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# Comparative Study Visit to South Africa

## Supporting Inclusive Dialogue at a Challenging Time in Turkey

### Comparative Study Visit Report

Pretoria and Cape Town, 9-16 June 2019













European Union



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of Foreign Affairs



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the Netherlands



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## Foreword

This report provides an account of the discussions that took place during DPI's Comparative Study Visit to South Africa on 9-16th June in conjunction with South African-based organisation In Transformation Initiative (ITI) on the topic of "Bringing a process back on track: Lessons Learnt from the South Africa experience". The event brought together a group from Turkey with diverse political and professional backgrounds who came together to develop an understanding of the conflict in South Africa, how it was brought to a negotiated settlement, and how challenges that presented during the negotiation period were overcome.

The CSV involved the participants visiting Johannesburg, Soweto, Pretoria and Cape Town, where they met with a number of the key actors in South Africa's transition from an apartheid state to a democratic one. The discussion centred on the crucial question of how the parties managed to keep the process going, even during the most difficult times, with a particular focus on the breakdown period and subsequent resumption of the negotiations between the African National Congress and the National Party. We had the benefit of gaining important insights from those who were directly involved in negotiations, as well as in the drafting of the post-apartheid Constitution.

This CSV forms part of a larger series of activities planned in the context of the project: "Supporting inclusive dialogue at a challenging time in Turkey", supported by the EU and the Irish, Dutch and Norwegian governments. DPI would like to express, once again, our deepest thanks to our friends in South Africa, in particular, Roelf Meyer, Ivor Jenkins, Ebrahim Ebrahim and Mohammed Babha, for all their assistance and contribution to the programme for the CSV.

We would also like to express, once again, our deepest thanks to all of our speakers and participants in the programme for sharing their experiences and expertise, to the DPI team in London and Turkey who delivered this activity, and to DPI intern Sarah Saija for her assistance in preparing this report.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Kerim Yildiz', written in a cursive style.

**Kerim Yildiz**

Chief Executive Officer

Democratic Progress Institute

## Summary of Report

Between the 9<sup>th</sup> and 16<sup>th</sup> of June 2019, DPI carried out a comparative study visit (CSV) on the theme “Bringing a process back on track: Lessons Learnt from the South Africa experience”. The purpose of the visit was to provide a diverse group from Turkey with the opportunity to learn from the period of negotiations to end Apartheid in South Africa and give participants the platform with which to engage in dialogue and discussion with speakers and amongst each other. The study visit, which took the participants to Johannesburg, Soweto, Pretoria and Cape Town, provided access to key protagonists in the period leading to the negotiations, the negotiations themselves, and the resulting state of post-apartheid South Africa. Participants engaged with the first-hand experiences of these actors, from each major political standpoint, who played significant roles in the conflict resolution process and continue to play important roles today. Through this carefully planned series of meetings, the group were exposed to the major successes and challenges encountered during the peace process spearheaded by F. W. de Klerk and Nelson Mandela. The experiences shared and discussions with the group led to insightful lessons and a deeper understanding of conflict resolution processes being forged.

The event, as well as providing an overview of the process in South Africa, examined many different key themes. Discussion focused on conditions that enabled negotiations to begin - dubbed ‘talks before talks’ - as the well as the formal process of the negotiations themselves. The architecture of the South African peace process was also explored whereby participants heard about who was involved and how they engaged with each other. The role of media and security structures in the peace process was examined in separate sessions. An overarching theme of the CSV examined how to keep the process going even during the most difficult

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times - with a particular focus on the breakdown period and subsequent resumption of the negotiations between the African National Congress and the National Party. Participants also engaged with speakers on the subject of drafting a new South African Constitution and Bill of Rights which would safeguard the rights of each individual citizen in South Africa. Finally, participants discussed the Truth and Reconciliation Commission that was set up in the wake of apartheid as a means of seeking justice for all victims of the conflict.

Participants visited Soweto, the largest township in Johannesburg, to see the house of former President Nelson Mandela. It was important for participants to see the modest surroundings of the man who espoused inclusion and dialogue as part of the process to bring an end to apartheid in South Africa. This was an invaluable way to begin the week-long event as it grounded the participants in the historic and troubled nature of the peace process in the country during the 1990s.

The first day of meetings (10<sup>th</sup> June) began with a welcome from DPI CEO Kerim Yildiz before Roelf Meyer, former Chief Negotiator for the government and Director of In Transformation Initiative provided the group with an overview of the transition to democracy in South Africa. Here Mr Meyer explained that the founding principle of the peace process was safeguarding individual rights on an equal basis for all. In the following session Mohammed Bhabha, ANC negotiator and former Member of Parliament and the ANC's Ebrahim Ebrahim, former Deputy Minister of International Relations and Cooperation, shared the experience of their roles in the period both prior to and during the negotiations that eventually led to apartheid being brought to an end. These meetings included lively Q and A sessions as participants found themselves exploring the multiple facets of the resolution process in South Africa and served as a good foundation on which they would build

during the rest of the comparative study visit. To round off the first day of meetings proper, Sydney Mufamadi, former Minister of Safety and Security, spoke about the architecture of the South African peace process where participants heard about who was involved and how they engaged with each other.

On 11<sup>th</sup> June, Nel Marais, gave a frank and insightful presentation on the role of security structures in the South African peace process. Of particular interest to the group was the shift in approach of the intelligence structures during the talks period as they moved to keep all parties, particularly the ANC and NP, informed of information that could harm the negotiations. The next session saw Dr Michael Sutcliffe, former Chair of the Municipal Demarcation Board appointed by President Mandela, discuss the challenges faced by the peace process following outbreaks of local violence. He went on to cite the continuation of dialogue as the most important factor in such difficult times. The afternoon session was delivered by Mathews Phosa, former Premier of Mpumalanga and former Member, National Executive Committee, African National Congress. In a highly informative session, Mr Phosa shared with participants the lessons that can be learnt from the South African experience with a particular focus on resuming dialogue in the aftermath of the breakdowns in negotiations.

On the final day in Pretoria Mr Jody Kollapen, Judge, High Court of South Africa, discussed the constitution making process and the session gave participants the opportunity to discuss the construction of the new South African constitution as part of the agreement to bring an end to apartheid. The group heard about the inclusive nature of the constitution which was drawn up to protect the rights of each individual in South Africa.

We were then hosted at the residence of Elif Çomoğlu Ulgen, the Turkish Ambassador to South Africa. The Ambassador provided a brief overview of the Embassy's work in South Africa and the relationship between Turkey and South Africa and the mutual benefit that can be wrought from one another. The group then visited the Apartheid Museum in Johannesburg. This further immersion in the story of South Africa added extra layers of detail and stark visual symbols of the challenges and struggles that were overcome through the course of inclusive dialogue.

Thursday 13<sup>th</sup> June marked our first day in Cape Town and we were joined by two speakers, Fanie du Toit, Former Executive Director, Institute for Justice and Reconciliation and Kraai van Niekerk, former Minister of Agriculture for the NP government. First of all, Fanie du Toit delivered a very informative session in which participants discussed the Truth and Reconciliation Commission. There were important lessons to be learnt about who justice was for and what its purpose was. Mr du Toit also reasserted that no one method can be completely transferrable from one case to another as each conflict includes its own context, histories and nuances. The afternoon session moved on to discuss Kraai van Niekerk's experiences as a government minister for the National Party before keeping his post under Nelson Mandela until 1996. As Minister, he discussed the challenges that still abound in the country around land ownership and reform. This demonstrated that peace is an ongoing process and that challenges and difficulties remain beyond the signing of formal agreements and the laying down of arms.

The discussion about the constitution making process continued with Albie Sachs, former Judge, Constitutional Court of South Africa and Johnny de Lange, Former Deputy Minister for Justice and Constitutional Development. In a stimulating and engaging presentation, Albie Sachs talked about the circumstances and motivations behind his drafting of

the first ever Bill of Rights in South African history. He described this document as containing ubuntu - a philosophical word with a rich history in South Africa, which he defined as ‘a world inside each human being and the dignity that each human being is entitled to have’. Johnny de Lange discussed the ANC’s transition from a liberation movement into a political party. This included an examination of the current difficulties the party faces as its focus shifts from promoting peace and equality to balancing post-conflict economic and social challenges.

As is usual DPI practice, a formal evaluation session was held to garner the views and opinions of participants on the lessons learnt over the course of the visit as well as their suggestions for follow-up activities and future work with DPI. In a very productive session, participants expressed their appreciation at the opportunities they had had to engage with key actors in the resolution process in South Africa as well as the importance and usefulness of the content shared by speakers during the visit. Participants were impressed by many of the methods and mechanisms for peacebuilding employed in the South Africa case and discussed their varying relevance for their own context in Turkey. Discussing further themes that would be valuable to explore further with core groups, participants pointed towards the role of women, the media and youth as good topics on which to engage with experts from the South African process.

This Comparative Study Visit also allowed participants to engage with prominent people and visit important sites over the course of the trip. On the final morning of the activity, the group took the ferry to Robben Island to visit the prison which housed a great number of political prisoners over the course of the struggles in South Africa. We were honoured to be accompanied by Ebrahim Ebrahim who, as an inmate, spent 18 years in total on the island. In guiding participants around

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the prison grounds, he pointed out fellow prisoner Nelson Mandela's cell, talked of the discrimination enforced by authorities even between Indian and black prisoners and discussed the symbolic moment when Mandela was eventually freed in 1990. As Mr Ebrahim noted, his release marked a turn away from oppression and an opening up of channels for dialogue between the ANC and NP.

Amongst the guests to join us at dinner were journalists Peter Fabricius and Liesl Louw-Vaudran; Yunus Carrim, MP and former Deputy Minister of Communications; Ambassadors to South Africa from Sweden, Switzerland and Ireland as well as representatives from the Norwegian and European Union Embassies. We were greatly honoured by their attendance and engagement with participants. These encounters offered the chance for more informal discussions which leads to the transfer of insightful knowledge not always achieved through a meeting room set-up. Additionally, these occasions, among others, facilitated further bonding between participants themselves. They were afforded the time to talk informally with those whom they would not normally find themselves sharing such experiences. It is through these encounters, more often than not, that participants form the foundation of relationships upon which deeper and more difficult discussions addressing their differences and divisions can take place in the future.

Overall, the CSV was useful and provided participants with the opportunity to discuss the current situation in Turkey and how to share their learning with wider constituencies and their own institutions. Both group discussions, as well as our own side meetings with participants prove that dialogue amongst themselves and with DPI are hugely beneficial. The event has been covered positively in Turkish media and the articles that have been written, along with a photo gallery and brief summary report, can be found on DPI's website: [www.democraticprogress.org](http://www.democraticprogress.org).

The CSV was part of the project 'Supporting inclusive dialogue at a challenging time in Turkey', supported by the EU and the Irish, Dutch and Norwegian governments. A full transcript report of the meetings that took place as part of this visit is forthcoming. Please refer to the gallery section of the website for photos of the events and to 'In the media' for media coverage.

# Session 1: An overview of the South African peace process: learning the lessons from the South African experience

**Roelf Meyer**, former Member of Parliament for South Africa's National Party and Chief Negotiator in the 1993 Multiparty Negotiating Forum

**Kerim Yildiz:** A very warm welcome to the second Comparative Study Visit to South Africa. Before handing over to our speaker, I wanted to thank Roelf, Ivor and Ebrahim for organising this wonderful trip for us. They have played an extremely important role both publicly and behind the scenes during the course of the peace process in South Africa. We are extremely lucky to have them here, to listen to their direct experiences of how the South Africa peace process started. In this visit, we are hoping to look at two things: one is the South African peace process, and the second one the South African transition to democracy. I would like just to share an anecdote; when I was here in 2013, I had a meeting with De Klerk and I asked him a question: "How did you actually move from this point to that point?". He mentioned three factors: the political, the economic and the military factors. We have to take into consideration that the nature of conflict is changing, not only in our region but worldwide, and in some places the dynamics of conflict are getting even more complicated. This requires a new architecture to deal with conflict. For example, in our neighbouring state Syria, you can even consider the conflict being a regional Third World War. It becomes very clear that we require a new approach on how to deal with peace processes in this part of the world. Therefore, in our own country the conflict is not unique, it is interconnected to the whole region; perhaps its only unique element is that it connects the East and the West. However, the principle is not

to discuss Turkey here, but to think about Turkey while we are learning from other experiences.

Going back to my conversation with de Klerk, his answer was the following: “We realised that neither us nor the armed groups, namely the ANC, could win militarily. We could have fought against the terrorists for another 10-15 years; our economic situation was fine, but we could see that the economy would have collapsed in 5-10 years. Politically, we also saw that the world was changing, the Cold War came to an end”. The South African example is different, but we can translate this idea into our region. We understand very clearly from the policy makers and other actors, that neither side believes that there will be a military solution, despite the government pursuing military action against the PKK. We have had a peace process, the AKP has changed the course of politics and has broken important taboos, such as those concerning the Kurdish and the Armenian people. This, in turn, established an important foundation for the discussion of the possible solutions to the conflict in Turkey. In other words, we see that the foundations are there, we do not need to start from scratch, we have to build on it, and this is an advantage. The big question is how to get from here to there, that is why we are in South Africa this week. One answer could be that it is inevitable. The peace has to come to our region, whether we want it or not, but we should find the answer to how to shorten that period, preventing further damage to the country and preventing further loss of lives. We should consider that there is still dialogue in Turkey, and we, as DPI, now understand what President Erdoğan meant when he said that they had put the process into the ‘fridge’. The peace process in Turkey is parked, the key is there and we have to find the way forward. Thank you very much for listening to me this morning, I will hand over the floor to Mohammed.

**Mohammed Bhabha:** Good morning. You probably have the biographies of Ebrahim, Ivor and Roelf, but their CVs do not tell their real stories. Ebrahim is in now 82 years old; from the age of 16, he has been with the ANC. He went into exile and then has been to Robben Island twice; the first time for 15 years, he was then released, but he did not learn his lesson, so he was kidnapped by security forces and brought back to jail. He then received amnesty once the ANC was unbanned. Ebrahim has been a member of the decision-making body of the ANC, the National Executive Committee, he has been a Deputy Minister, an advisor to the President, and to say it short he is a legend in this country. It is an honour to sit next to him. Our President at the moment is Cyril Ramaphosa, who is one of the two people that are responsible for having made this transition possible, along with Roelf Meyer.

Roelf was growing up to be the President of the apartheid government, he came from the ranks of the youth within the National Party government, rose up the ranks and eventually became one of the architects that saved this country from the civil war. There were two main negotiators during the process, our current President, Cyril Ramaphosa, and Roelf Meyer. And it is this special relationship, behind the scenes, that brought us to the peace process, during some of the most difficult times, when violence broke out.

Ivor Jenkins was a member of the ANC for many years, he played a meaningful role in bringing the business community to meet the ANC behind the scenes and keeping civil society active, at the most difficult times in South Africa.

**Roelf Meyer:** Thank you for your kind words. Let me start by welcoming all of you again. As I briefly said last night, it is wonderful to see you in this room together. Many of you have listened to the South African story

a few times, so I apologise upfront for repeating some of the things that you may already know. In discussing with Kerim the envisaged outcome for this visit, I realised that maybe we should not just share our experience from a South African perspective, but also try to make it applicable in terms of your own processes, as to how we can actually contribute in helping you to strategize, from where you are at the moment towards the future. For that reason, I think this is quite an important week, for us and for you; for us, to make sure that we get across the right perspective and the right insights that can make this trip as useful as possible. From my side, I would also like to add my word of thanks to Ivor, for all the preparatory work he has done in putting this programme together. He was on this programme for the last months on a daily basis. I think that Ivor, David and Ville need to receive our upfront gratitude and appreciation for the fact that they could manage to put this programme together. Thank you very much to the three of you.

Kerim, as far as our relationship is concerned, it feels like old friends are uniting again. You brought me along to Istanbul, to Oslo, and various other places, and here we are again in South Africa. It is wonderful. I really hope that it is not only an exercise of learning for you, but also some pleasure and enjoyment. We learned from our own process that you cannot just rely on the intellectual exercise, you also have to bring along some social experiences, to embody what you want to achieve in terms of real peace-making.

In the first session this morning I am going to give an overview of what the South African process entailed, while the session that follows Mohammed and Ebi will join to share together our various perspectives and insights, but I think it is important that we just give an overview of the process at the beginning, so that we can understand how that can be made applicable for your own consideration.

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The South African process started with the release of Nelson Mandela from prison, in 1990. It was a swift moment of the introduction of the change, because at that point very few people in the world knew about that possibility, and nobody really expected it to happen. It could have been a deadly civil war, people were killed in the streets in huge numbers. The security forces could have gone out of control and killed civilians, and could have caused devastation in this country; fortunately, we avoided that, starting with the release of Nelson Mandela at the beginning of 1990. That moment was particularly important: Mandela was released on the 11<sup>th</sup> of February 1990 and that was a moment of irreversibility; after that we could not go back, because there was no chance to put Mandela back in prison. From there we had to go forward, we were not certain as to what South Africa would look like or where it would go, but we knew that we could not go back from there, it was a moment of irreversibility. You must remember that at that stage no photo of Mandela was allowed, so we did not know how he looked like. He had been in prison for 27 years, and because of the ban on the ANC and the imprisonment of the ANC leadership, people in South Africa did not know how he looked like. Mandela was released from prison on a Sunday afternoon, when he walked out there was a huge number of people in the streets of Cape Town. The Committee that organised his reception, had arranged the public meeting at the Grand Parade in Cape Town. It is an open square, where Mandela made his first speech, on the steps of the Town Hall. What I wanted to share is that white South Africans were watching this on television, because we were afraid to be there. Only those who were on the side of Mandela and the ANC were at the public event. The rest of us watched it on the television, but we did not know what he was going to say, because there was not an agreement as to what he should say. Mandela was released unconditionally, otherwise he would not have accepted the conditions for his release. It was a moment of trust; he

could have used that opportunity to mobilise his support, and say to his supporters “Now it’s the moment, grab the opportunity, take power”, and that would have led to chaos, as the security forces would have tried to calm the situation. Instead, he immediately started to lead from where he was. I will just remind you that he came out of prison at 71, he was out of the public domain for 27 years, and suddenly he had to give direction and leadership to the country, which he did. For the next 9 years he became a world icon. He was only 9 years in the public domain, because he retired at the age of 80. If you think about that, it is amazing that in such a short period of time he left his imprint on the world.

From the beginning of his speech, he said “We will engage in a constructive process of change”, and that, I think, it is a very important concept for you. Why constructive engagement? Over the period of 6 years that followed, we had to engage with each other, as South Africans, in finding constructive answers through constructive engagement. That is what we did without stopping, from that moment until we signed the Constitution of South Africa into law in December 1996. We saw Mandela leading the way, engaging his own supporters, but also telling the world “We would strive to find answers through constructive engagement”. The fact that Mandela took that approach from the beginning did not mean that all the problems were resolved, but at least he set the right tone, from which we could then develop further. That saved that moment, and we, as white South Africans, could at least go to sleep that Sunday, knowing that South Africa would not be set on fire that night.

This was the 11<sup>th</sup> of February 1990. The first real encounter with him took place 5 months later, as Mandela went on a world tour; everybody pleaded for his liberation, so he was invited all over the world. In the meantime, behind the scenes, we were busy with preparatory work. At that stage, I was Minister of Constitutional Affairs, and our Ministry

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was responsible for organising and preparing all the bits and pieces that needed to be put in place for the start of a negotiation process. Mandela and De Klerk engaged for the first time in discussions in May 1990 in Cape Town, and from there on the process of talks about talks started. When you read textbooks about negotiations, there are always suggestions about a process that needs to be followed. We went through all those processes, talks about talks, talks about negotiations, start of negotiations and collapse of those. You have to accept that starting with the process it does not mean that the solution is found immediately. As long as you know that, you can move forward, without falling back into the old framework. In South Africa, the preparation for talks lasted two years; during this period, from the beginning of 1990 to the end of 1991, there was lots of turmoil in the country and, suddenly, more political violence than ever before. The reason is very simple: under the apartheid regime, the state had relative control of what people could do and could not do. With the release of Mandela, the apartheid state lost that control; people started to take more liberties, knowing that the apartheid state was not in practice anymore and the security forces could not exercise the type of control they used to.

**Participant:** Were there any people, that were supporting apartheid, in the committee which established the new constitution?

**Roelf Meyer:** Mandela was released by the apartheid government, and the apartheid government stayed in power during the start of the process of negotiations. Some sectors argued that the apartheid government should have been disbanded immediately, and that an interim government should have been formed. The apartheid government of De Klerk stayed in power until April 1994, but with the release of Mandela it did not have the same control over the state anymore, the state of emergency had to be lifted, for example. As a result, there were suddenly lots of

political frictions in the country and a huge increase of political violence at the street level. Frankly, neither De Klerk nor Mandela, or other political parties could get that under control. In this regard, civil society played an essential role in bringing control over violence, and especially Archbishop Desmond Tutu. If you look at his history, he always stood up for the right values, and that granted him moral authority, although he was never a politician. He was the one that brought the politicians together and urged them to stop the violence, which was destroying the country. Out of that initiative, a peace accord was negotiated between civil society representatives, the business community and the politicians. An inclusive committee was formed to draft this document that was called “the Peace Accord”. I was in that Committee as a representative of the government, but at the same time there were representatives of the ANC and from labour movements, as well as civil society leaders, and it was all under the guidance of Tutu, who was chairing the Committee meetings. After the Peace Accord was signed by all parties, the ongoing Committee was chaired by a businessman and Peace Committees were formed at the local level, in the suburbs, in the townships, bringing together representatives from the different communities and activists. For the first time, police station commanders sat together with activists and rebels. They had to come together in meetings like this one, facing each other for the first time. The Committees were formed as part of the structure of the Peace Accord, which worked at the national level and determined how the Peace Committees would have been constituted. Since the police station commanders were involved in the troubles happening at the local level, they were part of the Committee. It was important to establish dialogue at the local level, to get people to talk to each other and find peaceful ways to get out of the problem, with the guidance – and not the prescription – of the national level. There were hundreds of those Peace Committees functioning all over the country.

Those people that acted in local committees were the heroes in bringing peace to South Africa; if we did not have those Peace structures in place, it would have been impossible to think about a successful negotiating process at the national level. After we started with the constitutional negotiations, there were still ongoing eruptions of violence, and every time it occurred, we could refer to the Peace Committees to contain the situation and address the problem at the local level, as there was no way that we could handle it from the national level. The Peace Committees took the responsibility to find the way forward in any case.

Under the period from the release of Mandela to 1994, when he became President, more than 20,000 people were killed in political violence. More people were killed during that period than ever during the apartheid time itself.

After the National Peace Accord was signed, on the 14<sup>th</sup> September 1991, and the Peace Committees were constituted, the ANC and the NP government could start with the constitutional negotiations, when the violence was contained. Let me tell an anecdote. In October 1991, I was sitting at the dinner table with the leader of the Communist Party at the time, Joe Slovo. Joe Slovo was the biggest enemy of the NP, because there was an obsession with communism under apartheid. I have to add that there was a big debate within the NP at the end of 1989 on the question of whether the South African Communist Party should also be unbanned. There was a common majority thinking within the NP circles that we had to unban the ANC and release Mandela, but there was a reservation about the communist party, as it was seen as the real threat in the country. This occurred at the same time of the fall of the Berlin wall. I spoke to one of the advisors, who made a very simple point: if you unban the ANC and not the Communist Party, which used to be in an alliance with the ANC, the ANC would not accept it. We had no

choice but to unban it, simultaneously with the ANC. So, at the dinner table, I had a discussion with Joe Slovo, around the question “why can we not start with the constitutional negotiations now?”. As there was a structure in place which would deal with the political violence, we decided that the time had arrived for the negotiations to start. A few days later, Mandela made it public, saying that he thought that the time was ready for talks.

Therefore, we had to start working on the format of the constitutional negotiations. We started to form a preparatory joint Committee between the ANC and the NP; the ANC was led by Cyril Ramaphosa, and we started to create the process. The following point I will make is critical and it is often a mistake made in other peace processes: people do not spend enough time in planning for the process, they rush into it, they think only about its content, and they forget about the importance of planning the process. We also had arguments about the content, but then we had to go back and even reverse the process, on more than one occasion. The process of constitutional negotiations went on from December 1991 to June 1992, followed by a complete breakdown in the talks. There were lots of killings in the South of Johannesburg, which became known as the Boipatong massacre. That was a moment of complete devastation for the process, because Mandela and Ramaphosa called off the negotiations on behalf of the ANC. They said that they could not continue the negotiations with the government, because they were unreliable and responsible for the massacre. The negotiations were thus called off completely. This had two implications. The first one was how to get back on track, and this is one of the key lessons of the South African experience; within minutes after the negotiations were publicly called off by Mandela, Ramaphosa called me; my first reaction was to be relieved, because it meant that Ramaphosa was still prepared to talk to me. This meant two things: first, he trusted me to make the call,

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knowing that I would not be angry, despite the negotiations were called off; secondly, there were no facilitators, we had to take responsibility ourselves for communicating. As parties, we took ownership of the process. There were advisors from outside, and we listened to them, but the responsibility and ownership rested with us. After the call, I went to meet De Klerk immediately to ask him if we could continue with negotiations, and the next day we started talking again, and we continued for 3 months, to get the process back on track. At first it was secret, behind closed doors, but we always had a small team with us, on both sides. Three months later we could emerge with a new agreement between the ANC and the government: the so-called Record of Understanding. The breakdown led to two things: it cemented our relationship, knowing that we had to take responsibility to find the answers and to solve the problems; secondly, it also helped us to define where we wanted to go, and this is critical.

Despite the fact that people in the NP government were saying that they were open to change, there was always a lingering thought about keeping a sort of veto power as much as possible, for the white minority. If you look at the initial proposal that the NP put on the table, it always hinted at the protection of group or minority rights – on a racial basis. Indeed, one of the proposals we put on the table on the government side was that there should be a rotating presidency, Mandela President for 6 months, De Klerk President for 6 months, followed by Buthelezi as President for other 6 months. That was just to try to keep a veto power for as long as possible. The ANC was not prepared to accept it, but this meant that we had to go back to the drawing board and say to ourselves “What is that we want for the future?”, “What should a future Constitution look like?”, instead of “What should we protect from the past?”. And that was the determining moment, the shift in mindset, because suddenly we were defining the future in terms of individual rights, and safeguarding

individual rights on an equal basis for all; it was not anymore about safeguarding white or minority rights. Once we were prepared to accept that from the NP government side, the answer was clear, we could reach the settlement, because now we were on the same page as the ANC.

Many of my colleagues called me a traitor, for selling out, giving up on group rights and minority protection; there are still people today that would argue that we had to find a way for protecting minority rights in our Constitution, but that would never have worked. What we did instead was what we needed and the only way to resolve the problems of the country. Now I can sit here as an individual, equal to my colleague next to me, equal to any black person in the country, and nobody can take that right from me, because that is the right that I am safeguarded with in the Constitution of this country. I will repeat this, because I think it is important that we understand the essence of this part of the solution of the South African case: what resolved our problem was the protection on individual basis for equal rights for all. I have seen this in many other situations, where people are obsessed about the so-called minority rights, not knowing what they can actually gain from safeguarding individual rights, on an equal basis for all. This is critical when we look at possible solutions for other challenging situations.

Once we had the Record of Understanding, which was signed by Mandela and De Klerk, we could start negotiating without almost any further tension. It took us another 18 months to negotiate the content, but we never had to go back to the initial question of what is the founding principle of our Constitution.

If you look at our Constitution today, individual rights are safeguarded in Chapter One and Two. In Chapter One we have the founding principles of the State – Chapter One is protected with 75% majority,

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which means that the founding principles cannot be overruled without the 75% majority in Parliament – and it is further protected in Chapter Two, the Bill of Rights, where the rights of each individual are described. What we have seen in the last 25 years is that, on many occasions, the individual rights have been challenged from various pieces of court action; every time, the Constitutional Court ruled in favour of what is determined in the Constitution.

This is the background of the South African solution, there are lots of details that we can add, but the programme will allow to explore them in the next sessions.

## Q&A session

**Participant:** You have just said that you were seen as a traitor among the white minority, when you came up with the idea of focusing on individual rights. Has this changed since then? How are you seen today among the white minority? Also, concerning De Klerk, is he seen as a hero, among the white population today or are there any criticisms?

**Roelf Meyer:** I was seen as a traitor by some, not by everyone in the white community. In 1992, De Klerk, as leader of the NP, needed a mandate to go ahead with the process of change and, with the consent of Mandela, called a white referendum. They got a 70 percent majority. That 30 percent stayed with us all the time during the negotiations, and those who called De Klerk and myself traitors were probably from that section. If you ask me what is the proportion today, I think that 30 percent in the white community is still around; you will still find people that would say that they love the old South Africa. They would still do anything they can either to isolate themselves from the rest of the country or to protest.

**Participant:** Do they have political representation?

**Roelf Meyer:** Yes. The right-wing party has gained 3 percent of the total vote in these past elections, on the 8<sup>th</sup> of May, which is quite significant if you think of the total number of voters in the country. The total white population is about 8 percent out of 60 million. It is a small minority, and for them to have 3 percent representation in Parliament it means that they are very active. This group represented in Parliament is called the Freedom Front Plus Party. In terms of their participation, they are moderate, they are not activists. They would be still the ones to call me a traitor, in terms of neglecting their rights.

**Mohammed Bhahba:** Right now, one of the most populist black party poses a threat to this country; they believe that Mandela sold out. The party has been sued by a right-wing NGO; they were sued previously, for making very provocative statements that resulted in endangering and evoking emotions. The populist party had to pay the fees and whatever the judgement is. This is an important indicator for us. Secondly, as for the Afrikaners' side, in the last 25 years they are enjoying the kind of relevance and revival in terms of music, culture, language and television that have never existed even when it was protected by the government. This is because of the Bills of Rights; they did not need minority protection rights for that. If we ask ourselves if we took the right decision, I would say yes. Personally, I come from a minority religion, which represents 5 percent in the country, and I enjoy rights, not because of group right protection, but because of individual rights protection. That is one of the successes of the South African story.

**Participant:** Thank you for hosting us and many thanks to DPI, as DPI is training all the people for the peace process, and, in this view, the South African experience is very important for us. With regards to the constitution, you have highlighted the importance of the individual rights. From a narrow sense, were there any other cornerstones in terms of culture or transforming the power? Were there arguments when you discussed the terms of the constitution?

**Roelf Meyer:** There was a lot of debate around some of these questions. There was some participation by some of the right-wing groups in the negotiations. They were even assisted by some of the black groups, probably for opportunistic reasons. The third largest part in the country, the Inkatha Freedom Party (IFP), for instance, argued very strongly for a devolved system of powers in the country, demanding for some form of confederation, and that was for opportunistic reasons, because the

leader of that party and some of his colleagues thought about devolving as much as possible power to them in the province known as KwaZulu-Natal. They would actually gain some status for themselves; they linked up with these right-wing white groups and made very strong arguments at some stages of the negotiations. Once they could not succeed in getting what they wanted, they walked away from the negotiations, they withdrew, leaving their seats empty. Later on, they had to come back because they realised that there was no other way, but to participate. Some of those arguments were, therefore, on the table on an ongoing basis. What we have today in the Constitution, it is a flexible approach, which allows collective participation. As Mohammed said, if the people I belong to, the Afrikaners, would like to organise themselves in cultural movements and organisations, they can do that. From the artistic side, the Afrikaners are indeed more active today than they were ever under apartheid. It is almost as they revived their culture. We have Afrikaner cultural festivals around the country throughout the year, where people go and enjoy themselves. Also, the number of books that appear in Afrikaans today are far more than in used to be under apartheid. People enjoy the freedom they have, because the Constitution guarantees them that freedom. If the Afrikaner people would want to advocate separation from the system as a group, then the Constitution would not allow that. Therefore, there is freedom of cultural behaviour, of cultural rights, of practising rights as an Afrikaner, but separation in a constitutional sense is not possible. The issue that is at the heart of the debate at the moment is homeland education at school level, and there is a strong argument that educationalists are advancing: teaching in the own language at the basic education level favours the learner. There is an ongoing debate about that, which is not concluded yet, but the actual result is that we have Afrikaans schools, like we have schools for other language groups. There is a strong feeling among the Afrikaans-speaking people that they want

to keep their Afrikaans schools, at basic education level. It is difficult to say where all this debate about language is going to end up; the reality is that South Africa is a predominantly English-speaking nation, and the language of mutual conversation is English. I think that would have an impact in the long run, but nothing is prescribed as far as it is in the Constitution. There is lots of protection in terms of civil liberties, as far as culture and language are concerned in the Constitution.

Of the total population, 8 percent is white, while the Afrikaans-speaking community represents 12 percent, because is made up also by the coloured community, namely the people of mixed race. For instance, in Cape Town you will find Afrikaans being spoken by the majority of people, but they are people of mixed origins. Afrikaans is indeed a language that is very much alive thanks to the coloured community.

**Participant:** You talked about a moment of irreversibility, but after the release of Mandela from prison 20,000 people were killed, which are far more than during the apartheid era. How did they decide to release Mandela?

**Participant:** Retrospectively, did you make a list of errors that you committed? Is there any error you wish you did not commit?

**Participant:** I would like to ask a question about the black African population and inequality. How do you ensure equality in terms of employment?

**Roelf Meyer:** On the question of how the change happened, I will emphasize the key factors that contributed to the change, which may be also relevant to your case. Firstly, there were international sanctions against the apartheid regime; it was a complete, comprehensive and multilateral, as well as unilateral, action in terms of punitive measures

against the apartheid state that worked successfully. Sanctions are not always successful, but they were in our case, because they were not aimed at individuals, but at the state institutions. It was executed almost voluntarily by the different partners, because people wanted to bring an end to apartheid. The most comprehensive enactment was the US law against apartheid, the Sanctions Bill of 1996, which forced American companies to withdraw from South Africa, bringing the South African financial situation under huge pressure. The second factor was that the ANC was a very successful organisation in terms of the international lobby. They had more offices in more countries than the South African diplomatic missions. As a result, there was a general mood around the world that the apartheid had to come to an end. The South African government could have responded much earlier to that pressure, but it did not, so that it culminated, at the end of the 1980s, into a general assumption that we had no other choice. The other two factors are probably more relevant for your consideration. One is that we had an internal uprising, that was organised by various civil society organisations, the United Democratic Front was the umbrella body that put them together, but there were also other organisations. Their purpose was to make the country ungovernable, internally, and they succeeded, in my opinion, because it was impossible to keep all the holes closed, so the structure of the government started to fall apart. That is why we needed a national state of emergency, that granted extraordinary powers for the security forces, but which did not succeed because the uprising was too strong. The fourth factor is the internal change that started to take place in the white mindset, not because of the pressure, but because they recognised that the discrimination and the undemocratic practices that took place were unacceptable. Many of us, including myself, had that view for a very long time already; my own personal change process started in the 1970s, from supporting apartheid to working against it from within. At

the end of the 1980s, I was working for change in a very active way from within the NP government. There were growing elements within the NP government that worked for this change. Some of us could not tolerate it anymore and left the Parliament. I was probably not bold enough to leave, and looking back, I did the right thing, as I was able to contribute towards the change from within and to work on a constructive basis, through constructive engagement. That was a very strong factor: if you do not change your mind, you cannot bring about change. It has to come from within, it is not something that you can justify intellectually, but it also has to come from your heart and your soul. That reminds me of a message that I think applies to all conflict situations. I have seen some of my colleagues, who would see the change as a necessity; their minds told them that we needed change but they had never accepted it from their hearts. Intellectually, they could argue in favour of change, but they were not prepared to live with it. I am as angry with them as I am with those that argue against change, because they were half committed.

Those factors were the ones that contributed to bring about change in South Africa. If I could link that to the question of the mistakes and if I have to measure the Constitution in terms of mistakes or successes, I can say that there is very little we can change in our Constitution to improve it. We are very proud of our Constitution, as South Africans. Some would argue that it is too liberal, but when drafting it, my argument was that we should strive for the ideal and put it in the Constitution. Our Constitution has indeed an idealistic approach which is reflected in Chapter Two, it is idealistic in terms of the way in which individual rights are formulated, but it contains the ideal. The mistakes that we made are essentially two: one is that we should have started the process much earlier, we were ready to make changes by 1985 and we did not do it. We lost an opportunity there, we could have saved many lives and we could have saved ourselves from lots of tension that happened

in the period between 1985 and 1990. It would have created a situation where we could have negotiated on a more equal basis. By 1990, the apartheid regime had its back against a wall, because of the sanctions and the punitive measures. The country paid, and it is still paying a price for the destruction caused by the punitive measures; we have never really recovered from that. The second mistake is that we were a little bit overjoyed by the fact that we completed the Constitutional negotiations and then did not attend to the social economic transformation that needed to follow. The Constitution is a benchmark, but the social economic transformation that needed to follow to bring about change was not negotiated; it was left to the newly elected government, to find policies and implement them. That brings me to the third question: where do we find ourselves with inequalities today? We are still far behind with equalising the situation. You have seen some of it yesterday, when visiting Soweto. You will see even more devastating scenes in Cape Town, as you drive out from the airport. Those inequalities exist in our society and I think we could have done better in that regard, if we followed through on the constitutional negotiations by addressing also the need for socio-economic transformation. I would like to reserve my full answer to your question for later discussions, because that is something that we have to come back to and we have to attend to this in more specific times.

## Session 2: The conditions that enabled the process of negotiations to begin

**Roelf Meyer**, former Member of Parliament for South Africa's National Party and Chief Negotiator in the 1993 Multiparty Negotiating Forum

**Mohammed Bhabha**, ANC negotiator at the Convention for a Democratic South Africa (CODESA)

**Ebrahim Ebrahim**, former Deputy Minister of International Relations and Cooperation

**Kerim Yildiz:** We are here with Roelf, Mohammed and Ebrahim, who have been the backbone of the peace process and the future of South Africa, so this is the opportunity to ask them all the questions you have.

**Participant:** Roelf said that there were no mediators during the negotiation process, but there were external consultants. What did this process involve? Who were the external consultants? Were they international or South African consultants? When did they intervene in the process, or when did you need their recommendations? Is a process without mediator advantageous or disadvantageous?

