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MEMORANDUM FOR PRESENTATION TO H.E. AMBASSADOR R VAN OVERBERGHE, AMBASSADOR OF BELGIUM; MR LYSHOLT HANSEN; . CHARGE D'AFFAIRES, DENMARK, AND MR N PROTONOTARIOS, CHARGE D'AFFAIRES, GREEK EMBASSY

BY MANGOSUTHU BUTHELEZI, CHIEF MINISTER OF KWAZULU, AND PRESIDENT OF THE INKATHA FREEDOM PARTY

ULUNDI : AUGUST 26, 1993

Ambassador Mr R van Overberghe, Mr Hansen and Mr Protonotarios, it gives me great pleasure to welcome you to Ulundi. It is especially pleasurable to receive you on the eve of my European trip, which will take in Denmark and Germany. During my brief visit I will be asking for European backing for the Inkatha Freedom Party's bid to secure a true federal dispensation at constitutional talks taking place at the World Trade Centre. I will be explaining our position at negotiations and will be petitioning support for our stands at the talks. I will also appeal for investment in order to rebuild our apartheid and sanction-battered economy.

- This week saw the tabling of the third draft of the interim constitution. As you all know, the IFP did not contribute to any of the drafts of this interim constitution. We had withdrawn from the negotiations process in protest at the manner in which decisions were being made in terms of the concept of 'sufficient consensus' - decisions which led to the writing of an interim constitution and the setting of an election date before we had agreed on what form of state South Africa was to take. Both these decisions were rejected by the IFP. Both have a deleterious impact on South Africa's ability to secure a true federal dispensation for our country :

In any normal society, our decision to withdraw from negotiations would have raised the ire of most democrats. - As the argument goes, if one is to contribute to any new or better society, then the best way of doing that is to be part of the decision-making process. Yet South Africa is no normal society. For decades peace-loving South Africans, both Black and White, have been bludgeoned by the apartheid rule of the National Party and the equally undemocratic winner-takes-all struggle of the African National Congress, with violence of which members of my Party have been the worst victims.

The dictatorial and uncompromising approach of both these two parties did not end with President de Klerk's commitment to abolish apartheid in 1990 but has been transported into the multi-party talks. The result has been that all parties, including the IFP, have merely been relegated to the role of rubber-stamping agreements reached by these two parties. If we are to be honest with ourselves, then we will acknowledge that negotiations have never been conducted in a spirit which is conducive to compromise and agreement. It was in this light that we decided we were not getting anywhere by taking part in multi-party talks and felt that our cause would best be served by withdrawing.

Our decision to walk out of talks has, despite the negative media coverage, been widely welcomed by the man in the street. For a long time now there has been disillusionment amongst ordinary peace-loving South Africans with the negotiations taking place at the World Trade Centre. More and more ordinary South Africans have woken up to the real agendas of the ANC and the Government. More and more people are questioning these parties' commitments to democracy. More and more people are discovering that our accusations of collusion levelled against the Government and the ANC are entirely justified.

The result has been a groundswell of support for the IFP. The extent of our growing support is reflected by the fact that in June alone the IFP gained 130 000 new members. Applications for members are now streaming in at the rate of 40 000 per month and show no signs of abating. With this flood of support we are in a position to question the legitimacy of the oft-repeated view that the ANC and the Government are the two largest political players in our country.

Over my entire political life, which now spans 40 years, I have fought long and hard to achieve the moment when the oppressed Black masses of South Africa would finally achieve liberation from apartheid and white supremacy.

Now that we are at the door of our liberation, I seriously question whether we will achieve the democracy and justice we have fought so long and hard for, or whether we are to replace one repressive regime with another. With each secret deal being struck between the ANC and the Government, with each inflammatory statement by the ANC leadership and with each flare up of violence, the freedom, democracy and political decency that I have long strived for, seems more and more a political mirage.

During my long political career I have often been on the receiving end of criticism, abuse and unwarranted attacks. During the dark days of apartheid I was constantly under attack from the National Party Government for not being a good little Uncle Tom. Later on I was castigated by the media for suggesting that the Tricameral Parliament would force Blacks into open rebellion. That prediction was proved correct in the very year the government attempted to implement their Tricameral Parliamentary system.

On the other side of the political fence I was attacked by the ANC and their allies for not supporting sanctions and the armed struggle. During my long political career I have consistently called for peace and reconciliation between races and have warned of the dangers of ignoring the self-determination aspirations of our disparate peoples. Then, as now, I have been accused of war-mongering. I have not suggested that I am going to war. Just as I did in 1983, I merely warned that the flawed negotiations might cause a civil war.

