respectively rely.

It is because the ANC does not want a KwaZulu power base to back what a KwaZulu government delegation and the King's delegation could do in CODESA that KwaZulu has been barred from participation.

KwaZulu is not a construct of apartheid. KwaZulu has its own authentic historic sense of identity as the outcome of a past sovereign Kingdom.

A central government in a unitary state devolving power down to second and third tier levels of government is within the basic philosophy of the ANC. The Government and National Party on the other hand are now backing this process in a remarkable putting aside of the caveat with which the Government previously talked about the devolution of power needed to keep the central government effective. Whereas in private the President and his Cabinet Ministers talked about a preferred federation, the word 'federal' is never included in the language they are using in CODESA. Past inconsistencies in talking about federalism privately and not publicly will now disappear. The government and the National Party are now committed to a unitary state.

In the history of constitution making federal governments have been created by existing states. I cite the example of the birth of the United States of America where thirteen colonies came together to write the Constitution of the federal structures they would be prepared to serve under.

In this process the federal states which have original autonomy decide amongst themselves what elements of their autonomy they can divest themselves of and locate in a first tier level Legislature and Executive.

If states are not parent to the federal government and a unitary government devolves powers to states, straight majoritarianism will be seized upon to create a situation in which the Government of the day could not be removed.

In the history of South Africa itself, we have examples of federalists making concessions to unitarians in 1909, when they thought their interests would be safeguarded by the proposed devolution of powers to four Provinces. Consecutive South African Governments proved just how foolish they were when political step after political step and constitutional step after constitutional step were taken to leave us without even a Provincial Council. The powers which a central government in a unitary state can devolve downwards with one hand, can always be retrieved with the other hand.

We must, I believe, face these realities while at the same time recognise that CODESA is the only negotiation show in town. We must deal with the fact that CODESA is pre-disposed to support any proposals which are made jointly by the Government/National Party and the ANC/SACP or are independently made by both of them. The time has come, I believe, for us to break this developing hegemony in CODESA. The question of the priority of deciding upon the detail of states with autonomous original powers must, I believe, be tabled at CODESA to test just what sufficient consensus actually means.

I believe that the IFP on its own could show that there would not be sufficient consensus if it was spurned. Bophuthatswana and Ciskei, I believe, could do the same. Jointly we could certainly do the same and, very certainly if we could gather more around us, we would be able to show that the ANC and the Government cannot determine the meaning of sufficient consensus bilaterally.

It is now time to stop the momentum in CODESA developing such power that we will all find ourselves thrust into an unstoppable move towards the election of a National or Constituent Assembly in which the winning party would be located as the driving force of change.

If we have to deal with CODESA because it is the only negotiation show in town then let it deal with us in this way. Let us mount a high profile demand for the acceptance of a federal solution to South Africa's problems.

I will most certainly not stand by while an elected Constituent Assembly un-writes KwaZulu's boundaries and existence without us even being consulted.

It is my belief that a future federal South Africa could be created by the self-governing territories and TBVC states coming together as federal units after their boundaries have been redefined to make them territorially contiguous. That certainly would be an entirely different way of reconstituting South Africa to expecting TBVC states and self-governing territories to accept proposals in which they subject themselves, and their people, to the vagrancies of party political bosses in a elected Constituent Assembly.

There is now an historic ripeness of time for us to propose a federal solution for South Africa's constitutional problems. I believe that the whole world would be ready to back a concerted drive to establish a federal South Africa and would understand federalist objections to the holding of elections for a unitary state type Constituent Assembly or National Assembly which would become the constitution making body of South Africa.

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