

MEMORANDUM FOR PRESENTATION TO

HER EXCELLENCY DR. GRO HARLEM BRUNDTLAND
PRIME MINISTER OF NORWAY AND THE

HONOURABLE BJORN TORE GODAL,
MINISTER OF FOREIGN AFFAIRS OF NORWAY,
PRESENTED BY MANGOSUTHU BUTHELEZI, MP
MINISTER OF HOME AFFAIRS
AND PRESIDENT OF THE INKATHA FREEDOM PARTY
Cape Town, February 12, 1996

It is a great honour for me to meet with the Head of Government and the Minister of Foreign Affairs of a country which for many decades has showed special ties with South Africa and a keen interest in the unfolding of our national events. I know that Norway has great hopes that South Africa will be able to fulfill the many promises for social and economic development and for an active role in the international arena which was opened by our first democratic elections held in April, 1994. I also know that the Government of Norway is aware of the many fundamental problems and difficulties within our society which may prevent South Africa from fulfilling domestic and international hopes.

South Africa entered the final stage of its transition to democracy which culminated in the April 1994 elections against the background of political and constitutional negotiation which were not able to reach a settlement on the fundamental issues of our country being debated. South Africa made a leap of faith in the dark, with the unrealistic hope that the problems we avoided facing and resolving could be defused after elections, and would somehow go away in the general international and domestic enthusiasm which accompanied the demise of apartheid. However, the government of Norway showed its awareness of the fact that the true South African problems were yet to be addressed, when it chose to participate in the first process of international mediation, which took place before the April, 1994 election. On that occasion, the Government of Norway provided an ex officio mediator who joined the panel of renowned constitutional experts who had been charged with the task of proposing an acceptable solution to the outstanding list of constitutional issues and problems, left unresolved during negotiations.

It was through the initiative of Norway's former Minister of Foreign Affairs that Norway became involved in the process of negotiation in South Africa. The Norwegian Foreign Minister was contacted by my friend Sir Laurence Van De Post, who realised that the political deadlock which had developed in negotiations was about fundamental issues of substance which will affect the future of our country for many decades to come. Unfortunately the ANC wrecked the process of international mediation, with the assistance of the Minister of Constitutional Development, Roelf Meyer. With the failure of international mediation the country was plunged in one of the most dangerous crises of its history which could have opened the door to unpredictable social instability and conflicts.

At the eleventh hour, the IFP saved the situation, accepting that the fundamental issues of
our
country would be dealt with after elections. On April 19, 1994 a solemn Agreement for

Reconciliation and Peace was entered into among the South African Government, President Mandela, Deputy President De Klerk and myself, requiring that international mediation would resume as soon as possible after the April 1994 election to settle the outstanding constitutional issues and the issue of the restoration of the Kingdom of KwaZulu Natal as an autonomous Province within the parameter of a unified South Africa.

As you know the ANC and the new South African government have breached and dishonoured this solemn Agreement, which indeed is a disgrace for the whole country and undermines South Africa's own respectability and credibility as per the fulfillment of its obligations. The breach of the Agreement for Reconciliation and Peace is only one of the many promises broken in the past eighteen months, during which period the South African situation has become much worse, in spite of the domestic and international propaganda aimed at promoting the so-called South African miracle!! In fact, all the problems which were to form the object of international mediation have become the cause of enormous conflicts and political and institutional degeneration in our country. Now more than ever, the solution to these problems becomes the key to the success or the failure of South Africa, as a nation and as a viable partner in international relations. Now more than ever, the responsibility of finding solutions to these problems should be shared between the people of South Africa and those friendly countries which historically have helped us in the difficult process of our transition to democracy.

One of the fundamental issues on which international mediation was to be held, was that of the form of state in our country, which was whether South Africa should be a unitary, a regional, or rather a federal state. Since 1972, analysing the conditions of our country, I have come to the realisation that South Africa may prosper only if re-established as a federation, in which Provinces serve as the primary government of the people reserving to the central Government only a limited number of powers and functions which cannot be adequately and properly exercised at provincial level, which national powers are to be specifically listed in the national Constitution.