Yet in every instances I have been justified in my statements. Just as the Tricameral Parliament plunged our townships into chaos, so too has the armed struggle plunged Black society into a chaos of another kind. This is the kind of chaos that has pitted Black against Black, the kind of chaos where law is dispensed by people's courts and where the fabric of Black society has disintegrated. Far from bringing about the capitulation of the apartheid regime, the armed struggle, and the ANC strategy to make the townships ungovernable, have plunged our townships into turmoil. It is a turmoil from which we might never recover.

During the numerous bilateral talks taking place between the IFP, the ANC and the Government, I have made it known that I want nothing to do with multi-party talks as long as a decision-making is made according to the principle of sufficient consensus, and as long as the ANC and Government insist on a two-phased process to write our constitution. Our view is that there is no need for a two-phased process.

The two phased process will merely serve to institutionalise party political interests and ensconce an ANC/National Party Government of national unity which we will not be able to remove. It is our view that the writing of South Africa's constitution takes in a one-phased process in which a final federal constitution is written before elections, and then put to the people for their approval or disapproval.

Despite the reasonableness of our stand we have been castigated and have been attacked from all sides. We have been labelled by the press as spoilers, as engaging in a dangerous game of brinkmanship and as even being afraid of democracy. Our decision to walk-out has nothing to do with being spoilers, we are merely engaging in a democratic wish to not be part of a process which will lead us to disaster. It has nothing to do with political brinkmanship, we believe that the stakes are too high for that. It has nothing to do with being afraid of democracy, we believe that the majority of moderate South Africans are behind our stand.

What our position has to do with is our reluctance to be part of a process which is intrinsically flawed. It has to do with our rejection of a process which through deadlock-breaking mechanisms can be manipulated by the ANC in order to secure a centralised unitary constitution without cognisance of the need to adhere to any constitutional principles which are contained in the interim constitution. This we believe is a recipe for disaster.

Let us examine events which have led to the current impasse. Six weeks ago the IFP walked out of negotiations in protest at the manner in which decision-making was being made. At the heart of our decision was our dissatisfaction at how fundamental decisions were being taken in accordance with the principle of sufficient consensus. In terms of sufficient consensus the Negotiating Council at the World Trade Centre instructed the Technical Sub-Committee on Constitutional Matters to draw up a draft constitution. It was also through the use of sufficient consensus that the election date for South Africa's first non-discriminatory election was set.

These two decisions are not objectionable to the IFP per se. We, along with the vast majority of South Africans both Black and White, welcome the decision to draw up a new non-discriminatory constitution and to set an election date for our first democratic election. It is however the context in which these decisions were made which is unacceptable.

The instruction to draft an interim constitution was taken in terms of the ANC's two-phased process which would leave it up to an elected Constituent Assembly to write the final constitution. The decision to set an election date was taken before agreement was reached on the form of state that South Africa is to take. We in the IFP reject both of these decisions. We believe that these decisions were merely taken to please the ANC in its

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demand for a two-phased process which would in the end secure a centralised,. unitary state
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In such a state there will be no room for federalism nor democracy.

The decision to over-ride the IFPâ\200\231s objections goes against the spirit in which negotiations
were originally to be undertaken. At the very beginning of the negotiation process, it was
unanimously agreed that in terms of forging out a new constitution, decision-making would
be made by consensus. What this meant was that there would be no counting of hands in any
rush to find agreement on critical issues. However, in order to stop any insignificant or
obstructionist party from holding negotiations to ransom, it was also decided to incorporate
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the principle of â\200\231sufficient consensusâ\200\231 to the decision-making process. Simply
put, sufficient
consensus meant that negotiations could go ahead despite the fact that one or more parties
might be in disagreement with any decision.

As with negotiations as a whole, this was a principle which needed to be used with caution
and after all other avenues had been exhausted. First and foremost we were to try and reach
agreement and find common ground. Only if we were blocked by spoilers were we to use
this avenue. However, right from the beginning negotiations were not conducted in a spirit
of give and take. They were from the outset plagued by connivance between the ANC and
the National Party.

A five-year plan and the innocuously named Record of Understanding were designed to give
the Government a face-saving last few years of power and the ANC its demand for a

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We in the IFP conslstently ob_jected to the i~\202agrant oontempt shown by the ANC and the
Government to negotiations. â\200\230We constantly warned that their actions would lead to
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deadlock. We constantly opposed their selfish plans for satisfying their own party politica
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_ interests. Despite our objections these two parties were not to be deterred in their ques
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power. So to get around our objections they have used the concept of sufficient consensus.