**Roelf Meyer:** We did not have formal third party actors of any kind during the process, but we had technical support. In other words, we had legal practitioners, people from academia, professors from universities, who acted as direct advisors for the negotiations. During the negotiations on the Constitution, politicians were supported from the different teams, by expert technicians, who were mainly South Africans. There were a few parties that had international individuals, but the majority of technicians that supported the ANC, as well as the National Party, were local South Africans. The advisors in a general sense were people that helped and

gave advice from time to time. Boutros Boutros-Ghali was the Secretary General of the UN at the time and we engaged him on a few occasions to ensure his support for the process, which he gave to both the ANC and the National Party government, but it was indirect, it was not a formal process. We would arrange meetings to seek his support for certain points of view, which he was very supportive of, but he did not use the formal channels to do that. Then, there were a few governments that would send advisors to South Africa from time to time. In the case of the US government, they had sent Cyrus Vance, a former US Secretary of State, who engaged with all the parties, and particularly with the ANC and the National Party government. I would like to emphasize that we did not need mediators, because we used our direct access with each other to interact, but advisors were never excluded and we welcomed well-meaning advice.

**Kerim Yildiz:** When you look at the mediators or facilitators today, they are very crucial in the different conflict around the world, but in the South African experience you used technical support and advisors. Were they seen as a witness at the same time to any agreement between the sides?

**Roelf Meyer:** Our process was independent of adjudicators. The interesting fact is that the South African process was regarded as so inclusive, that we did not even require a referendum to approve what we negotiated together. For instance, the constitution was never put to a referendum. We had no formal arbitration from the outside or guarantor for the process, we relied on each other. That was the level of trust that we succeeded to build between us, and that is how we took ownership of the product jointly; once we completed the negotiations, the outcome was accepted by everybody, so we did not need adjudicators or guarantors, as it was not required.

**Ebrahim Ebrahim:** Thank you very much for giving me the privilege to speak to you today. I think Roelf has covered the whole question of transition. From the liberation movement, we said that South Africa was a colonialism of a special type. The whites were enjoying all the privileges of colonial power, they had the vote, a good standard of living and everything in their favour. On the other hand, the blacks, as a colonised people, did not have the vote, hospitals, housing or social services. The difference was that they were living in one country; not like in Algeria, for example, where the fight was to get rid of the French people. From the very beginning, from the liberation point of view, we felt that there had to be a political solution to the problem, that would include all people in the country.

We have never said that the whites belonged to Holland, for example; on the contrary, we considered everyone to be South African. That is indeed also reflected in our Freedom Charter, which was our starting point.

With the formation of the African National Congress – the oldest political organisation in the continent – the method of struggle we adopted was very important. You have to identify the problem first, and then identify the method of struggle. We decided that we should use dialogue and negotiation. We have always said “let us sit together and discuss our problems”. Also, there was the Gandhian method of struggle, a non-violent method, which was in itself geared towards finding a peaceful solution to the problem. Then, we formed an alliance with the Communist Party, which started to influence us in terms of striking and demonstrating. What I wanted to emphasise here is that the ingredients of a political negotiated solution were already present, because of the nature of the organisation, and the nature of our struggle.

However, the non-violent struggle became impossible after 1960; Mandela decided that there had to be some response to the violence of the government towards unarmed people, and he formed the armed wing of the ANC, called the Spear of the Nation. When the army was formed, the questions that arose at that time were: “what is it going to achieve?” and “how it is going to affect the struggle of the people?”, but it was accepted that the armed struggle was limited to targeting government installations, and was not targeting innocent civilians.

Also, by signing the Geneva Convention, our president Oliver Tambo affirmed that we were going to conduct our struggle in terms of the Geneva Convention. That was important because it gave the ANC the moral high ground internationally; we were indeed supported by the international community, which did not see us as a violent terrorist organisation, but knew that our struggle was justified and understood why, at a certain stage, we had to form an armed wing.

The struggle was political, and that is an important factor to bear in mind; you identify the nature of conflict, you identify the method of struggle and you put on the agenda the question of peaceful negotiation all the time. Even when the ANC was banned, in a big rally, Mandela called on the government to have a national convention; whenever we took action against the government, we were the first to call on dialogue and negotiation. That also gave us the moral high ground and demonstrated that we were not terrorists, that we had a just cause and we would have resolved this problem only through dialogue and negotiation.

In the negotiation process, we had to put the question of human rights at the centre of this negotiation, because of the nature of South African society. We had a very strong leadership, and Nelson Mandela was able to negotiate also from prison. He would discuss with us, on the phone,

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the negotiations he had. I remember him saying two main things: that the Communist Party was concerned about a compromise; and that there had to be a majority rule, but the fears and concerns of the white minority had also to be addressed. The only way in which this could be done was through a democratic constitution that guaranteed the rights of all individuals.

With regards to the mandate, both the ANC and the NP had to get it. The government obtained it through the white referendum, whereas we obtained it by bringing different organisations together, which were eventually 206, and included civil society, trade unions, and even organisation that supported the government in the past.

When we had our first elections, the Parliament had two roles: firstly, it could pass laws; secondly, it became a Constituent Assembly. Every weekend, the Parliament would organise a multi-party delegation to go to the rural areas of the country and tell people what was happening in the Constituent Assembly. The process was very transparent, it was on TV and radio, but since people in the countryside did not have a TV, every weekend we would go there and talk to the people. In this regard, transparency and inclusivity were very important, as they gave legitimacy to our Constitution.

We were thus able to establish a free, democratic, non-sexist society, and this is due also to the fact that we are a very diverse society: we have 11 ethnic group, with relative languages, in South Africa. We made all these languages official and, in addition, our Constitution says that we must promote also non-official languages. That is very different from other countries, where people are not even allowed to speak their own language. We were able to have this freedom primarily because of our

leadership and because of the type of method we used in our struggle, which brought a diverse society together.

**Mohammed Bhahba:** To look at the context under which we negotiated, it is important to consider the year 1989 and the fall of the Berlin Wall, which did have an impact on the horizons and the framework within which we could negotiate, because a lot of the economic factors and the economic investments in South Africa did have some sway in the decisions we made when we negotiated. Secondly, we have to remember that we were subjected by a special type of colonialism. White people have been here for more than three centuries, no one wanted them because they had become pariahs in the world. In the rest of Africa – we were the last country to obtain our freedom – colonialists went back to their countries; in Zimbabwe, the British went back to England, the Portuguese went back to Portugal from Mozambique and Angola. We knew, as the ANC, that our enemies were within the country, and that we had to live with them. The third important factor is the genius of apartheid: the entire objective of apartheid was to try and divide us on tribal lines. They worked on a system of patronage, as there were traditional leaders. This is also a contradiction, in the sense that now we have a modern society, which is reflected in our Bill of Rights, but that lives alongside a very strong, traditional community. We saw what happened in Africa, we see what is happening in Iraq and in Libya: you remove whatever power there is, and the vacuum is going to be occupied by tribalism and different militias. To avoid that, we needed to have a very strong sense of patriotism and notion of a state, because the design of apartheid was to separate us.

We made lots of mistakes in these 25 years, but one of the things that I am particularly proud of is that our primary identity is South African, regardless of our identity, as Muslim or Indian, for example.

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In my view, that is perhaps our greatest achievement, that we were able to draft a constitution and have a negotiation process that did not break up this country. We had 11 statutory police forces in this country, because of all the different homelands. We also had non-statutory forces, such as the MK of the ANC, and we were able to integrate them all into one society. Perhaps, our biggest shortcoming is that we did not have a social compact in the implementation of the socio-economic consequence of our Constitution, and we are paying for it now. I say this because we got political power, but we had to make compromises on the transfer of economic power; the structure, as skewed as it was, was not changed and has not changed to the extent that we would like to have it, until today. It has allowed populists to come in, especially with the downturn in the economy.

In the context of why we negotiated in a particular way, it is important to remember that the ANC brought this country down to its knees through social unrest, following our tactics of making this country ungovernable; and it succeeded, to the extent where South Africa was in a negative growth rate. Secondly, we were able to mobilise international society and the international diplomatic community, to the extent where sanctions started to work. Thirdly, for all its weaknesses and the controversies, we were having an impact on the psychology of the people in the country, by putting bombs in strategic places. However, the truth is that we had two negotiating partners who neither had the capability of defeating the other, so we both negotiated from a position of weakness, and not of strength. It was a stalemate, that brought us to a situation where we had to decide whether the civil war was the way out or we come to a constitutional settlement, with all its weaknesses.

We did not go into negotiations with a haughty attitude, thinking that we were going to defeat the enemy, as we were not capable of doing it.

On the other hand, adhering to the Geneva Convention allowed us to win the moral high ground and mobilise the religious community. The religious community, along with the civil society and the press, created a framework for our conduct as politicians, they created a very strong and moderate centre based on human rights.

It was not about who was right, but it was about what we are going to do as a society and under what framework we going to live as a society. That is why we got so much diplomatic support, because they did not see us as terrorists anymore. Moreover, I would like to dispel the notion that this was a fight between black and white people. It is true that white people were in privilege, but, equally, the ANC had a number of white people as well, because we had framed it around morality and ethics, not about right and wrong. Mandela used to say, indeed, that the biggest victims of apartheid were the perpetrators of apartheid, because it dehumanised them. It was under this narrative that we started building social cohesion. I will give you an anecdote to illustrate the South African identity. At the opening of the World Cup, I was sitting with Roelf, and sitting across us there was a lady wearing a niqab, with a South African flag. That lady has preserved her Muslim identity, whether we agree with the niqab or not, but at the same time the South African identity was maintained. Whether we want to go into a constitutional discussion, the question I always ask first is, do you want to be part of this country? Then we talk about how you participate in this country.

What we have learnt, is that your enemy is not homogenous; you have moderates also within your enemy. If you reach out to the moderates, you will find that you have more in common with your enemy. The second lesson we learned is to allow your adversary to mobilise in their own community, so that the negotiating partner you are negotiating with is representative of the broad consensus in your enemy itself. We

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were very fortunate in this sense, because De Klerk managed to bring a significant majority of his followers on to the negotiating table. And once that happened, once we had the two biggest groupings, the lunatic fringe started becoming less and less relevant. However, they put huge pressures on your negotiating process. Many people died after 1990. While we were talking, people from the anti-apartheid movement went into a church and killed worshippers, while there were white people in the military killing innocent people. The defining moment was when Chris Hani, who could have been the future president of this country, was assassinated; we had huge challenges, but because we had this strong centre, we were able to overcome them, by getting people to follow a common purpose.

One of the things that contributed to the success of this country was speaking with each of the communities. You cannot tell people to start forgiving each other, you cannot achieve that in a room with politicians talking to each other. That is where civil society played its role and started to build the cohesion from the bottom up. Fortunately, the ANC was very well structured, and could send messages out immediately to its branches – once it was unbanned, it started to establish branches all around South Africa. A very important lesson to share in this regard, is that you should never make a process top down, as it is not going to work. It has to be bottom up, as you have to win the confidence of your people on the ground. For this purpose, the role of civil society, religious communities, NGOs cannot be underestimated. They are the ones that make it happen, even though the politicians can take credit for it. In our case, also the press played an important role; we had white and black children from different backgrounds going on a TV programme and debating what the values of a constitution should be. We used to sit and watch these programmes, which eventually created an excitement in the

country, a feeling that we are creating a future, that everybody is going to be part of it.

Another important thing that Mandela said, is that you do not negotiate with your friends, but you negotiate with your enemies. No matter how small that party is, you have to get as many people as possible under one roof, so that whatever solution comes out from there, there is an ownership of it. Inclusivity and ownership were the key underlying pillars of our negotiating process.

When we started talking about the architecture of the state, we started a constitutional debate about whether South Africa should be a unitary state or a federal state. Eventually, we structured our Constitution as a unitary state with federal features, because we decided to allow regional expression. In this way, the Constitution itself did not only promote social cohesion, but also recognised the diversity in our country.

To reiterate, in our constitutional architecture we had to be mindful of three very important things. First, the distribution of wealth, which is uneven in our country. We had to make sure that some of the poorest areas of this country were benefiting from whatever constitutional system we had. Secondly, we had to take into account that despite we, as modernists, believe that we must suppress tribalism, those kings are respected by the constituencies, and to ignore them and their identity would be politically dangerous and naive. Thirdly, we had to take into account that the ANC was born out of civil unrest from the ground up, so the role of local government had a special place in our heart and influenced tremendously our constitutional architecture; that is why we have now a unitary state with federal features. In South Africa, there are nine provinces with nine Parliaments; we have a national government that has two houses, the upper house and the lower house, which we

call the National Council of Provinces, and which is largely based on the Bundesrat in Germany. The distribution of the budget, as well as our fiscus, are done nationally, based on the development index. In this sense, the provincial powers do not allow provinces to raise taxes, because we knew that otherwise we would have had a dangerous situation in which the poor would become poorer, and the rich would become richer, as many areas of this country are underdeveloped. Therefore, an independent body called the Fiscal and Financial Commission looks at the developmental indexes, and advises the Minister of Finance on how to distribute our finances every year.

The last point I wanted to make is that 25 years ago we sat down and we said that we could have become just as dangerous as the people we were fighting, if we did not check our own power. For this reason, we have what we call chapter nine institutions: one of them protects cultural rights and language, one is the Human Rights Commission, the other is what we call a Public Protector, that looks at government abuses and has the right to investigate, and, most importantly, we have our judiciary.

We went through a very difficult period in the last eight years, our institutions were compromised through a system of patronage, and our independent judiciary played a very important role, but someone will talk about it to you in the next few days.

Going back to the question about the distribution of wealth, we did not transfer economic power. According to the apartheid design, and to the so-called spatial apartheid, black people were only used for their labour and were living away from the work centre, as you have seen in Soweto. To reverse this, it is going to take generations, because there is the issue of private property; right now, we have the debate about expropriation without compensation. We thought that the solution would be to create

an emerging and a strong black middle class; and the black middle class is now the biggest buying power in the country. However, now we are moving from racial distinction to class distinction. We now have put into place black economic empowerment mechanisms, some of which are taken from Malaysia; when you tender with government, including banks, it must include women, the disabled, and people of colour, so that your tenders are awarded on the basis of that. It is not entirely successful, because these things can be manipulated, but these are the methods we use to create a strong black middle class. Talking about percentages, the black middle class was 2 percent in 1994, while now is around 16 percent, or even more. It does not reflect the demographics, but it is a steady approach. We have now the highest Gini coefficient in the world, and this is one of the biggest challenges we are facing.

**Participant:** You said that Mandela was moved from Robben Island to a prison in the mainland, in a house. How did this transfer happen? Was it due to the support of the political power or to the effect of ANC actions? Did the government support this event?

**Participant:** Inequality is a major issue in South Africa. How do you think this problem can be addressed? Are there any strategies that have been put in place?

**Ebrahim Ebrahim:** About the first question about Mandela, if you look at the history of leadership of the ANC, they were arrested in a place called Rivonia, they were sentenced to life imprisonment and they were brought to Robben Island. At a certain stage, they were taken out of Robben Island to a prison in the mainland, then Mandela got sick and was hospitalised. For some reason, they decided that from hospital he should not be taken back to the prison. He was put in a prison complex, not a prison cell, it was a house that belonged to one of the officials. He

could wear normal clothing and food was cooked for him. I think that separating him there was an opportunity for the government to engage with him and negotiate. Secondly, they allowed him to meet people and to discuss with his own comrades and colleagues. There, he started to lay down broadly what was the ANC policy and how he thought that we could negotiate and resolve this problem in South Africa. He was also engaging with the South African intelligence, that wanted to find out exactly what the ANC policy was and what type of South Africa he wanted. That process of engagement started there, while he was in prison.

**Mohammed Bhahba:** Let me start with the last question. There are many children of white people who have never had the direct privileges of apartheid, but they feel that they are carrying the burden of their forefathers. At the same time, there are black children who say that they have been sold out, that they still do not have access. With this, we learned very quickly that this is a very long process. The debate about land is still a very strong debate. A very important lesson that I would like to share in this regard, is that raising expectations and not being able to deliver creates a very dangerous situation. In our case, the fact that black people do not have land it is not due to white people, but it is due to administrative incompetence.

Also, our own mentality as slaves has not come out of us; I find many black people using skin lightening to define their beauty. How are we going to get rid of that? However, I see the confidence in the next generation, they are emphasising meritocracy and forgetting the baggage of their forefathers. Certainly, you get resistance, you get nationalists on both sides, but you will not find people talking disparagingly about each other, they would do it at home perhaps, but not publicly, because

we have strong institutions that protect our values, such as the Human Rights Commission; they would take you into court immediately.

**Roelf Meyer:** I will start with the last point. The last election that we had on the 8<sup>th</sup> of May, last month, was probably the last one that the ANC could win as a liberation movement; in other words, the struggle benefited the ANC to some extent for a number of elections after 1994. Probably it is a good development, because it means it has to stop performing, and now there is a lot of doubt that the ANC is able to turn itself around. What we need to do to change around the inequality gap depends on two things. One is the level of our education, specifically basic education, up to high school level. The biggest damage that the apartheid brought to this country was indeed in the area of education, and in these 25 years we have not succeeded to turn that around and improve on our capability to provide education to learners, to qualify them for the working career. The other one is that inequality can only be addressed through economic growth. At the moment, more than 25 percent of South Africans have received social grants and most of them depend on those social grants, whilst our direct taxpaying population is less than 10%. Therefore, when you talk about inequality gap, there is already a huge contribution that comes from the wealthy side towards closing that gap. However, if the state does not earn sufficient revenues, the capacity of keeping up with social grants is going to be reduced. A substantial portion of the ANC sits on an argument that economic growth should come through state intervention, not recognising the need for private sector to play that role.

In terms of closing the inequality gap, I think that South Africa can learn a lot from a country like Germany, for instance. Part of the problem is that, despite having a successful constitutional change, we carried on with the same mistakes that we had under apartheid, economically

speaking. It is the so-called free market economy. I use Germany as an example as they have successfully dealt with the integration of East and West, which was done on the basis of a social market economy.

One last point that we have to take into account is the influx of Africans into our economy. We have a totally porous border in the North, we have no account of how many people are actually coming into South Africa, as people coming with no registered documents can count anything between 5 and 10 million. We have no record of that, but we have to absorb them in terms of social needs, of services like education and health. Again, that has a huge impact on our inequality levels. The people who are living in the poorest conditions in South Africa are actually foreigners, because they do not qualify for social grants, for example, but they are coming here because they cannot survive in their own countries.

**Participant:** In the 1960s, the ANC preferred the armed struggle to the non-violent struggle. How would you explain this choice?

**Participant:** In South Africa, the government was not able to achieve socio-economic transformation. Under apartheid, people lived under pressure due to white racism, but today, people have begun to live under pressure because of black racism. Do you think that the white oppression is a reflection of the black oppression? What do you think about this problem?

**Ebrahim Ebrahim:** The ANC had a whole history of nonviolent struggle, but then it was a difficult choice, as all legal methods of struggle had completely ended. The leadership of the ANC and of other parties was banned, so it was a difficult and painful choice. It was decided that we would have an armed wing, which would not be an organisation that was going to kill people, but that was going to target government institutions. Also, we had a rival called Pan Africanist Congress, that

immediately formed an armed wing, they were very anti-white and very violent, so we did not want to create a space for them to continue the violent anti-white armed struggle.

**Mohammed Bhabha:** There is no black or white oppression in South Africa, what is happening is class distinction within the black community; it is more like a class divide rather than a racial divide.

The ANC is struggling to modernise itself from a party that was a revolutionary movement, and there are generational changes as well. There are huge changes that have been taking place, such as the representation of women, which is 50% in the Cabinet.

**Participant:** Probably, if the ANC restore itself, it will lose the next elections. What would a change in the ruling party mean in South Africa? What is the biggest opponent of the ruling party?

**Participant:** South Africa is rich of natural and mineral resources. What is the contribution of these resources to the economy of the country?

**Kerim Yildiz:** We had a very constructive peace process in Turkey for a very long time, but it has stopped, that is why we are saying that it has been parked. As DPI, we believe that time will come, and that we all have a duty to support it and to prepare society for it. What should we learn from you to put the process back on track?

**Roelf Meyer:** If the ANC does not win the next election, it would mean that it will have less than 50 percent, but it will still remain the biggest party; they will have to negotiate a coalition of some kind. As we have a pure proportional election system, if a party does not reach the 50 percent mark, coalitions will come into play.

As far as the wealth of South Africa is concerned, South Africa was a country based on extraction of mineral resources, but those are not important anymore. With the fall of the economies around the world in 2008 and after, South Africa's economy is not based on mineral resources anymore. In any case, the biggest gold mines nowadays are outside of South Africa, in DRC and West Africa. Today, we are the biggest producer only of platinum, but its need is in huge decline. At the moment, our economy is in the phase of reinventing itself.

With regards to the third question, I think we have to remind ourselves that it is actually what we have to engage in all the time. What can this delegation learn from South Africa? I think we talked about a few points through the morning. One was the moment of irreversibility, if you have not reached it yet, you have to determine what that moment of irreversibility can be, so that the process can go forward instead of getting stuck. The second one that I want to emphasise is the one of constructive engagement: do not reverse your position, do not get off the table, make sure that you engage all the time and make sure that it is constructive engagement towards a goal of long term peace, whether it is on the government side or against the government. The third point is the one of mindset change. If we did not ensure that the biggest portion of the white community changed their mind, we would never have seen the changes happening in South Africa. Equally, if Mandela did not give the lead on the ANC side, or did not change the mindset towards a constructive engagement with the white regime, it would have never happened. I think those are some of the key elements that came out from the discussions this morning, and I am sure we will pick some others in the next sessions.

## Session 3: Architecture of the South African peace process: who was involved, how did they engage and what were the challenges

**Sydney Mufamadi**, Former Minister of Safety and Security

**Roelf Meyer:** For this third session today, we have Sydney Mufamadi. Sydney was appointed as Minister of Safety and Security after the 1994 election, and has been Minister of Provincial and Local Government since 1999. He is also a professor at the University of Johannesburg and engages in many advisory capacities, including advising the current government on a number of issues. We are very fortunate to have him here this afternoon to share specifically some of his experience in relation to the South African settlement and the peace process that we had. This morning we gave an introduction of the whole process that led us to the peaceful settlement, but I think it would be very useful if you described your insights as to the process that led up to the start of the change in South Africa, and where you found yourself in that phase of the South African experience. Welcome, Sydney.

**Sydney Mufamadi:** Thank you very much, and thanks to DPI, for giving me the opportunity to interact with you. Also, welcome to you into our country. History brought us together, when in fact, we spent a long time apart from each other. There was a long conflict in our country; on the NP side, there was an attempt to maintain the status quo, which was seen as an exclusionary power subjecting the majority who had no say about national affairs. The organisation that I belong to, the ANC, was formed in 1912, and from its inception, the organisation declared that it was committed to finding change in South Africa through peaceful

means. Indeed, in the beginning, you would see the leaders of the organisation putting together delegations and sending them to Britain, making representations on behalf of black people. The National Party was formed in 1914, two years later, and in 1948, it came into power as a result of elections where only whites participated. My party continued to talk about preference for peaceful change, but it was gradually becoming radicalised and militant as a response to the repressive means that were used from the other side; people were getting arrested and were getting banned. The real turning point was in 1953, when the defiance campaign was launched and the party institutionalised the practice of apartheid; you would have policies that prohibited blacks of being on the beach, for example, which then provided the liberation movement, the ANC, with more targets against which to mobilise.

In 1960, the government decided to ban the ANC, and another party which was an offshoot of the ANC, the Pan African Congress. From the point of view of these organisations, once they are banned, it means that the option of dialogue is no longer available because in the first place, just saying that you were a member of that organisation had become an offence. In this situation, where the organisations were banned, they began to look for other methods to supplement the effort at continuing to organise the people. One of these methods was to organise the international community to support the struggle for change, to help put pressure on the government to behave differently. The result of the activation of that front of organising was the emergence of what became the single biggest solidarity movement in human history, the anti-apartheid movement. In that sense, the world became engaged with the South African cause. However, in a situation where you are banned, you start saying that maybe the only language which the government will understand is the one they use, namely the armed struggle. Along the way, there were setbacks, the leadership of the organisation was rounded

up, Nelson Mandela and others went to jail for life, other leaders went into exile, those that stayed had no space where to work, so they adopted covert methods of organising.

The organisation was unbanned in 1990, after 30 years of illegal existence. During that period, we found other ways of working even inside the country, forming organisations, some of which looked like single-issue organisations. For example, we formed an organisation around the issue of cheaper public transport; we were campaigning for the release of the people that were detained en masse, or for the release of those who were doing long term imprisonment; we went as far as forming an organisation that was called the United Democratic Front, which had the same intents and purposes of the ANC, although we would deny that. What became clear over time was that although you are banned, these organisations continued to exist, they were fighting for legal space, but also the other pillars had been activated, such as the response of the international community. The NP was beginning to find it difficult to govern in the same old way. There was ferment in the country. I remember, in 1986, I was talking to a comrade that was in exile who told me to read the speech delivered by the Finance Minister, in which he used the word “affordable” 14 times. It must mean that such is the depth of the financial and economic crisis, that this phase is closing down for the government, even to find the resources that they must use to deal with us.

There were also developments around the world at the time, and one of them was the Solidarity Movement; this was made up of civil society organisations in different countries, including in the big power countries like America, the UK, Germany, who were organising labour and were organising to support our struggle here, even in instances where the official position of their government was not supportive of what we were

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doing. There were instances where we had fairly good support from governments; it would have been from countries that shared history of subjection and colonialism, such as India, and the socialist countries. With developments in 1989, the collapse of the Berlin Wall, you could see that the world was changing. The NP succeeded to intimidate the countries in their neighbourhood, to make it difficult for them to continue to support our struggle, so were moving some of our bases away from countries that were close enough to enable our people to come in and operate and go out. At that point, then president of the ANC, Oliver Tambo, said that he would not be surprised if at some point soon we were brought under pressure to negotiate; even if, in our own estimation, conditions favourable to negotiate, did not exist. Therefore, he said that maybe what we could do is to prepare ourselves as if we knew that we would be negotiating the next day, so that we are not caught unprepared. Some of our colleagues were given the task of developing a negotiating concept which took the form of the document that came to be known as the Harare Declaration. The leader of the ANC felt that it was important also to get the support of the countries which supported our struggle, to stand behind this negotiating concept that was drafted by the ANC. You will find two interesting things in that document. One is a sentence which says that in our country exists a concert of circumstances which makes it possible for us to bring about change through peaceful means. It is interesting, because it was actually a culmination of a long debate that took place within the organisation, with some people saying, “we can’t negotiate with these people, they are not interested; if they have not negotiated with us for so many years, what makes you think that they will now want to negotiate?”, while others would list the reasons why we should think about negotiating. That statement was thus showing that the prevailing consensus in the end was that there were circumstances to bring about change. Then you will also find a section in the document

with a subtitle “statement of principles”, which was saying that we will go into a dialogue with the aim of producing a particular type of alternative society; that society is actually spelled out in the document, a non-racial, democratic, non-sexist South Africa. It was like a manifesto. That is because there was a need to indicate what kind of South Africa we were committed to building, so that the people could decide on the basis of what we were communicating, whether they can comfortably put up with the outcome of this negotiations. It was indisputable that the elections would have produced an ANC government. We would then start to talk about other issues, such as governing with constituencies that were not traditionally our constituents, in terms of making them feel that they are also represented in this arrangement. That is why we made commitments to a government of national unity. Some of these commitments are things that we made before actually negotiating, because we were thinking about a South Africa, which is moving away from a situation where it was at war with itself, and that was creating an idea of a shared, inclusive future. We then realised that we could not have a two-sided table, because there were other contending forces in the society, even though we might have been the premier liberation movement, because of the way the struggle unfolded and the role we play in that struggle. So there were other parties that might had views about what South Africa should look like, and, for this reason, we thought that we must aim to have a round table, which is inclusive, and where no one’s voice is left out. That is the way you make it possible for everybody to associate with the outcome of this process, even if, when they take part in the elections, they don’t get a seat in Parliament, but, at least, they played a role in shaping the new dispensation. At the end, we had more than 20 parties at the negotiating table, but the majority of those parties continued to look at the chemistry between the ANC and the NP. If it looked like the ANC and the National Party were not agreeing on any

issue during the meetings, they would be worried because they knew that an agreement was safe if it was underwritten by both parties. So we did not impose ourselves, it was just something that you know, that if these two parties do not agree, then we are back to the bush.

From our side, we also had formal alliances with the communist party and with the organised labour, so we made sure that in some of the subcommittees that were established to deal with specific issues,

we also included them. One problem that emerged during that period of negotiations was the flair up of politically motivated violence in the communities on the ground. And we realised that it was constituting the biggest obstacle to the progress we were trying to make in the dialogue. We negotiated an arrangement, which was called the National Peace Accord, that provided the structures that will accommodate political and non-political parties, that would come together at any event of violence, particularly under the chairmanship of neutral organisations like church leaders, business leaders, and try to understand what the causes of violence are. In that sense, we were building a non-partisan peace movement, but we also involved the security forces, the police, the army, in working with these committees to address the problem of violence. So the problem did not remain unaddressed, but it was not addressed in a way to clog up the dialogue.

It was complimentary to what we were doing in the dialogue itself, because at one point, the ANC pulled out of the negotiations, as it thought that the government was not interested in finding a serious solution to the problem. We got advice from some of our friends, who said that the NP people might have been afraid of the change that was coming, so they were postponing the day of reckoning. This is the reason why this process of dialogue had to move forward, so that we could take

out of the way all the underlying causes of the strife in the nation. One time, we really thought we were facing a fatal blow, when one of the most popular leaders in the country, Chris Hani, who used to be one of the commanders of the MK, was assassinated. We did not know how the population was going to react, but we suspected that it could go up in smoke. Mandela said to stay calm and turned the situation into an opportunity to get us to move the dialogue on, as perhaps the process was moving too slowly. This event also demonstrated how all these pent-up emotions and anxieties can result in things happening on the side, which will affect the process negatively.

Although it is not possible to replicate the experience of another country, we share this experience for learning purposes, so you might find few takeaways that you can identify from this kind of interaction. Thank you very much.

## Q&A session

**Participant:** When you became the minister of police, how was it possible for you to manage the situation? Did you have any kind of strategies, or alternative plans in order prevent any negative effect on the process that an event might have caused?

**Sydney Mufamadi:** The police played a particular role in the country. They were an instrument used to suppress resistance. And a lot of things happened. We spent two years killing each other, and the police played a particular role in that. When we talk about constituencies that feared change, they include the police.

The approach we took was that of the rear-view mirror, which it is an important part of the car, but the reason why it is smaller than the other one is because it represents things that matter less than what lies ahead. We were not there to change the past, but to change the present and make sure that the future looks much better. And we said that every party must be given a chance to decide whether they want to be part of this process. Then, I was given the assignment to bring together the 11 police forces in the country to form one police service and to change policing culture. Other colleagues who were in other portfolios had their own challenges which were different, but taken together they were the same challenge. What we needed to understand was that we cannot deal with petty issues when there is this big picture.

I hope people who are finding themselves in conflict today are not failing to find their way out of those conflicts because they are too busy to deal with the past, as it does not help.

**Participant:** How did the transformation process take place from the apartheid police department to today's police department? How is it today? How are the records of police violence today?

**Sydney Mufamadi:** When we were forming a new government, there were 140,000 police officers; however, because under apartheid the country was balkanised into homelands, each homeland had a police force. Having 140,000 members in a country of this demographic setting, it is clear that the overwhelming majority of these members is black. The truth is also that they were immersed into a policing culture of the South African police, which used the same curriculum for their training. The first thing we did was thus to change this curriculum. Secondly, since we could not take people in the leading echelons back to basic training, we made sure that we exposed them to a different philosophy of policing. Some left, but changing the policing culture and demilitarising it, is a process which will take time. We also created a situation where members of the police know that if there are allegations that any one of them is violating human rights, they will have to account for those things. This also means that you must give them new skills, because, for example, they knew only one way of getting information from a suspect.

**Participant:** Could you tell us about how the ANC got involved with the security forces structure? Were they left out or did they get a job?

**Sydney Mufamadi:** We had the statutory forces, which were made up of the South African Defence Force and the Defence Forces in the homelands, and the non-statutory forces, which included the armed wing of the ANC, the armed wing of the Pan African Congress and the armed wing of a smaller organisation, called Azanian Liberation Army. We went through a process of amalgamation: we had people that were militarily trained who went into the Army, the Air Force, or the Navy;

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we had those who entered into the police and some who went into the intelligence services; some others chose to demobilise, while others just wanted to be civil servants in the civilian wing of the public service.

**Participant:** How did you manage communications during the toughest times? Did you have a strategy to create impartiality of media? Secondly, your success in South Africa was revolutionary. Are those children of the revolution still active?

**Participant:** Despite many years have passed from the settlement, why do we have to go through so many security checkpoints in South Africa?

**Participant:** You said that some of the militants were employed in the civil service, while others were demobilised, was this guided by a framework? How was this legally provided for? Did they do whatever they wanted? Secondly, the peace process included everyone, do you still feel that is it still the case? Is everyone included in the society?

**Sydney Mufamadi:** The people I was referring to as militants, they were militants insofar as they were opposed to the apartheid status quo. I am absolutely certain that if we did not have apartheid many of those people would have become something else other than what they became. But these are choices that you were forced to make by circumstances. The people that had received military training could say that they could use it to serve their country. So there was an opportunity to join the army, but they did not do it. There was a process of determining suitability for going to the army, that was agreed by the political leadership across the board.

We wanted everybody to feel included and I think we are still inclusive. In the last election, that took place in May, there were 48 parties that participated, because everybody felt they had a chance. However, you

need to get 45000 votes to get one seat in Parliament, but this shows that everybody has as an opportunity to participate in the process.

It was absolutely critical that the process had support from the public; both the government and the ANC had their own way of communicating with its supporters, as they knew that elections would have come at some point. I remember, at one stage De Klerk asked us to allow him to organise a referendum, in which only the whites would have participated and in which he asked for a mandate to be involved in this process. That was because there were some leaders from the white community who were trying to undermine the process. We discussed it and then decided that perhaps we should allow him to do that, because he was an interlocutor in the negotiations and it was important that he brought his constituencies together. Communication was thus very important. People from the parties were not relying on second guessing anymore, because they were working amongst one another, and they were communicating.

We have the problem of crime, which is a universal problem. We spent lots of resources, trying to create an infrastructure which will allow us to improve levels of human security. People must feel secure in the country; you do not want to tell them that they must lower their guard. If people are feeling unsafe, they will do what is necessary from their point of view, to protect themselves. A few days ago, an auditor was conducting a forensic audit for our public broadcaster; when he arrived at home and got off his car, someone attacked him, but fortunately he was armed too and he protected himself. When the criminals saw that the target was shooting, they drove off and left. The police arrived within 10-15 minutes. These are the sorts of things we want to see, the police responded quickly, so that we can raise levels of safety and security in the country. In this way, it will become unnecessary for people to take extra measures, because they can relax and feel that the police is on top of the situation.

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However, it is also something that takes time; as I said, it is a universal problem. Luckily, today we do not have incidents of violence that you can attribute to political unhappiness. This achievement is something we want to preserve into the future, but it would be nice to have a country where you can just walk freely, without thinking of being mugged.

**Participant:** The police under the military was also part of the negotiations, talking to people at the local level. How were the police reacting at this level? Were they shooting at those people and did this affect the negotiation process?

**Participant:** George Orwell talks about internalised colonialism – Burma is an example. There are claims that the colonial period still plays a big role. Can you relate to this as well?

In Turkey, when we talk about discussions with Öcalan, the PKK is seen as a criminal terrorist organisation. How do you provide a legal framework for our own negotiations?

**Participant:** Are the crimes you were talking about connected to its colonial past and thus to apartheid? Could it be due to the economic crisis and unemployment?

**Sydney Mufamadi:** With regards to how the police was reacting at the local level, you must think about South Africa before 1990, when people would organise a march, and the police would shoot at the demonstrators. We agreed at the negotiating table that the right to protest must be upheld but the protesters must also respect the rights of those who do not want to be part of the protest. The police have indeed an obligation to protect the marchers and to protect those who are not protesting. That meant that you know the new way of doing things; the police do not see protesters as a target; they sit down and have a discussion even about the route

that the protesters will take and where they are going to assemble finally to disperse. Those things were discussed by the political leadership, but also with the people. The communities were encouraged to work with the police and form what we called community policing forums, where they agreed to share information with the police about crime trends and what can be done about it within a community. They were coming from a different kind of relationship, but we are encouraging them to take responsibility for building new relationships.

Crime has got more than one causality. It can be a result of economic deprivation, but then you can have also people stealing 500 million Rands, and that is not due to deprivation. The enforcement of the law is important, but the government has to stay focused on addressing other causalities of crime, including trying to improve the economic situation in the country, so that we can create more jobs.

There will always be a debate about colonialism. The point is that we do not need it, as it does not respect the rights of some people. You want a system where the entirety of the population is given equal opportunities. That is what we want, otherwise we will continue to make excuses for reintroducing bad systems.

**Participant:** Did people accept oppression as conditional effect of life?

**Sydney Mufamadi:** Yes, that is why they organise protests. Every system, even if it is bad, has got a way of legitimising itself. In the village where I come from, they justify inequality by saying even the fingers of your hand are not of equal size. So that is why you organise and get people to know that there are choices they can and should make, because oppression does not give you choices.

**Participant:** How was the TRC process? How many cases were brought into the court?

**Sydney Mufamadi:** We will discuss this question further this week, when we will talk with Fanie du Toit. However, to reply to your question, we are going into a new South Africa, which will become successful if we treat reconciliation as one of the success factors. We should forgive what happened in the past, but there are people who lost their loved ones and they do not actually know the circumstances in which it happened. You cannot say to those people that they should forget. We should create possibilities, even for the perpetrators, to come forward and say what they have been doing, mostly because they were doing their job. Indeed, there are things that you would not do ordinarily, but that you end up doing because you are in a certain situation.

We have not organised enough resources for counselling, for people coming from those conflicts, or for people who spent two years in jail, in exile or in the underground. These are human beings and those conditions in which they lived were not habitable conditions. However, when we create opportunities for people to talk about these things, they reach out to each other and after that process, they also become more than just acquaintances, they would occasionally meet, just to mix as people.