The federal approach shaped the original formulation of United States policies with respect to South Africa, and it was reflected in the positions taken by the then Deputy Secretary of State Alexander Cohen who declared it to be US policy that South Africa be organised as a federal rather than a unitary State. The German government has also expressed on several occasions its favour for a federal outcome to the South African constitutional crises.

The federal argument has compelling reasons in our South Africa context, which reflect the diverse and multi-ethnic nature of our country as well as the need for entrenching political pluralism and efficient and accountable government. In fact, very strong centralistic and autocratic tendencies are operating in our country at present, as they have in the past, and I fear that unless the present trends are reversed we are destined to suffer the evils of a single and monolithic system of power which will not allow for any political competitor to challenge it.

In an African context, political allegiance and voter support is determined by the sphere of political

power within which vested and community interests gravitate. Throughout Africa this phenomenon

has often made it impossible for minority parties to become the majority of the future through the

means of a democratic confrontation of ideas. For this reason, in our country we must have a strong federal system to enable different political parties to be in power at the same time in different provinces and levels of Government. Therefore, Province should be endowed with true political power, which is the power of autonomous policy formulation and should not be regarded as mere administrative implementors of policies and political decisions taken at central level.

In our context, a provincial diversification of policy formulation is also essential to keep our decision-making processed in balance, in a system of real political accountability. Too often in an African context, government policies go unchallenged, no matter how ineffective and undesirable they might be. For instance, a diversification of educational policies in our country would generate a healthy competition based on success and achievement, thereby providing a valuable guarantee of progress in education. The importance of policy diversification is especially relevant with respect to the economic system, and I have often stated that the whole of South Africa may be saved from incipient socialist and autocratic economic solutions emerging in our country for as long as the province of KwaZulu Natal is empowered to develop its own economic policies and protect free market enterprise and private initiative.

The interim Constitution granted to our Provinces only a very limited number of powers and functions and severely limited the exercise of these powers, empowering the central government to override policy formulation at provincial level for an extremely broad list of reasons and vague justifications. Even this limited autonomy has been crushed during the past 18 months. Since May 1994, the process of rationalisation of powers between the national provincial levels of government has progressively and constantly eroded any degree of provincial autonomy and has turned Provinces into mere implementors of central Government's policies. In each and every of the subject matters

which the interim Constitution promised as areas of provincial autonomy, today Provinces are not enabled to take any decision of any consequences or relevance. For instance, we are faced with a single unified and inherently autocratic education system, in which all minute aspects of policy formulation have been removed to central level. Similarly, for all intent and purposes, health, welfare, housing, consumer protection, environment, police and all other ostensible provincial matters have become the prerogative of the hegemonic and exclusive policy formulation of central Government. We have reached the point where even land development policies, such as planning and zoning, have fallen within the overriding prerogatives of the central Government, in spite of this type of powers being the protected prerogative of local governments around the world.

The unresolved issue of federalism has created an enormous amount of institutional conflict between the central Government and Provinces such as KwaZulu Natal, which is reflected in numerous pieces of litigation presently pending before the Constitutional Court. In the next few months these legislative and institutional conflicts are likely to escalate and may create unsolvable di

lemmas. For

instance, it has been recently announced that our central Government is planning to nationalise all the water resources eliminating any provincial competence on this matter. This would be disastrous for the Province of KwaZulu Natal where water is one of the major factors of provincial economic development and prosperity.

The new Constitution which is being drafted by the Constitutional Assembly is likely to complete

the process of abolition of provincial autonomy. The draft which is presently circulating indicates that Provinces would be enabled only to adopt secondary, rather than primary legislation and that Provinces could only adopt legislation if so enabled by national legislation, for which the misnomer of "framework legislation" is now employed. The fact of the matter is that provincial legislation would have the status of regulations or ordinances as it was in our old provincial system.