Although we have withdrawn from multi-party talks, that does not mean that we have
withdrawn from the process entirely. As already mentioned, we are continuing bilateral
meetings with the Government, the ANC and other governments, parties and organisations
in order to thrash out our grievances. We have also instituted legal action to have the
legality of the principle of sufficient consensus assessed.

Our ongoing talks with the ANC, Government and others are aimed at paving our return to
multi-party talks. This is of course not how the press sees it. They see it as an attempt t
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upstage negotiations. Strangely enough, we are in a way achieving just this. Negotiators
at the World Trade Centre have made more concessions to us in the few weeks since we
have been out of multi-party talks than in the entire 19 months of negotiations that preced
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our walk-out!

The press have argued that our insistence that the issue of consensus be resolved and that
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demands for a one-stage process are unreasonable. They argue further that the ANC and
Government have bent over backwards to get us back to the talks. They see our actions as
unnecessary since we have prised significant and substantial concessions from the

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Government and the ANC and that we have succeed in making the interim constitution a fairly permanent one.

We beg to disagree. It is our view that the ANC can make as many concessions as they like, but until they drop their insistence that a Constituent Assembly will have the final say on the writing of our final constitution, we will not return to multi-party talks. By allowing the Constituent Assembly to write our final constitution, we will in effect allow it to take back all the concessions that the ANC and the Government have granted us in the interim. They know that the party or parties which are in the majority in a Constituent Assembly will tear to pieces any agreements that are made at the Multi-Party Negotiations.

If we are to return to negotiations then we demand that the issue of sufficient consensus be resolved to reflect the fundamental political reality of our country that no one can have the political arrogance to impose fundamental decisions by a show of hands and in total disregard of the concerns of the IFP.

As a further condition of our returning to the negotiation process, it must be ensured that the decisions to which we objected, and which were taken without our participation, are revisited. Negotiations must proceed from a reconsideration of the issue of the form of state and of the process of transformation so as to ensure the establishment of a federation of states under a final constitution prior to elections.

We also insist that the IFP's vision for the New South Africa be considered by negotiators and put to the vote. The IFP's vision for a democratic and stable future is of course for the speedy agreement on a one-phased process which ends up with a central constitution acknowledging the right of self-determination for our ethnically-diverse regions, and the right of those regions to draw up their own constitutions.

We in the KwaZulu Government have already drawn up our own constitution for the region of KwaZulu/Natal and we want this put into the process. It is a constitution which incorporates the need for political and economic pluralism - political pluralism which embodies multi-party democracy, respect for civil society, economic pluralism which is guaranteed through a free market economy, the protection of private enterprise and property, and an extensive programme of privatisation.

Although we have prised out of the ANC and the Government the right of regions to write their own constitutions, there remain other fundamental prerequisites which will have to be satisfied before we return to talks. These are not unreasonable demands, but merely reflect the provisions of constitutions of successfully developed countries, such as the United States and Germany.

We hold the view that state or regional governments and legislatures must be established under a final federal constitutional dispensation. The powers of these states or regions must derive immediately from the constitution and their legislatures must be able to implement those powers through their own legislation. It is our view that there is a need for the immediate vesting of powers to the regions so as to ensure that we are not going to face a two-year hiatus while the ANC's two-stage process runs its course.

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 given that any future constitutional development cannot wipe out the 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 independent, fully jurisdictional and easily accessible Constitutional Court. This will prevent any ruling party from interpreting constitutional principles as it sees fit, which is especially a risk you run if you allow a Constituent Assembly to write our constitution.

We totally and utterly reject the notion of any deadlock-breaking mechanism, as built in the draft constitution. According to this mechanism South Africa's new constitution can ultimately be adopted by a 51 per cent majority. This mechanism renders totally useless the guaranteed built-in requirement of a 60% 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.

The IFP has been strongly criticised for its present stand. We have been attacked by the press and now foreign governments are placing pressure on us to return to the talks. We remain unbowed, however. We in the IFP believe that our negotiators should be at the World Trade Centre to write a constitution which will provide a basic legal framework in which democracy, freedom and justice are possible. It should be a framework in which the right to self-determination of our disparate peoples is acknowledged.

This framework is not possible under the present process, no matter how many draft interim constitutions are tabled. As long as there remains the possibility that a Constituent Assembly will write our final constitution we will always end up with a flawed, expedient and populist constitution which will not last.

Clearly understanding the inevitability of a breakdown, we do not want to be part of this flawed process. By us accepting this route to the new order, we believe we will in fact be accepting responsibility for the conflict and strife which is sure to follow.

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