**Participant:** As a legal principle, crimes against humanity cannot be forgiven by the state. This is a basic principle of international law. How could the state forgive the crimes on behalf of the victims?

**Roelf Meyer:** This lady, 10 years ago, interviewed me in my office in Johannesburg. She asked me a question, and I am now posing the question to you. She said to me, how was it possible for the majority to forgive you – meaning me? I tried to explain the concept of Ubuntu,

and I think you could say something about that, because I think it is a powerful message.

**Sydney Mufamadi:** It really depends on what we think this issue of security is about. If you see it as human security issue, the state has the responsibility, as it has responsibility for social provision. It is actually about the question whether people feel that justice was done, but also, whether they want to forgive. In Rwanda, when the genocide happened in 1994, a process that was slightly different from our Truth Commission started; it was a community-based process of working towards reconciliation, where the perpetrators would come to a community-wide meeting, sit down with the families of the victims and talk with them. On their own, they decided to forgive and forget. It is absolutely important that the state finds a way of supporting that process. As members of the community explore issues of reconciliation, asking themselves whether they can or cannot forgive, they are discharging their obligations as citizens. In South Africa, we decided it was important that the Commission asked the affected families how they felt about coming forward and asking for forgiveness. We explained that if these people who did wrong in the past are not given a chance to become normal citizens, they would find their own means of wanting to survive, some of which will be antisocial means. Having said that, there are things that happened in the past, and it beholds to us to draw a line somewhere together, but you cannot achieve reconciliation with the perpetrators above the heads of the victims. You must have a process which is inclusive, and which brings the victims in as well, because they also might need counselling, to overcome their pain and traumas.

**Participant:** In Islam we have the same rule. Islam says that only the victim can forgive the perpetrators, you cannot force to forgive, as a state.

**Sydney:** We don't force, but we create conditions for people to decide, to the extent that they realise that they are also not alone. There are others who are equally affected; the victims were innocent civilians, both black and white.

What Roelf refers to as Ubuntu, is about people who are not forced to forgive, but who find it in them, to forgive. I know some instances in which, in defence of a victim, a perpetrator was given a punishment that was too harsh, and the victim would beg not to do any harm to the perpetrator. It is a human trait, to find it possible even to try and understand the problem from the point of view of the next person, not just from my point of view; otherwise we wouldn't be social beings, we coexist because I am able to think for myself but I am also able to think for you.

**Kerim Yildiz:** Thank you very much. It has been a very productive and very lively discussion, your input was extremely valuable.

## Session 4: Role of security structures during the negotiation period: coming to agreements on security sector reform

**Nel Marais**, Former Research and Analysis Manager of the South African Secret Service

**Ivor Jenkins:** Good morning and welcome back. The session of this morning will talk about the security sector integration and reform. We are very privileged to have Dr. Nel Marais with us; he has been for many years in the South African intelligence services. He has been an analyst and researcher, and one of the most prominent and chief advisors to the South African government during the negotiations time. He was centrally involved in the integration process, particularly of the intelligence services in the national government of the time. In 2000, Nel left the intelligence services and he started his own company, which is involved in risk analysis and research. He therefore provides research and analytical services to many private companies, to the big corporate companies and to many of the diplomatic missions in South Africa. He is very active in our political society.

He will focus mostly on the process of integration, but he will speak about the other integration processes within our broader security systems, such as how we integrated the liberation movement structures into a single Defence Force and into a single police force. Thank you so much for being here.

**Nel Marais:** I will talk about the role of the security structures dividing it in three broad topics: the role of the security structures during the negotiation times, how complicated was the integration of the different

military police and intelligence service after the settlement, and how were the hardliners dealt with.

Let's start with the role of the security structures during the negotiation times. Before I can talk about that, I have to take one step backwards because what happened during the negotiations was largely informed and directed by what happened before 1994. Before 1990, there were many processes ongoing in South Africa to bring the different parties together. The elections of 1994 are often presented as a miracle; in a sense, they were a miracle, but it also required hard work. It did not need people to work for political recognition, or people that wanted to be seen in public, it needed people to work behind the scenes to bring together parties that were at war with one another.

Firstly, the National Intelligence Service, which was the civilian service at that stage up to 1994, wrote a number of strategic assessments of what was happening in South Africa and in the world. Even today, people are surprised by the findings of those assessments, because the assessments found that the white apartheid government could not continue on the political path it was on. It was going to lead to complete political and economic implosion in South Africa. That was the intelligence assessment, it was not the political assessment at that stage. Initially this message was very unpopular, the messenger got criticised on a continuous basis by the South African government. The government was then informed that the country needed an inclusive political dispensation, and that meant inclusive talks; otherwise, the economy would have imploded, there would have been a massive revolt in South Africa, and international isolation of the country. Certainly, there were other factors that favoured this process. The collapse of the Berlin Wall, the disintegration of the Soviet Union, and some regional events in southern Africa. However, the intelligence, at least from the government's point of view, had a message

that was very different from what was in the public domain, namely the belief that the apartheid government could survive forever. It was believed that it would just need more military effort, more suppression, more states of emergency; and it could continue without the international community, without trade, without investment. The intelligence had a completely different opinion about what was going on, and because of that, the leadership of the civilian intelligence services decided, in the mid-80s, that it was time to start talking with the banned liberation movement, the African National Congress. This happened in different ways.

Initially, there were talks with Mr. Mandela while he was still in jail. This was done on a very selective basis; very few people managed to see him, for instance, the director general of intelligence, Niel Barnard and later on one or two ministers. Secondly, the ANC had country representatives in many places in the world, and the National Intelligence Service also had representatives in embassies internationally; those representatives of the apartheid government in South Africa, and those representing the liberation movement of the ANC had informal talks. Therefore, there were informal talks, discussions, exchanges of ideas with many people on the side of the apartheid government and the ANC. Perhaps more importantly, secret talks were also initiated: senior people from the ANC and senior representatives of the intelligence service – not the government – met with one another in Europe, mostly in Switzerland.

We can have the most fascinating discussion for the rest of the morning about how these meetings happened, what happened, how people changed passports to get to the hotels, how they had secret signals to know that the situation was safe. The point here is that when these talks took place, the intelligence representatives could report, for the first time, to the South African government that the apartheid government

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could not continue with apartheid policies in South Africa and that there should be room to have constructive inclusive talks between the government and the ANC.

It is critically important to realise that while these talks were happening, there were a number of parallel processes. Civil society in South Africa also decided to reach out to the ANC and there were numerous meetings between them in Africa and all over the world, even though the ANC was still a banned organisation. This included journalists, economists, people from the church, a wide spectrum of civil society, that also wanted to hear what the message of the ANC was, from the ANC. In fact, as a banned organisation, the ANC could not get its policies across to the population in South Africa, unless it was done illegally and secretly through pamphlets, through documents and through the broadcast of a radio station that the ANC used.

As I said, intelligence and the civil society were in contact with the ANC, but the government was not talking to them. That only happened later, after the ANC was unbanned in 1990. In summary, what role did the intelligence play? Part of the reason why there were talks with the ANC was that it was important to know and understand the ANC better. You must remember that I am talking about an intelligence organisation that reached out to speak to an organisation that was seen as the enemy; in a sense, it went beyond its mandate. Although the South African intelligence services thought they had good intelligence on the ANC, on its leadership, on its thinking, on its strategy, on its international relations, they would have got a better quality information by talking to them, compared to having secret sources and secret connections. I am not saying that during the first meeting in Switzerland the two sides exchanged all the information, and gave away all their policies, plans, intentions and agendas, but those talks helped to develop a better

understanding of the ANC. The only reason why they got together is because they wanted to “know the enemy”, to open doors, to build bridges. Later when talks started, it was to monitor these disruptive forces and to understand whether there was a consistent message on the side of the different parties involved.

The role of intelligence went much further than just the normal collection of information on other states and other intelligence organisations. It was really a political instrument that decided that the apartheid regime could not stick to its mandate, that South Africa would be destroyed and that certain steps had to be taken. Although the role of intelligence should not be overestimated, as there were a lot of other processes going on that were equally important, the intelligence at least opened the eyes, opened the ears, and then in the end, opened the mouth of the South African government, which started talking to the ANC.

Even during the negotiation process there was a specific role for intelligence, but that role changed a lot from the pre-negotiation phase. The pre-negotiation phase was to give information to open doors, to build bridges, but once the talks started, the responsibility and the mandate shifted back to the political parties; they were now the main players, and there was no longer a secret process, but it was an open process. The discussions were confidential, but there were many leaks and the media was also covering the process.

When the main protagonists started to talk to one another directly, the intelligence started to play a different role. The negotiation period in South Africa was characterised by many disruptions, which were mostly related to violent incidents, where the security forces would act against civilians. Through protests, the ANC was demonstrating its domestic strength in South Africa, but unfortunately the security forces still had

their own agenda; many people were killed during this period. Every time this happened, the negotiation process would come to a halt, mostly from the ANC side, but it was not because it was a tactic. It was because of real concerns on the ANC side about whether they could trust the government and the security forces. Indeed, they could not trust them, as they were still dominated by white people. In the National Intelligence Service more than 90 percent of the people were white, whereas in the security branch probably 70 or 80 percent were white people, and many of them very conservative.

Today the situation is completely different. Talking about the intelligence service, the Defence Force and the police, probably 85-90 percent are black people, but that is because of a specific policy of the government aimed at changing the ratio configuration of the department.

Going back to the disruptions in the negotiation process due to violent incidents in South Africa, the role of the intelligence was to find out why this happened, if it was an intentional strategy by senior officers in the Defence Force to disrupt the talks, if there were hidden agendas within the National Party.

There were also people within the African National Congress that were still very uncomfortable with the idea that the transfer of power in South Africa would take place by way of negotiations and not by way of the liberation war victory. Therefore, the intelligence also had to be sure of what the hardliners, or extremists, on both sides, were doing during the talks. There were many groups that were outside of the talks initially, such as the Inkatha Freedom Party, which is now a political party, but at that stage it was a government of Bantustan KwaZulu Natal, the Pan Africanist Congress and others, that were not necessarily fully committed to the talks. There were also some white extremist groups

that were formed, and they started to make experiments with violence in South Africa, planting bombs, committing assassinations, and generally trying to disrupt the process. The intelligence then focused on these groups, and, at the same time, its responsibility changed; it was no longer to inform only the white government, but also the other role players within the negotiation process about these groups that wanted to disrupt the process.

I was involved in a group of people that sat with the Department of Constitutional Affairs and we would get inputs from all the different intelligence structures in South Africa. Then, we would go to the ANC and inform them about the plans of a group within the ANC, or we would go to the NP and inform the President – who was De Klerk at that stage – that there was a “third force”, namely people in the Defence Forces that are not following the orders, but are still planning to kill ANC people and civilians, and then would blame the ANC for those killings. We had to give evidence, and not opinions, to all the parties within the talks about individuals within their organisation that were still trying to disrupt, postpone or change the nature of the negotiation process.

We will now move on to the second part: how complicated was the integration of the different military police and intelligence services after the settlement. I will quickly scan the different structures. Firstly, with regards to the police force, the ANC, for example, did not have a formal, separate police force, as it was first and foremost a liberation movement. It had a political structure and military structure, the MK, but it did not have a police because that is normally a function of the state. After 1994, the integration process started. The integration of the police forces was quite complicated; the ANC had to offer people coming especially from its military branch, the MK, to get integrated into the police. Before

1994, some of the them were on international training, and were later integrated into the police because of the expertise they gained during the training which took place all over the world – such as Scandinavia, Europe, China, Russia, Cuba, India.

On the military side, it was much easier, as the ANC had a formal military structure and the South African Defence Force existed; however, the South African Defence Force was largely based on a so-called civilian force, so the permanent side of the Defence Force was not that large and it was aimed predominantly at activities like counter-revolution. It fought a semi-conventional war in places like Angola and Southeast Africa.

You had to integrate forces with very different doctrines and very different opinions on how things should be done. The MK was first and foremost a liberation movement, its strategy and tactics were placed on liberation movement goals and objectives. By definition, that was different from what a semi-conventional military was. Training and equipment also were completely different. The MK was trained very often by Russian and Cuban personnel, and the equipment was linked to a liberation movement. Whereas in the case of the South African Defence Force, the doctrine developed over time, it was not really based on any specific country, but it gave a preference to Western military doctrine. Their equipment also was mostly from Western countries. Some of it came from countries like Israel, but mostly it was Western European and American equipment; lots of it was coming from France, for instance. These were issues that had to be dealt with in integration.

The intelligence side was slightly different. Many of the people were trained in Eastern Germany, others were trained by the Soviet Union. The point is that, as intelligence work tends to be similar, you do not have to be trained by the same service to have the same understanding about

intelligence work. You recruit the source and analyse information in the same way, everywhere. Therefore, the integration of the intelligence was easier compared to the other structures.

The most important point to make here is that the integration of the different services was not something that happened overnight. The negotiation period in South Africa was extensive, approximately between 1990 and 1994, and the integration actually started in 1995; in this period of five years, many of the people that would become senior personnel in the different departments had the time to get to know one another much better. In many cases a good relationship developed through trust and friendship. When leadership had to sit together and talk about new structures and new policies it was probably less complicated than many people think. There were also specific structural processes that made a contribution: before the elections took place in 1994, we had the Transitional

Executive Council, and we had councils such as Law and Order, Stability and Security, Defence, Intelligence. There was thus a lot of emphasis on the security environment, because that was an area of concern on both sides. In a sense, the Transitional Executive Council was a parallel structure to the official government, and there were debates about its exact responsibilities and powers, but it was there to make sure that the country was governed without much of difference between the period before the elections and after the elections. Therefore, within the TEC sub-councils, the people from the different Intelligence and Security structures also worked together. For practical purposes, after 1994, we had a government of national unity for a while; so we would still have people representing the old government in the new government, within the National Security Council and in many other structures. There was a mix of people. After the elections, the ANC did not want to change

everything within 24 hours, they did not force every white person that worked for the apartheid government to find another job. That was instead what the Germans did when they integrated East and West Germany, but that was not the model we followed in South Africa.

The process of transformation in South Africa took many years; it was planned in a very rational, objective and fair way. In other words, if you worked for the previous government and you did not want to serve the new government, measures were taken to make it possible for you to resign from government. There were financial packages made available, people could retire at a younger age, and there were many other such initiatives taken by the new government, to make sure that only

those who wanted to serve the new government would stay in government, and those that left would not feel let down by a new democracy in South Africa.

I must say that this is the theory of what happened. In practice, you work with human beings, and many of those that left the government, those that had the skills, the expertise, the enterprise, the initiative to do something else on their own, took their package from the state – a few hundred thousand Rands – and they started their own businesses.

Many of those people that stayed in the government were those that did not have the skills to look after themselves, so they became a bit of a drag on the new system. They were not fully committed to the new government, or in terms of work ethics, and in some cases they had to be encouraged by the government. Therefore, at one point, it became less optional and more obligatory to leave the government. This process is still ongoing in South Africa.

Another question is: how did we deal with the fault line between the old system and the new democratic system and how did we deal with hardliners in all the different parties that got integrated into the new political dispensation. I will mention 3 things: policies, processes and people. On the policy level, the tone in South Africa was set by the new constitution. It took a lot of hard work by many constitutional experts, political people, economists, civil society, that told people what the overall political objective of the new South Africa was. And if you couldn't commit yourself to the new constitution, you were not going to fit into the security services of the new South Africa. That had to be something that you had to feel comfortable with.

Secondly, we drafted a number of white papers, for intelligence and for defence, for instance; those white papers were a level lower than the Constitution, they would address the specific issues within the different security departments. Within the intelligence service we drafted an extensive code of conduct, which all people that became members of the new services after 1994 had to sign and had to commit themselves to that code. You could argue that it is easy to sign a document and to declare that you are faithful to that code, even if you are not. However, people tend to express their views; initially, people would say that they were committed to the Constitution and that they were subject to the code of conduct, but within years you could hear from what they were saying and you could see from what they were doing, that this was not the truth. At least, now, there is a mechanism to confront that, to take disciplinary action against the people that are not following the code of conduct.

As for the processes, not all the decisions we took were the right decisions. For instance, if you look at the South African National Defence Force that came into being after 1994, we disbanded many special force units,

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and that was the wrong thing to do. There was a negative perception about the special forces within the liberation environment; the special forces were often those people that were sent over the borders to attack and kill ANC people, to assassinate ANC leaders. It was clear that the ANC had an issue with the special forces. However, given that South Africa now has a small Defence Force and is now involved in peacekeeping operations in Africa, it required special forces, and slowly over time many of those units were reinstated; but we paid a price because we had to retrain people to relearn certain skills that we had before 1994. In the South African police service, the so-called specialist crime units were disbanded, once again because there were concerns about the special units, whether they were politicised in their work. The new ministries wanted to embrace all crime as one, but what we have learned since then is that sometimes you need units that focused on specific issues, such as crimes against women and children. Therefore, we reintroduced those units.

We also had so-called ideological creep; initially, post-1994, we were trying to serve the Constitution in South Africa. Officials were enthusiastic about the Constitution, but over time, some ideological issues within the ruling party by the ANC seeped into the different departments, and differences between leadership structures within the ANC also affected the different departments. You could have, for example, a General and Brigadier General with different political commitments, and maybe two different leaders within the ANC, and that produced a negative impact. We also had the introduction of the so-called inspector general for the defence force, for the intelligence, for the police and for other departments, but the inspector general did not meet the expectations in all cases. They were not always provided with sufficient information, sometimes they did not want to embarrass the ruling party by exposing problems within the departments, or sometimes

they were just individually not capable of doing the job. Although the processes were well intended, not all of them were successful and one had to re-evaluate processes on a regular basis.

With regards to people, we had many problems. We had, and we still have, the accusations of unwillingness to transform, with regards to transforming the sense of serving the government of the day, transforming the sense of committing to a different attitude to racial issues in South Africa, and unwillingness to accept the fact, because of the reality of South Africa, that the overwhelming number of senior people within the government will inevitably be black; thus, even to these days, some white people still come into rebellion against this. We experience racial incidents and we have other problems with transformation in the government.

We also had a policy addressing the demographic imperatives of race and gender in South Africa, and I referred to some of the instruments we used to manage this, such as early retirement, packages, training programmes, but these things are useful up to a point. In the end, you need to have people in the civil service that want to serve the government of the day, otherwise you will fail. In conclusion, was the integration process in South Africa a success? In South Africa we moved from a civil war with massive ideological differences, with a strong racial dimension to a constitutional democracy, with professional security departments. Could we have done certain things differently?

In hindsight, we could have, but many of the problems we have in South Africa at the moment are unrelated to what was done during the phase of reintegration of the security forces. More than 25 years later, South Africa is a different place, with different people, different problems, different challenges. The international community also looks very different from

1994. I think that if we have failures in the security sector in South Africa, it would be unfair to blame what was done 25 years ago; I would say that it has more to do with an inability to adapt and to develop similar solutions in different circumstances. For me, the challenge for South Africa going forward is how are we going to face these problems in 2019-2020?

Thank you very much.

## Q&A session

**Participant:** Clearly the intelligence service was constituted by whites to protect the apartheid regime. How did the transformation happen precisely? How could the intelligence on the side of the government and the ANC come together?

**Participant:** In your speech, you differentiated the Code of Conduct and the Constitution. What is the Code of Conduct about?

**Participant:** You talked about a civilian intelligence service. What do you mean by civil and special intelligence? Was it dependent on the government? As you explained, the intelligence seemed to act very freely. Could you please elaborate on its working measures?

**Nel Marais:** I will answer the second and the third question first, because that will take us to the first question. In the pre-1994 period, we had a National Intelligence Service, that was what we called a civilian intelligence service. The reason why it was called as such is because it was ununiformed. We did not have ranks, we did not wear uniform, it was like any other government structure with a director general, a deputy director general, chief directors. It was also because it does not have executive powers, and this is crucial for any intelligence service to be a successful one. The moment you give executive powers to intelligence service you are complicating matters. With executive powers I mean that we could not arrest anyone, we could only collect information in South Africa and outside the borders and, most importantly, we could assess that information, and report it. Those were the three major functions like in any other intelligence service in the world. Comparing it with other intelligence services, the security branch of the police was solely focused on the liberation movement; its only challenge and responsibility was to

identify members of the ANC, as it was a banned organisation. It had the power to arrest and collect the intelligence by way of interrogation. You can only do that in a country that is not a full constitutional democracy. The moment you become dependent on interrogation for political intelligence, you are overstepping the guidelines of democracy.

Another thing that the security branch did not have to do was to interpret information and to provide the government with security assessments. All it had to do was to catch and neutralise ANC people; that meant not only catching them and sending them to court and to jail, but it also meant keeping them in jail without being through the judicial processes and it also meant killing ANC people outside of the law. It was the kind of intelligence that you do not want in your country.

The South African Defence Force had its military intelligence wing, which is supposed to collect intelligence on the Defence Force and the capability of powers that might represent a threat to your country, but in the context of the pre-1994 South Africa, military intelligence once again became a political instrument. It had two main areas of focus. One focus was the ANC; it operated against ANC people outside of the borders of South Africa, but it also operated against the ANC illegally inside the borders. Secondly, it tried to weaken the governments of the neighbouring countries – the Frontline States – because those countries acted as a transit area for the ANC to infiltrate South Africa. The Defence Force also acted against them and collected intelligence on them. As you can see, intelligence became completely integrated with political objectives and political policies, serving the government of that time.

That brings me to the question of why the National Intelligence Service acted differently. One answer is that there was visionary leadership within the intelligence service. Unless you have people with vision,

people that can look beyond the today and the tomorrow, you are going nowhere, as a country and as an intelligence service. A person like Niel Barnard – the Director General at that stage – did not come to the conclusions by himself, he trusted the personnel to provide accurate intelligence assessments, based on information that you could trust. Secondly, the National Intelligence Service was, in a sense, a very large and expensive think tank; when I left the intelligence service in 2000, we had approximately 110 full time analysts. With that number of analysts, you can do a lot of work, and you can have some really good intelligence assessments. The intelligence service was not only focused on what is happening now – as the security branch and the military intelligence would have been – but was worried about the future. In the ANC, the intelligence worked in a similar way, and also had people looking at the future, who were focused on how South Africa could go forward. They both came to the same conclusion: at one stage or another, we had to talk. In the case of the ANC, this was highly and directly influenced by Nelson Mandela, but it was not only dependent on Mandela's leadership, many other people were involved.

When people from apartheid intelligence, people from ANC intelligence and diplomatic structures came together, they disagreed on many questions, but they also agreed on one fundamental issue: the need to negotiate, to ensure an inclusive political solution in South Africa.

To summarise why it was different from other intelligence services or from other structures, it was about the leadership, the analytical capacity and the fact that it did not have executive powers.

As for the code of conduct, it included very specific rules and regulations for individual members working in the service; it was also about the behaviour, the morality and the integrity as a leader, it gave guidelines

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for people collecting intelligence, for those analysing intelligence, and for those in human resources. It was aimed at ensuring that people would understand what was permitted and what was not permitted. The Constitution does not do that, it addresses the intelligence in a very general sense, whereas the Code of Conduct provided very specific guidelines, so that each individual could clearly understand what was allowed and what was not allowed.

**Participant:** Would there have been a negotiated settlement in South Africa if the Soviet Union did not fall?

**Participant:** I have a question about the content and functions of the intelligence service. Did the government request you to do assessments or did you start to do the assessment, as an institution? Secondly, what about the reactions received from other security structures, as the military or the state bureaucracy? Have you ever been named as traitor?

Also, how did the ANC perceive you in the meetings? How did you build the trust?

**Participant:** You said that there were leaks when you started negotiating. Could you give us more detail about how they were reflected in the media, what was the reaction of the white population, and what were those leaks pointing to?

**Nel Marais:** With regards to the first question, I would say, yes. By the time talks started, the ANC was much less dependent on the political direction of the Soviet Union, its military strategy, its general training of people that it was maybe in the mid-80s. The ANC had good relations with many countries in the world and it was blind to the problems that were starting to emerge within the Soviet Union, so it adapted in terms of its international relations. From a diplomatic point of view, in terms

of isolating South Africa, the Soviet Union was not the main player. The fall of the Berlin Wall and the disintegration of the Soviet Union coincided with other processes in South Africa, it coincided with other international processes, and it certainly contributed to speeding up the process. If it was not for the disintegration of the Soviet Union, maybe it would have taken slightly longer for the process to start. On the other side, both the ANC and the apartheid government did not have good relations with the US at that stage.

In terms of the relationship between intelligence and government, the intelligence, first and foremost served the President. To come back to the leadership that National Intelligence had at that stage, Niel Barnard had a very close relationship with P.W. Botha, who was President before De Klerk. Botha was not interested in talking to the ANC, he came from a military background and he thought a military solution could last for decades, and Barnard had to convince him that this was not the case, but he never convinced him fully. At least, he got permission from him to start the talks, firstly with Mr. Mandela in jail and later on, with the ANC in Europe. That was enough, the door was opened a little bit, and intelligence could use that gap. Botha was not informed about everything that happened; the National Intelligence Service believed that he would stop some of the processes, if he was informed about everything. At a certain stage, Botha fell ill and he had to retire, it was as a silent coup within the National Party. When De Klerk became President, there was a perception that he was very conservative, but he soon realised that he had to change the political environment quickly and fundamentally. I am not saying that De Klerk was the architect of a democratic South Africa, but I am saying that he had a specific role to play and perhaps circumstances forced him to play that role. When De Klerk became President, the director general of intelligence, Niel Barnard, informed him about the process of talks that was going on, which De Klerk did

not know. De Klerk was not too happy about it, not because he did not want to talk to the ANC, but because he could not understand why the talks with Mandela had been going on for years.

We had a period of secret talks, a period of semi-confidential talks, and then a period of open talks, and there was a role and a reason for each of those phases.

As for the question about how the other departments reacted to this, not everyone within the Defence Force and police structures was happy with the fact that national intelligence had been talking to the ANC. The word “traitor” was actually used from time to time. However, there were people within the Defence Forces, within the police, and even within the security branch that understood the imperative need of talks. At one stage there was a real risk that the military would stage a coup against the new political dispensation, but the general at that time intervened and convinced senior officers within the military that this was not a good idea.

There were also processes to influence the thinking of the people within the military. One of the tasks I had to perform in the early 90s was to give a presentation to the offices of the Defence Forces on why we were going to talk with the ANC, and why the ANC was unbanned. I was sitting next to the commander of the Defence Force, which helped because he gave some legitimacy to me, as the message about negotiating with ANC was not the message those people wanted to hear. For 20-30 years they were indoctrinated to see the ANC as a communist threat that was planning to overtake South Africa.

As for the other question, during the initial phases of the talks the intelligence was perceived by the ANC with a lot of scepticism. One of the problems was that talks took place with Mandela long before they

took place with other senior ANC people, and within the ANC there was a perception that the intelligence and the government were trying to divide Mandela and the ANC from one another.

During the first talk, you do not start negotiating about the fundamentals; like any other negotiation process you have to go through a process of building trust. At first, parties just exchange information about themselves and agree to meet again after a few weeks to exchange a document on how they see the process moving forward. That also gives you the time to consult with your leadership. Therefore, the process was extended over a long period of time, and trust was built. However, you must remember that trust can only be built if people keep their word; if you lie to the negotiating partner, you will always remember that and you will not trust the party next time. That is also why the avenue between Cyril Ramaphosa and Roelf Meyer, who were the chief negotiators at that stage, worked, because they trusted one another, they did not lie to one another.

As for the leaks, I think that once the genie is out of the bottle, once it is an open process, you can have closed meetings, but there are many people participating in the talks, such as external advisors, and the media wants to know what is happening. Therefore, there were deliberate leaks on both sides. In some cases, politicians have egos and they like to have good relations with the media, they like to grow their status by giving interesting stories to the media. Thirdly, you also had negative leaks, that were aimed to disrupt the process. Even within the negotiation team, there were people that were not enthusiastic about the outcome, they wanted at least to delay it, if not prevent it. They would leak stories to the newspapers that would have a negative impact, especially on the white population, because at that stage the white population was still the power base of the National Party. De Klerk was able to manage it

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well; we even had a referendum which gave the white people the choice of either accepting a new inclusive democracy or rejecting it. Fortunately for South Africa, De Klerk had the majority of white people behind him, and the ANC clearly had a majority of people behind them.

**Kerim Yildiz:** Who facilitated or mediated your talks with the ANC, for example in Switzerland? How did the ANC people travel to the talks? From South Africa or from abroad? Also, under whose watch the talks took place abroad? Under the government or other institutions?

**Nel Marais:** If an intelligence service cannot find a way to contact somebody on the enemy side, they are useless. I am not saying that this is the method that was used, but it was possible for instance to find a cell phone number for Mr. Mbeki to contact him. Making contact was fairly easy, but I can also assure you that telephones were not used to make that contact, because we assumed that the Americans, the British and many others were listening to most of the calls. The ANC and the government had representatives in Europe, and in some cases those people that were making the contact would become good friends with ANC representatives. Therefore, it could have been fairly easy to tell the representatives that we wanted to make contact with Mbeki.

Getting to Switzerland was complicated, because once again we assumed that travel movements were monitored; the delegation flew to a specific country, we had the capacity to manufacture false passports, so they used false passports to travel into Switzerland, and the Swiss government did not know about the talks. There were teams there for a very long time to make sure that everything was clear; a lot of different rooms were booked as false flags, the decision of which room was to be used was only taken at a very short notice. Those talks did not stay as a complete secret for all

intelligence services, some of them picked up some of the movements, but the initial talks took place without any external interference.

**Ville Forsman:** Thank you very much for your presentation.

## Session 5: Keeping a process going during difficult times

**Michael Sutcliffe**, former Chair of the Municipal Demarcation Board

**David Murphy:** I will introduce Michael Sutcliffe, thank you very much for joining us. Dr. Sutcliff was Chair of the Municipality Board and played a large role in drafting ANC policies, in the local government white papers and had a long-term relationship with this process. We are very grateful to have him here. The overall theme of this session will be looking at how we keep the process on track and how to bring it back on track when there are outbreaks of violence.

**Michael Sutcliffe:** Good morning everyone, it is very good to see you all. Let me try to take you a little bit through my adult life, and just talk about each of the periods that I have had within the movement. I am within the African National Congress, and my involvement stops there. I finished a doctorate in the United States in political geography and economic development and I came back to this country as a professor in Town and Regional Planning in 1980. Let's just talk a little bit about the history around that year. It was a period in which many important things happened. The major liberation organisations were bad. You could not even wear the colours of the African National Congress, otherwise you would have been arrested for at least four years. The second thing that was obvious was that at university we had to be very careful on the program we taught, even about the publications we gave our students to read, because we could all be arrested. We had the only program that was teaching to black students, who were studying for the master's degree in planning. The reason for that is that black people were only meant to be servants; they were not meant to be professionals, like planners and architects, so we had the only master's program where at least half

of our students were black and the other half were women, which was quite different from the rest of the country. The rest of the country used planning and trained white planners in order to keep the country apart, to create what was called the apartheid development. Now, in some ways, you still see that today. This place that you're at here. I do not necessarily like these estates, because I think that they promote elitism and differentiation between people. Geography was, thus, used to divide people; black people could not live next to white people unless there were highways and farmland separating black people from white people. Therefore, in our programme we had to work with students, firstly to create what we call "gorillas" in the bureaucracy – those fighting for change. It is a theory of planning where we get into a system in order to undermine it and break it apart. From 1980 the context was very difficult, also because in 1979 the South African government created as part of the security operators something called the National Security Management System. That is a system whose primary focus is the security of a country, and it is the system that the Americans used in Latin America – and all over the world. In this case, the system would keep white people in power and make sure that the country remains the same kind of country. The National Security Management System had three parts. The first part concerned the security within the country, making sure that all the major wings – intelligence forces, defence forces, and security companies – are actually working as part of the security management system, even though they work separately. The second phase of the strategy was winning hearts and minds. In other words, the government must try to win black people over, or at least some of them, and bring them to their side, because the main liberation movement, led by the ANC, was considered as the enemy. Then, the third part of the strategy is to focus on economic issues. As you know, in that period, the ANC was driving an international sanctions campaign throughout the

world, trying to dissuade companies to do business with South Africa or to buy goods made in South Africa, to try and make the economy go down. However, Margaret Thatcher in London and Ronald Reagan in the United States at the time did not want sanctions to happen. That was our struggle, which was then supported by the civil society movements. In this regard, that is what happens when you have an autocratic state. It is almost like when you have a puddle of water and you put a hard stamp on it. What happens is that it spreads out, and so you get the trade unions, the women's movement and all civil society movements that start to become strong in opposition to the state.

As a result, in the 1970s, the government could not stop the growth of the movements. People started to protest against price increases in rent, transport and food. A youth movement in Soweto – which spread in the whole country in 1976 – protested against the school programme, which was focused on subjects that would make black people servants. There were women's movements, who protested against the migrant labour system, as it was dividing them from their men. Black people were in fact forced out into the countryside, but men could live in the city while working, and would end up with having a woman both in the city and in the countryside. We had strong movements that are still very powerful today. Thus, this repression in the early 1980s led to the emergence of a lot of movements, which the state security system tried to crush. Some of the work that we did was mobilising civil society organizations, despite our movement being underground, including our army.

As a Professor of Town Planning, all my life was around building non-governmental organizations to fight the state. Let me give you an example. People would build their own houses in black townships, but the State would then realise that the houses are too close to each other and would not be able to send armed vehicles in. As a professional, I would go to

court and use the court system to prove that is wrong to demolish houses so that the armed vehicles would be able to access the area. Mr. Roelf Meyer, who was with you yesterday, was part of the National Security Management system and drove the strategy I was talking about this morning. As part of the winning hearts and minds campaign, the State would build a soccer pitch in the black township areas, where children can play, hoping that the black community will change the view. But if you have got police and military surrounding the soccer pitch while you are playing, you are not going to use this soccer field.

In 1983 the government then decided that it will try to create some more allies in the system, and to bring more people to oppose the ANC. Firstly, the Indians and the Coloured, who only constituted maybe 6% of the whole country, were brought into the political system. Secondly, some black leaders were given power – which was called ‘toy power’ – in the so-called homeland areas. Clearly, in a system where the state has tried to crush everything, people try to create new arenas of struggle, new means of organizing, different ways of mobilizing, different ways of dealing with media. We did not have anything such as social media at the time. It was thus difficult to collect information under a state of emergency, even information about how many people have been killed. One of the projects I developed in 1983 involved the so-called ‘unrest monitoring’, to inform our comrades and leaders who were either in jail or in exile. We had trained young people who would go out and see what the truth behind the violence was that was occurring, because it was not allowed to report publicly, unless it was an official report from the government. It was not allowed to protest. Young people would collect information, put it together and distributed it, so we knew where the violence was occurring and who they were killing. That is because you couldn’t pick up telephones or go on social media, as you would do today.

The challenge was how to keep that organization going, bringing all the comrades together; there were comrades permanently in exile, some were in jail, some had been studying in the Soviet Union, in Germany, or in a Western context, and then there were those of us who were primarily working here in the country. How to bring all those people together was a huge challenge. In fact, it remains the biggest challenge that the ANC faces at the moment, particularly when money is concerned.

As the state recognized, by 1985, that the tactic of bringing a few black people into government was not working, it realized that it should start doing things a bit differently. Therefore, the then Prime Minister allowed the intelligence service to start talking to the ANC and to Mandela, but equally. That same government started saying “let’s try and talk to these people on the ground in the townships, who are struggling against the system”. They thus started these two sets, and I think the intention was to alienate Mandela and all the other leaders from us, while at the same time they were trying to find out who we were and what we were doing. From about 1986 until 1989, around the country and in all the major urban areas – Johannesburg, Cape Town, Durban – they started to engage with us, primarily to find out who we were and what our tactics were. They couldn’t find out how we were organised because we were cleverer than the regime was. They did it to see if they were possibilities of dividing us, so that when ultimately the negotiations would have started, we would have been divided amongst each other. In that 10-year period possibly more than 70,000 people got killed. Many of the young activists that I work with have been killed. For example, I know one of them that was killed during Christmas celebrations at home, in a rural area. 20 young people were sitting around, having a nice time with their family, and the security branch broke in and shot this young activist in front of everyone else. What do you say to the father who does not even know what politics is about? In another case, in 1987, the security

forces killed 15 people in a house, while the family was having a religious ceremony, as the father of two young activists was a religious preacher; the two youngsters were not even at home at that stage, but everyone got killed. That is the reality and the level of violence that we had to face. It was brutal violence, but it was also subtle violence, the violence of removing people, of dividing families, of creating racial divisions. If you were Japanese, you were considered an honorary white person in South Africa, but if you had lived here all your life as a black person, you would not even be considered a citizen, you would not even be able to come to this city.

In that period we had to develop our own strategies. And in the midst of all of that, there were also the Americans, the British, the Israelis and probably other forces, as they supported the Inkatha Freedom Party, because they saw in their leader, Mangosuthu Buthelezi, an ally and wanted to make sure that there was not just one main black organisation, the ANC. One thing they promoted was the so-called two track strategy of negotiations; one track being the formal process, alongside an informal process as well. Therefore, the Americans would invite many of our leaders to have some sessions at the embassy to talk, to see how we related to each other as individuals. While this was happening, we had to keep discussing, but equally, understand what the objectives of the international and the South African forces were. We had, indeed, to reflect continually on our work and on what was going on; we had to be suspicious even of NGOs that looked to be progressive NGOs, asking ourselves if they were really here to assist our struggle or for some other motive.

In the 1980s, as people were dying, it was clear that we needed to talk. So, we had a number of attempts at building peace, some of those led by religious churches, some of those by the trade unions, but not all of

them were successful. What happened with the trade unions, was that the major trade union federation, called COSATU, was losing workers, because they were associated with the ANC. So they organised three or four peace initiatives, never talking directly to the regime, but usually talking through business or the churches who would then talk to the regime at that level. It was only in the early 1990s that we then formed the National Peace Accord. Once Mandela got released and our organization got unbanned, the first thing that we put on the table was the killings, in which the regime was involved; on the other hand, the regime put on the table the fact that we still had a military wing, and that we must disband or disarm it before the start of the negotiations. However, we pulled out of the talks because there were still major killings that occurred. Eventually, we got the National Peace Accord consisting of about 27 political parties, that committed themselves to pursuing peace together. Part of the reason we continue to do this today, whether we are engaging with people who are still fighting around the world, is that we know that every bridge that you blow up today is a bridge that you have to fix tomorrow. And if you are not focused on that peace enterprise or on talking to your enemies, you are not going to be able to solve those issues.