To fully assess how pernicious this renewed effort of centralisation could be in our country, attention should be given to the fact that South Africa has never been a unitary state. In fact, it must be borne in mind that our country has been characterised by vast areas of virtual autonomy in addition to areas of institutional autonomy. For instance, throughout the country there is an existing plurality of legal systems and many of the property, family, inheritance and commercial laws have always been very diversified. However, we have before Parliament a Bill that will repeal all the property, marriage, family, and commercial laws previously adopted by the nominally independent TBVC states and the Self Governing Territories. The practical effect of this ill-conceived plan of rationalisation is that of imposing all the civil law adopted by the previously ruling white minority onto the overwhelming majority of South Africans who have for centuries lived on the basis of different rules. Only a federal system in which residual powers are left with the Provinces, as it is the case in the United States of America, could enable the majority of our people to escape new forms of cultural colonialism, worse than those they suffered during the regime of apartheid.

The transformation of South Africa into a federal state is crucial to the development of the future dynamics of our country which at present are at a cross road between autocracy and pluralism. At present, from an institutional viewpoint, South Africa is more of an autocracy than a plural society, and if the system of central Government is not segmented by means of federalism, I fear that there will be no way back from our progressive descent into the horrors of autocracy.

I believe that our country must undertake profound changes in its economic system and in the relations between Government and productive sectors. Unfortunately, in this respect South Africa has also moved substantially backward, rather than forward. As you know, we have inherited as the legacy of apartheid an economic system characterised by extensive parastatal, monopolies, cartels and heavy government involvement in economic affairs. The Government of National Unity has fully capitalised, and indeed expanded on this legacy and has set the foundation for the establishment of what can only be classified as a corporative state.

The establishment of Nedlac, based on the coerced participation of government, trade unions and business, will enable those ruling the country to hand down the policies which the productive sector may be forced to comply with. The Labour Relations Act has expanded our traditional government involvement in labour disputes and has established statutory national bargaining councils, also empowering trade unions to control businesses' managerial functions. This institutional evolution

is to be contextualised within the materiality of our political system in which the power of the ruling party is penetrating as an octopus in all aspects of our economic life, by means of an innumerable number of sub-political structures, committees, community organisations and political commissars. All this undergrowth of political activities is becoming closely tied with the political clienteles which generated out of the power exercised at central level, and may prove themselves extremely

pernicious for the economic future of our country when coupled with the extensive list of powers granted to trade unions. I have been informed that South Africa is one of the few countries in which in its labour legislation has provided for close shop agreements, agency shop agreements, secondary and sympathy strikes, and other forms of political control on labour dynamics.

Obviously, the writing of the new Constitution reflects this economic climate and we are witnessing the endorsement of constitutional proposals which will water down into nothingness the property clause and the requirement of compensation for expropriation and nationalisation. Similarly, it seems that sufficient consensus has been reached on the omission of any constitutional protection for private enterprise and the right of free market initiative. The IFP has always held the position that our constitutional system must entrench free market enterprise and must constitutionally mandate both privatization as well as deregulation. In the provincial Constitution that we are in the process of adopting for KwaZulu Natal we are making our best effort to protect free market enterprise and mandate deregulation and privatisation as the way toward future economic prosperity, which I believe is the only viable means to finding long-term solutions to redress the injustices of the past and create a more acceptable distribution of our national wealth.

The IFP believes that we must develop pluralism into our country, breaking the control of the State on all aspects of social and cultural life. Also in this respect, the past two years of the new democratic South Africa have marked a clear regression towards the establishment of an autocracy and moved away from the notion of pluralism. The IFP has always advocated that our national as well as provincial Constitutions must entrench a clear divide between government and civil society, entrenching the constitutional autonomy of social and cultural formations with respect to all matters which the people, both as individuals and groups, may adequately and properly regulate and administer by themselves.

The new South Africa has systematically taken control of all areas in which some degree of collective autonomy existed and survived even during the autocratic control of the previous regime of apartheid. The most salient example of what is happening in our country is provided through the analyses of the present situation of land affairs and of the Government's attempts to gain political and social control of traditional communities. You may know that the Black people of our country always owned and held their land not as private but rather as communal property, so as to enable each of us to have sufficient land to sustain ourselves and our families. Because of White colonization and racial discriminatory laws, the Black people of our country, who are the overwhelming majority, were left with only thirteen percent of the available South African land. With the adoption of the interim Constitution, all this land has been re-classified as public property under the control of the central Government. The central Government is now considering giving it back to its rightful owners, but instead of recognising the law which always governed it, which is communal law, it has proposed a scheme of collective ownership of land under the political control of the Department of Land Affairs, which closely resembles the models of indirect land ownership

used in the former Eastern Block. In this process, traditional leaders, who have always been the custodian of the land and the administrators of traditional communities, will be replaced by government officials under political control.

It is the deplorable intention of our Government to transform traditional leaders into mere ceremonial figures, and legislation has already been adopted to provide for their remuneration from central Government, thereby transforming them into quasi organs of the state. Central Government's attack on existing autonomies within our society seems to know no limits or constraints, the measure of which can be signified by the pending legislation before Parliament which will enable central Government to remove and direct officers and trustees of non-governmental organisations, including research centres and private institutes. These proposals go hand in hand with the fact that our entire system of tertiary education, including universities, is not autonomous and must be accountable to the Minister of Education, who, on various occasions, has already interfered with the management of universities to the point of removing and appointing the universities' Presidents and determining internal organisational matters, such as his recent interference into Professor Mokgoba's affairs of the University of the Witwatersrand.

This consolidation of power at central level and the expansion of governments control on all aspects on social, economic and cultural life have been possible only because of the failure of establishing South Africa as a federal state. However, the present situation should not be considered as an irretrievable status quo. The fact of the matter is that the autocratic consolidation of the central system of powers has taken place in spite of fierce resistance which is operating at many levels of our social dynamics.

It shall suffice to mention that on October 28, 1995, traditional leaders from all corners of South Africa sent a delegation to meet with President Mandela to lodge a long list of grievances related to the autonomy of their traditional communities and to the fundamental issue of land. In KwaZulu Natal traditional leaders have been mobilising themselves for sixteen months calling for the restoration of our Kingdom of KwaZulu Natal. Indeed after eight months of community consultations on August 20, 1995 an historical imbizo of the Zulu nation was held in KwaZulu Natal, in which members of the Zulu Nation, for the first time in history gathered together irrespective of race, colour and creed and as citizens of KwaZulu Natal, sworn to a sacred Covenant by virtue of which they committed their lives, honour and fortunes to the restoration of the Kingdom of KwaZulu Natal as an autonomous Province within the parameters of a unified South Africa.

The Parliament of KwaZulu Natal has also been very active in promoting legislation which in many respects challenges the centralistic and autocratic tendencies of the central Government, and much of such legislation has produced extensive litigation presently pending before the Constitutional Court. The institutional dissent of KwaZulu Natal has been met on several occasions by the autocratic response of the central Government, and President Mandela, who went so far as to threaten to cut off central Government funding to that Province, and to conduct an unconstitutional house-to-house search and seizure across KwaZulu Natal. When the President was faced with the fact that these proposed measures were unconstitutional, he threatened to tamper with the Constitution itself.

You can see how the issues which were tabled for solutions by means of international mediation are the crucial issues which are now polluting the institutional life of South Africa and threaten its future peace and prosperity.

These conflict are capable of escalating and they operate against a social background which is still very volatile. South Africa still needs to make major steps toward the establishment of an open, tolerant and violent free society. I would not be able to even begin summarising how far removed South Africa is from reaching the goal of a fully fledged democracy. It shall suffice to mention that the real issues of South Africa and the many things which I have mentioned in this memorandum are not even traceable in our domestic press, in spite of the fact that both I and the IFP have repeated them ad nauseam in every possible forum.