In the 1980s, there was a small core of us in the ANC who worked inside and outside the country, particularly on the policies of the future of South Africa. One of the things that we argued, was that what happens in urban areas is as important as the negotiations happening on the national level, in the long term. The reason for that is that it was clear that the National Party knew that they would have to compromise the national vote, but they wanted to keep the local context racially divided. They wanted to create cantons like in Switzerland in South Africa. So you would still have this little white area, remaining white, because they would have their own mayor elected by them. However, since many of our leaders were either in jail or in exile, their focus was primarily on the

national situation, such as one person, one vote, and human rights issues. What is different from our constitution compared to other constitutions in the world, is that we have included the chapters on local government powers, partly because we did not want our own organization to get to a position where they are so dominant that they can control everything – national government, regional governments, local governments – because that's not good for any country. Alongside the discussions at the national level, there were a lot of talks happening at local level to get white people in particular to understand that democracy does not mean that everything is going to be taken away from them, but it is saying that we have to share what rightfully belongs to everyone. We have to make sure that everyone is entitled to decent houses, water, electricity, etc.

What we learned in the negotiations over the conflict period is that violence existed, and it became true later, with the Truth and Reconciliation Commission, that found out that the violence which was perpetrated in the 1980s was violence created by the apartheid state; the apartheid state had itself created these divisions among groups of black people who fought against each other and continued to fight even in the 1990s. In fact, even in the year of the elections in South Africa I think over 2000 people were murdered for political reasons. The following year, 1996, about 1000 people were murdered. I was at that stage one of the parliamentarians in the regional Parliament of Kwa-Zulu Natal. As leadership from that province, we did not go to the national Parliament, because the peace process was fundamentally about what was happening in our part of the country.

The elections of 1994 gave the IFP 50% of the vote, while the ANC got 30% of the vote. I wouldn't say publicly but we all know that the result of that election was a negotiated result. We know because we went to court, because of the corruption that happened in our province. Nelson

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Mandela came down to Kwa-Zulu Natal and said to our leaders that we could not go to court, because if you were going to court here, De Klerk would have gone to court in the rest of the country, contesting the votes. The reality is that the violence continued and we had to make sure that we tried to deal with all the elements involved in that. After becoming President, Mandela tried to bring people around the table, he spent lots of time talking to the people in De Klerk's cabinet, who were directly involved in some of those forces who perpetrated violence.

Equally from our side, I remember once I was in the provincial legislature with two colleagues from the ANC and 150 people came into the room and told us that they were going to kill us, because they had been trained by the apartheid state to kill ANC people, and now that the apartheid state was gone, they felt that they did not have jobs. So in those processes you learn very quickly that it is important to keep fighting for peace, but you have to deal with all those elements that are dissipated, because there were a number of wings in the security branch that were simply there to kill; there were black people trained to kill black people, and there were white people trying to kill ANC people. So, even after the elections we had to keep all channels open, we had to keep talking about peace, and we had to make sure that we were able to deal with those leaders who we knew were warlords. Many of these warlords were indeed involved in this kind of killing. And I remember one of them ended up going to Parliament, the same time that I was, and he greeted me. He didn't even greet his own comrades from IFP, but he greeted me, because for 10 years he tried to kill me. What we had to do was to convince these warlords, who still had their own private armies, to bring them to an understanding that, in the end, you won't win the war by killing people, you won't bring development by killing people, you won't bring peace. My work, from 1995 to almost the year 2000, was to try and get some peace accord; each time we would take one step further, of getting some

of the leaders on the other side, around the table with us. As we worked on the hardliners, something changed; you will differ ideologically, you will differ in many different ways, but after five or six years we were able eventually to get all sides to accept this peace accord.

We have not got rid of them completely; in my own province we still have hit squads, but this time it is for money, for power, for corrupt reasons, it is not a political thing. It is something that you have to keep working on, because most people start to understand the reality of peace and that development, getting the economy sorted out, is far more important in the medium to long term. They start to understand that we are not fighting for power, but for better lives, better development, better conditions, etc.

As I said, in the early 1980s, we used the civil society, churches, women's organizations, to keep that struggle going forward for democracy, allowing them to talk to everyone, even to our enemy. Another thing I wanted to mention is that until the week before the elections, the IFP was being handled by two different international groups; one was saying to go for elections, the other one not to go for elections; fortunately, they came into that process. Even after the elections, there was a possibility of a coup d'état by the apartheid state; for the first two or three years, Mandela spent a huge amount of his time on working with the elements in the regime that could still go for that. You might have seen a symbol of him at the Rugby World Cup of 1996, as rugby used to be a white sport, and it is still largely a white sport. For two years, Mandela worked on that, because he wanted to get that psyche of the opposition, making them understand what it was like. It was a political strategy, he was visiting them, as he was visiting apartheid people, so he would put himself in a place where they were not able to criticize him.

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As for the transformation of the state, it is still a problem that we have today, mainly because people in government do not have the experiences and the right competencies. This is because apartheid education taught black people to be servants and to remain that. They were taught to be in service. So it's only in the last 20 years that we started getting the ability of black people to have the freedom of education that white people would have had as a child.

Then we have the corruption, which has been taken to another level in our country. Now, in any state you get different levels of corruption, as for example the United States, which has the highest levels of institutionalized corruption of anywhere in the world. It's not about giving bags of money, but giving access to the military industrial machine, for example. It is what kind of happened here with our former President. We caught it at the right time, but it has been devastating because for the last 10 years we have not made the level of progress we expected.

In brief, the message that I would always give, is that no matter where you come from, whether it is civil society, organized political formations, or expats, you always have to put yourself in the shoes of your enemy, and make sure that there is always an opportunity for dialogue to emerge.

You met Roelf Meyer yesterday, from – what I would call – the enemy side, who, along with our current President, Cyril Ramaphosa, from the liberation movement, kept a channel of conversation going, while Mandela stuck to the principle of what the organization expected of him.

Some of the work I did was on the local level, in hostels, for example, where the migrant workers were allowed to stay, but which also became places that were used as the bases for the hit squads. You wouldn't even be able to get in there. People living in hostels next door to each other would want to kill each other, if they got the chance. During the negotiations,

I was working at that level, trying eventually to get them to understand that the person living next door to them is not the enemy; the enemy is poverty, the enemy is inequality, the enemy is the lack of development. Therefore, what I have learned over the years, is that all levels of society have to be involved in the process, not to leave it to leaders, because they would sit around the table and shake hands, but actually nothing has been done on the ground.

## Q&A session

**Participant:** You said that international forces, such as the US, England and Israel, supported the process. How exactly did they support it? Also, thousands of people were killed during the negotiation process. Were they killed only by the apartheid regime or also from other actors?

**Participant:** What is the rate of mixed marriages, between black and white people? Also, do you think is there a contradiction between individual rights and collective rights? Because this became an issue in Turkey, Kurds want collective rights, status quo, but the government rejects it, as their priority is individual rights.

**Participant:** What did the white referendum put to question? Also, at which level did the devolution support cultural growth? Was it done on the basis of collective rights?

**Michael Sutcliffe:** The elements of the international forces that were hostile to the liberation movement were generally the United States and Britain, in particular, and certainly Israel, in the links that it had with the South African government over the nuclear question. Around 1989, the Israelis tested their first nuclear bomb off the shores of South Africa, in association with the apartheid government. They knew that they had to always have a second channel, but the views were always explicit in all my dealings with the British and the Americans in the 1980s. They would say that one of the reasons they would not support the international sanctions movement, which almost every country of the world ended up supporting, is because what they learned from their own history of colonialism and imperialism, is that the last out is the first in. What they meant is that, if they decided to go out and support sanctions, then when the liberation happens, they would not be able to be the first to be doing

business here. So they were very clear about their main objective, which was to preserve their economic interests in the area. The interesting thing about these two main countries, the US and the United Kingdom, that were supporting the apartheid regime, was that their people were supporting the ANC; in the US and in the UK we had indeed the strongest core of popular support. They would tell their governments to support sanctions and support the struggle of our liberation movement, and that is probably why, around 1989, they eventually supported the sanctions movement. Those were the most difficult to deal with because they always had other agendas; they would invite you to a meeting of progressive people, but actually they would just try to understand the weaknesses, the strategies and what was happening.

The governments that were very active in supporting us throughout the decades were for example the Scandinavians, Sweden, Denmark, etc. They have always been hugely supportive of liberation movements, particularly in Africa. Ironically, their companies, like Volvo, that were the first to leave the country in support of sanctions, were the last to come in. Canadians were in support of some aspects of our struggles, while countries like India, China, the Soviet Union, were supporting us on the international level; this is because they were not really trading states, and they were not necessarily supporting our integration process, but would mainly provide us with military hardware.

**Participant:** The United Kingdom did not support your struggle, but eventually had the right, given by Mandela, to extract gold and diamonds. Is that right?

**Michael Sutcliffe:** No, because they always had those rights, so they stayed here, and they carried on with the extraction of gold, diamonds and other resources. Most of the investment in South Africa, would

have been in their own services, their own companies and their own businesses at that level.

In 1987, when we were still banned, we developed what we called principles for the future constitution. One of the first of those was the development of a human rights culture, because the value of human life in our country had been demeaned through killings, through brutality, through the removal of families who had lived here for centuries to another place 50 kilometres away. Therefore, we knew we had to build a human rights culture, but we also knew that if we built a culture around collective rights, we would not have known where to stop. Even within ethnic groups there are differences; they hate each other, even if they have the same religion. What we did then was to put all the individual human rights in the Constitution, so all rights were protected: the political rights, the economic rights, the social rights, and the environmental rights. In this way, all the groups were protected, unless they went against the Constitution. If the collective rights are bigger than the country's rights, then you run into problems. Thus, in our Constitution we specifically tried to look at all the rights that exist in our world today, including the rights to practice one's religion or rights to be a gay person, as an example; if someone wants to take away my rights, is going against the Constitution. Certainly, that is difficult because in some religions, for example in Christianity, the idea of two gay people marrying is wrong. In this case, what we have said is that you can have that belief in your church, but you cannot exercise it outside the church. That applies also to the issue of language; in our country there are 11 main languages and we put all of them in the Constitution; we know that in practice, one language becomes the language of business, but, in any way, every South African has the right to go to court and to be addressed in their own language, or to be translated into their own language.

In terms of economic rights, we saw the experience of countries in Africa that nationalised the land, Mozambique for example, and ended up with disaster. Also, we could not say to those companies that did business with the apartheid regime that they could not do business anymore; that goes against our principle that you have the right to do business in our country. One of the biggest things that Mandela did from an economic point of view, was deciding that we were not going to be a nuclear nation, that we would not carry on selling uranium to Israel for example. However, you had no right to say that someone was not allowed to mine in a certain place, because of the Constitution. There is a huge debate now in Africa about levels of foreign ownership, about allowing other countries to take over all your assets, which does not involve the US or Europe, but also Chinese investments.

As for the question asking who killed people. It was one of three groups. The first was the apartheid state, and there is no doubt on that; we had many commissions of inquiry, we had the Truth and Reconciliation Commission, and there is an acceptance that the state security forces under apartheid, as well as these militias that they created, were responsible for the majority of the killings, even if they used my own party or other parties against each other. The second group included the warlords and their militias, and the Truth and Reconciliation Commission found out that they were being handled by the same security branch person who was paying them to kill each other. The third group included people who were killed often by mistake; for example, in the ANC's submission to the TRC, we explained cases where we have been involved in killings of people that were mistakes, based on poor intelligence or other reasons. However, 95 percent of the killings were by the apartheid state.

I am not sure about the percentage of mixed marriages cases, but I think, at this stage, it would be less than 0.1 percent. Remember, 85 percent of

our country would be black African, maybe 8 percent would be white, and about 7 percent would be coloured or Indian. If you look at 15 percent versus 85 percent, the percentage of mixed marriages between black and white is very small.

Dealing with individual versus collective rights, we have collective rights but not in the Constitution; you have every right to belong to a church of your choice, as long as they choose to not fight violently. They have the right to protest; for example, you have lots of woman groups, and also more men, protesting the fact that we allow abortions. We put it in the Constitution because it is a controversial and emotional issue, so we thought that who wants that right deserves to have that right.

Talking about the white referendum, I must say that De Klerk was often seen as an innocent person, I would be curious to know who was behind him. I remember that in 1986 we were doing an assessment about who the contenders for power could be, we looked at Magnus Malan, who was the Defence Minister, and we also looked at De Klerk, but at that time he was even more right-wing than Malan. Thus, there were arguments that De Klerk had a clever tactic about the referendum. By having a referendum, with a question that most whites will accept, he knew that he would have got the backing of the opposition whites. Knowing that his party was divided, if he had 50 percent of the votes, 30 percent were supporting him, 20 percent were against him, but by combining the votes of the opposition – who generally support transformation – then he would have got 70%. When you analyse those figures, you would see that it was a very clever tactic from a very conservative person; in this way, De Klerk would move from being a leader of the National Party to being a leader of the country.

The apartheid regime had divided our people on racial lines, and thus on physical lines as well, since black people were not allowed to live in white areas unless they were servants. When I was Chief of the Demarcation Board, we would draw lines that would not lead to division, that would be broader and more rational, also in economic terms. We would for example combine white areas with black areas that did not have any local government, to get a degree of more sharing of wealth. The devolution to local government is contained in our Constitution; when we passed the Constitution in 1996, we were the first country in the world to specify powers of local governments as constitutional powers. For example, when I was city manager in Durban, the powers that the local government had were water, electricity sanitation roads, transport, economic issues, tourism issues, and housing issues, among others.

Cultural issues are covered in our Constitution, which allows and protect all religions and faiths, even though our country is predominantly Christian. The only thing you cannot do is to impinge on one's human rights. Some conflict arose when we had to deal with religious festivals or traditions; but the Constitution allows the killing of an animal for religious purposes, as long as it is done humanely, and the animal does not suffer. You just need to follow the procedures.

As a country, we are still not there, we still have debates for example on whether abortion should be allowed, but you cannot just keep changing the constitution based on emotion.

**David Murphy:** Thank you very much for your time, Michael.

## Session 6: The motivations for resuming negotiations after breakdowns: why the ANC continued dialogue with the NP

**Mathews Phosa**, former Premier of Mpumalanga and former Member of the ANC National Executive Committee

**Ivor Jenkins:** This is a privilege and an honour to introduce you to a very good friend of mine, Dr. Mathews Phosa. He is one of those special South African politicians, he has a long history in the ANC, he was in exile, he was part of MK, the ANC's armed wing, and, after the four-year negotiations, he became the premier of Umhlanga province. He is a lawyer by profession and he speaks Afrikaans fluently; indeed, he is also a poet and has published poems in Afrikaans. After his appointment as a premier in the Umhlanga province, he continued to be involved in politics and in the National Executive Council of the ANC for some years. During the first few years of President Zuma, he was elected as the Treasurer General of the ANC. He is retired from politics and is now a businessman, doing business across the country in agriculture and other types of activities. Mathews is going to talk about the negotiation process, in which he was involved from the ANC side, and he will focus particularly on one aspect, how the deadlock in negotiations was broken. We are thus looking forward to your input.

**Mathews Phosa:** Good afternoon, ladies and gentlemen, welcome to South Africa. I was like many Africans thrown in the struggle by the conditions in which we lived, which were not acceptable. I was part of the many millions that were rebellious at the time; I qualified as an attorney, a commercial lawyer, and became very active in the underground organization. It is important for me to mention one thing.

One of my commanders is sitting back there, and he is the one that put me in trouble and ended up in exile. I am happy that he is alive for me to thank him, and I will respect him forever. The struggle was very lively and vibrant, and it is good to have him here.

I was thrown out in exile by the condition in which we lived, people getting arrested, getting shot, because we didn't come from one side, we were shooting one another. After a few years in exile I was doing many things. I was one of the first three ANC members to be asked by the ANC leadership, to come back home, to start negotiations, to take my AK 47 and put it away, and focus on peace and peace-making. It was me, Mr. Maduna, who became the Minister of Justice, and Mr. Zuma, who was the last President of the country. We were only three, and when we arrived here, we found people like Roelf Meyer and President De Klerk. We were very young and De Klerk was an old man, very intimidating, but we had to deal with it and find a future together. We were the secretaries of Mandela, we were preparing for every stage of the negotiations, assisting him and the other leaders of the ANC. It was identified at the beginning that central to the negotiations was the ANC and the National Party, the big power resided in the two. Therefore, if the two parties agreed, if a consensus was found between the two, the rest of the parties had to follow, as they were very small, but we also were humble enough to realize that there were other voices. That is why we invited all the parties, even the smallest, even those we did not agree with at all; we let them come to the table and tell us their story. We have never said that we wanted certain parties at the table because of their ideologies, we wanted different ideological friends around the table.

We wanted the whole nation to own the process, and we wanted that no one felt excluded, so we ended up with about 23 parties around the table. It was big, but we had to address a big problem facing our country.

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First, we had to remove the obstacles to negotiations; the security laws were bad, the playing field was not levelled, the political prisoners were still in prison. All these factors were very important to the deadlock I am going to talk about.

We never agreed as to who was a prisoner, and who was not a political prisoner. There were still a lot of people who were in prison, who we thought needed to be released. However, the government would say that they were criminals, while we were arguing that they were political prisoners. So there was a big argument from day one, which would continue into the deadlock. At that time, the country was very violent, and it was even more violent at the end of the negotiations. In the streets there were no longer military targets, but only civilian targets. Bombings took place in the city, as well as killings in the streets, in the townships, the situation was very bad. In that atmosphere, we continued to focus on the agenda of peace, as we needed to find a solution to the same violence. There were different stages of negotiations; the biggest deadlock was the last deadlock, during CODESA. What caused the deadlock? It is very important to understand that. First, there was a debate about who should have written the final constitution of the country, and the parties could not agree. The National Party said that CODESA had to write the final constitution. We did not agree, as the parties did not have a mandate to write the constitution. We agreed that there must be a Constituent Assembly, made up of elected people, which mean that we had to have elections first and an Interim Constitution. But the problem was, whereas we agreed on the Constituent Assembly, the National Party felt that there must be a second house, which would have the power to veto decisions of the first house. We could not agree on having a minority body vetoing the decisions of a body which was popularly elected. Then, there was the issue of the release of the political prisoners and the issue of violence. Now, the day before CODESA II, it was very clear that there

was going to be a deadlock. I was asked by some of the senior comrades, like Mac Maharaj, to go along with Cyril Ramaphosa to warn Mandela about the morning after, and prepare him for the deadlock. We also contributed towards ensuring that there was going to be a deadlock, as there was no way Mandela could pretend that we agreed when we did not agree. We thus had an investment in the deadlock; we had to prepare him to deal with it that morning, to give a speech in which he would say that we did not agree on who must write the Constitution, on the powers of that body, on how to stop the violence, on who is beyond the violence, and on who must be released from prison. We were not going into the final constitution with our own comrades sitting in jail, as they also fought for this freedom. We could not go into the future and leave them in prison. We were not even going to allow a body which is not elected to write the final Constitution. That was the biggest deadlock. The following morning, we went to see Mandela in his house, we briefed him and he agreed that he would prepare a speech that blamed the other people. In negotiations, it is always about the moral high ground, which you have to maintain all the time as a negotiator, and you must talk with your constituents, who would follow you and understand the issue.

Mandela's speech was very nice, it addressed the issues, but there was a bit of tension in the comrades, who were scared to go back into exile and into shootings. However, we knew it was a discussion. What did we do afterwards? This is where I wanted to elaborate more. Our team included 15 negotiators, who were given different things to focus on, such as security or police. The country was balkanised, and we had to bring back all the pieces under one country. How could we bring them together?

Mandela told us to go and speak to the cabinet of Mr. De Klerk, individually. There was a Minister of Justice called Coetsee; me and

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Maduna, who were involved in dealing with political prisoners, went to talk to him privately. Cyril went to see Roelf Meyer, they went fishing, and discussed the whole global picture together there. We know the themes that were causing problems. We had private discussions with the police about the release of the political prisoners; we had a report about each of the discussions, which would show what was possible or not possible to do. Therefore, we came up with possible options. Mandela and De Klerk decided instead to create an informal channel of communication. Roelf Meyer led this channel of communication, and we, who were in the Committee, became members of it. It became known as the constitutional channel of communication. It was the only body which was talking during the periods of silence, no one else was talking except us. We would talk from six o'clock in the evening to six o'clock in the morning, arguing about each topic, which was discussed privately until we found a consensus. What did the consensus mean? We would say to stop the nonsense, we would find the interim constitution, and once we have it, we would hold a national election. We agreed on that. After that we would have a Parliament, which would also sit as a Constituent Assembly, and we agreed also on this point. We then said that we had to agree on the final list of prisoners to be released. 155 prisoners had to be released; we could move forward only if they were released. We then said, what do we do with violence? Because we saw violence coming especially from the hostels, the labour camps. They were more aligned to Buthelezi and the IFP, but they were used as a surrogate. If you would have told De Klerk about it, he would deny it. I will give you an example of a meeting where we confronted him about this. We said that we had to deal with this violence; the police must now be proactive and deal with it. There was no way we were going to the future with violence, it had to stop, no matter where it came from. They accused us of forming self-defence units, which we did, because we felt

we were going to be killed. There were no angels in this situation. We felt attacked, we defended ourselves. They felt attacked, they attacked us. One day, there were huge killings going on in a township, Mandela called us and told us to meet De Klerk. He was very angry about the killings, very emotional in his discussion with De Klerk, as he believed he was behind the violence, that he was financing it, because he was the President and had the police and the army in his control, but did not stop it. As they were heating up, we needed to separate them. We said to De Klerk that we were not going anywhere, that we should stop talking, as we are not solving the problem that we were discussing there. We went back to Mandela and gave feedback to him, and he said something which he never said before: "I am angry. I want to teach this Dutch boy a lesson". We said that it did not look good, as we needed solutions. Our role was thus to advise the leaders as well, and we were not afraid to do so. They came back to the table and Mandela changed. He said: "I understand. I'm making mistakes, and you are making mistakes, because we're not finding solutions here. We are fighting, imitating the people out there. We should be leading towards our solutions. And I apologize, if I was rude to you". De Klerk replied, very philosophical: "It is good. Mr. Mandela, let me and you fall down the precipice. And when we look up, we must ask ourselves, who is leading the nation?". I thought it was a very deep response, and then they began to come up with solutions.

Through the channel of communication, we were able to work out solutions, then we called a public meeting with Mandela and De Klerk, to rubber stamp what we agreed from 6 PM to 6 AM for almost a month. However, Mandela was not happy with the 155 prisoners that were to be released. There were indeed three other prisoners, whose names were used by the media to show that the government was not serious about the release of the prisoners. One of them was Robert McBride, who put a bomb in a restaurant and killed many civilians. Mandela said he was

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not going to those talks unless those three prisoners were also out of jail. Before the morning of the talks, these 158 prisoners had to be released. Some of the prisoners were afraid that they would have been killed once released, and we had to convince them not to refuse their release. The government, on the other side, wanted some white prisoners that killed black people out of jail. The difference was that McBride was a freedom fighter, whereas the other person was a racist that killed black people. It was very difficult to find a compromise. Someone may have not liked it, but we had to accept it. As the prisoners were released at 10 o'clock, Mandela and De Klerk met and looked at the list. They ticked all the issues they had to agree upon: who is going to write the Constitution, that there was going to be an Interim Constitution, that there would be national elections, that the Constituent Assembly would sit as Parliament and Constituent Assembly, that the second house would not have a veto on the first house, and that the prisoners would be released. That unlocked the future for us, and we went back to negotiations. That is how the deadlock was broken.

## Q&A session

**Participant:** Thank you for your presentation. You talked about a Parliament that prepared a Constituent Assembly, but there was no referendum for it. Was the general landscape enough to legitimise the Constituent Assembly? What was the ratio of the seats in Parliament?

**Mathews Phosa:** There was no problem of ratio. That is why we said that we had to have an election, so that the Members of Parliament also rise when they sit as members of the Constituent Assembly, to write the Constitution and to vote on it. Therefore, there were no chairs, there were just Members of Parliament or Members of the Constituent Assembly, and they would vote in terms of their numbers. After the elections, we allocated seats to each party proportionality, so you would vote in terms of your members.

**Participant:** Was it the Soweto massacre that caused the anger of Mandela? What was the exact date in which you overcame the deadlock?

**Mathews Phosa:** The 1976 killings were much earlier, before the negotiations started. I was part of that uprising, which helped mobilize young people in the country and received support internationally. At the time, many people left the country and joined the fighting forces. The violence during the negotiations, between 1990 and 1994, happened in the townships like Boipatong, which is a township out of Johannesburg, and one in the Eastern Cape. Those killings happened after the deadlock and it was very traumatic and dramatic. As I said, the highest number of people were injured and killed in South Africa was on the eve of the Constitution. And that is what made Mandela very angry. While we were talking about peace, people were dying. People indeed blamed us for being in talks and drinking tea together, instead of stopping people

killing each other. Mandela was thus angry because of the killings during the negotiations, that happened in four places. The first one was when we had just flown in from exile, and we flew back, as we could not see the point of discussing when political violence was going on. Mandela told us to fly back, as we had to negotiate the future, including this type of violence. The violence was brutal, especially when it became group violence. Just a day before the elections, a bomb exploded in front of an ANC office.

**Participant:** What do you think those attacks came from? Which actors within the regime? Was De Klerk really not aware of those attacks? Were there some elements, maybe in the army or in the bureaucracy, who were actually planning to sabotage the process?

**Mathews Phosa:** That was the biggest argument between Mandela, the President De Klerk, and all of us. Mandela thought that, as the Klerk was the President, the police and the army fell under him, he must have armed them and he must have known about it. Mandela accused him of knowing, of creating vigilante groups, of using the Zulus against everyone. There was a mandate to investigate violence. And until today, that report of state has not been made public. Mandela has thus always insisted that De Klerk did not make it public, because the report was perhaps implicating him, the police and the army.

**Participant:** Of course you need to reject political violence, but what about the definition of terrorism in line with international norms? How did you manage to deal with the definition of terrorism in South Africa?

**Mathews Phosa:** I have always said to people that I had the honour to graduate from being a lawyer to a terrorist, because that is what happened to all of us. We are all terrorists, in some cases we were defined as communists. During the Cold War we were seen as aligned with the

Soviet Union, and therefore we were seen as driven by communism, but that was propaganda. This was the key question in the first meetings in Cape Town, because we had to define who is a political prisoner. Then, the definition of a political prisoner brings in the debate about terrorism. We were called terrorists, so we tried to tell De Klerk that we wanted to disabuse him of calling us terrorists. We were not terrorists but freedom fighters, we were not criminals but political prisoners. We had an ideology behind, we promoted human values, in terms of United Nations, which the governing party was not promoting, we were standing for human rights. So the contestation of values was in our favour. We came up with a long definition of what is a political prisoner, and what is not a terrorist. You cannot say that someone that is fighting for a good cause is a terrorist; if this person is a freedom fighter it means that s/he is a political prisoner, and should be granted political status.

As an example, during WWII, a group from South Africa aligned with Hitler and became Nazi, from here, like John Vorster that became the Prime Minister of this country; he was fascist, and was not called terrorist, but political prisoner, and was released. In the spirit in which John Vorster was released, we asked the release of our comrades. We even formed a working group for political prisoners, to take the issue away from the table.

**Participant:** With regards to the political prisoners that were released. Did the peace process have any impact on the families of the political prisoners? Were there any studies, any support provided, or program that would deal with their rehabilitation?

**Mathews Phosa:** I am actually ashamed to answer that question, because the truth is embarrassing. People were released to their families and there was a debate on how to strengthen the peace process; we agreed that we

would have a Truth and Reconciliation Commission to get the victims and their families to ventilate their pain and their experiences with the aim of exposing what happened in the past, but finding a way of reconciliation, and, at the same time, prosecuting the people that committed crimes. However, the ANC did not reach an agreement on compensation, that is why I say it embarrasses me, I am not sure we did a good job. I call it the South African Vietnam syndrome. There were men who were not able to adapt from prison or from exile to normal society and who have become homeless. People were angry, as their future had been changed by the revolution. We did not go far enough to compensate; but more than money, people needed to be looked after as social beings. In this regard we failed, we did not address this issue correctly, but maybe it is not too late. The majority of these people are alive and they live under difficult conditions. Some of them were still thinking about the war. One day I went to the airport to take home some of the colleagues coming from exile or prison. They would still ask for their pistol, as they thought that they would risk their lives, being around people that were chasing them in the past. People would not believe that their enemy forgave them, they were traumatised by the fact that they were forgiven. I don't think that some of them will ever recover psychologically, on both sides. However, I don't think it is late to intervene and look after the welfare of the former combatants.

**Participant:** We have been hearing that the apartheid policies were tearing families apart, especially due to the issue of the hostels. How and why did this happen? Also, were there white people taking part in the ANC struggle? How many ANC white people were there? Were their families also torn apart?

**Mathews Phosa:** The hostel question is not a normal thing in most societies, it is very peculiar to an economic distortion in South Africa.

The economy was – and still is – in the hands of white people. They needed labour from rural areas very far away. Therefore, the government thought of two things: one was to build cheap houses for them, call them townships, with very fancy names, and the other was to have bachelor places, where men would stay alone, without a wife, as no women were allowed there. There were also hostels for women, where men were not allowed. Both the hostels and the townships were labour camps. In the townships you could have a normal family, but it was still a labour camp. In addition, the gap between the people living in hostels and those living in townships generated tensions, because, for example, the man living alone in the hostel would come to the township and grab the girls from the families living in the townships, or criminals in the hostel would cause crime in the township. The tensions, thus, were exaggerated during the conflict and the government played on them. They would release an army of hostellers against a township next door. People were abused, women died or were displaced from their homes, as they ran away from there, resulting in extensive disruptions of families.

Many people from outside our country do not understand the roles of white people in our struggle. Not every white person was a racist, not every white person supported apartheid. That is why the ANC fought a non-racial struggle and never agreed to racialize the struggle. The ANC never struggled against whites. If you think about Joe Slovo, he was a great leader of our movement and also of the Communist Party, and he was white. Brow Fisher, for example, was an Afrikaner, his father was an Afrikaner judge; he was a lawyer and was also involved in defending Mandela, he was imprisoned and died in prison from cancer. There were also young white Afrikaners that refused to go to the army, and paid a price to refuse to join the apartheid army. There were many white people that were part of the ANC. People of all colours and religions played

their role in our struggle. I am very proud of being part of a non-racial organisation, which strived to create a non-racial society.

**Participant:** We have always supported your struggle, so I am very honoured to be here, listening to you.

**Mathews Phosa:** We always talk about the pillars of our struggle: one was about mobilising the masses; the second one was about the armed propaganda struggle; the other pillar was the international support. We would never be where we are without international support. We appreciate the role of international community.

**Participant:** Your country is experiencing an extensive wave of crimes, do you think that it is due to the fact that perpetrators of crimes were not prosecuted after the mandate of the Truth and Reconciliation Commission?

**Mathews Phosa:** The crime in South Africa is embarrassingly high. If we trace it, it is around poverty, around inequalities, around the high level of unemployment. The level of unemployment is now about 28 percent of the people. The economy is not growing, it is not creating jobs. As a result, this high level of crime is provoked by the difficult living conditions of our people. We have to improve those, if we want to impact directly on crime. The Truth and Reconciliation Commission was for political reasons, and not for common law crimes. That is why we are pushing for a stricter law enforcement; the struggle against crime is an important one in South Africa, but it is an economic struggle.

**Participant:** In my opinion, the state should not have the right to forgive perpetrators on behalf of the individual, the victims. How is that possible that perpetrators were released?

**Mathews Phosa:** If we talk about the political issues, we came to the conclusion that there was a war in the country, and you cannot criminalise a war act. Never in the world an act of war has been criminalised. If you think about Bush, who invaded Iraq and killed innocent Muslim women and children, nobody criminalised him. However, if that is a crime, we can never forgive that, we would keep the perpetrator in jail. If we are able to say that a policeman, for example, killed a person under state order, we would definitely prosecute him, if we know that he committed the crime.

In the Truth and Reconciliation Commission, if someone did not say the truth, they would have been prosecuted, you cannot forgive what you do not know. One of the lessons that I learnt from Mandela was when he said: “When I left prison, I left behind my pain, my anger, my bitterness, and I left them in prison. And when I walked out of prison, I decided that I was going to live above my pain, my bitterness and my anger, if I have to find peace”. He repeatedly said that he needed De Klerk, and that De Klerk needed him. He needed De Klerk to bring the white people to a settlement, and de Klerk needed him to bring the black people to a settlement. It did not matter how much he hated him, they both needed each other. If they were going to continue like that, there would have never been an end, there would always be violence.

Ivor and Roelf go all over the world to share their experiences; I was asked by Mandela, after he negotiated the peace process in Burundi, to explain to the army why there must be a peace. We would go to talk to churches, to organs of civil society, and at the end we met the President. The message we carried was to ask the people to forget their differences, their anger, their bitterness and to reach out to one another. We addressed military camps, we shared our experience with them, as each situation is different. We did the same thing in Northern Ireland, when Blair and

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Mandela asked us to receive the fighting groups in Northern Ireland. We sat together for one week, and those parties did not even talk to one another. Reverend Parsley would not shake McGuinness's hand, because he considered him to be a terrorist. They would not even sit all together in one room for us to share our experience, so we had different rooms. The day when Mandela came there, they both sat in the same bar, they drank Irish beer together and they sang Irish songs together. We then went to visit some prisons in Northern Ireland, where we met IRA members. The next day, there was the Good Friday Agreement, and if you look at it, it uses terms like sufficient consensus, which came from our experience at CODESA and it was used as a deadlock breaking mechanism.

To conclude, the lesson learnt was: live above the bitterness.

## Session 7: Negotiating a new constitution in South Africa: what lessons can be learnt?

**Jody Kollapen**, Judge of the High Court of South Africa

**Ivor Jenkins:** Welcome back this morning. We have a very special person with us today, his name is Jody Kollapen, he is a judge at the North Gauteng High Court in Pretoria. When he was a student, Jody was an activist and became the Executive Director of Lawyers for Human Rights in South Africa, a civil society organization, where he served for quite a few years. And that was an organization which is still going today, and that was focusing on the citizens whose rights are being abused. Thereafter, he was appointed to be the Human Rights Commissioner of South Africa. We have a chapter nine structure which is called the Human Rights Commission and Jody was part of the first group of commissioners. He is now a judge in North Gauteng, a court based in Pretoria. He is on the shortlist to become a constitutional judge and in the next two or three weeks the decision will be made by the President. They are five people running for two positions in the Constitutional Court. Jody is a long-standing friend of Ebi, Muhammed, Roelf, and myself, probably 20 years or more. It is wonderful to have you here.

**Jody Kollapen:** Good morning, everybody and welcome to our country. When I look back at my life, there were times when we always knew that we will achieve our liberation and we will achieve our freedom. We just didn't know when it would have happened. Eventually it did happen and it was wonderful. South Africa's transition has been described in many ways; some people call it a miracle, but I don't like to call it that. I think it is something that we all want to be proud of, but it took place as a

result of good leadership, hard work, perhaps a bit of divine intervention from the Almighty. I think many other societies are capable of doing what we did, because when you describe it as a miracle, then you put it almost beyond the reach of others, and you almost say that only South Africa could do something like that. We are not an extraordinary country, we are ordinary people, but from time to time, we can do some extraordinary things. I would also like to wish you well, in the important work you do in building your society, and in trying to create the kinds of conditions in your society that will provide for peace, for stability for the respect of human rights.

The South African Constitution is a text that I have to work with every day, as a judge; however, for the majority of South Africans it became more than just a legal text. When I read the Constitution myself, I read the history of my country, which tells us about our struggles, what happened and what went wrong; it also captures where we want to go to as a society, what kind of society we want to create, a society where they will be social justice, where they will be democracy and where there will be respect for human rights. The text of the Constitution is beyond legal, it is also philosophical. It also captures the fears of our people, the hopes and the aspirations. There is something in that Constitution for everybody to feel extremely proud. I know that also when my granddaughter, who is seven years old now, will read it one day, she will find in that Constitution hope for her future. That is why the Constitution has become – as President Ramaphosa described many years ago – the birth certificate of our society. With this, I am not suggesting that it is a perfect document, it is a document that came about as a result of compromise, of give and take. Even today in South Africa there are people who say that some of the compromises went too far, but I suppose, it is easy, with the benefit of hindsight, to be wiser and to judge something after the fact. I have no doubt that for those who were there at the time, they were men and

women of integrity, and the product that they produced was the best they could do at the time. Thus, we accepted that and we moved on. I think there were times in the process where we did not think that we will emerge successfully; there were breakdowns in the process, there were stages when we thought the country would be plunged into violence, there were massacres during the negotiation process, Mandela blamed President De Klerk, there was the assassination of Chris Hani, but somehow we persevered and we managed to pull through. From a practical point of view, what we need to appreciate is that the people who were negotiating this Constitution, were largely two groups of people, who for 350 years, distrusted each other. You can imagine the enormous gap that existed. Black and white people looked at each other automatically with suspicion, not because of what you did, or what you said, but because that was the way in which our society was structured for so long. You can thus imagine, when the opportunity to negotiate a future arose, fear, distrust and suspicion hung heavily in the air and that needed to be negotiated, and overcome. One of the important factors in that process was the ability to continue talking, even at a time when hope was low. There was a public part of the negotiations, but also a private part, and that was important, because even if publicly things may have been stuck, privately, things were continuing between people who were identified as having the ability to talk to each other, to find each other and to keep the process going. I think hope and the belief that we had to succeed was important.