The lack of accurate information in this country is most concerning, and I fear that with the establishment of the Truth Commission the divide between reality and fiction or history and propaganda will no longer be discernable in our country.

It shall also suffice to mention how the IFP, as the major black party in opposition, has suffered and is still suffering the effect of a campaign of intimidation and violence waged against us. During the past ten years the IFP has lost over 14,000 of its members, killed not by the regime of apartheid but by our Black political opponents in the pursuit of their struggle for power. In the past years the IFP has lost over 400 of its leaders and office bearers who have been murdered in a systematic plan of mass assassination in their houses and job places, and not during public violence. No one has yet been convicted for the systematic killing of IFP leaders, and no investigation has begun to search for a common master mind and a consistent plan underlying this violence.

The evils which are operating within our society and the items of violence and intimidation against the IFP are indeed too numerous to be listed at a meeting of this nature. You must know, however, that we, as an opposition party, are operating under the most difficult circumstances which by no

stretch of the imagination can resemble the characteristics of democracy. The fact that IFP Ministers sit in the Government of National Unity shall not deceive anyone into believing that our opinions have ever been taken into account within the formulation of government policies. The IFP is on the record as having opposed many of the policies of this Government, and yet not one single item of legislation has significantly been amended to accommodate us. The IFP remains in the Government of National Unity because we are aware of the disastrous consequences for the whole of the country which may follow, if we were to withdraw from it.

The truth of the matter is that the Government of National Unity does not work, and, as another broken promise, now is nothing more than window dressing in the ANC's pursuit of autocratic power. As a Cabinet member, I have always abided by the instructions I have received from Cabinet and the President. Even within my Department I have not been able to pursue policies based on good sense rather than ideology. I have always put it on record that I do not agree with the decision to place a moratorium on illegal immigrants from Mozambique which would pave the way for similar requests from other neighbouring countries, while South Africa is struggling with the problem of 4.5 to 6 million illegal immigrants.

The various issues which I have thus far outlined, are the true background which justify and motivate the call for Provincial autonomy and the necessity of solving the issues which were meant to form the object of international mediation. The picture which emerges from today's South Africa is that

of a consolidating autocracy and the people of KwaZulu Natal do not wish to walk on that path. Within the parameters of a federal system it would be possible to allow different Provinces and different peoples to coexist in peace and harmony in spite of their diverse vision, wants and aspirations. There is no doubt in my mind that what is to be mediated in our country is a fundamental difference of visions between those who believe in pluralism and those who are pursuing the path of autocracy. A constitutional solution framed around the notions of federalism and pluralism seems to me the only way forward, and yet what is emerging out of the work of the constitutional assembly is diametrically going in the opposite direction.

As you know the IFP abandoned the constitutional assembly because of the failure on the side of the South African Government and the ANC to honour the promise for international mediation. We have focused our constitutional attention on the adoption of a constitution for the Province of KwaZulu Natal which could be finalised by the end of this month. It is possible that the adoption of this constitution for KwaZulu Natal which is inspired by the notion of federalism and pluralism, will create an additional conflict with the philosophy of Government and the overall idiom of the constitution being drafted by the Constitutional Assembly. The provincial constitution of KwaZulu Natal will receive the support of at least a majority of two-thirds of the political representatives of the people of that Province, which is about twenty-eight percent of the people of South Africa. This is a further indication that the issues of federalism and pluralism which will be entrenched in the provincial constitution of KwaZulu Natal cannot be ignored and will not go away.

We are committed to defending freedom and democracy in KwaZulu Natal because we are aware of the fact that if such Province were to fall within the trap of autocracy there will be no going back from the slippery slope of social and economic degeneration in our country. I have dedicated my

entire life and more than forty years of political commitment to the cause of freedom, tolerance and prosperity in South Africa and I feel that I would betray everything my life has stood for and the sacrifices of all those who for many years have struggled with me, if I were to be silent and accept what is going on in my country, at this crucial juncture of its history.

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