I think that what President Obama said, when he was talking about the American people, applies to us as well. He said: "We came to this country in different ships. But now we're all in the same boat". The reality is that white people did not have the option of going back to Europe. People of Indian origin, like myself, have never seen India; people in India look like us, maybe they eat the same food that we eat,

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sometimes they watch the same Bollywood movies, but we are totally different. When I went to India for the first time, I saw 1 billion people that looked like me. I was so happy when I came back to South Africa, because I was a part of a visible distinct minority. The point I wanted to make is, how did these two groups find a way in which to negotiate a Constitution that was going to take them forward? The agreement on the constitutional principles was important. Because on one hand, the National Party did not want any process in which the results of the negotiations would be overtaken by the majority; they wanted some kind of assurances that certain key features of the Constitution would be in place, and would not be the subject of a majority overriding it. The Constitutional Assembly, which is the representatives of the people must ultimately agree on the Constitution, because that is the only way you can have a Constitution that is legitimate. Therefore, the agreement on the 3-4 constitutional principles was an important one, because that meant that whatever the assembly was able to do, or not able to do, they had to comply with those principles. In this view, it was very important to have, for example, the principle of South Africa being one sovereign state, the principle of the separation of powers, the principle of the respect of fundamental human rights. The Constitutional Assembly, which came into existence after our first elections, had wide latitude to negotiate, and to agree on the Constitution; at the same time, they had to ensure that whatever they did, complied with these principles. At the end of the day, the Constitutional Court of South Africa had to certify that the constitutional text complied with the constitution principles. Today, the Constitution has come to mean much to all of us, it became almost a frame of reference. Even the worst amongst us wants to say in public, what I am doing, is allowed by the Constitution. Even people on the extreme right and on the extreme left in society, interestingly, insist that what they do is allowed by the Constitution. That is very

important, because in their own minds, the legitimacy, the supremacy and the authority of the Constitution is not being questioned, even if they do not agree with it, but they say that is what must guide us.

In South Africa, there are so many different groups in terms of language, culture, race and religion. What is it that binds us together? It is only one thing, the Constitution. It is the glue, it provides the basis. A professor from Wits University described our Constitution as a bridge from one place to another, a bridge that comes from a culture of authority. Before 1994, our government was based on a culture of authority, you had to do what you were told because people were in authority. Whereas now, it is a culture of justification; whatever the government does, one is entitled to ask them to justify that in terms of the Constitution.

Nevertheless, it created difficulties, especially with regards to the separation of powers. With regards to the very idea of a democracy, people elected a government, so why must the court have the power to override decisions that the government makes? Courts have set aside appointments made by the President, for example. This is not because judges have given themselves that power, but because the Constitution specifically said that any conduct, any law, that is inconsistent with the Constitution, must be declared as such. This created difficulties, the ruling party has said on different occasions that courts are running the country. I do think that perhaps sometimes lawyers play too much of a role in society, and certainly, in our society, virtually everything gets elevated to the courts. However, I do not think it is the fault of the courts, but it is the failure of politics, it is the failure to resolve issues at the political level, which then gets escalated to the court.

As we sit here in South Africa, we are in the process of debating amendments to the Constitution, the question of land is a big issue,

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for example. We will debate and fight with each other, but we will find a way of moving forward. For someone who grew up in this city, who experienced the dark side of apartheid, I can say in all honesty that in 25 years into democracy, I have never felt so proud to be a South African. It is not a kind of romantic pride, it is based on what I see, based on the opportunities my children have in this country, which I would have never had in the past. My children could go to the university down the road, which I could not attend when I finished school, even though it was about six kilometres from my house, as the law said that I had to go to university 600 kilometres away.

Let's now talk about the Truth Commission in South Africa. It was a very difficult process, because when I was a lawyer in the 70s and in the 80s, we did not have a clear sense of what would happen to people who committed crimes. Normally, if you commit a serious crime you must be investigated, charged, and prosecuted, and a court of law must determine your guilt. However, South Africa was in a unique situation and the issue of the crimes of the past had to be dealt with by the negotiating parties. The model that emerged took into consideration the fact that, for this society to move forward, we could not have a process where we have ongoing prosecutions in respect of crimes that has been committed historically, as serious as they may have been. Therefore, the parties agreed on a model that would deal with the crimes of the past, which was called the Promotion of National Unity and Reconciliation Act, but it was known as the Truth Commission. It sought to do three things. One was to look back into the past through a window and discover what it happened. There were a lot of people who were detained, who disappeared, who were banished, who died, and their families, in 1994, did not know what happened to them. Therefore, one of the tasks of the Truth Commission was to provide a complete picture of what happened in the past, but the cut-off date was from 1960. The

second task, which was very controversial, was to grant amnesty to those who had committed serious crimes, provided they had committed those crimes with a political motive and provided that they made full disclosure. That was controversial, because it meant that people who had committed crimes would not be prosecuted. If they came forward and made full disclosure, victims' views would be heard, but would not have a veto right. If a victim would not forgive the perpetrator and wanted to go to court, it would not necessarily happen. The third part of the process was to provide reparations for victims, either in the form of compensation or bursary. For example, if someone was deprived of an education, they would get a bursary, or medical assistance, psychological support, etc. The second part of that process was very tricky, because many victims found it unfair, as they thought the perpetrators needed to be prosecuted. The case went to the Constitution Court of South Africa and resulted in a very famous judgment written by the late Justice Ismail Mohammad. There was a challenge to the constitutionality of the legislation. The family of the victims, relying on international instruments, said that the legislation, at least in terms of the amnesty provisions, was unconstitutional, because it violated a victim's right to justice. The court did not uphold the challenge. It could not, as that would have been the end of the process, this was part of the negotiated settlement. Interestingly, Justice Ismail Mohammad said that the truth that people were looking for was more likely to come out through a process by which the TRC looked into the past, rather than through the process of prosecution. It was a kind of balancing exercise, you can go to court, but you may not get the truth. The interesting aftermath of this was that in 1971, a young and brave activist, called Ahmed Timol, was arrested and detained by the Security Police. After being severely beaten and tortured, he was thrown out of a building from the third floor; the policemen responsible were never prosecuted. An inquest that was held

in 1972, in Johannesburg, found that he had committed suicide, that he jumped out of the window, despite evidence that he was badly beaten, that it would have been almost impossible for him to reach the height of the window, but that was how the court system worked. The family of Ahmed Timol never gave up. A second inquest was held in 2017, and it found, in fact, that he was murdered. There were five people in the room at the time of his death, and none of them came to the Truth Commission to apply for amnesty. By 2017, all of the policemen had died, except for one policeman. His name was Joao Rodrigues. After the second inquest, the State decided to prosecute him, because he did not receive amnesty. If he had applied for amnesty and amnesty had been granted to him, things could have been different, but he did not. He thus brought an application to court saying that because of the long delay – 47 years from 1971, the right to a fair trial was compromised, and that the court should order a permanent stay of prosecution. I was privileged to be one of the judges who were setting the case; we refused the stay of prosecution, because the reasoning was that, given the particular crime, its historical context, that he did not apply for amnesty, even the need for justice, the prosecution should proceed. The fact that he was 80 years old, did not matter.

**Participant:** If you are seeking amnesty, it means that you are deprived of your right to go to court?

**Jody Kollapen:** If you are seeking amnesty as a perpetrator, then you obviously cannot be put on trial, if you successfully receive amnesty, because the amnesty committee would decide whether the crime was politically motivated and whether you made a full disclosure. If you did, you were probably granted amnesty, and once you were granted amnesty, you could not be prosecuted, nor you could be sued in a civil court. For this reason, the victims could not use the civil process to sue you, so you

are absolved from all the consequences of your crime. But if you were not granted amnesty, then you could be prosecuted or sued. However, no one could be forced to apply for amnesty, it was a voluntary process.

I will talk now about the Judiciary and how judges are appointed in South Africa. The Constitution says that the Judiciary must be independent and judges must exercise their authority, without fear, favour or prejudice. Thus, the independence of the judiciary is an important issue that has occupied us for a long time. We have a system of appointment of judges, where we have a Judicial Services Commission. 23 people sit on the Commission. They are the chief justice, and two other senior judges, members of Parliament drawn from various political parties, members of academia, members of the legal profession, and the President. If you seek a judicial office, you have to wait until there is a vacancy in a court, and you apply. You can be shortlisted and then you could be invited to an interview. It is a public interview that takes as long as two to three hours, and where you could be asked, all kinds of questions. Then, the Judicial Services Commission would make a recommendation to the President for all judicial appointments, but it can recommend only the number of candidates required to be appointed. For instance, if there are two vacancies in the High Court, it will recommend two, and the President must appoint those two. The decision is not made by the President, but, effectively, by the Judicial Service Commission, except for the Constitutional Court. For every vacancy in the Constitutional Court, the number of names submitted to the President must be the number of the vacancies plus three. If there is one vacancy, the President must have 4 names. That is because you want to give the president some scope, even though it is the highest court in South Africa, but he cannot go outside of those names. The Constitutional Court consists of 11 judges, who have a 12-year term, but for a maximum age of 70.

## Q&A session

**Participant:** Thank you very much, your presentation was very interesting, as I am a constitutional lawyer. What was the timeline for the finalisation of the constitution? Did you announce the principles to the public? Did you try to help people digest the process?

Also, the constitution is not a magic wand. Were there debates or studies about the economic inequality? As for the TRC and the period of applications for amnesty, were you making any differentiation among amnesty applications?

**Jody Kollapen:** The constitutional principles that I spoke about were agreed upon in the negotiation process before our elections, CODESA and the Multi-Party Negotiation Process; the Interim Constitution was first passed, because we needed the Interim Constitution to conduct the 1994 elections. The Interim Constitution contained a schedule to it, the 3-4 constitutional principles, so its legal standing was as being part of the Interim Constitution – I think it was schedule 4 or 5 of the Interim Constitution. That would have been in the agreement we reached in 1993. In terms of the timeline, you had a Constitution agreed upon, you had the constitutional principles clearly established, you had the elections in 1994, and then the two houses of parliament constituted the Constitutional Assembly. They had the task of drafting the final Constitution based on those constitutional principles. From a public digestion point of view, there is still some debate as to whether there was a high level of public participation or not. Certainly, from 1994, the Constitutional Assembly had very strong public outreach, I recall something like 1.7 million written submissions that were made to the Constitutional Assembly by a variety of interest groups ranging from people interested in gender issues, animal rights, the environment;

also, something like 1000 workshops were held by the Constitutional Assembly, and they were run by civil society across the country during those two years from 1994 to 1996. It was useful, because one was able to ask which were the criteria to use in dealing with these public submissions, and clearly the constitutional principles provided a kind of outer parameters in terms of the limitations of the Constitution making processes. However, the Constitution is not a magic wand; we have been into democracy for 25 years, we are able to say that we have the best constitution in the world, but, consistently, we remain the most unequal society in the world. There are many debates around that: one is whether the kind of compromises we made in the constitution making process went too far, or whether we were held captive by white fears. Maybe many of these issues come back to haunt us today, for example the issues around land or economic justice. The Constitution in its current form is not going to resolve problems of equality, and I am not sure if amendments to the Constitution will do that either, that lies in bolder policies by the government. I think that the stability of our democratic order is dependent upon us, dealing with inequality; in a society where millions are living in poverty, people do not love the constitution as much as I do. I will give you an example. I went to a rural village many years ago, and I spoke about the Constitution. An old man said to me “I really enjoyed listening to your talk, because it is clear to me that this Constitution that you love so much works for you. I can see how you dress, I can see the job you have, I can see the car you drive. And I promise you, when you come back one day and when the same constitution has worked for me and my village, I will be even more passionate than you are”. And I thought that was a very fair observation.

In terms of amnesty, the problem was that the crimes dealt with in the TRC were crimes that would be crimes even today, but the crime of apartheid was not regarded as a crime. It was murder, abduction, torture,

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but those are always crimes, whereas the United Nations declared apartheid to be a crime against humanity. However, apartheid was never classified as a crime. I think about this idea of appeasement. In South Africa's Constitution, the word apartheid does not appear; in the legislation that deals with the Truth Commission, the word apartheid does not appear.

**Participant:** What was the tradition of impartiality in the judiciary? Despite apartheid, was there an independent judiciary?

**Participant:** What are the reasons for choosing 1960 as the cut-off date for the TRC process? How is that possible that the state was given the right to forgive on behalf of the victim? Also, how do you explain the high rate of crime in South Africa?

**Jody Kollapen:** As for the first question, during the apartheid era the judiciary was functioning consistently with what was expected of them by the apartheid government, but there were exceptions to that rule. Certainly, I practiced as a lawyer at that time; one did not have the confidence that the judiciary, as an institution, would be able to step outside the logical constraints imposed upon it by apartheid. However, there were individuals who stepped outside of the model, but by and large, when we went to court as lawyers, the expectation was not that you would receive justice. Sometimes you would take cases to court knowing that you would lose them. However, the act of taking the case to court would have its own benefits, in terms of exposure to the public. Now, that tradition has changed, not because this group of judges that were appointed in 1994 are better people than the old group, but because of the advent of a new constitution, people feel that they are in a new ballgame.

There are judges today sitting in our courts who still have their own biases and have their own prejudices. In our Constitution, we provide for the recognition of diversity, gays and lesbians should have the same and equal rights. I know that many of my colleagues feel very uncomfortable about that. I would say there is a consciousness that, as judges, we have an important job to do, but we need to be careful, we have to be realistic about the judicial authority.

I think the reason why 1960 was chosen as the cut-off date was the fact that the work of the Truth Commission had to be done within a certain period of time; otherwise, if the period had been extended too far back, the work of the TRC would have never finished. Also, 1960 was a symbolic year, as it was the year of the Sharpeville massacre, when people demonstrated against pass laws. 1960 was defined as the cut-off date also for practical and generational reasons, as victims and perpetrators were still alive.

As for the question about amnesty and the state vis à vis individual rights; that was the sticking point, because people could say, who gives the state the right to forgive on behalf of the victim? Clearly, that distinction would not have been practical in moving forward. For example, you could not have a category of crimes committed against the state, in respect of which amnesty would be given, and a category of crimes committed against individuals. That is precisely what justice Ismail Mohammad had to grapple with in the AZAPO case. He found the solution in saying that the Truth and Reconciliation process did in fact provide for victims a sense of justice in a different form, there was a measure of justice in receiving the truth. Even though truth and justice are not the same thing; justice is a vindication. I suppose that is why the TRC was not called the truth and justice commission. It was called the Truth and Reconciliation Commission because its aim was also to

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provide for a mechanism by which a victim and a perpetrator will come together and there will be some kind of reconciliation; that happened in a very few cases, whereas in most of the cases, the victims and the perpetrators would come on their own.

In South Africa, we do have a high rate of crime, and it is not just white people who feel insecure, but lots of crimes are committed against black people. In many ways, we are a violent society. Historically, we have dealt with our problems in a violent way. That violence is not just an outward violence, but it is an inward violence as well. Domestic violence has nothing to do with the politics, it happens within a relationship between a man and a woman. Yet, domestic violence is a serious problem in our society. Perhaps we were too romantic in 1994, we thought that we could place this wonderful constitution on top of a very damaged society and hope it heals it. I sit in the court and I deal with crime, not every day but 25% of my work. And one of the difficulties that I still cannot overcome is understanding what underpins that violence. Why do young men kill to steal a cell phone? Poverty and inequality are issues, but I think we haven't come yet to terms with our seriously dysfunctional society.

**Participant:** Thank you for your presentation. I have a question about the appointment of judges. How many people are there in the Commission? Does the Commission elect judges at all levels? Are all judges elected by this Commission? What are the fundamental problems of the judiciary in South Africa?

**Participant:** I have a question concerning the post-apartheid period. Maybe I might be repeating, but I think it is very important. How you realise the process? About the Truth and Reconciliation process. What was the drive of the perpetrators coming to the TRC? Were the perpetrators really looking for amnesty or for relief? What is the

percentage of perpetrators that came to the TRC and how many are still hiding? What are the difficulties in this regard?

**Jody Kollapen:** The Constitution says that for a vacancy, the number of recommendations must be the number of the vacancy, plus three. The Judicial Services Commission consists of 23 people that include judges, parliamentarians, academics, legal professionals and the President. They deal with all appointments, from the High Court upward, namely the High Court, the Supreme Court of Appeal and the Constitutional Court. The lower courts', the Magistrates Courts, appointments are dealt with by the Magistrates Commission, which is a separate commission that appoints magistrates. The Judicial Services Commission decision is the appointment – it is the appointment body – except for the Constitutional Court. If there is one vacancy in the High Court, the Judicial Services Commission will only make a recommendation of one name, which will be the person that the President will appoint. I think the problems facing the judiciary in South Africa is that our system is too adversarial and there are not enough opportunities for mediation, which actually is very much part of African customs and cultures. The second issue is ongoing judicial training. In the past, judges were appointed when they were close to 60 years old, they would have had considerable years of experience; now, increasingly, judges are appointed at a relatively young age, late 30s, early 40s, and clearly, the years of experience is much more limited, so the need for ongoing judicial training is important. The third issue is that people wait for too long to have the cases come to court and to be adjudicated upon. I think that it may be linked to the first issue, that if we had a viable system of mediation, we could divert many of those cases for mediation and the court would deal with what needs to be dealt with.

## Session 8: Justice, truth and reconciliation: the architecture of the Truth and Reconciliation Commission

**Fanie du Toit**, Former Executive Director of the Institute for Justice and Reconciliation

**Ivor Jenkins:** Welcome to Cape Town. This first session of today will talk about the TRC in SA and will also spend some time talking about Peace Committees and reconciliation in general. We have Fanie du Toit with us, he is one of the leading experts in the process of reconciliation, particularly in our country. He headed one of the most prominent civil society organizations in South Africa, called the Institute for Justice and Reconciliation, IJR. He then retired from that and embarked on other challenges: he spent two years in Iraq with the United Nations and started to implement a program around peace committees, following the model that South Africa used during the hardest periods of political violence in the 1990s. At the beginning of this year, we, as In Transformation Initiative, offered him a one year contract to work in Myanmar/Burma, so he would spend two weeks in a month in Rakhine, and two weeks a month he is back in South Africa. It is not easy to find a more experienced person in peace-making and reconciliation. Fanie, we are honoured and happy to have you here, and we are looking forward to your input. Thank you.

**Fanie du Toit:** Thank you very much. Good morning, everybody. It is a great honour to be with you this morning. I thought it would be best for us to start with a video that will show you a little bit about the TRC process, because I think it is important for you to feel the atmosphere of the event, as it is very difficult to reflect that feeling in words 20

years later, you have to see it with your eyes. Before we watch the video, I just want to put it in historical context, so that you get an idea of where this process originated from. One of the trickiest things to handle during political negotiation is the issue of crimes against humanity, as it is very difficult to accuse the person that you need to cooperate with in negotiations, when you should instead build trust. In South Africa, this happened because there were rumours on the ANC side that they were crimes being committed in the camps where the ANC had convened and did its training. Also, there were rumours that the South African government was operating what was called the third force, namely death squads. However, these were just rumours, and yet, when these two groups sat opposite each other, they had to decide to trust one another, whilst knowing that the other side may be committing some atrocities. That was very tricky. There were two techniques that they used in the negotiations, which were very effective. The first was that they sent a signal to the other group, that they were serious about human rights violations by making internal investigations in their own organizations; the second thing was that they committed that they would deal with it publicly, when the time would be right, as the situation at that stage was too sensitive. The job they had to deal with first was to secure the Constitution of South Africa for the future. Once the future and the path to pursue was settled they would be strong enough to turn back and deal with the past. The problem with dealing with the past, if you do not know where you are going, is that often you reinvent it and you repeat it, and you never get “past the past”. You lock yourself into that cycle. After having a clear idea of where you want to go, a nation can then turn with much more confidence to the past and say “let’s see where things went wrong and what are the obstacles that prevent us from going where we’ve decided we want to go”. Often I have seen the Truth and Reconciliation Commission being recommended for a country, but the

country is not ready for it. Why? Because they don't know where they want to go, they have no idea about the future. It is thus very important to find a constitutional agreement on where you want to go; to look at the obstacles within this framework; and then to deal with the past, as it is one of the obstacles to reach your dream. South Africa did two things: investigating themselves to show the other party that they were serious about it, and making a commitment to deal with the past at the right moment, by writing it into the postamble of the interim constitution. For the internal investigations the ANC had three different commissions that looked at the crimes committed within the ANC camps in Zambia, in Tanzania, and other places. One of the most important commissions was called the Motsuenyane Commission; it was when the Motsuenyane Commission made the report to the ANC National Executive Council, during the negotiation period, that the ANC said that it was not going to deal with the crimes of the past straight away, but that it would set a Truth and Reconciliation Commission for the whole country as soon as it put the house in order. This was the first time that idea of TRC was actually voiced, it was when the Motsuenyane Commission reported on the crimes that were committed in the ANC training camps. On the National Party side, during the negotiation period, President De Klerk instituted Richard Goldstone as a judge, heading the Goldstone Commission, which looked into police violence. For the very first time it was proved that there were death squads operating in South Africa, that there was a national intelligence that was operating from some company's offices in Pretoria, that there was a farm outside Pretoria that acted as a torture centre, and also that there were hit squads that assassinated activists. The Goldstone Commission was the first to uncover this; in response, De Klerk fired about 13 different generals in the army. The TRC process thus started by internal investigations on either side, which then became a trust building mechanism across the political divide, but

it was not a joint national effort. The TRC came later, when we finished our constitutional process, and that was a wise decision, in my view, to wait until we were confident enough to turn back to the past. When we finally decided we were going to turn to the past, we had one obstacle, which was an absolute requirement of the political process, as it was written into our constitution: the obstacle was that there will be amnesty. You all know what amnesty means; amnesty it is not a pardon, it is not that you have been found guilty, and that you have been pardoned. Amnesty means that you will not be investigated, and that you will be free. This was written into our interim constitution, to make sure that we did not get an armed uprising. What did we do? In 1994, when the first elected Parliament of South Africa took office, the debate began, and it was very different to the debate around the negotiation table. Both parties were saying that they had soldiers and that they wanted to look after them. But what about the victims? The civil society organizations and the national Parliament got involved and the debate went on for a year and a half. Up to that point, it was about the perpetrator, whereas now it became about the rights of the victims. The justice minister at the time was Dullah Omar, who made a famous speech in Parliament, saying that from that moment, the truth and reconciliation process would be about the victims and their rights, not the perpetrators. The perpetrators held us hostage, it was now the time of every mother that lost a child to talk about it, it was the time of every survivor of torture to talk about this publicly. To do that, the nation needs to be stable, so when we had our constitution in place, we were strong enough to do that. That is where the Truth and Reconciliation Commission came into being, with the National Unity and Reconciliation Act of 1995. I'm going to break off here, so we can watch the video that will give you an atmosphere of what the Commission's work was like, and then I will describe it in more detail.

**Fanie du Toit:** I think the basics of the TRC process is well covered in the video, so I do not need to repeat, but I want to emphasize just one fundamental principle, about the word reconciliation. Often the word reconciliation is seen to be idealistic, not realistic, it is for the dreamers, the utopians, those who want a better world; whereas fighting is for the realists, those people who see the world as it really is. I think there are many countries in the West and in the East that think that reconciliation is not for the realists, but I would like to differ on that position. I would like to say that reconciliation is for the realists and fighting is for the idealists. Reconciliation is for people to understand that peace is not possible for your own group if the other group does not have peace; reconciliation is for people to understand that your own future is dependent on the future of the other person, and if the other person suffers that suffering will also reflect in your own community. Reconciliation is for people that understand that weapons are a last resort, to keep a little belligerence from harming those who love, that weapons cannot build peace. It is for people who build peace, and to get it you have to get through to the people on the other side. This sentiment is well captured in a story of Nelson Mandela, when he phoned up the general that had deployed 2000 young Afrikaner men to fight in one part of South Africa. He told General Viljoen the following: “I notice what you have done. I see that you want to fight, but I have a proposal to you. And the proposal is that I want to admit to you that the ANC will never be able to defeat your militias, you have too many people, and too many weapons. But General, you have to admit, you cannot kill all black people in South Africa, which means that tomorrow, there will be white and black people in South Africa, so at some point we are going to have to learn to live together, because we will always share this country. So General, why don't we do that now, before we fight. Because if we do it later, the longer we fight, the smaller is the cake that we can divide amongst us. So why

don't we do it now, so that the cake is still relatively large, and we can all have more". That day, the general took his uniform off and he put his suit on. He went back to the right wing of the Afrikaners, who were ready to fight, and he told them: "We are going to be part of the political process in South Africa. It's in our own interest, it's in the interest of our children, and ultimately, it's the only realistic option for us". In a territory where people share a certain geographic space like Iraq, between Shia and Sunni, and like Myanmar, between Buddhist and Muslim, the only realistic option is to pursue reconciliation. To fight is idealistic, it is ideological, it is trying to imagine the future without the other person being present. Therefore, I want to turn this idea that reconciliation is for idealists and say that actually reconciliation is for realists. The Truth Commission was an important stepping stone in this regard because it also accepted that in the past both groups had hurt one another quite a lot, and that it would be difficult to learn to live together if the wounds were not addressed. Our step at the TRC was to bring this out in the open, so that the nation could begin to deal with this issue. I think I could safely say that today there is not one South African that would deny what happened under apartheid and that most people accept the horrible things that happened in our past. This is because of the TRC process.

When the TRC process finished, about 1000 perpetrators of gross human rights violations got amnesty, but the condition was that they had to tell the truth in public. If they said they had committed four murders, but the Investigation Committee discovered that they had five murders, they would not have got amnesty. If they said they had committed these four murders because they were members of the ANC, but they could not prove that they were members of the ANC, they would not have got amnesty, because they were not part of a political party. If they said they committed 25 murders including five children, but they were looking

for just one person among them, they would not have got amnesty because it was disproportionate killing. 7000 people applied for amnesty, but only 1000 got it; however, the ANC identified 300 names out of the people who applied and who did not get amnesty, and out of the people who did not come forward at all, and gave them to the national prosecuting authority, as those were bona fide cases, and there was enough evidence for these people to be prosecuted. These cases included people both from the ANC and the apartheid side. Unfortunately, the political will to prosecute these people did not exist. Even though it was a black government, political leaders at the time said that we had to move forward, so none of these 300 names were prosecuted. That was a big problem because the people who got amnesty claimed that they should not have come forward. Amnesty indeed depends on the credible threat of prosecution, so if people know that they can be prosecuted, then they are incentivized to participate; otherwise they would not come forward. People who do not come forward must be liable to prosecution.

I want to argue that there is a very big difference between what we will call blanket amnesty and conditional amnesty. Blanket amnesty is when you just uncover the past and nobody ever talks about it again; that is called also called impunity. Conditional amnesty is when you offer the perpetrator amnesty but in exchange for the truth, then you uncover the past and you get the truth that you may not have found in the court. The courts are not always very good to get the truth to victims. That is why the big national project of uncovering the truth would be best done it through such a Truth and Reconciliation Commission. However, we left the courts, as a credible threat that if you did not participate, then you could be prosecuted. Unfortunately, after the Truth Commission, our government did not prosecute. We, as a civil society organization, we lobbied long and hard with the government to prosecute, but it fell on deaf ears. We did not lobby because we hated the perpetrator, but

we lobbied because of the integrity of the whole process, which was dependent on this. It is thus very unfortunate that South Africa did not prosecute those people. However, now, several activists took to court some of these cases. On the 12<sup>th</sup> of June, a few days ago, there was a court case in Pretoria, where one of the perpetrators applied for permanent stay of prosecution, and it was rejected in the Ahmed Timol case - you met the judge who made that decision yesterday. Timol died in police detention in 1972. It was claimed that he committed suicide by jumping from a building, but he was thrown out of the window. The person who helped to throw him out of the window, went to court and asked for permanent stay of prosecution and that was rejected four days ago, which means that now the door is open for more prosecution. If a country has the rule of law and an independent judiciary, with independent judges, sooner or later these court cases will come up. This has happened in Argentina as well, 30 years after the events. It is a pity that South Africa did not handle this more astutely at the political level. The other part of the recommendation of the TRC was to pay the victims, a pension for six years, at a minimum wage. Instead, the government opted to pay a once off amount of about \$3,000 at the time, which was actually an insult to the victims, as it was too little money for the victims. The sum was paid to about 16,000 victims. It was actually 21,000 cases, but some victims had repeated cases, while some others had died. Among those 16,000, there were not just victims that suffered directly, but also the next of kin of those who died – their children or parents. Unfortunately, again, the reparations were disappointing. The lesson that I would draw from the South African experience is the following: if you do have a TRC, then you should have an independent civil society-based monitoring mechanism to monitor the implementation of the recommendations of the TRC. You cannot rely on governments to implement the recommendations as governments, everywhere in the world, are very bad at this.

I also wanted to mention that during and after the time of apartheid there were two conflicting myths in South Africa; one was by the white people and the other was by the ANC. Each of them had a story of how history had happened; they admitted to include their own faults and their own mistakes but they only talked about the faults and the mistakes of the other one. The TRC came up with a third story that included all the human rights violations in the country, and thereby, it opened up a space in civil society to talk about these things that had not existed before and away from the political manipulation. Recently we had a fairly disastrous president, President Zuma; the more pressure was put on him politically, the more he began to deliver historical lectures on the merits of the ANC and the merits of the liberation movement. It was very useful to have the Truth Commission on the table as well, to tell that the liberation movement was amazing on the right side of history, but it had mistakes as well. They were human beings involved, and it cannot exonerate corruption today, because you had a perfect past. And so that political manipulation of history is also made more difficult. If the TRC has a history that it can put on the table. That is not ideological, but it's simply a human rights focus on the history of the country, then it helps the country to move beyond those myths that both sides perpetrate, and those of us, and I'm assuming this is all of us around this table, who are part of an informed civil society, we know those myths very well. We don't need to be told what they are. We know that these myths are not true, or that they only half true. And then, it was very clear in Iraq, for example, how these myths operated against one another. And there wasn't a moment of truth in Iraq, because of course, during the transition in Iraq, the transition was not managed by the Iraqis themselves but by the United States of America. So they, there was a feeling we just get on with it. We don't need to deal with the past. And you know what happened in Iraq. It went from bad to worse.

So that moment of truth has not yet arrived in Iraq. So, I will stop there about the follow up on the TRC and then we can have discussion.

## Q&A session

**Participant:** How do you see the role of the young people moving forward from conflict? What have you done to help this process? Also, what about the exhumation of bodies claimed by the families? Is there any building or statue dedicated to people that died?

**Fanie du Toit:** Thank you. I think those are two very important questions. It is linking the past to the

future that matters. We don't deal with the past, only for the sake of the past, we deal with the past for the sake of the future, and therefore the youth have to be very centrally involved. The government did not have a lot of political will to include the Truth Commission's in the curriculum of the schools. However, my institution I'm proud to say, worked a lot on this and produced including those videos and also a lot of other materials, which eventually we managed to convince the education department to take to every school in the country. And then we had training process with the teachers, because we realized teachers do not know how to teach this. teachers are also part of society, they're also part of the problems in society. They're also biased and teachers do not know how to teach this material. So we did in all nine provinces we did training courses with teachers. In fact, with a trainer of the trainers, so at that so that this could be a teaching methodology that could be incorporated everywhere. Unfortunately, what has happened is that because of the structural inequality in our education system, black schools are still much worse than white schools, white schools are much better. The irony is that it is now more often taught in white schools than in black schools. And so for a new generation of young black children, they don't know this history because of the fact that their schools are not properly functional. And this is a really big problem for us. This is also why you will see in South

African society that although I would argue, there's not a big chance of racial conflict re-emerging, there's constantly eruptions of violence, Mini eruptions, protest delivery, xenophobic attacks, criminality and so on. This violence is still simmering in our communities because our education process has failed the black communities because of the structural inequality of our education system. The government has not managed to turn that around. And that has been a big problem. We have to spread the spending around. So, spending is now more on black schools and on white schools, but it's not yielding the fruit that results. So this is a big problem. And then secondly, on the exhumation of bodies. Not a lot of bodies have been exhumed but there is an exhumation unit in the Justice Department in South Africa. I would say about 100 bodies have been exhumed. I don't think it's many more than that, only 100. But there have been re burials of some of these. We've had ceremonies, and there are memorials being erected, it's a slow process. There are also community memorials being built in a community where a massacre might have taken place. Unfortunately in some in many cases the bones of were destroyed or swept away by rivers or thrown in rivers. So, but that process is ongoing. It's done at a very high scientific level, so it's very slow, but it is proceeding.

**Participant:** Do you have an estimated number of people that disappeared? Some people were not prosecuted. How does society feel about it? How would society have felt if they were prosecuted?

**Fanie du Toit:** The TRC report, which is available on our Justice Department website it's a very large report, it's seven volumes. It's there for everybody to read, the problem with it it's too large and very few people have actually read it, and the government never produced a popular version because in that popular version we would have had the figures that you are talking about. We know that there were 21,000

victims that approached the TRC. But we know that the list that civil society is keeping is now closer to 100,000. So many people missed the opportunity to participate in the TRC, for whatever reason. It may be that they were not informed or maybe they were somewhere else at the time, maybe they were outside the country. So there is a case to be made to have an open ended list. Ideally we should have an office now that keeps taking testimonies of people. And then verifying these testimonies. Officially, I think the figure for deaths that the apartheid state caused is about 10,000 it's not a lot. But the conditions that the state created of course, caused a lot more deaths. And there was for example a civil war in Kwa-Zulu Natal in the Midlands where many thousands died. And then the other big number that you should keep in mind is that about 3 million people were displaced, officially forcibly removed. And, and so many of those people who disappeared in that process. It's unknown and it's not recorded. But I would say that the gross human rights violation victims would be between 80 and 100,000 people over the 30 years of apartheid. There was was a sentiment that we should not prosecute people in the past, because our criminal justice system is already under pressure with the crimes of the present, and that if we start operating with crimes of the past, then we will not have the capacity to deal with what is happening now. I think the youth have called us out on that one. I think black youth are very angry that people got away with murder, literally, and these are the people not so much the ones who received amnesty at the TRC but the ones who did not participate, who did not come forward. And so, I think there would have been a lot more peace in South Africa if we had managed to prosecute even only 20 people, or 25 people of the 300 successfully; that would have made a big difference in the peace of mind of the youth of today. Unfortunately, of course, as I said, we never did that. But it's important to say that we did not use prosecution as the first step, the first step was a more inclusive process

of conditional amnesty. And only when that fails, then you prosecute, but to uphold the integrity of the conditional amnesty process, you do need to go through the prosecutions, and I think the youth is pointing us out on that.

**Participant:** Has justice been achieved, even for a little bit?

**Fanie du Toit:** Yes. If you define justice as a more inclusive, and a more fair society. Then, justice has increased for the majority of South Africans dramatically since 1994. Also, a sense of what I would call historical justice that we now admit that the truth of history, that history was on the side of the liberation movement, we admit that in South Africa, black and white. And that's an important sense of justice even if individual victims did not receive enough reparations and the fact that some perpetrators got away with it. The fact that we now have a more inclusive society, and a much fairer society is the biggest justice. That's what we want, that's the Holy Grail. That's what we're after, an inclusive and fair society. South Africa is more inclusive now and fairer now than it's ever been in its entire history, what we are saying is that we are still not inclusive enough, we are still not fair enough. And there's a lot of work still to be done. But that doesn't mean that we haven't improved since 94, we have improved.

**Participant:** You gave numbers, and those 300 that AMC identified that those who are until today not persecuted. What is the difference between those 300 names and the 1167 names who got amnesty? So, those 300 names, there still is the possibility, maybe in the future that they might be prosecuted, but those 1167 are out of the realm of the prosecutor? And my second question is, you said there was 7116 applications, and only 1100 something got amnesty, so what happened to the rest? Were they prosecuted?

**Fanie du Toit:** So, what you will see if you make an open offer to the population on amnesty a lot of people come forward that are not necessarily political criminals but just normal criminals. And they try and pass themselves off as political people, but they're actually just criminals. So a lot of these applicants, we just threw out on the criteria that they had to have political motivation. So this is why I say if somebody could not prove that they were part of a political process they did not receive amnesty. So many of them simply stayed in prison where they were. Others, nothing happened. And then some of those people of the ones who did not receive amnesty became part of the 300 names. And some of the others who did not participate at all, also became part of the 300 names, but it was important for the TRC to say we have credible evidence that these are guilty people. And how did they get the evidence. Now, one thing that that is not clear in the video, is that the TLC had a strong investigation unit. That worked very hard at getting evidence, and that they have powers of subpoena and search and seizure, which meant if they walked into an office they could seize any documents they wanted, or hard drives. They even raided police officers and found documents in police stations. They raided personal premises of high profile people who had stashed documents away as a kind of insurance policy. I've got some dirt on you, you know. So, all that evidence was there, and when they went through it, they developed evidence on certain people. And then they gave 300 names to the government.

**Participant:** There might be a possibility that they can get prosecuted? I mean, what is the difference between those who got the amnesty and those 300 people?

**Fanie du Toit:** So the ones who got the amnesty, there is no possibility for them to be prosecuted for

what they applied for. So they got that. if something new becomes available, new evidence, then they can be prosecuted for that, but the 300 names are either people who did not receive amnesty, or who never came forward.

**Ivor Jenkins:** And the Ahmed Timol case that has been mentioned yesterday is one of those 300.

**Participant:** Thank you. Regarding the initiatives taking place for the reinvestigation of past crimes. Does the political power support them? The apartheid regime caused gross human rights violations, which we talked about yesterday. What urged people to develop the apartheid museum, for example? Also, the apartheid period in South Africa coincided with a decolonisation period worldwide. South Africa went to the opposite direction, this is such an exception. What do you think is the sociological and historical explanation for this?

**Fanie du Toit:** I think that there is a bigger chance now under the new president for the National prosecuting authority to actually prosecute some of these cases, than there was under the previous government. There is a sense that when you have a corrupt leader your primary priority is to get rid of that leader and there's a lot of things that don't get attention. So, the time that Zuma was in office. It preoccupied all of us just to get rid of him. Now there's a sense that there is a long in-tray of issues that need to be dealt with that couldn't be dealt. Because we now have a president that is at least a good faith player, is not perfect but he's at least somebody that will do the job according to the rules, more or less, we hope. So now the criminal cases of the past is part of the agenda again. And the other thing is that gives me hope is that we have in the national prosecuting authority appointed somebody to very independent credible prosecutors, one actually worked for the International Criminal Court

in The Hague. And she is now being appointed. So I think there's more capacity. And at least there is not so much a political obstruction to this. How much active political will they will be, I am not sure yet, but I think the process will have more freedom for due process to take place. Under the previous president there wasn't a lot of freedom. And then what motivated South Africa, that's a historical question. And I think we can talk long about that but it was only formally legislated really in the 1960s. But, but the people who started apartheid, the National Party, came into power in 1948. So, it came out of the Second World War context. And I think because of Africa was the world's largest producer of gold and diamonds. And because there was a fierce competition between the East and the West, between Russia and between the United States of America and Western powers, South Africa was of strategic interest also to the west, and to the east. So there was also a power struggle for the control of the resources of South Africa, in 1948. And I think that they will say the South African white minority government was supported by the West as a bulwark against the Soviet Union expansion in Africa. And so it was an exponent of the Cold War. That became quite hot in our neighborhood where Angola became communist, Mozambique became communist, and Zimbabwe toyed with the idea after 1980, and South Africa was seen as a Western controlled state, a very rich one that was opposing Soviet expansionism. So from an international perspective we had the support of Britain and the United States, at the time, from a domestic perspective, I think the fundamental premise was that black people cannot govern a country. It was racism. And it was saying, white people need to lead black people. White people are more capable than black. And so, we must find a system where white people can gently guide black people to maturity and create havens where black people can flourish. They can't come in our cities, because they are all part of the communists, because they're undeveloped and gullible. That was the

kind of story that was told within the Afrikaner circles, none of that was true. But that is what that was the public motivation for apartheid during that period. That's why South Africa went a different direction than the rest of the world.

**Ivor Jenkins:** Fanie, we have to add the role of religion. The Afrikaner leaders were all in the early 30s and 40s, religious Christian men, by the way, and there was a fear of theology that said that God creates nations, and God created the Afrikaner nation in South Africa. And that gave, not only a political but also a deeper religious motivation for apartheid. so it was never seen by our people, Fanie's and my tribe, that there's anything wrong with apartheid. It was always seen as we are God's people. And God has called us. And so that deeply rooted justification, we can do. We want to kill people but you know we are God's people and so that I think can also be a added to that.

**Participant:** Thanks to you I had a better grasp of the work of the TRC. I have some questions. Where is the justice in it? How can we get those documents? You mentioned 3000 possible criminals. You had developed a system of amnesty; however, the Constitution is not a divine book, and the criminal code regulates prosecutions. Is this why you are so flexible about this, as its not regulated by law? What kind of problems will emerge?

Moreover, the confessors will come and confess, could you look for other cases through the confessions? How did you protect the confessors? Why did they come forward and said everything publicly? Were they looking for vendetta? And where is the justice here? You have ensured social reconciliation, but where are the individual rights? Where are women's right?

**Fanie du Toit:** Thank you very much. Where is justice? Perfect justice is in the future. Perfect justice is not here. Justice - imperfect justice - is in the truth that we obtained about what happened. And the satisfaction that victims felt that the truth was publicly acknowledged. That's a form of justice. Justice is in the memorials erected for victims. Justice is in every perpetrator that acknowledged and confessed that he had done bad things. Justice is in the incrementally slowly moving better society that we are trying to create for everyone. What is missing is prosecutorial justice. Justice through the courts. And that is one element of justice, that is my viewpoint, this is not the only justice, it's just one element. It's an important element but only one. Let's just go to your specific questions. Firstly, you can find the five or seven volumes of the report on the Department of Justice website. And, unfortunately, the road documents are all kept at the National Archives in Pretoria. So, it is accessible but there is an application process, it's a bit like the Stasi files in Germany. Except it's not as well catalogued as the German system is. On the legality and on the legal flexibility that you're talking about, I would urge you to read a document that you can Google, and you'll find it. It is the ruling of Deputy Chief Justice Mohammed. He was deputy chair. The legislation that provided for the TRC was tested in the Constitutional Court. It was taken to the court and the whole court sat and said, Is this what we now are going to do legal, or is it not legal, in terms of the Constitution. And there is a very important ruling that was made by Justice Mohammed, arguing for the legality of what is happening based on the historical position of the country. So, it's far better that you read that ruling, then me trying to explain the ruling to you, it is very well written, very poetic language. But the essential argument is that in order to embrace the future that the constitution demands and envisions, we need to know what it happened to the past. And the most effective way to do that would be through a truth commission. Otherwise, through

a court process, which equals the abstract right to prosecution may not deliver any concrete deliverables to the victims. And if you see how the ICC has performed up to now. It is not been a great outcome for victims of these areas. You know I always think of the criminal trial of Saddam Hussein, who was found guilty of 122 murders. and then executed for 122 murders, because that's the only evidence they had. But what about what was untold. What about the suppression of the Shi'a. What about the 1 million people that died in the war with Iran, those victims had no justice. They were not acknowledged, only 122 victims could be happy with Saddam Hussein's death. So despite the fact that he was criminally prosecuted and was executed, a lot of his victims never found any justice, because there wasn't a broader process of truth. That could bring that to them. So I think they said, in terms of political transition and change prosecution is not necessary but not sufficient. You need a broader process that gets to the historical truth of what it in fact happened in the dark of night, when nobody looked. Our truth commission did uncover a lot of stories about violence against women. But there wasn't enough focus on gender in our commission. It was in fact somewhat of a blind spot for us. And if we were to do this again that is one of the things I think we would do differently. We would dedicate far more time and effort on women's issues, and not only on women telling the stories of male victims, but women telling their own stories. So, I think that is a mistake. I just want to correct one thing, I was not the TRC chair, Desmond Tutu was the TRC chair, I was the executive director of the organization that called for the truth Commission, the Institute for Justice and reconciliation. So Desmond Tutu was the chair of the Commission.. Just to say that some hearings that were too sensitive, we did in camera, we did privately. But for the rest of it, we only used victims. So, the victims could choose if they were happy to go public, if they weren't happy to go public, they would be dealt with privately. Once it was public it was televised. There

was a dedicated TV channel and radio channel for 18 months, you could tune to it and it was there. And on a Sunday night there was a summary of what had happened in the week. And it was the most watched documentary in the history of South Africa.

**Participant:** How did people react to the fact that the TRC was formed by ANC, in the sense that people who did not support the ANC rejected the TRC?

**Fanie du Toit:** Yes. For a long time, when we did public opinion surveys, my organization tested South

Africans perception about the TRC. And for a long time black people supported the TRC by 80% while there was only 30% among the white people supporting the TRC. Even though you could argue that the TRC was perpetrator friendly and wasn't very good for the victims, it seems that the political support was the opposite, and that is why I think the truth is such an important form of justice. Because clearly the white community was hurting, was scared of the truth, that was coming out of the TRC. And so it was clear that that it had an impact. But yes, we have different opinions, what helped a lot was when the TRC did its final report. It made both sides angry. And so the fact that both sides were angry showed that they were actually neutral.

**Participant:** With regards to people appearing in front of the Commission to tell the truth. Was it perhaps easily done by them because of your Christian culture, and Christians are used to confess in public? For instance, in Turkey we confess to ourselves. You also talked about the example of Iraq. Is it a workable method for all societies?

**Fanie du Toit:** There's no doubt that that that TRC that you saw was South African. It was a South African experiment in South Africa for

South African culture. Turkey and Iraq need to try and understand the principles that were inside this process, and then give it their own cultural adaptation. So, for example, what we proposed in Iraq, and this this never happened, was a citizens archive as a first step towards not public truth telling, but recording the stories of people in a big archive, where everybody could come and talk and just record their stories. And then afterwards, one would decide what to do with his stories, and how to refer people either for psychological help, or for legal aid or for reparations. But the starting point was telling a story privately; for example when women came forward, they would be a woman's channel for women to tell their story to other women, for example. in the Nineveh province, you know that it is a lot of minorities ,Shabak Muslim, Christian, Yazidis, Kaka'I and all these people are there, and Turkmen as well. And they need to tell their stories, maybe two people from their own group. so it's important to find the cultural adaptation that is most suitable for your society. However, in South Africa, the thing that had the biggest impact was the public nature of this, the fact that everybody could see it. That was a very busy show. So one needs to think of how one can do that. And of course what I found in Iraq, is that in South Africa, there is a lot of patriarchy. A lot of male dominance, but it's even stronger in Iraq. Women are even in a worse position than in South Africa. So for women to play a prominent role in Iraq, would be even more difficult than in South Africa. But it's necessary. So sometimes you have to be sensitive to the culture. But sometimes, also you have to guide the culture. You have to lead the culture to the values that your constitution says that you are about; your culture is not holy. It's merely how you live, but it needs to change and it does change all the time anyway, So it needs to change in good positive ways towards family, towards rights for everybody. And so this this TRC process can help with that education process also in our

country. But at the same time it doesn't help to try and do it like we did it in South Africa. You have to find your own ways in which to do that.

**Ivor Jenkins:** Let me remind you that the purpose of your visit for me is to listen to South African stories. And hopefully they are principles and lessons that are valuable to you. And as you move into culture, we can only share with you principles and lessons, good and bad, of our society and our experience. There's no way we can translate that for you. You have to find your own cultural adaptation. There are two more questions.

**Participant:** What was the role played by women in the society and in the negotiation process? Were women represented in the TRC? If they weren't, was it because there was not enough representation?

**Fanie du Toit:** There were many women who participated in the TRC; there were female commissioners, the chairperson and the Deputy Chair were both men, but out of the 18 commissioners they were several women. I think five or six women. And the majority of people who came to deliver testimonies were women. So, for example, one of them who testified early on became my colleague and we work together on this a lot. There is a lot of sexual crime in South Africa. It's one of the highest in the world. And there's two ways to interpret this. The one way is to say, nothing has changed. The other ways to say it is because things are changing the perpetrators are resisting. They are fighting back. And I would like to believe it's because things are changing. If I think back to the society in 1994, and even before. If you walked in the streets in Cape Town, downtown Cape Town, and I hope you get a chance to go down town, you would have seen mainly white men in suits. Now, it is an explosion of colour of all, and there is a strong gay community in Cape Town as well. And the whole idea of African factions, as well as being driven by women in South Africa, some of our top legal people

now are women. But all of this has a shadow over it and the shadow is the level of sexual violence. And that has a lot to do I think with men being unhappy and uncomfortable with a change that is happening, and trying to assert themselves vis a vis the change. Now, why I say this, is that statistics show that something like over 70- 75 percent of rapists know their victims. They know them as a family member or somebody that lives close by. So what does that tell us. It is not about the sex, it's about exerting power. It's about making a point. And I think a lot of these rapes are about trying to impose a certain way of life on to that community where men are still in charge.

**Participant:** When we define it in this way, it is a kind of reaction from the men who are resisting to the events happening in the country. So, generally, are these white men raping black woman?

**Fanie du Toit:** No, these are men of all colours raping women from their own community. And this has not changed so much. This change that they're resisting, it's a change of becoming a more open minded society, of having equality between men and women, that sort of thing, and it's not something that you can defend in public. You cannot go out there and say I'm against women's rights. So what do you do, you get your revenge in another way. This is also of course why in war situations like in Myanmar now, rape is a very big tool of war. It is the way of humiliating the other community by raping their women.

**Ivor Jenkins:** I just want to add, not to defend or be defensive, but to say in the 25 years since democracy, shifting our society towards much more gender equality has been quite significant. Particularly the middle classes and upper middle classes in the poorest communities, there is still, I think, male dominant communities. We are now in the top five countries in the world with most women in Parliament. And we have

last week, two weeks back, our president announced the new cabinet in South Africa. 50% of the cabinet, for the first time in the history of our society, are women. So, not saying that our society is an equal one, but I do think they are strong symbolic actions being taken to start to change that after 25 years. We're going to take the last question but let me address one question for me I thought we that was perhaps not answered. It is the fact that there wasn't prosecutions for the apartheid perpetrators, that's why our society today is so filled with crime. And I would argue that is not at all the case, there are other reasons for that. So you might want to jump in on that. But let's first take your question and then we might return, then it's up to you.

**Participant:** I have two questions. The first one is about the TRC – you said that there were tv and radio broadcasts. How were the broadcasts received? Didn't this polarise the society or aggravate the situation?

Also, have you made a study about managing communication crisis? Today white people with apartheid mentality are still keeping a racist ideology against black people. Why does it still survive?

How do you promote and make coexistence happen?

**Fanie du Toit:** Sure. These are the more difficult questions for last. We measured public opinion on the TRC from 2001 every year since, until now. It's called the South African reconciliation barometer. This is also in my Institute, and all the reports are on the website so you can actually read what the South African state thought about what had happened. There's a few interesting observations in certain aspects. It made people come closer together, in other aspects it widened the gap. I'll give you an example. It is interesting that acknowledging that apartheid was a crime against humanity brought people closer together. In 2001 over 75% of white South Africans said yes we agree apartheid button was a

crime against humanity. So that had a positive impact in that it helped people to see the history in a similar way. But when it came to money on compensation, there was a question should white people's tax be used for paying reparations. Now we're not talking a symbolic amount but real reparations substantial reparations, white people would say, absolutely not, while black people would say, of course, yes. So on financial issues it drove us quite far apart. At the beginning of the exercise of the TRC the white media was very anti-TRC. The white media called it a witch hunt, "the burger" which was the newspaper at the time, the Afrikaner newspaper, called Desmond Tutu "an angel of revenge". And I had big fights with him on that. So there were deliberate attempts by the media to misunderstand what was happening. Fortunately, the state broadcaster in the South African Broadcasting Corporation, the TV coverage was good, unbiased. And there were a number of newspapers that were actually unbiased. But, but in terms of the Afrikaner newspapers that were reporting in Afrikaans, they were very biased. And fortunately that opinion changed over the course of the Commission's work. Part of the reason why it changed was this strategy for public communications that the TRC used, and the TRC had a pop star as a therapist, Desmond Tutu. He understood the media very well. And he had his saying, which was, if there is a problem in the commission, if there is a problem with the process, we don't wait for the media to come and ask us about that. We go out and shape the narrative right from the beginning, we call a conference, interactive engaging, all the time. And he did that when one of his commissioners was accused of having been involved in a violation of human rights. He called this conference immediately and said, we're suspending him, we investigated and by the way it was a hoax it wasn't true, he was reinstated. but by getting out in front of the story, he could manage the story well. The other thing was that on Sunday nights a half hour synopsis was broadcast on TV. The person who produced it was a

seasoned journalist, and he understood that people trusted him. Then, on racism, racism is a virus; it's like a cancer virus that mutates below the surface, and just as you think you have eradicated it, it pops out at another point. It's a bit like sexism, it's the same thing. You can do a lot of work against it. And then all of a sudden it pops up. We have taken two measures; one is to criminalize racism. And we have criminalized racism, if somebody makes a racist comment and it's found by a court of law to be racist, that person goes to prison. So people can be racist in their attitude but if they say something on social media and it is against black people in a derogatory way they'll go to prison. But second, is the education system, the positive side, and where we are seeing real progress is in mixed schools. We have mixed schools, but only the better schools are mixed. Only the richest schools are mixed, the poorest schools are all black, because there are no white people that want to go to the poor schools. That's the problem. So in a lot of black schools, they don't only get poor education, they're also isolated socially. It's a big problem for us, whereas in the richest schools, there's a lot of integration, this dating across the colour line. My children are very privileged at that level. They get a good education, and they can mix. And for them that battle is 50% won already.

Because of the HIV and AIDS epidemic, we have a big orphan problem in South Africa. And a lot of white couples are adopting black babies, for example, to raise them as their own children. So that is a positive. Have we got a coexistence? Well it depends how you define coexistence. I would say yes to the extent that we are not killing each other anymore. That we are trying to work together with ups and downs in this country, and as Desmond Tutu said we are living together reasonably peacefully, I think, to that extent we have coexistence. And at the moment, I would say there are three national agenda points for South Africa; corruption, growing the economy, and land reform. And those are three things, as

a nation, we should be pursuing. And we are busy with it. So, it means black and white are working together to try, it doesn't mean we have no more problems, but at least the country's busy with the agenda it should be dealing with. Personally, I would just like to say that I don't think that the fact that some perpetrators of apartheid got away with it meant that he cultivated lawlessness in that country directly. It may be indirect but much bigger factor that cultivated lawlessness in South Africa is the institutional weakness of our judicial system. And the fact that our criminal justice system, and the fact that we have uncontrolled urbanization in our cities, which results in massive townships outside our cities where living conditions with very poor services is brutal and nasty. And people come from all over Africa to our three, four biggest cities, and there's just not enough resources for everybody. At this point, so we are working on that issue but I think our criminal justice system is a problem. My final point is one thing we could have done differently in 1984 is looked more in depth at security sector reform, which we didn't do. We did do security sector reform but not in depth enough so that a lot of the old habits of the police have not died, and that is been part of the ongoing problem with crime.

**Ivor Jenkins:** I just want to add one sentence to that related to why we have such a violence society. And I think it will take three or four or five generations if we do the correct things to overcome structural violence. The deep effect of apartheid, on a human psyche, cannot be fixed in one generation. If you have grown up as a person and you are told that you actually just a shadow, you don't have any humanity, your life means nothing - that was the message that apartheid, or perhaps colonialism, for 300 years have told people it basically didn't value their lives. Structural violence, the violence of apartheid as a system will take us a few generations I think to recover from. It is different in other African states where the colonialists were there and those States

won freedom. I think apartheid was much more brutally focussed on suppression, and so as a society, I think it will take years for us to recover from that psychological dark spot in in our history, over and above all the issues of inequality and poverty and urbanization and others that were mentioned also by Mathew for instance the other day. Thank you, I think this was outstanding, I'm sure he has left a deep impression of all of you.

## Session 9: The Convention for a Democratic South Africa (CODESA): how was it formed, who was involved and what were the results?

**Kraai van Niekerk**, former Minister of Agriculture

**Roelf Meyer:** First of all, I'm very happy to be back with you after two days. Thank you very much for allowing me back with the group. I hope you had some pleasant experiences in the meantime. My colleague, Kraai Van Nickerk, is the speaker for the afternoon. We worked together in the National Party over a long period of time, he was Minister of Agriculture. And it would be good to maybe explore some of what he has to tell about that specific portfolio. The reason why I thought it would be good to invite him to come and share with you some of these specific experiences from his point of view is that it reflects not only what I have already told you, but also maybe a bit of a different perspective. Not only on the negotiations, but the transition as a whole, what it meant for South Africa from the perspective of a white South African. He continued in Parliament longer than me. And by the way, both of us were part of the government of national unity. After the transition, when Mandela already became president, so we served in the first cabinet of together, he as Minister of Agriculture while my portfolio was constitutional things. So we served in that cabinet together. And then afterwards, he continued in Parliament. And he will tell you more about that. I left politics at the beginning of 2000 and you continued for another 8 years. So it will be good to hear that experience, also from the longer perspective than only mine which was reflected on you. Kraal is retired but he's still a farmer. His business today is honey producing and he produces honey on a very big scale all over this region, Western Cape. He has many producing

beehives, he can tell you about that. So if you would like to get into the South African beehive business, and he would be the point of contact!

**Kraai van Niekerk:** Thank you Roelf, thank you ladies and gentlemen. Thank you in a sense that I could be here and speak to you. The last time that I was in Turkey was in 1968. The last time I was there, I moved around the country but have never been back, I think it must have changed from that day to now. So what I would like to talk to you about is how South Africa changed. What happened in this country that we could move from the past into a future where people have expectations and where there is a future for the many. About 300 years ago the colonial government started to govern Africa, from outside. And for nearly 150 years, South Africa was governed by the Dutch terms of a company, that's the East India Company, and later the British took over and they enforced their rules and the government on South Africa. And then, in that time, people in South Africa did not really communicate over different racial groups. As the government from outside, more and more intervened in the life of the people inside South Africa, the resistance started to grow and people started breaking away from Cape Town into the Transvaal. Because they wanted to decide for themselves, they didn't want other people to decide for them. And that is where the republic starting from the Transvaal and the Free State and five, six, every group has his own Republic, I don't want to be told by anybody else want to do. So as the economy developed, along with economies of the world in diamonds and gold, eventually Britain came and try to take over. And that is where the English war came from, where the republic's chairman took Great Britain in a two and a half year war which destroyed South Africa in terms of the potential, there was nothing left after the war. That was the first real point where you could see that moving away from a problem doesn't solve the problem, it causes other problems, and trying to resolve political problems by war

in South Africa made that the whole country disconnected, there was nothing left. So 1910 comes. And again, under the British law, we have a government of union where the different provinces have fixed together in a Constitution, which was overseen by Britain. In that constitution, only the white component of South African population was included, the blacks did not figure in that, although they British went to Britain and the ANC wanted to be part of this negotiation. Thanks, have a good day, sir, you know, the term by now, that which took place in the creation of the government of national unity. But it was declined. So that stage, you had the government of whites over the people in South Africa and this went on, it was a rebuilding each on his own. And then we come to 1961 we became a republic, where we shook England off our shoulders, and we became a republic. And then we had to deal with the problems in South Africa, different racial groups, different belongings, and where a solution was put on the table by them in terms of creating the Republic again, the boundary stops. And as you know, this was the law and it was parliamentary decree and the leader had the right to do what he wanted in the circumstances. So, there we got into the problems, that the resistance to this became more and more, because the problem was not negotiated, it was told you will have a republic, and we will have our Republic, and there was no participation or interaction between the people for whom a decision had been made and that was proposed. So that didn't really work.

In terms of another proposal that didn't really work was the bicameral system, what happened then, in this whole process, people were taken off and a commission came forward. I think it was 1972-1973 we said that there was a wrong being done. And you have to right that wrong - how we going to do that and from the kinds of report the coloured and Indian groups should be accommodated in the voters of the so-called white government. To do that, a suggestion was made to make the parliament

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expand the parliament and give three chambers, one for white, one for coloured and one for Indian. And then the silence came. Who decided this, where did you negotiate with us and said that the Indian and the coloured community. We don't know about this, you telling us what to do again as usual. We come to the stage that people are do not like to be told anymore. PW Botha renegotiated that and put them around the table that was actually in a sense the first type of CODESA on an individual basis, trying to persuade people listening and altering to put a solution on the table. And in 1983, the tricameral system came into being, which accommodated, white, coloured, and Indian but not black.

So the next problem was now how do you deal with that, because if you look at the population, this is quite interesting. And just on the population of South Africa, you've experienced, there is quite a variety of people in South Africa. And it is interesting to look at the numbers. In 1980, when the whites were in the government, they were 4.7 to 5 million white people, about 2 million coloured, 1 million Indian and 20 million blacks. And the decisions were taken by a quarter of the total population. And this is where the resistance started more and more and more. And in the 80s, we went over to a new type of dispensation where the rest of the world was putting pressure on South Africa. You had to negotiate the economic pressure in terms of the banks had started stopping funding South Africa, we were in an economic dungeon with nowhere to go and nowhere to hide except on our own. And this is where the different discussion started. And really at that stage, this is where the people for the first time in South Africa started talking to each other. It wasn't easy to start this because the basis to stop this was that if you negotiate and if you talk, you shouldn't have the pressure of violence behind you to force your talks, you should not use violence, to strengthen the talks that you have. Let's try and get the solution. That is why it went to and fro for a long time. Until 1989. Again, the influence

from outside. At that stage South Africa was at war. South Africa was in the war in Angola. and South Africa was in a war with itself in the civil unrest; every magisterial district was declared an unrest district, with the army, police; an untenable situation with no money from outside, you couldn't even buy an engine for car to make those engines yourself. But that's not the point. And then de Klerk decided to free Mandela and start negotiations. Now I think you've heard a lot about that so I'm not going to go into that. But that started a type of new era in South Africa, where for the first time, we spoke to each other. And there are two types of speaking and two types of listening. A lot of people speak but they don't hear. And the success of the negotiations wasn't in the speaking. It was in the listening to the others. So that even the National Party and by the name of this man here – Roelf – came back with a message that we didn't want. And sais we got a plan to do this. But what was asked to be implemented in the end wouldn't work because there is no respectability on the other side for that what we are proposing. We had hard times in the Cabinet, we were in the cabinet together, we had hard words towards each other. But we learnt and we started listening. And then who talks - it's no use two or three people or different groups speaking. If you have a diverse country like we have: Afrikaans, English, Greek, French Zulu, Swazi, etc all in one culture. You've got democrats in all communities, you've got conservatives in other communities, you've got racists in terms of certain policies. If you exclude one, you want to represent their view somewhere so you have to bring everybody in. And from CODESA came the new arrangement. And from that, it's not easy. And the important thing about the negotiations is not the agreement around the conference table. The success was not there. The success is to go out to all the communities so that they would buy into this decision and understand the full complement of what is proposed. And to get them to support in a vote, that is the difficult part, to communicate

back. That is not done by mass action, that isn't done by the press, that is done by communication of people with each other, looking at each other in the eye, small meetings. That is how we made it. We had funny things, we had billboards. We went into meetings with five, six and 10 people, town to town, group to group, even opposition groups. And in the end, people started buying in, and people really not so enthusiastic, but at least said, let's do it. So this is how 1994 came about. People stood with a neighbour they never even spoke to before. With people greeting each other and all of a sudden a new atmosphere of let's achieve this. Now, the reason why we could sell the constitution to people is that people try to keep things for them. They don't find somebody else, to really tell them what to do. But they will try to have their own free life. And they understand that investing in the law is the reason why we could say that was that this constitution moved away from parliamentary dictatorship, where the Prime Minister and the government of the day could decide what to do and enact that in law and the law was Supreme. And whatever you have to say that law was counted, and that is what was implemented. Whereas in the new constitution, you can see the interaction of the Parliament. And where power was given not only to Parliament, but also to nine provinces which interlink with parliament. They are nine provinces. So all the power is not situated in the central government. And each province has got its municipalities, there are 268, I think. The municipal would also interact with government with their own type of say what they can and cannot do. And this is enshrined in a constitution, where the final say of just law is not decided by the government, but by the Judicial Committee, which say this can or cannot be. And that is the basic human rights, which are written into the Constitution, the economic freedom in terms of free market principles, the free movement, all those basic human rights written in there. And if a law is made or a decision is made, it is being tested not by the politicians, but by

the judicial part, which would say this can or cannot be. You'll find today a number of these actions going where judges sat and they listen say "well, this can't be this is not part of our Constitution". And slowly the different facets of SA are coming together. So yes, what have we learned in this whole story? First of all, I would say people want a say in government. And they want to understand how it works. Secondly, running away from problems, creates more problems. Thirdly, war and violence destroys lives and do not solve political problems. Success of the negotiations is not in the talking but in the listening. That is how problems can be fully understood and the right solution sorted; and the success of negotiations is not the agreement inside the conference. It is only through acceptance by the voters. In this regard, referendums are important because they facilitate the simple message to be sold but it has to be explained. And then the most thing and what I've talked to you when I started from 300 years ago, to where we are today, politics and political solution isn't a single decision. It is a process. It is a process of a number of small things working together, understanding. And you must understand this process never stops. It continues and the process that we've been through to bring what we have today. I'm quite sure that in another 20, 30, 40 years, there would be a number of differences. We would find new directions will come as research and new technology and views of people and how human rights evolve. But the process is important to understand and it is the small things which are put together and keep people together. Any questions?

## Q&A session

**Participant:** Thanks. You said that you learnt the Zulu language during your childhood, whereas you learnt English later. What are your origins?

**Kraai van Niekerk:** First, the Zulu story. The interaction is that I come from Kwa-Zulu Natal. And this is a province of pseudo land because it is not part of Natal, but it is Zulu land. And I grew up there on the farm and the language was Zulu. And my gift I get from small, there was Keke - he died a couple of years ago - he was my best friend and he was black. And we speak of black and white because it's part of a history, and it's falling away now. There was a big difference in the old times in terms of religion, culture, between black and white. And that's falling away now. And slowly these cultural differences because of the language that we now have the same language, we can understand each other. Because many people didn't have the fortune to speak Zulu and couldn't understand. So it was a type of a mixed language in which you couldn't have a really good conversation. But as things develop as we're schooling, people now start identifying each other not as black and white. But as individuals in which you can associate. Like, within my own group, there are people in my friendship, which I don't like. Even with some of my family I can have a bit of an argument. But you see, in terms of the problems of domestic violence, there are a number of organizations in South Africa, which look at this. And it's not so easy to do that because we are still breaking down old barriers. And I'm a farmer; if I look at the interaction between the labour that I had, and in the farm, we looked after each other, right, they looked after my children, we looked after theirs. We were a big family, although we were at different levels, but you didn't swear at them, you talked to them. You would say "Good morning, good afternoon, how's your children, is somebody sick?". And in the rural areas ,that is so prominent today in terms of the interaction

between farmers and the people living on the farm, but in terms of the cities I think things are a bit different because there isn't that much interaction except at the working point and not at the social point.

I farm with sheep and I'm not a politician I'm just an ordinary farmer. Once a year we shear the sheep and then people come together. So we're sitting there at 1994 and they were shearing the wool, and I said to the person in charge there, "now that you can vote, are you going to vote for me?", Because I was still in politics then, and a silence came. Everybody was watching and then they said yes, you are ok, we like you, but look at your house. You got a good house, my house is very small. Your children are at school and university. We've got problems getting mine through. You've got water in your house. I've got a tap a hundred meters away from me. If I vote for you, who are you going to fight for, for you or for me. It's a very relevant question. And then you say okay, I understand this it but we must work towards it. People want to participate in the decisions over them, even those in the class which have not been educated, but they still have a will and a want. In terms of the support basis, going on quite widely, and it's escalating. There are woman's organizations. When they have a conference women do it differently from men, they sit around the table, they all talk together and in the end somebody writes a decision, while with men there is a proposal. So I've been amazed at how quickly and easily decisions are made in terms of office by women.

**Participant:** My question refers to the period before the Constitution. How did the Parliament operate? There were no blacks in the Parliament, and they didn't even have a say. With the new Constitution they have become the rulers all of a sudden. To work in the government, you have to have skills, but they didn't have them. My question is: did you support them? What did facilitate this transition? Was it about supporting them or consulting them?

**Kraai van Niekerk:** That's a very interesting question. But I don't think it's so easy to answer. Let's start from the beginning of this, the government that we had in South Africa it was not about one constituency - there were, I think, 250 constituencies, divided with each having about 10-15,000 voters and they voted for the individual and different parties proposed a candidate and then you would vote for the candidate and the candidate which got the most votes he came into parliament. And then they would count the number of Political Party supporters and the one who had the majority that became the government, that's basically how we were governed at that stage. Now, in terms of the Indian and Coloured actors, they were in the tricameral system, with they had also chambers and took decisions and they had certain rights on their own which they could decide on and in which nobody could intervene. You must remember, in the 1960s, when the apartheid regime then starting to kick in homelands were created where black people had voting rights in the homeland and the homelands had governments. Four of them became independent. In Kwa Zulu Natal for example we had a government that they didn't go for independence, they had their own parliament and towns had their own municipalities, their own mayors and their own councillors. And the people there were trained by some white South Africans to do the functions in those parliament. There was a base created by the positive energy for people in civil society to work in government, to do the basic jobs. So the ANC didn't like this and it was separate in the sense that they didn't want this to be successful. But it trained people and they is how people eventually came in with a basic knowledge. It's not like what happened before for instance, in other countries in Africa, where the colonial people came in, all the positions in municipalities were filled by people from outside, and when the colonial people left, there was nothing in place. So this is a bit of a difference, why they were people

that could come in and take over the jobs and from there that was a place to go on forward.

**Participant:** Since when did you say that the black population started to have the right to vote in the municipalities?

**Kraai van Niekerk:** It was in the early 80s, but it was in the homelands that they had the system from which they could vote within the Bantustans for the people there; but it did started low and then it escalated in the 80s, when it really became prominent.

**Participant:** You said that you should first listen and then talk. We also say that ears were formed and then were the mouths. In Turkey, when people are asked if they want to have Kurdish or Syrian population, they say that they believe in equality, but that they actually don't want to have a different neighbour then the one they have. If you think about the Balkans, mixed marriages were also forbidden. Again, in Turkey there are 3.5 million Syrian refugees, but the government doesn't want to have them in their beaches. This is a big issue, we cannot easily establish bases for dialogue. How do you deal with that?

**Kraai van Niekerk:** I think we also started with that initially. In South Africa, the Afrikaans, the English and other people try and stay together. I think all over the world, if you see people move, you see groups together, they speak the same language, they usually have the same type of colour or something or the same whatever that brings them together. But crossing the bridge from one to the other is not an easy one. Usually it is because people are not exposed. What happened in South Africa is that more and more, we are making an effort to speak to each other. In terms of people working in the business or in the house, you start taking an interest – how are you? Good morning. What is the problem? - and then they discover that they got the same problem. And then people

start knowing each other and getting together. But this is a process. Law cannot alter them. It is the view that people take, the actions that they take, and they are a lot of these actions. And I think we're getting past the point now that people have accepted each other, we are not, at the moment busy talking acceptance. We are busy now getting rid of the people who don't accept the terms. That is a right step but it would not work in the past because the language and the performer reactions were quite normal. Now it becomes abnormal. But that comes as a result of specific actions taken. And also agreed laws and words which may or may not be said. In my house now there's a black student renting one of my rooms. 10-15 years ago, it would not have been possible. In the student houses there are mixed people as well. It's not everyone that will accept it. If you go in the rural area, they are more conservative. And I think you will find that there too. But if you go to the cities where there's interaction, and promoted interaction, you get past this image.

**Participant:** What about economic growth and corruption? Why was the land reform left with no regulations? Also, what is the most important service that you provided during your ministry, or do you regret anything that you did not do?

**Kraai van Niekerk:** I think if I had my life over, I would do some things different. I think all of us will do that. In the farming, it's easier than in the other areas. Because we work with realities which we cannot change; it is a rain, it is a wind, it is a drought, it is a market, it is your ability and your knowledge. And that is the area in which you work when you're in agriculture; to go beyond, the agriculture would throw you out immediately, because you won't survive. So you have to be able to do that. Now, what we did is that we started training people, training labour, how to work better to understand not the work but also to do the right thing. If you take, for instance, a very simple thing, if

you work with sheep, and you grab it by the leg, you pull it out. Now if you lift that leg too high, then you hurt the bones of the back and that will not breathe very well. So by keeping it low, pulling it up and working, prevent some of the problem, you see basic things that you then teach, which makes the difference between success or failure. So we have training sessions, we started bringing in, for instance, in 1994, when we went now going into the transition from the old regime to the new dispensation. In 1992, I took the Department of Agriculture and I said to them, Look, what do you see in the future? What does that scope what you see, if you look into what do you see? Do you see change? They said yes. They said, Well, if you see change, you've got two options. You either change it yourself, or you will be changed. Which option do you want? And this department then wait out and say, okay, after a long discussion, no, we will change how we do we change. That's a long story. But we saw that white dominated farming will not survive, it will have to bring in people with competence and with knowledge of farming. So at that stage I and the director general there who had close interaction with the agency and started identifying all the students which fled South Africa and were studying Agriculture in Europe, bringing them back and making contact with them. And saying that, we can come back and we brought in 38 people with degrees in farming from Moscow and UK and America. And when they came back, we said we can't give you a position just because you studied overseas, you must start understanding how South African farming works. Because farming in Russia and farming in South Africa, are two different things. To make a long story short, we started getting them in the position, getting knowledge and many of them are now in the top post in agriculture, in helping the system to grow.

Now what land reform is concerned, the question of land reform is giving people land, you can't eat land, you can only eat what you produce from

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it. And to produce from it you need knowledge and if you don't have knowledge, you won't have a healthy farm. And you need money and you need collateral to go to the bank and get money so that you can finance that what you want to do and the bank is called the hold on you and it forces you to do it economically. The struggle at the moment is that people want the land but land alone is not the solution, this is the way how to farm it and we started by teaching people how to do it.

**Participant:** You talked about land ownership. What is the percent owned by whites, black, Indians?

**Kraai van Niekerk:** I do not have the exact figures. Let's start with South Africa. South Africa is 120 million hectares; out of these 120 million hectares, about 20 million hectares is for people in cities, parks, and whatever is not privately owned. The market figures show that around 100 million hectares are now available for farming. In terms of the past, in 1910, of that 100 million hectares, 13 million were reserved for black farmers, and that was increased in 1930s to about 16 million hectares, and later, another 16 million were allocated. And then they was 3 million edits, and then came down to 19 million hectares, which was in the hands either of individuals, but mostly in terms of the Council, of the chiefs of the black areas, but individuals didn't own the land, but the land was allocated and no white could buy there. So, in terms of the original that we had was of 150 million hectares, you have got 80 million hectares in the hands of the whites and 20 million in black hands. Now, that has now changed; if you add the areas of the covenant community, there is another 4 million; the transition has brought in other 6 million, so this is another 10 million hectares. 30 million hectares is now basically in black hands and there have been identified another 20 million hectares to be transferred. Now, the problem with this is a lot of money has been spent by government on this and the land was

expropriated from white farmers and then given to a community of black farmers, but the farm is an entity on its own. One farmer is successful. But if you all of a sudden take that same farm and put 20 farmers on that, with the same basic economic income, those 20 farmers will not survive. So that left the problems that we have. Now, let's go to farmers. On that 80 million hectares, when I started 60,000 commercial farmers, over 60,000 commercial farmers, 750 produced 75% of the total agriculture. About 3000 farmers produced 85% of the total production of SA. It's not different from America. It's not different from Europe. It's a big farmers in terms of the enterprise today.

Apart from these farmers, you had especially in Kwa Zulu Natal area, there were 200,000 small sugar cane farmers which all were under contract within the laws to produce sugar cane. And I had 510 -15 hectares of sugarcane which gave them a livable income. Then we had 200,000 subsistence farmers; we concentrated on these people to give them more expertise on how to cultivate enough. But this is the farming community at the moment. It's interesting that when I started in the farm, my neighbours were all white; at the moment, all the managers are white, but the farms are owned by black entrepreneurs from the city. So this is a tendency, and you find that when people are offered the rent, the restitution to get the land, they go for payment and not for the land. People want a place to stay, but they don't want to farm and it's not easy to farm in SA. Our average rainfall is only 450 millimetres when I farmed it was under 126.5 millimeters. And don't forget that point five because it makes a difference. So, there are people migrating from the rural areas to the cities. And when they come to the cities, they want a place to put them wherever they can. And that is where I think the main emphasis should be in solving the question of land not to farm, because farming is not easy.

**Participant:** Do you export any agricultural product? Or is the production sufficient for the country? What about competing in world market?

**Kraai van Niekerk:** We produce sufficient to be one of the six countries of the world which are self-sufficient in terms of our agriculture so we have enough for ourselves. We export, we can compete especially in Africa, we export a lot if you look at our corn consumption or production. Our corn production is basically about 12 million tons a year, we need for ourselves about 7 million and we have 3-4-5 million which we export. Wheat: we not self sufficient. We import wheat, we produce about 2.7 million tons and we need about 4 million tons. Then, fruit; we are the third largest exporter to China at the moment in terms of oranges. In terms of grapes, we are in competition with Spain and others. With wine we are in line with prices in the rest of the world. In terms of meat, we import meat from Namibia and Botswana. And lately, we've come to the point that we started exporting a lot of ostrich meat. Then in terms of the other commodities. You see South Africa as a whole in this 120 million hectares, we've got 23 different economic ecological units. We've got a winter rainfall area, we've got a summer rainfall area, we've got a winter and summer rainfall areas, we've got a subtropical area, a tropical area, a Savannah area, and the desert. So we can produce nearly any product in the world, but not on a very large scale, but we can produce it. And we've got an agricultural research council which is the best in the world because we had to adapt world knowledge to function at extreme climate conditions in South Africa. So we have that we had a service where each area had its own research component to do that. So we know how to farm in Africa. The result of this is that now in terms of Africa, where the colonial powers use the information that they had in their home countries to farm in Africa, did not have the same results. So I was in office one day, and that is in 1993 and one of the South African

presidents just walked into my office. And I was quite surprised, and he said, Look, I want farmers to come and help me. And it must be white farmers, because I see that they can farm and I see that they can help. But the political situation and lack of infrastructure makes it very difficult. And the key to this is not to go and farm there and then do what you've done in SA. If you farm an island of prosperity in a desert of hunger around you, then you will not be successful, you have to incorporate the local people in the business and that they start ownership, or else that you will not have it. That is the approach that the South African Farmers Union is making at the moment when they go out. They use white farmers in the black area. It is putting them there and using the expertise to draw in people. And the benefit of the whole enterprise is basically what we trying to achieve. People in the northern areas, which have been expropriated and which were highly productive farms, which are now unproductive because of reasons that I have told you – they moved to Mozambique. And at the moment, we are importing about half of your vegetables from Mozambique.

**Participant:** Do you accommodate private investors in the sector?

**Kraai van Niekerk:** Private investors is the basis of agriculture. Throughout the world, we have seen what happened to farming with a socialist approach, when it is not based on economics. Look at Russia or Germany. We do private investors and there's a lot of them invested, we find that a lot of Europe is buying wine farms in South Africa. And they finance a lot of it here. And it is the thing to do.

**David Murphy:** Thank you very much. I think that brought us to just about the end of our session. Thank you so much for coming and sharing your time and your vast experience in the field. We're really grateful for your presentation today and for answering all our questions as well.

## Session 10: Discussing the drafting, debates and agreement on the South African Bill of Rights

**Albie Sachs**, Former Judge on the Constitutional Court of South Africa

**Ivor Jenkins:** Good morning everyone. Today we have Albie Sachs with us here. Sachs needs no introduction. I am sure all of you have heard him speaking or read something written by him, somewhere in your life. But anyhow, let me introduce him. As you know, he was a ANC liberation fighter; he was an exile in Mozambique for some years. He had the terrible accident, when a car bomb was planted, as an attempt to assassinate him. He will tell the story himself. He recovered and became one of the leading legal minds in this country. Albie has been the instrumental person in our Bill of Rights and we, as a country, will reflect back in history about this amazing process that he has embarked on for us at the time. In 1994, after he has returned from exile, he was appointed by President Mandela as a judge to our Constitutional Court. He served there from 1994 until 2009. As Jody Kollapen explained to you, you reach an age we are not allowed to continue to work in our Constitutional Court. Albie could have continued another 10 or 15 years, but he then started to serve the world in many ways, contributing to the thinking of countries in transition and in constitutional reform processes; he became almost an international advisor to the constitutional processes. He travels the world at this age way too often. We are fortunate that we could catch him for an hour or two back in South Africa, to share with you his experience. It is an honour and privilege to have you here with all of us.

**Albi Sachs:** I am going to add two little Turkish related details to your knowledge about me. One is related to Nazim Hikmet. I admired him

when I was in a youth movement in the early 1950s in Cape Town, because he combined beautiful, eloquent, meaningful poetry, with grand events of the world. Many people were involved with grand debates, but they had no poetry inside themselves; many coaches had beautiful thoughts, but they were not connected to the world. He connected the two, and in that sense became something of a source of inspiration to us. You join the struggle for freedom, but you bring your humanity into the struggle. You do not abandon your humanity, because you are part of history. We hope to humanize history, and Nazim Hikmet was the individual par excellence representing that to us. He was in prison for many years in Turkey. And he writes beautiful poetry about love, about existence, and about struggle. Secondly, in 1954, I was traveling on a train from Moscow to Peking, it took 13 days, and we were all political activists. There was a woman from Turkey, who was one carriage down from mine; I spent hours and hours on the train just looking at the forests of Siberia and seeing this beautiful Turkish woman in the next carriage. I never spoke to her, I never found out her name, but after 13 days, I was in love with her. She must be about 85 or 87 now; if you can get in touch with her, tell her that she has an admirer in Cape Town!

I am going to speak about the Bill of Rights in South Africa now and the very simple role that has played. In America, they got a constitution and they added a Bill of Rights; in South Africa, we have got the Bill of Rights, and then we added the Constitution. In our Constitution today, the Bill of Rights comes right up front, before the structures of power. To explain why it takes such a very special role in our nation, I will start with my experience. In 1988 – I still had two arms then – I was in a room at the University of Lusaka and there were about 40 or 50 of us. I think I was the only person who would have been classified as white in South Africa. Our conference was about getting constitutional guidelines for a new South Africa; we were in exile and we would always

have security nearby, in case South African commanders would have taken us out. Oliver Tambo, the then president of the ANC, called an in-house seminar to brief the delegates on why we needed a Bill of Rights in the future democratic South Africa. My heart was beating; I had never been in the MK, the armed wing of the ANC. A number of the delegates were in fact from the armed wing of the ANC, others were doing the kinetic work in Africa and all over the world, others were studying, whereas some others were from the underground resistance in South Africa. The emotion was very high in those days, in 1988, as we had to lift up the mass populace struggle for the seizure of power, and the idea was that we would storm Pretoria, raise the flag of the ANC, and destroy the system of apartheid.

I told them that there were three reasons why we needed a Bill of Rights in South Africa. The first was that it made us look good; we were supposed to be the terrorists, we wanted to seize power, kill, destroy, and instead we were talking about a Bill of Rights. It made us look good internationally, it was a tactical reason. Secondly, we needed a Bill of Rights because it was our answer to what the enemy was saying, that South Africa was not a united country but a country with many different population groups who have to share power amongst themselves as population groups; in other words, that there were black people, white Afrikaans speaking people, Zulu speaking people, and each one had their own political formations, and power had to be shared between them. That is the reasoning underlying the power sharing idea, for which we would have had three presidents. It would have been Nelson Mandela on Monday, Buthe on Wednesday, and De Klerk on Tuesday, and they would have had to rule by consensus. We were totally opposed to the concept of having separate population groups, which would have their own political representation, and would have to share power. We were opposed to it not only because it would reintroduce race as a foundation of citizenship,

but because it would give the whites a minority veto. 87% of the surface area of the country by law belonged to the white population, which included the beautiful cities, the centres of the cities, and the mining areas, for example; and the white veto would mean that we had votes for everybody in South Africa, but that we could not change anything. For us, this was a central issue to the future of South Africa.

The power sharing would have protected the rights of the whites in the new Constitution, because of how the government would have been structured: the whites would have had the votes legally, they would have had the right to be in Parliament, the right to be president as white, the right to have judges as whites. The writer Arend Lijphart developed the notion of consociationalism, for deeply divided societies. Belgium represents a good example: you have the Flanders, that has a very high degree of autonomy, and which is Flemish speaking, you have the Wallonia section, which is French speaking, and then you have all the instruments of power, even the judiciary with a small German speaking section. In Colombia, which has also a deeply divided society, groups would oppress each other for power; they came to the conclusions that democracy, in its only sense, was not the answer, and that they needed forms of consociationalism, and power sharing. That was going to be applied in South Africa as well. People would argue that if the whites are in power, how could we expect them to give up the control to let majority do whatever they want there?

The answer was the Bill of Rights, that would be entrenched, institutionalized, protected, and become foundational to the New South Africa. It would protect people not because they are black, or white, or brown, or majority or minority, but because they are human beings, we had to get all South Africans to look at all South Africans as human beings. Human beings have language, culture, religion, they like this

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kind of food, or this kind of music, or they vote for this party or that party; but the starting point was human beings, and human dignity. Thus, the African National Congress adopted a Bill of Rights already in 1923.

During World War Two, when Churchill and Roosevelt developed the Atlantic Charter, which included certain fundamental freedoms, the ANC in South Africa said that they also wanted freedom in South Africa, not just in the Atlantic, and they demanded the Bill of Rights for a future South Africa. In 1955, we had a conference on the outskirts of Johannesburg, and we adopted the Freedom Charter. If you look at pictures, you would see 25-year old students sitting at the table, looking very serious. He had every right to look serious, because the police were surrounding us on horseback with machineguns. If someone would have done something wrong, it would have been a massacre. We stood up and maintained a discipline, but we adopted the freedom charter, which was a vision of a future South Africa. South Africa belongs to all who live in it, black and white; it was a revolutionary idea in South Africa. The organizers were put on trial for treason, for demanding equality, but in the end the trial collapsed. The ANC was banned, the Communist Party was banned, meetings were banned, newspapers were banned; that was where the armed struggle started. This idea of a charter of fundamental rights that could go across all the divisions of South Africa, that would confer a nation of fundamental equality and dignity to everybody is deeply entrenched in our history and figures in very profoundly with the strong element of African culture. Mandela spoke about it in a famous speech; he would say that democracy is not something alien to us African people; when he grew up in a rural area, the traditional leaders would call a meeting in which the issues would be discussed, everybody would take part and attempt to achieve some form of consensus and agreement, through discussions, through listening. And now we want the same

values to be in our Constitution. And we have a notion that's been referred to quite strongly in recent decades in South Africa. I'm not sure if any of the other speakers have mentioned it: Ubuntu. Have you heard the word Ubuntu? And it's very consistent with democracy. But it's what I call a rich form of democracy. not isolated individuals competing against all other individuals. The ultimate nation could be, you are dying of hunger, but you can curse the government before you die. That's not the society we want. we envisage as a society of interdependence, interconnection. And my autonomy is not reduced by recognizing your humanity, it's enhanced. It's a powerful theme, without which we could not have had our truth reconciliation commission. And without which we couldn't have transcended a lot of the bitterness, the anger, the hurt, the pain, of a very divided society, in any event I am mentioning this, because the second reason for the Bill of Rights was the strategic one. And it's become foundational to a whole new constitutional order. Very few historians even referred to its significance. And if the focus is simply on the talking between the different groups and so on, you miss this core elements of a vision of the nation. And it's very contextual, there might be countries where a degree of consociationalism makes more sense; it might be in Turkey, issue of the rights of Kurdish people within a common territory might be better accommodated by degree of consociationalism. But in South Africa, consociationalism meant divided rule, it meant division of the African people and it meant a white minority veto. But that doesn't explain why my heart was beating, my heart was beating because we need a bill of rights for the third reason, we need a bill of rights against ourselves. These are people now who are putting their lives on the line every day, and we are speaking about a bill of rights. We get the votes, we have majority rule, but we can't do anything because of the bill of rights. Anyway, I'm saying we need a bill of rights against ourselves. And that was based on experience, not theory. We've

seen countries in Africa where people have fought very bravely for freedom. And leaders have gone on to accumulate land and wealth for themselves to throw the opposition into jail. We didn't want that. We had seen inside our own organization, inside the ANC. There have been abusers. We have used torture in our camps against captured enemy agents. Oliver Tambo asked me to help design a code of conduct. Freedom Fighters do not use torture, we are fighting for freedom; it is against our whole vision of the world, even if they've got information about trying to blow up; this is an organization where we don't use torture, not only because it brutalises the tortured but it brutalises the torturers and loses the essence of who we are and what we are fighting for. We knew that. And there were other abuses, women joining the army, commanders, some cases demanding sex. It could be different things of that kind. And I'm thinking they're going to dismiss what I'm saying. But instead, I said, looks at the light in the eyes of the people. The problem then, was that many people inside South Africa saw the Bill of Rights as a trick by the whites to use it to hang onto power. And one of the challenges was to say why should a bill of rights be a another instrument that simply protects the civil rights and the property of those in power? Why should we hand over the Bill of Rights in those days to Henry Kissinger? Can't we make a bill of rights and emancipate the instrument? Why should the Bill of Rights stop at the door to the factory? Why should the Bill of Rights stop at the entrance to the farm? Why should the bill of rights stop at the front door of the home? There are so many violations inside the home. why should the Bill of Rights not protect children. And so we developed the notion of a bill of rights and that became my main contribution. I might mention I was sceptical about the bill of rights. I belong to that legal thinking in America called the Critical Legal Studies, which is saying don't leave major political issues to the judges. They come from a conservative class, and they will

protect the interests of the ruling class. major political questions - housing, education, health, workers' rights - had to be fought out in the streets, in Parliament - the democratic control. And now I realize in South Africa's circumstances a Bill of Rights was central to our project to majority rule. So we needed to have an expansive view, emancipated view of a bill of rights. And at that stage a check functionally in the United Nations, he wanted to protect environmental rights, screen rights. He couldn't fit them in to rights as they were understood in the late 70s, early 80s. So he developed the notion of three generations of human rights. the first generation, French Revolution, American Revolution, civil political rights, to write, to speak, to play, the second generation rights is in economic rights coming from Bismarck, the Russian Revolution, social democracy and Sweden, Denmark and elsewhere; right to health, right to education, housing as a fundamental right. And there's a third generation: the rights to a clean environment, and then the right to peace and development was added. Three generations of human rights. So now, a number of us introduced this idea of generations of rights, because we wanted our bill of rights not to be a narrow instrument that will protect the status quo but the Bill of Rights as providing machinery, including the rights of the most disadvantaged in our society. I'm not going to speak about the bomb, safe to say that three weeks after the conference and our seminar adopted the idea of having a Bill of Rights in a democratic South Africa. I was blown up and so, two arms became one and a half arms, and five months later, I am out of hospital and I receive request instruction from Oliver Tambo, to go to Dublin to the house of Professor Kader Asmal and with him we wrote the first draft of a bill of rights of a democratic South Africa. Can you imagine; better than all the medicine in the world, better than the physiotherapist, better than occupational therapists, asking a lawyer to draft the first bill of rights for a democratic South Africa. And I remember

going to Kader Asmal's house. He made a big sacrifice, he was a heavy smoker. I hated smoke in my eyes, he did not smoke indoors for all weekend. And I remember sitting down and I said "Kader, I don't want any documents. I just want a piece of paper I've learned to write with my left." A bill of rights must speak for itself. The rights that are so fundamental to human beings don't come from book, don't come from document, they come from something that you feel profoundly, as every human being is entitled to. I sat down and started writing the fundamental rights, and afterwards they were all there. The basic fundamental rights. I brought with me this document, it went through many phases and transformations. I think you've all heard in this session, the two stage process of constitution making. We had the interim Constitution, which had a very progressive bill of rights but very limited, because then we were negotiating in conditions where the enemy were in power physically. Roelf was a minister at the time. And I must say it makes our bond even stronger. That we were on other side fighting and now we are together for our country. In any event, what is very meaningful for me is that this wonderful document, the bill of rights, was drafted not around the table by lawyers, it was drafted in Parliament. Overwhelmingly by people who were in jail, in exile, in the resistance; people whose education had been interrupted because of the participation in the struggle, and possibly the most advanced human rights set of protection in any constitution of the world was drafted largely by them. And it's no accident that the gender dimension features very strongly because women inside the ANC had been complaining during the struggle days, that we are always given supporting tasks to enable the men to fight - we want to be full citizens inside the ANC. And Oliver Tambo had responded and said you must organize a women's section inside the ANC in 1980, which they did. And when we drafted our guidelines, we started with the phrase, South Africa has nine racial domination for 300 years. what about sexual

domination? Why don't you mention non sexism. And if you look at that document, you'll find how was the Rapporteur for the constitutional committee – 300 years of racial domination and a millennium of sexual domination. And the word non sexism now was incorporated. It is now a foundational principle of the constitution; workers' rights became very important, they are protected in the Constitution as fundamental rights because we had a strong trade union movement. It was very active in the freedom struggle, but also determined to have an independent trade union movement after we got majority rule. I think South Africa was the first constitution in the world to have environmental rights as a protected fundamental right, this is 1996. It was certainly the first constitution in the world when listing the clauses of protected equality, say unfair discrimination on grounds of race, colour, creed, sexual orientation, and disability. These were not university trained lawyers with PhDs with a great moral vision of the world. This document is drafted by people who've been battered by apartheid, by repression, but they were dreaming of a new free better society and incorporated that vision into the Constitutional text. In the section dealing with personal freedom, it not only includes freedom from being detained without trial, which I insisted to go for right from the beginning, of being deprived of freedom arbitrarily; it includes freedom from violence from public or private sources. So domestic violence is seen not simply as a criminal infraction, it is seen as a constitutional matter, because it impacts on the dignity and the right to freedom from fear of the population. Right to make decisions of reproduction is also included there. the inputs of people who suffered for being who they were. So I am going to leave you with that. Hopefully I have conveyed something of the meaning of this document for us. It's not just a technical instrument, the bill of rights, it contains soul if you like, it contains Ubuntu, it contains a strong focus on human dignity, it contains the right to a voice, to be heard, to participate, to be

acknowledged for everybody, in a country with that being denied for so long. In a sense it contains, to go back to where I started, the vision of a beautiful world, but not an external beautiful world, but a world inside each human being, the dignity each human being is entitled to have. Thank you.

**Ivor Jenkins:** Albie, thank you for sharing your experience and showing us your soul. The way you talked to us is very passionate and deeply moving.

## Q&A session

**Participant:** First of all, thank you very much, I was really excited to listen to this speech, as a constitutional lawyer. When the first talks took place, there was a search for a new Constitution, but the conflict was still going on. What is the correct timing for a new Constitution? When should we look for a democratic constitution?

**Participant:** In a divided society, it is more important to look at the division, at devolution, at a centralised government, or individual rights that spread through the country?

In your case, you didn't expand the regional authorities, but even if you don't transfer the authority, would it be good to transfer socio-economic rights or powers to some region in the country?

**Albi Sachs:** Timing is fundamental. But it isn't just one moment. In advance of the actual constitution making we had to have a vision, we had to have a clear understanding. We needed a party for ourselves to going into battle, you must know what you're fighting for. It's not just against the creation. It's for a certain kind of a country. But more important than that, to the extent that a country is an imagined nation to begin with, the battle in the imagination, conceptualisation is fundamental. And the work that we did in exile in the Lusaka was vital to the progress that we made later on in terms of a fundamental structuring of the constitutional order. So even if the actual talks for a new constitution are delayed, it's very important to do what you can in the meanwhile, to prepare, even if it's preparing alternative visions, so that people see yes, I can live with it. Maybe that's not what I want. Maybe it's not everything I want. But it's manageable. And we can use that to get more things afterwards. We had talks about talks about talks.

Then we had talks about talks, and then we had talks. This is all a timing thing. The Talks about talks about talks, where, how can we even start negotiations. And the books that have been written focus very much on secret talks that were taking place between representatives of South African security, government leaders, with Mandela first and then others. My own view is much more important our engagement with the Organization of African Unity. So that we would have Africa on our side and this led to the Harare declaration, in 1988. In a seminar I was speaking about it came from Harare, but the Organization of African Unity was laying down conditions for negotiations in South Africa. I remember Oliver Tambo saying that talks about talks about talks would be important. We can use them to get our people off Robben island, out of prisons, we can use them and say we can't negotiate until the African National Congress is legal again, until the exiles can return. And so the talks about talks of course, create the conditions for talks about talks. And ANC is unbanned, Mandela comes out of prison. We can have free political activity. It's not democracy. But for us, it's a huge breakthrough. And our argument was, you could only have negotiations between equals; if you're in prison, you can't negotiate with the person who has got the key. And the Organization of African Unity - Robert Mugabe was not highly praised - but we put him on the back with us, we said do it in Harare and we take it to the United Nations, and the United Nations supported that project. So this is all before we get to actual negotiations. Then the talks about talks happen, Mandela is released, ANC is back in the country, we can speak to the whites, it is not an enemy anymore, you become the regime, which is softer than the enemy. And we have talks about talks, how are we going to negotiate. I remember from our side, we wanted everybody to be there, the masses, we wanted the trade union movement, we wanted the communities, we wanted women's organizations, we wanted them all to be in the negotiations. And then

people pointed out, it's impossible. And in those days, a mandate was everything. You couldn't do anything without a mandate from your organization. So imagine all the unions having to get mandates, before you can even call the constitution a constitution. So we ended up saying it will only be political structures, political structures can liaise with its support base. So we would liaise with the trade union movement, the women's organizations, UDF then, but it had to be manageable. So the talks about talks would cover the conditions for negotiating, we had to agree on a very remarkable form of decision making. Did we mention sufficient consensus? This is Cyril Ramaphosa's contribution. You got these groups, the South African regime, the National Party that supported it, and lots of other groups on the other side, and then the Inthaka Freedom Party. And we were saying how should we take decisions by majority, 2/3, ¾? No, that's impossible. A group of 2000 members would have the same power as the ANC and as the SA government. He said, basically, the process can go forward if the ANC that represents the most powerful section of the liberation movement on the one side and the South African government, on the other side, agrees, the two main participants, there must be sufficient consensus to move forward. But who decides if there's sufficient consensus, that's why we brought in judges. We had 150 judges all together. 148 were men, 2 were women and 148 were white and 2 were black. one of the black judges had been a lawyer in the apartheid times, very brilliant of Indian origin, is now a judge. So the agreement was a judge who De Klerk has confidence in, would be one of the judges of the sessions at CODESA and Mohammad would be another judge there. And they would preside. And they would decide if they was sufficient consensus. there was one measure in which there was sufficient consensus, it excluded the IFP, who voted against, it wanted an equal voice. And it didn't get it. And it withdrew from the negotiations until a matter of days before the election.

The elections could have been sabotaged, but he came in, he got some concessions right at the end. And we had \$40 million papers, 20 million for national list and 20 million for the local lists. And people had to work through the night putting his photograph on the ballot papers at the last minute. An order that came out of a special procedure that we developed called sufficient consensus. Again, you can see adapting to situations. Did people speak about the breakdown? It was a very serious breakdown. Because it wasn't just small details, it was these two visions of South Africa. But in the end, would the whites have a veto as a racial group, over the matters of special consent to themselves or not. And we said no, from that point of view, we put the emphasis on individual rights. Now most of us have spent much of our lives very influenced by socialist ideas. So we didn't start off with the fundamentalists' freedom nation of individual rights. What we saw in South Africa, individual rights became revolutionary. Because it meant majority rule, it meant the black majority now would be basically the decisive force in our political life, but everybody will be protected as individuals, individuals belonging to communities, individuals with languages, with a particular face will be protected. But the protections didn't just come from the veil of rights. It also came from a considerable degree of devolution. And if you look at our Constitution, you'll see that we have concurrent powers between the national and the provincial from various areas of the government. And that was an idea we got from Germany. It's not who has the power - the national government or the province. So agriculture, trade, industry, health, education, all concurrent powers. And then what happens if there's a clash between the national and provincial because I have different parties supporting them. We also got this from Germany for a tiebreaker. If it's a national interest been involved, then the national will prevail. We only had one case, dealing with that, we thought they'd be lots of cases over that, we dealt with the liquor bill, with the national

government wanted to break the monopoly of South African brewery in the distribution of beer and liquor. It passed the law that would open up access to the sale of liquor at all different labels and destroy the monopoly. I would say it's a very progressive law. Mandela the President said however, the provinces are given an exclusive competence, in violation to legal licenses. And the President had doubts against his own parties and government about the constitutionality of the law and he referred it to the Constitutional Court and we looked to Canadian jurisprudence and we upheld his reservation, he said that that is an exclusive competence. That's the only case we've had. Then we used to speak about tiers of government. Now we have spheres of government, and we have notions of corporate governance. The idea is not that different areas are competing against each other, but they must work together. In practice, the National predominates, but it is quite an expansive sphere of municipal autonomy. It's not even dependent on national governments, where the national provincial forces can't interfere; given some recent developments in Turkey, the prominence of Istanbul, Ankara and so on, I think it's worthwhile looking at the corporate governance notion, as Switzerland, Germany is strong, the Canadians, so everybody told us, follow our example, the French, and there is no doubt they have the best constitution in the world, the English don't even have a constitution. The only people who said "follow us", were the Canadians. They said how strong autonomous provinces. We don't want to change the constitution but we have premiers meeting every year, to resolve national issues, follow the German and the Swiss approach to corporate governance. And I would think this is very transferable elsewhere, in terms of the scope of social economic rights. South African courts became pioneering courts, in the English language world of developing these rights. Now, Latin America has gone ahead very rapidly. But I think the case for seeing these rights as fundamental rights is overwhelming now. And there is lots of

international experience for it – I am not sure what your constitution says - but it's a very important theme, you don't separate the mind from the body in a human being. You can't separate choices, autonomy, from the people who exercise and the right to education, the right to health, the right to a home is a set of fundamental things. And I think they've enriched our whole constitutional project very much. I'm not saying we should add to them, you also need a judiciary that will be supportive of the philosophy, of the approach, when it comes to social economic growth. In terms of the Kurdish population, these decisions are so context dependent. We went strongly for fundamental rights for everybody, and there is one territory called South Africa. That was a reaction to divide and rule, reaction to the Bantustans, the reaction to racism, that was saying some people with more than other people. So that fundamental equality of every human being was central to our project. When some people are speaking about Israel Palestine, I say, how can you support a two state solution? It depends on the context. And maybe one day there will be a one state but with soft borders inside, who knows, there are all sorts of possibilities. Our democracy is working, we have six general elections just quite recently, and they were free and fair, and millions took part. And we have freedom of speech in this country. And we have strong institutions that are working. Another South African feature, we call it the chapter nine institution, I think it's unique to our Constitution. These are institutions to protect democracy. I asked many people, apart from the Constitutional Court, which is the institution that's done the most, to preserve human rights in South Africa. The Auditor General controls over expropriations, no secret funding, no people getting into office and having money that they can use for what they want, to my mind is as important as a bill of rights and our Auditor General is protected in that way, chosen by Parliament in an open process, can be removed by very special processes. And we've got

the independence Electoral Commission, if people can't trust the elections, then democracy is completely without value. And you need a body that is credible, trustworthy, professional, and independent. We got a lot of help from the Indian Electoral Commission, maybe the greatest democratic process in the world is in India, and its wonderful, very professional, very independent people can advise us on that. And the Electoral Commission has gone very well, sometimes the Constitutional Court has had to correct them. When they didn't allow prisoners to vote, we say prisoners should have the right to vote. And in other cases like that, but by and large, have done a great job, the independent judicial commission. If you contrast the judges, if the judges aren't appointed in a process that the public understands, and that they are credible, and that they know they're independent, then the whole constitutional project is at risk. So they also played a terrific job. There must be good, if they appointed someone like me to be on the court! The commission for gender equality: it's been some debate, should we have a separate commission for gender equality? And the answer was, yes. Otherwise, the claims of women get subordinated. That's just one of those areas where the feeling was women were speaking their own voices very strongly with a special institution. The commission for human rights plays quite an important educative role, but it doesn't have a very powerful authority. But it's important in terms of conscientizing the nation. And there's another commission that deals with religious Cultural Rights communities. so that's chapter nine constitution, which plays a very particular role and that's something I think that all constitutions could benefit from, special protections for these key institutions for protecting democracy.

**Participant:** We listen to these experiences, people talk about lots of features, and we have heard about everything, we all witnessed law, the role played by law, the negotiation process, the spirit behind the Bill of

Rights, the awareness of law. That is active not just in SA but around the world. So what is the role of law in conflict resolution, or politics? What is the unique role of law in all this?

**Participant:** We talked about individual rights versus collective rights. At the same time, we see that there is a gender and a minority language issue, isn't it a form of group rights? We want to give individual rights but it seems that the Kurdish question cannot be solved with individual rights. What do you think about this?

**Albie Sachs:** Lawyers in South Africa happened to play a very big role. Gandhi came to South Africa as a lawyer for the commercial case. He was trying to be a dapper English gentleman when he arrived and he ended up being sent to jail. General Smuts who became prime minister for many years was a commando fighting against the British. It was claimed he had a rifle in one hand and the book of international law in the other hand, but I don't believe that because he had to hold the stirrups for his horse. General Hertzog, another commander, similar story; B.J. Vorster, who was Minister of Justice when I was thrown into jail, was a lawyer, F.W. de Klerk was a lawyer. Nelson Mandela was a lawyer. Oliver Tambo was a lawyer. Joe Slovo was a lawyer. So we find lawyers crop up on both sides. And I have my own theory about why lawyers played such a big role. And I think it had a lot to do with the fact that the whites who came to South Africa first, but from the Dutch India company, with the Dutch rule, the British then occupied the country. And in order to keep some kind of peace between the Afrikaans Dutch speaking community and the English speaking community, the law could play a very important mediating role. And it was also convenient for black who didn't have a vote but could go to court. So really, from the late 19th century, the judiciary was playing a big role in South Africa. And when our people were arrested, put on trial for treason, we had big support for

them, we had a Treason Trial Defence Fund. And it was so crazy that the trial was dragging on and on. And one of the defence lawyers asked the judges on a Wednesday afternoon to meet early so that the accused could go out into the streets to collect money in 10 boxes for the Treason Trial Defence Fund. It is only in South Africa that you're on trial for treason and you collect the money with the judges saying it's okay to do that. Right from 1960 onwards, the law became a terrible instrument of oppression. And the laws were changed, prisoners overthrown to solitary confinement without lawyers' access, in complete isolation, people being tortured and killed in detention, all under the law. And one of the problems we had as a new judiciary was, should we go to the truth commission to acknowledge that the judiciary failed, and we had a very serious discussion in the Constitutional Court. And interestingly, those judges on our court who had been the best judges in the apartheid era, wanted to go to the commission to say we didn't do enough. The judges who had gone along with apartheid said, no, we were just carrying out the law as it stood. In the end, we issued a statement, it's not well known because we knew nothing about public communications, is simply gave the statement saying the judiciary failed. We failed because we enforced racist laws. We failed because we didn't investigate allegations of police torture and violations. It is a mea culpa from the judiciary. In my own case, when I got a big prize for the rule of law, on the 10 Foundation in Taiwan, they said Albie Sachs has supported the rule of law his whole life. I said, you've given me the prize, you can't take it back. But that statement is not true. For most of my life we had rule by law, the law was used to suppress the people to divide the people. So there's nothing intrinsic to law itself that avoids conflicts, that avoids equations. But at the same time, that same instrument could be turned around. And I used to feel, as a young law student, very divided in tone, doing the exams at the university. And the professors loved the rule of law, they

loved justice and equality, they wouldn't give their life for justice, but they would protect the rule of law. And then I would speak to people and the people hated the law. The law was the enemy, the law threw them into jail, the law chased them for documents, the law chased them as they didn't pay their debts, the law was hounding them, but they gave their life for justice. And when it came to write the Constitution, I could see the grand phrases of the ages were very meaningful for the poor. And the passionate commitment to the poor was important for the texture and significance of the grand phrases. So helping to write the constitution didn't heal South Africa, it healed the mind of Albie the lawyer. We felt so conflicted about the law. So from being a legal sceptic, I become a convert to what law can do, and like many converts, I'm very enthusiastic. But the fact is, through our negotiations process, and for then legality every step of the way, back with mass action outside, international campaigns, all sorts of mobilisations to show the capacity that we had, we got this wonderful Constitution. The separation of powers is another whole fascinating story. In our debates in the Lusaka, in exile, the main thrust was to combat group rights in the sense that I mentioned, but there was another conceptual battle: people's power vs multiparty democracy. And our freedom charter had spoken about votes for everybody, that was our guarding documents, and we came down firmly in favour of multiparty democracy, pluralism, and it was converted to pluralism by my experience in Mozambique with the Mozambique revolution, not by Karl Popper, and theoreticians, but if you don't have place for opposition, opposition doesn't go away, it goes underground, civil war, millions of refugees, Mozambique is filled with people without arms and without legs, because of landmines. And that converted me to pluralism. So you have a unity of the state. And you have what we might call constitutional rights, it is a constitutional democracy that provides that unity, and scope for people's organizations, community

organizations to function, to be represented in the organs of power, to go to court, to demand the fundamental rights, rather than people's power. and so separation of powers is built into our Constitution. And I feel so thrilled. I was rushing to catch my plane, at the airport, about two, three years ago and a big, burly, middle aged African men blocks me. Thank you, thank you, he said, he did not say why. I said it wasn't me, I've been off the court for eight years. He says thank you, because our court had ruled against Zuma, ruled against him in terms of money spent on his private house. And he was saying thank you. And if we didn't have separation of powers, we wouldn't have had that.

Separation of powers, we took a decision in exile, already. We don't want a directly elected president, because Parliament becomes nothing. We want parliament to choose the president, if it hadn't been for that we wouldn't have had the change for the presidency, maybe we wouldn't even be here today. So we become converted to separation of powers, but unified by the common objectives established by the Constitution, and the Constitution is not neutral on racism, on sexism, and homophobia. It's not neutral on workers' rights. When the employers complained that there is a right to strike in the Constitution, we should have a right to lock out. And the Constitutional Court said no, the only power the workers have is to restore the labour, they have the power of owning instruments of protection. So in that sense, you need a constitution that is sensitive to the rights of real people and the real society to achieve any of the goals that we had. Maybe we were thinking of people's power, but without using the people's power, very authoritarian approach.

Group rights. We're not against group rights, rights for workers, rights for women, rights for members of faith communities. They all recognized in the constitution in various ways. It's very strong on if you like multiculturalism, but the multiculturalism doesn't define citizenship

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in our country, because that would be the apartheid separation of the people, on the grounds of the appearance, that would see which degree of blackness and everything depended on that, you should be moved out of your home, school, everything, depending on if the pencil went through your hair or not. So ugly, so demeaning, we wanted nothing like that, to survive in a constitutional order. But group rights are there, they become quite important in terms of constitutional rights, through civil society organizations, and legal groups. So we have a Legal Resources Centre which takes up rights on behalf of prisoners facing execution. We have an equality project, for gay and lesbian people, their right to marry.

We have an environmental rights group, dealing now with carbon in the air. We have children's protection, very strong and Pretoria University, bringing claims of groups, usually an individual client, and we have very wide access to the courts. And standing is easy. It's not like in America, where you have to show that you are personally affected in some way by the litigation. So these are ways of recognizing group rights, but not consolidating them in terms of our structures. And as I say, this is for South Africa against the background of apartheid that separated us. And it might be in terms of, say the Kurdish people, at some form, if you start off with where people are, what they really want, then start with a solution. Even the term self-determination, we had very interesting discussions, Muslims from the Indian community said self-determination doesn't just mean independent existence, self-determination can take the form of use of language in schools. That's our choice to be part of the bigger community, that is self-determination. It's not a choice between integration or separation, there are alternatives. And maybe, who knows, in Israel-Palestine, forms of self-determination that are more flexible and permeable could be used. And maybe in terms of the Kurdish people. Something starting off with the biggest pain that people, their strongest

claims - how can we create institutions to accommodate the mutual needs rather than making it for the one to succeed the other must die.

**Participant:** I would like to get some information about the operations of the Constitutional Court, as it cannot make any binding decision. Does it work very well right now in South Africa?

**Albie Sachs:** The court doesn't have an army. It doesn't have a police force. In that sense, its decisions can't be enforced by the court itself. But our constitution obliges all exercises of public power to be conducted in keeping with the Constitution. And the Constitutional Court is under a duty if a case is brought to it, and it finds unconstitutionality, the court can't say well, this is a very delicate matter, we don't want to deal with it. We don't have the American political affairs doctrine at all. So the court is powerful. We ruled against Nelson Mandela, it was very inconvenient. He had to reconvene Parliament and pass the law. We ruled against Thabo Mbeki as president. He wasn't directly involved in the provision of an anti-retroviral to women about to give birth, women living with HIV, it changed the whole project of HIV in this country. And now we have the biggest antiretroviral program in the world. And it's given hope to the country. We wrote against Jacob Zuma in the case that I mentioned, and he accepted it. And it transformed the country. So it's a very powerful body. People asked me, do you visit the court? So I go there from time to time. And I'm thrilled to see how well it's doing, and dismayed to see how well it's managing without me. In other words, it's doing a wonderful job. It's very powerful. And with socio-economic rights, the focus of court is not just on the powerful and the rich and the well organized and political leaders. It's on people living in a shack, they become the centre of attention. So its role in terms of public education, in terms of what the role and function of the law is, is very profound. They also function in a very courteous way. It's an honour to be on that court.

And the Judicial Service Commission, I think has done excellent work in choosing the judges, we are preparing separate materials on the court. I'm going to leave here 5 copies of this film, you get some views of the court. It's called *Soft Vengeance*. And when I was in hospital recovering from the bomb, I received a letter, saying don't worry comrade Albie, we will avenge you. And I think eventually, if people began to cut off the arms, to blind one eye of other people, is that the country we want? If we get democracy, we get freedom. If we get justice that is my soft vengeance. So that's the theme of this documentary, soft vengeance.

And then finally, in addition to the Bill of Rights, you would have to do justice amongst yourselves. And there you can see, before a court, it doesn't look like a court, courts are frightening. If I go to the lowest court in the country, I feel scared, nervous, the architecture is saying "we know what you've done". And we wanted a friendly warm, beautiful place for people to get the fundamental rights.

**Ivor Jenkins:** Thank you so much Albie.

## Session 11: The ANC: from a Liberation movement to a Political organisation

**Johnny de Lange**, Former Deputy Minister for Justice and Constitutional Development

**Ivor Jenkins:** A very warm welcome to Johnny de Lange. Johnny was in Parliament as an ANC member from 1994 to 2015. During these 19 years in Parliament, he also was for 10 years Deputy Minister – for two terms of five years, the deputy minister of justice and constitutional affairs. So the topic that you have been listening to this morning, Johnny can address probably all those questions equally well. But I've asked him to embrace another matter with you today. And that is specific, we look at the ANC as a political party and how it has reformed itself, if not, from a liberation movement to a political party, so he will embrace that process. And so Johnny is now a consultant and he's not in politics anymore. He's not running a practice anymore. So we very often give him a call and say, can we meet with delegation such as yours, and it's always a fun and learning experience. So Johnny, welcome. And looking forward to your input.

**Johnny de Lange:** Good morning. I must say it's a real honour and privilege to meet you. And to be part of your processes as you're dealing with difficulties you experience in your country. I try and be as subjective as possible and look at things in a national perspective, I do remember that I'm a member of the ANC. And I did experience all these things that I experienced as an activist from the ANC. So I hope not too much bias will come through in my explanations. I also want to say that whatever I say, do not regard it in any way as prescriptive. And something that you can use, you may be able to use it, you might not be able to use it. I hope it's some worth for you to see what our experiences were. As I

have said, I was involved in negotiations, as one of the negotiators, as a member of the Constituent Assembly and I was involved in the Justice Department. So you may be able to find someone else better to tell you the history of ANC. But it is a fascinating history, to see how the agency is developed and how it is gone through phases. And really, you have to look at what the ANC is all about, You have to look at the history of South Africa. And I use therefore landmarks you can take, constitutional landmarks. 1652, that's when the white people came here and they started in Cape Town, they started dispossessing the indigenous people in the country, then 1910 when the colonizers, the British, created a union in South Africa, and basically handed all the power they had to white people. 1961 when we became independent, became a republic of South Africa. And then 1996 when we adopted our final constitution, I think those landmarks are important If you look at the constitutional development of the country. In 1910, what happened was in 150 years, from 1652, when the British were here, they created two colonies, Kwa Zulu Natal and the Cape, and then the Boer, the Afrikaners, that moved away from here because they didn't want to be under colonial rule, formed two colonies. And so in 1910, the British took those four colonies after defeating the two Boer Republics. And they made into one country, called the Union of South Africa. and unashamedly, they gave the power of governance early to white people; black people, Indians, and what we know is coloured people completely excluded from the constitutional dispensation in 1910. So basically, a lot of white people handed over to some other white people, the ones that then lived in the country. And of course, the colonizers played a role until 1961. In 1961, we became a republic (when I say we, I mean the whites); again, black people were completely politically excluded from any of the structures of the input. There were various experiments of self-determination but it's not very interesting. The ANC because of the formation of the Union of South

Africa, was formed in 1930. And particularly around the issue of land, because at that time, of course, the land would pass on to white people. Remember, Albie Sachs told you that 87% of the land, by the time we became a democracy, was legally in the hands of white people. 30% was in the form of reserves, like the Indian reserves in the United States, you know, each tribe was given a piece of land and it was a reserve, they tried to create a country. So at that time, the ANC then realized that the British, clearly the colonizers, were not going to give black people a fair stake in the whole situation. And the ANC formed itself. But you must remember at that time, that, and if you look throughout history, that basically, what happened also is a legal shift came around in the heads of South Africans. And that is basically, that white people are subjects of the law, they are citizens, they are subjects, they have all the rights that citizens have. Black people are objects of the law, not subjects of the law, it's very important to know that distinction. Because if you look at the history of South Africa, that's the way people would go. So what you will do is, if you pass a law, you say that and you give rights to workers, you say, a worker is someone who is defined as white men, you give them the rights, black people will govern through permit, get permits to move from one place to another, you have to permit to live in one place, you have to permit everything was done through permits. And in that sense, they were treated as objects of the law and not subjects. That, of course, then has a big influence on how you then organize, if you do not have the rights that a citizen has, then clearly you have to use other forms of organization. And that is the history of ANC. In various times, it had to use itself as a structure or other structures to perform certain functions in order to form politically. And in that sense, of course, it's also liberation movement. interesting also that because of the race issue, only blacks could belong to a political party as or an organization, Indians have to belong to another one, whites belong to their own ones. And of course,

what we know as Indian people, Asian people, they say the ANC was an organization for black Africans. It doesn't matter whether I fully agreed with the ANC which I was, I could not belong to the ANC. In fact, until 1985, it's only 30 years ago, the ANC was black Africans. But because they were people that thought the same as the ANC, what we then formed politically in the 50s in the 60s, we called the Congress Alliance. So the Congress Alliance or black people were there represented by the ANC; the coloured people, and a particular grouping that was also there. The white people and the Indian still get the Transvaal, English Congress and then the Natal Indian Congress, those were the formations. It was an alliance of structures, based on the apartheid definitions. We had to accept the apartheid definitions, their law framework, and therefore the way we then organized as a Congress was called the Congress movement, or the Congress Alliance, and it has these four components. This was particularly when the apartheid government came to power, Because mainly before that, the parties in power, the white parties, were mainly linked to the colonizers, then the Afrikaners came to power, they were more inward looking, they were against the colonizers, but they were very much in themselves. And once they came in, they started making the apartheid lines much harder and much stricter. So really apartheid starts in 1948 when it starts becoming legalized and entrenched in the statute books. And of course, as that happens, and as the oppression gets more, so the resistance gets more and the ANC and the whole Alliance becomes stronger. Another thing you must know from that time, the ANC has always been part of what is called the tripartite Alliance. Basically what that was, is the ANC and these Congress Alliance structures. The Communist Party, which was formed in the 1920s had a very strong link to the ANC and has played a very important role within the agency. And then the third one was the trade union movement, SACTU, was the trade movement at that time, they always formed a

tripartite Alliance, where they basically saw the ANC as the leading force. But clearly as a trade union, they're the separate existence as the Communist Party. And it's been pretty consistent. But together, they form the platform. In the 1920s, the Communist Party was formed, the ANC in 1930 and SACTU also in the 20s and the 30s. And so you had this political formation, the Congress Alliance, and then they were in the lines with the unions. during that time, the ANC became stronger and stronger, became more of the dominant Liberation Organization. But they also during the 1950s, there was their first and only real breakup. And that is when what we call today, the pan Africanist Congress, they were opposed to the influence of the Communist Party, and that white people in general and were part of the ANC Alliance, and they didn't want to be part of it. Of course, when you have so many structures existing and so what holds them together. Albie was telling you that during the 1920s, already, they started looking at a bill of rights, the Atlantic Charter. But what happened then in the 1950s is, he also mentioned it, is the ANC to try and find a common purpose and a common thread that holds us together, started the process, and also to look for the first time at real policies. So they started a process whereby they engaged the people and said, what kind of policies, what kind of society do you want. And that was the process that led to the agreement of the freedom charter. So the freedom charter became our first political document where we captured the imagination of our people and formed this broad liberation movement. And that is why people will talk always about the ANC being abroad, because if you go through this history, I'm telling you, you can see why its approach is, you know, you had the unions there, had the Communist Party there. So we had the most serious Stalinists on the one side, to the most conservative people on the other side, all together. How were they able to achieve this? How were they able to do this. And as I said, at that time, and in any case, until

1996, of course, it wasn't that difficult because we had a common enemy. And that was apartheid, which was doing everything they can to oppress the people and the aspiration, and therefore you had a common enemy. So even though you may not fully agree on all policy issues, you may not agree on everything, but at least you know, you have one enemy, and you can fight that one. But with the drafting of the freedom charter, it became for me in any case, ideologically much clearer where the ANC stood. And one of the most interesting clauses in that document is that South Africa belongs to all, black and white. There, the whole issue of non-racialism was entrenched as a principle for the ANC, and its broad church of people. So you want to be part of us, that's fine. But like the PAC that didn't want white people to be part of this dynamic, you can then go your way. We are this broad church that includes all South Africans, and we want all of them to be part of South Africa. It's a very interesting document for the 1950s. But what it did is not only that you have all these formations now that are fighting apartheid, but you also had document that gave a policy direction. And what they stood for, which was very important. Of course, the movement then grew very much stronger. Until the 1960s, just after the formation of the Republic of South Africa, white South Africans, the apartheid government came down heavily on opposition and the centre of the country. And so they banned all black organizations, the ANC was banned. Very interesting at this stage is I must mention is Umkhonto We Sizwe, that was founded in the late 50s, early 60s. when the ANC saw that petitions and talking to white people is not going to have impact because it would just result in stronger oppression. We then formed our army. Interestingly enough UWS was not racial. So although the ANC was African, the democrats were part of the grouping of the ANC, the white ones were the Democrats. Although they were a different organization, when it came to the army, it was not racial. Someone like Joe Slovo who was white could become

the commander in chief of the army, although he could not be at that stage a member of the ANC. But he could be the leader of the MK, it was very interesting. Of course, then all those structures are bad. In the 1960s in this country, there was very little political organization. Because the ANC President Oliver Tambo, moved out the country to find a new way to establish the ANC outside the country. And that took a long time. And of course, MK also moved out of the country, and it had to establish itself. Only in late 60s, when they started, they were some movement, where the armed wing started coming into the country and so on. But interestingly enough, despite the weaknesses with the ANC, is that the community organizations in the country started becoming more and more active. In the late 60s, early 70s. of course, with the pressure of apartheid, and having no political voice for black people, the apartheid government had a structure lending some way to give people a voice. And where they did it was in labour law, they started giving workers rights, right to meet. And then of course, it became a very important organizers' tool within South Africa, you were talking earlier about how one can use the law in different ways. Sometimes as an oppressive tool, you use the repressive laws against its people. As those labour laws gave some rights to the workers, they started organizing, even though the ANC was very weak amongst the youth a militancy started arising. So that by the mid 76, you may have heard of Soweto? And there were these community organizations, there's always a debate on how big a role that the ANC played in helping form those structures. When I was here, and I was part of some of those things, I can tell you that of course, they were people in the underground. But the ANC was very weak at that time, those struggles amongst the youth, it was the youth themselves that started, it was interesting. So this outside movement in exile called the ANC, you've got the MK, which is in the underground and starting to come into the country and fight. But

internally in the country, you now starting having people that are starting to become part of the movement. And interesting enough, those people do not identify with the PAC, or with any of the other political groupings, like the black consciousness, they identify with the ANC flag, the ANC flag is everywhere. It's in the forefront of these struggles. And now internally, this nascent struggle, these nascent community organizations fighting against apartheid. Most of those structures, the community ones, of course, we call the UDF, United Democratic Front, which would include anyone that believes in the freedom charter, internally. So what happened was the UDF and its structures, but the teachers organizations that are ANC aligned, as organizations will join the UTM. That is a house organization, the lawyers organizations, which I was part of. And we're part of the ANC, they became partners. And so the UTM became this big internal organization of front that pulled together all these internal organizations in the country together and give leadership. Of course, it was also strongly repressed, the police smashed them, most of these people were thrown in prison. We had many declarations of emergency, we had one after the other. So the whole 80s was this growing anger, and unrest of the country, and the strong oppression at the same time, of course, as apartheid grew, it had to give some space to us to do things and so they'll come, what they'll do is they'll take this organization and say, okay, we ban you. And all we do is we take the other organizations, we make them call meetings, we make them call people, even later, when they banned - all UDF was banned at one stage - we were still able to use other structures. And then there's a gentleman asked about how the law can be used, we use the law. And at that time, I was a young practicing lawyer, we used the law for one thing, and that was to fight apartheid. And as the struggle grew stronger, of course, the judges, some judges became braver, because in the beginning, when you challenge someone that was putting the tension, they just said that the government has

decided to stay in tension. But as things started loosening in the country, and as they saw that phase change is going to come in some states, we were able to achieve more through the law. And we were able to get people released, we were able to get meetings. And it became much more difficult for the apartheid government because we used their own laws against them. And as I say, the judges, or some of the judges, became a little bit braver to start giving judgments. But we also became brave as lawyers. Because we became more creative, we could see how to do these things. And in that way we could further a struggle as well during the 80s. And then, of course, a very important group - but one we knew very little as youngsters - was, of course the political prisoner. It was a third group that was existing. So you had the ANC in exile, you had these internal organizations going on, Then you had the prisoners, which was Nelson Mandela, which was the top leadership. All our top leadership was in prison, except Oliver Tambo was the president in exile. And that's the only reason he wasn't in prison because they'd sent him out of the country before the rest of them were put in jail. So, of course, everything about them was banned. They were put on Robben Island. Their families could see them I think once a month for an hour, complete with people sitting there watching. We started smuggling things out of there as things loosened up. But in the beginning, it was very tight. And we knew very little about that. None of us knew what Nelson Mandela looked like, except for photos. And he always looked like Muhammad Ali, if you see a young photo of Mandela, he looks just like Muhammad Ali. In fact, I went to a court case like that once where this guy was charged with having a photograph of Mandela. So the policeman, the security, police kept the evidence in court such as a photograph of Mandela, therefore, it's illegal to photograph Mandela, you must be found guilty. He said, 'Really? So you have seen Mandela. No I haven't. So how would we know what it looks like you've never seen him? I mean, you can't

come to us as an expert. Did you see that picture - to me it looks like Mohammed Ali.' At the end he was found not guilty because they couldn't prove it was Nelson Mandela. Because no one knew him and he was banned. So also, during those times from the 70s onwards, the labour movement became very strong in South Africa. Remember, SACTU was there originally in the tripartite alliance in the beginning, but then did not exist anymore. Then in the early 80s, COSATU was formed, the Congress of South African Trade Unions, and it became a massive Federation. People like Cyril Ramaphosa, was part of that. A lot of our leaders were part of the structure. So now you had the UDF, strongly, you had COSATU strongly, and then you had these other structures of the ANC, these are all the different components of the ANC that existed. As I said, what brought us all together, we were all believers in the freedom charter. So as disparate as we were, we were able to have at least one policy vision. COSATU, also later on adopted the freedom charter, and all of them as UDF. So now you start coming to the 80s and 90s, when we getting close to negotiation, lo and behold, we didn't know it. And it seems that most of the ANC leadership, none of the ANC leadership, but at some stage Mandela. And it's a very interesting history, if you want to know what happened, but in the long and the short of this, Mandela started speaking to the government, and they start talking about the possibility of negotiations, and for the first time in my life, I thought maybe we're going to have a settlement in this country. Of course, at that time, basically this country was at Civil War. At that time, Johannesburg, in the morning, when people went to work, whether they came from the eastern or the western, those railway lines that go to the city from the township. Every morning people used to get on with Panga, which is a big cane knife. People used to get onto the trains, and they just used to kill people indiscriminately. These are ordinary people going to work, they were just hacked to death. At night,

those same people would go into the township, they'd just hack people to death in their homes. In Kwa Zulu Natal the ANC and the IFP were just at war. They would hear shootings literally every night, fighting going on. At the same time, all this was of course commanded by the government of the day, what we call the third force, all the guns, the excess. If the police would say okay, we're going to go to that, they make sure that the police are not there. So these guys come in with a Panga, they just hack people with it. So we had a low level civil war in this country at that time. So at a time when we have to negotiate, we were still basically killing each other. People forget this today, there's a lot of revisionism in this country. "Mandela sold us out" but we were in the middle of a Civil War. Chris Hani, one of the great leaders of the Communist Party and one of the top leaders in MK, was gunned down by right wingers at that time in his home. The right wing, that hated basically anything black, were going around and just doing what they wanted. There was bombs being planted on the day of the elections. So the ANC started negotiations in a climate of civil war. You can imagine the difficulty that has, because not only is it difficult then to make policy to decide strategically on what things were going to agree in the negotiations but of course people are being killed. And that impacts on the process, you have to keep people happy. But also, you have to try and keep people alive while you're trying to negotiate. But the fact of the matter was, is that we as ANC was coherent in our views around negotiation. And that was because of inclusivity. It was firstly because of our leaders, people like Mandela, Mbeki, and all those leaders of ours and then, of course, the next generation, we had implicit trust in our leaders. These were these giants. These are intellectuals. And they had the support that's the one big thing, which is very important in negotiations, that you have a collective of leaders that are being followed, and that are driving the process. And actually, we went a step further, we

also took possession of the process. We did not have mediators or arbitrators from somewhere else to come here. We said the only way we're going to solve this problem is if we look at apartheid in the eye, and we agreed on certain things, because then both of us have the responsibility to make it work, not just one. And that was very important. And you can only do that if the leaders are trusted, your leaders are trusted. And the second thing is inclusivity. And in that the ANC was very strong. I come from this province. I used to be the leader of negotiations in this province at that time, we used to go regularly up to Joburg meet all the provinces there plus our tripartite Alliance. All of them were in those meetings, and we will discuss with them, negotiate. And we had diverse views, a lot of people wanted to continue with the struggle but what I would still remember for myself was the day when I realized what the negotiation all about, when Mandela got up one day and say, 'hey, you know, all of us, we can keep fighting amongst each other and we can keep disagreeing and all that is happening, people are dying outside. You must work out for ourselves what it is we want to achieve. You cannot achieve everything, you can't have everything. If you're negotiating with the enemy, you can't wish them away, you have to realize that there's a question of give and take that takes place. If you don't do that, we can go ahead and get out of negotiation.' So he said to us and I was wondering on the hottest of those days, he said to us, 'Johnny, we know that you guys are serious about it. But what is it that we actually want out of these negotiations? What is it ultimately that we want?' He said the most important thing is majority rule, we want votes for all of us, and we want to be equal citizens. So our goal in negotiations is majority rule. Do we agree? So we'll also say, so what does it matter? If it's two years later, three years later, if we negotiate a process to get us the goal of majority rule, then the means and the strategies by which you get there doesn't matter. And that's where I learned my golden lesson. Process is as important as the

end result, your processes are as important, you must take your people with you all the time. And the majority of them must agree with you. And you must have leaders that are clear enough as Mandela was when we were added in had a say to us, come on, decide what is it you want. And if we now all agree that the majority rule, then we can make concessions and compromises to get to mature but as long as after a certain period. And we then agree on five years. So to allow a five year but at the end of the five years that we the majority of this country, no group rights, nothing else itself. And that was the way that our leadership was able to keep us together in negotiations, although we all these disparate groups, that is the way, by leadership that we trusted, leadership that was clear on where they wanted to go. And then everything inclusive, to take the people with you and explain it. Of course, we then went back and explained it to our people in the Cape, they started understanding and then of course, your centre gets bigger, and your centre then holds on the issue. And that is even when someone like Chris Hai gets killed during that process, we were able to hold all the negotiation together, even when they were doing what they were doing with these third forces, and we walked out of the negotiations, we were able to sit down and say, well, this is not going to help us. So let's get back there. And this is how it goes. So that was the glue for us that kind of kept us together. We had a broad policy, of course, as I said, the freedom charter. But of course for these processes, the one thing you must prepare yourself for is one day, you are going to be euphoric because you achieve so much, but the next 10 weeks is going to be depressing. It's depressing, you can't achieve anything, you can't talk to each other. And that is why our leaders, people like Cyril Ramaphosa, our president today, became very important in the process. And he was given the job to actually start creating relationships with the other side. He and Roelf became the two major points, we used to call them the channel. We all negotiated with each

other, we try to find compromises with each other, but where we couldn't solve issues, then it would go up to the channels. And ANC trusted Cyril and Roelf and then people trusted them. And they were able to break the bottlenecks. But they weren't the ones that were prescriptive, we were the ones negotiating, we were giving effect to the ANC's mandate. And when the problems were there, we had mechanisms, what I call unlocking problem areas, we had then trusted leaders that could do that kind of job with the other side. And as I said, it was very important for us for the other side to buy into this, because at the end of the day would have to implement it together. So during that time, if you answer this question I've been asked how did we all this all together, that's how we held it together with the kind of leadership we had the integrity and the vision, plus the inclusivity. And then of course, a very important issue is to get people that are skilled enough to drive this process. And of course, on the other side, you need people equally with skills. You don't want stupid people on the other side of it, because that is going to be what people that can think and drive those processes. So that's how we got through the negotiations as a political party soon after we came into the country. Now remember, at this stage, you've got the political prisoners is one group that's part of the stage, then you've got the exiles that come back into the country. Then you've got COSATU, and the UDF; here's a big group of people, because I brought a message about people with it. So all these different groups, plus the Tripartite Alliance, with the Communist Party and COSATU. Now you get all these people, how do you now have policies in mind for all of them? Now, the first thing that happened, and I think if we go back in history, I think we would do some things differently. But the first thing that happened as the exiles came back, we all want to become part of the agency, including the released political prisoners. And the ANC formed as a party itself, it is the first time it formalized itself as a party since 1930. Without a constitution, we had a

conference here in South Africa in Durban. And we of course, they had a constitution that would bind what we would do from there. Now, that's very interesting to notice. how we make policy, which is what holds us together, after all, is clearly spelled out as being made in the national conferences of the ANC, originally national conferences, were every year, then they made it every three years. And now it's every five years. I personally think the gap is far too big between that and I have spoken against that. But in any case, that's where the policy by the ANC is made, at policy conferences of the ANC, by the members of the ANC, very important members of the ANC. Because all these groupings I told you about not all of them, I remember, for example, in the Western Cape, COSATU's have got a big affiliate. The vast majority of those people don't vote ANC, they vote for opposition party. So by being in the tripartite Alliance doesn't mean that all those people are necessarily ANC members. And that's why you had to make sure that policy for the agency for this broad liberation movement is made within the ANC network, that is how we make policy, in conferences. This is very important, because what it does do is it creates certainty. But also it creates a negative impact. The negative problem is that your partners, when they're not happy with policies and the way policy will be implemented, there is no way where they can change. You have to wait for the next national conference. So on the one hand, you have certainty on policy, on the other hand it allows for fighting for these structures. Remember, they are separate structures, the trade union is a separate structure, the Communist Party is a separate structure, so they have their own policy. So the messages sometimes that are sent out, can be very difficult to control. Because when people aren't happy with those policies and data, although they are create that certainty, they are also difficult to change. In a way, that's a good thing. Because you don't want to change policy. you want certainty, but on the other hand, there are

difficulties with that approach. That is why the title of this session I said to Ivor, when it says from a liberation movement to a political party, I wouldn't put it like that. I think, for reasons like becoming part of governance, we had to formalize the ANC into a political party. And we had to formalize - that is where policies are made - but in effect, the ANC still operates a lot like the liberation movement it always was. That is why it's got the tripartite Alliance. The Communist Party can be part of an alliance, the unions can be part of us. One thing we did do, once the ANC came into the country, and we all started joining the branches, because there was a branch in each suburb, We immediately disbanded the UDF and disbanded a lot of the internal structures that were still in the country. Because those people then became part of the ANC, and I think that was a huge mistake, because those were the structures that our people will use to, those were the structures of people fought through. And I think we did not think through clearly enough, and we were emotional about the ANC. And I think we disbanded a lot of the structures, that could have been a big help for the ANC as we moved forward. So I think that was a mistake we had made. And then, of course, the tripartite Alliance plays an important role. The secretaries are still supposed to meet regularly, they still are supposed to talk a lot with each other. But personally I think the Tripartite Alliance does not work very well. The real problem for that is a simple problem; the tripartite Alliance looks at things of co-governance. They want over certain policy issues a direct say in it, and they want to have a veto. Whereas as I said, the policy is made in the ANC. And any CEO of the ANC is this major structure that makes the decision. And so we found from the beginning of our democracy, problems started arising, particularly around economic policy, that the tripartite alliance was not very happy with the way things were going. And so over time, you could see a dissonance taking place, as far as clarity of policy. But of course, all these groupings, were publicly

disagreeing with it, so much so that the Communist Party and COSATU decided they wanted to get rid of what it saw as the problem, which is president Mbeki. And they started supporting Zuma to get him into the presidency, because they felt they would be able to much more, try and get the policies that they wanted to get. I have my own views about that. But clearly, it was the numbers calculation. And it cost us very dearly as a country. Some people now called it the eight wasted years of democracy. It's when he came to power. And unfortunately, the kind of looseness, and the kind of problems we had by managing this whole political liberation movement, that wasn't being done. And things just went backwards rapidly until The ANC then got rid of President Zuma and put in place Ramaphosa. So it's not been easy. And as we move deeper into our democracy, you can see that the fault lines in the party get wider and wider. That this broad church that we have on one in one sense is great, having this broad church of people. On the other hand, it's difficult to manage in terms of policy, in terms of keeping all going in the same direction. And I think those fissures and those divisions are growing deeper and deeper within the ANC. And so now you have an ANC with two clear factions that developed in the ANC. The one was the Zuma group, and the other one was the Ramaphosa group. The opposed group was just able to win with about 100 votes at the last conference. So the ANC is a very divided house, as far as we stand. Our president almost didn't make it. As I said, for few hundred votes he got into it. And the other thing that has started happening, we have started a lot of inquiries that are taking place in our country commissions, we have started seeing the damage that was done in those, particularly the last eight years. But only in the last eight years. I don't know if you've heard this whole thing called state capture. But basically what has happened is that there's two families, the one a foreign one, and the one South African one, who have used the ANC Networks, to actually get into government, and basically

siphon money out of it. There are horror stories coming out at the moment, about the kind of corruption and some that took place in our ANC. And so even with all our beautiful policies, even with all our best wishes, even with all our best intentions, on our own watch as ANC, as we were growing, we allow this criminal corruption and these networks to grow into our own structures to take control of people in those structures. And because what you had to do is you had to take control of the major faction in the ANC, then of course, you can control certain things that are happening in government. Because those ANC people then go into government, they are ministers, they are in high positions, and they start influencing the direction to benefit these corrupt people. And as I say, at the moment, we've got 2 big networks that are being exposed through our commission of inquiry. So as the distance grew, and as a dissonance grew within the agency, so of course corrupt elements came in. The other thing, of course, is a lot of our oldest generation, either dying or like me and not around anymore, then we don't play a role anymore. So the new ANC members that have come in, they are people that will mostly have not involved in the struggle at all. They've got a new value set, they think differently, they stopped going to speak to people. So all the good things about the ANC of going on the ground speaking to people, those values fall by the wayside. And of course, the ANC has been seen more and more of a vehicle through which you can enrich yourself. I mean, you be going to the ANC, you become the leadership of the branch of the ANC, and they see that it means you can also be a leader in local government. You gain a position in the provincial leadership of the ANC. Once you're in that leadership, you can become part of the provincial government. At the national level, it makes it easier for you to then be a National Government. So you become part of the ANC not for reasons that most of us became part of it, to fight the struggle against apartheid. In the ANC today you get very few young,

professional people that have come to join the ANC and to be part of a branch doesn't mean black people now but other opportunities, so they become lawyers, they become anything else, which is what we wanted. But what it is now happening is that the soul of the ANC is changing. And it's becoming something completely different. So we all have good intentions. And we were there, I think we were wonderful ANC, but a lot of bad habits and problems crept into the ANC. So the one thing that one can learn about the history of the ANC, it is possible to keep a lot of people together and so on, but when it comes to policy and our government decisions, it's difficult to remain a liberation movement. Because you can't please everyone anymore. You can't please them in a way you used to. Because you used to just previously say "there's apartheid, fight!" And then we all we all run and we fight. Now they say we don't want to talk about fight, they want to talk about this policy we disagree with, we don't want to talk about this, we don't want to talk about disappointment you made in government. So the whole thing has changed as the ANC got in there. And in one sense, we are a political party, but we want to still act like a liberation movement. Because we want to keep all these people that have influence. And funny enough, we've been very successful. But it's now starting to show in the elections; when we started off with two thirds of the vote was 66-67%. The last election we're down to 57%. So a lot of people now, that kind of moral high ground we had as a liberation movement we've lost it. And we are now being judged just on how we are as a political body in government, and how wonderful we are as a liberation movement; our previous leaders will now be measured on the issues that count the ones that affect people. And as I say, people would say that the ANC has slipped morally and has a lot of issues inside. Although the vast majority of ANC people will say it is still decent, and not part of their corruption status, but that has happened and has happened on a large scale. We now we talking billions

and billions of rands but at the end of the day, Cyril Ramaphosa now president, came in on a new ticket, he said, we stopping here, we're not going to go on like this anymore.. And so we really having to go through a process now we want to renew the ANC, but we know that you know, it's going to be difficult because as I told you, the president came in with just 100 votes more than the other side. So with the ANC split in 2, you want to renew this thing. You can renew the one side but the other side doesn't want to renew. And the thing about that is of course, over time with the dominant faction becomes dominant in the ANC and in government, because when they are dominant in ANC, the Zuma group became dominant in the ANC they control all ANC, but they also became dominant in government because they supporters were put into government into different levels. So you now have a president whose messages are open to renewal, saying "I'm going to change this ANC to what we were, we're going to try and do it" but you've got a whole part of the ANC that is resisting.

## Q&A session

**Participant:** The ANC is becoming something different – but black had their own mechanism, they claimed their rights through their lawyers. How could you be sure that another domination would not occur again? Do you think that what has been done is enough? Is there a possibility for blacks to oppress the whites?

**Participant:** The struggle of the ANC was very powerful and successful until they came to power. When did the corruption in the ANC start to emerge? Despite all independent institutions, how come you couldn't prevent corruption?

**Participant:** My question is about youth. The ANC shouldn't be criticised, as young people cannot really understand the ANC. They say that it is out of fashion and filled with old people. The ANC has written a new language, new structures and a brilliant constitution. However, there are always shortcomings in real life. The new generation don't have experience of the past, as they did not live it. What is the general direction of the youth? Is there a current structure that can meet demands of the new generations?

**Johnny de Lange:** Until about a year ago, I'm a loyal ANC member, But I've always used the ANC as a platform to talk, so I'm not scared to talk about issues. But for this eight years that President Zuma was in power, I must say I became very disappointed, that all the things that we struggled for, all the hopes we had, all the visions we had, all the policies, I really thought that we were different as the ANC. I really thought we were great. But I had to realize that ideas that we had become something that none of us wanted, and none of us are proud. But as the resistance came when people started seeing the corruption - because it took a long

time for it to come out. But as people started seeing it, and as people started seeing some of the things that Mr. Zuma and other people were doing, my hopes grew so much. Because that resistance, of course, it came from outside the ANC. But most of them came from inside the ANC and members said, no, this is not what we want. Even with your struggle credentials, this is not what we struggled for. And that resistance grew in the ANC. And for the first time in our history, and as leaders are standing up, Pravhin Gordon, and a whole lot of our leadership. And even if some of our older leaders got up in public, there's our group of top veterans of the struggle, they got up and they said, this is not our ANC, Zuma, I want you to go. the courts started clearly directly getting involved in political issues - because although it helped us at the time, because it put pressure on the Zuma regime – and I wasn't happy with all the things that courts are doing, because I thought they were creating bad precedents. You don't create precedent with one president, you don't try and look at one individual. You see what are your lasting, durable principles that are going to be important. And I think on some issues, they overstep the mark. But having said that, I also recognize that through the pressure that the courts and the judgments came against Zuma, and created huge problems, and helped those people in the ANC that was fighting it. Because now they couldn't say "you're doing wrong". But what did happen, as in South Africa, we as a nation, once again, from the low we had reached, we were able to stand up and able to exert ourselves and say we want to open renewal, we want the agency that we had that before. We don't want this, we don't want leaders that become politicians to get rich, we want you to be there to serve us and to look after our interest. So I think, although I explained to you, it's going to take a long time for the right people in the ANC to really be in the leadership, because there are a lot of still bad apples, it's going to take time to do all that. But the will of people inside the ANC is strong to do

it. And of course, the media in various ways, the courts in various ways, all did play a role in putting an end to bad things. Our Constitution says that, never again shall one group in South Africa dominate another group. Just like Mandela said that in his speech, he said, I have fought against white domination. But I've also fought against black domination, I think that was the creed of the ANC. So I think that at an institutional level, at a decency level in society, I don't think that we're going to have those kind of problems about whites wanting to kill blacks, and people going to find that acceptable. But having said that, I'm very worried about some things that are happening in our society, as the EFF - these people are young, black people, they come from groupings that are marginalized, and the people that support them are very marginalized in society, you go look at the voting patterns, they get votes from everywhere in the country, but there's no way that they even govern a municipality. Because they don't have a vision that people can identify with, and this affected people's vote. But the problem is 10% of our people are prepared to vote for them. And with their leaders, saying the things they do about white people, about Indian people – they say terrible things about Indian people. I'm worried about that type of division, that's going to create further. Because we've always had white people, right wing people, that are being very opposed to black people, saying terrible things about black people. But I mean, most people didn't take them seriously. Whereas this group of EFF people and some other black leaders in society, the kind of things they saying and the kind of message that conveys - I'm very worried about that. And at some stage, we're going to have to act strongly against them. As the ANC, I don't think that institutionally we have worries about that. But I do think that because of these people have platforms in which they can talk, they now are 10% of Parliament, they may become a larger voice and the message they give is terrible. So that does worry me at that level. We obviously grew, strengthening our moral

high ground as we did. But then we've lost that since then. And when did this happen? A simple answer will be basically that when Mr. Zuma came to power, things started to go backwards, things became very populist. If you know our country, you'll know that all the prisoners we've had were very intellectual. Thamo Mbeki was a very intellectual man. Mandela was very intellectual in his way, Motlanthe, very intellectual. Zuma, unfortunately, he wasn't. So that meant that the worst people in society came out and were given space to do things, so most of us will say that that is where we started losing our space in society. But today if you start looking at what's happening at the Commission, that's not true. Because it's true that the one family, the Gupta family from India, that they created a really huge network of corruption, the hugest network anyone could think of, but the evidence that's coming out now at the commission is that there was another network before that. That it existed before Mr. Zuma came to power. And that is all the stuff that the Watson brothers have done in the commission. They had their own network of corruption in the ANC, it was a much smaller scale, it was more focused. But it was existing a long time already, before Mr. Zuma. So it's very clear that these bad habits started coming. When did we start realizing it? Some of us always thought that was going to happen. And we knew we were opposed to it, but without any real evidence. But I look at how the people that supported Mr. Zuma put into power, the Communist Party, and the COSATU. And in the first four years, they were all happy and loving each other, But in the second four years, it was clear that they themselves were the ones that was starting to say, hey, but yes, corruption, yes, state capture. So it's very clear that half way into the eight years of Mr. Zuma that his own closest people that put him to power started realizing that there was corruption, and then things started coming out. So for the second term of Mr. Zuma people start realizing this, newspapers started writing more

about it where they couldn't hide it away. And then as I say, amongst his own people, the COSATU and the Communist Party turned against Zuma. And that was an important time when all these things happen. And since then, no one knew about the Watson issues, only once the inquiry started with the Gupta family to look at them, the Watson family case came out only over the last year. What I always say to people is, why don't you do something against corruption. The problem is corruption is it's the most difficult crime to prove. Because if people don't leave a paper trail, there is no evidence. at least in murder, there's a body or something. but if you and I are corrupt, we don't talk and we don't put things in paper. No one can ever find out that. And that's only when the people turn against these people and started looking and saw the problems; it is only when they themselves started talking against each other, that the things started coming out.

So the youth issue, it's so vital, because the future of our country is the youth. I'm very sad with our youth. Because I think liberation has brought a lot of things for our youth that they never had, particularly black youth. And also not all of them. I mean, if you go to the schools of most of the black youth in this country, the schools are still terrible, even after 20 years of democracy, the education they get is still bad, and so on. But there is a huge black middle class that was created that didn't exist. And there has been huge opportunities for the youth. The problem is that their examples originally would be Mandela, but as the ANC went backwards our Leadership wasn't the example we want anymore. And so people do want to emulate the ANC and the ANC leadership. As I said to the youth, the professional youth, you don't find them anywhere close to belonging to the ANC. They go into their professions. you get very few new people, that are people with skills, people with university degrees, that are now joining the ANC to become part of that that structure. The ANC Youth League - and I'm sorry to say publicly – but they are useless.

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Firstly, the leaders usually are still 35 years old. So they don't constitute the youth anymore. They are people that are grown up and should go to do grown up things. They get involved in things that don't affect the youth. They get involved in political issues. So they do exactly what the ANC is doing, but worse. And they have a platform to put all their rubbish that they can into society from there. They are not people that have a political look at things, that aren't politically educated, the kind of youth leaders that we are used to as an ANC. So the youth is not giving leadership to the youth, they're not taking up youth issues. Now, the worst thing is that the youth has opted out of the political structures and political processes in this country completely. Last time, when I looked at the registration - you can only vote, if you are registered. If you can look at registered voters, it's just a bit more than 10% of the youth - we're talking about those people between 18 and 21. Only 10% of them are registered - maybe 10 to 15% are registered. that means that 85% of the youth of this country have decided "I'm not even going to register myself and give myself an opportunity to vote". That's why I was laughing so much in this election, when people were saying it galvanized the youth, but there isn't youth vote, Because they haven't registered. If you go look at our reference 10 to 15% of the users are registered. The other thing that worries me is this thing that lots of youth are coming into politics. But I think we as ANC we are doing it incorrectly. Politics is not just something that you are born into, you're just a great politician. Politics is more something that you learn: the structures, how you go about it, how you behave as a politician. So what are we doing now, as we're taking all these 20 year olds, and we're putting them in Parliament. And what we should be doing is we should look at these peoples, okay, let's see which one have skills that we can use. Then take them and start them at a lower level in governments, in local government and you build them up as politicians. We are parachuting youth right at the top, replace all these

people, we don't want these old people anymore. In some cases, they are right. But in most cases, they are just wrong. Because we are changing our politics, and the politicians are changing, all our institutional memories are gone. As an ANC, when we started, we had no experience of government at all, none of us had ever been in government. So it took us 20 years, 25 years now to build up skills. Now what we're doing is because of this factionalism, we taking these skills, and we throwing them out of government and putting new people in all the time. So we're not building up an institutional knowledge base, we will get experience and we are infusing young people and inexperienced people into the system, and you then keep the longevity of systems. You know, this week there is going to be a new Parliament, And so you're going to see in the next two weeks, the parliament is going to be chaos again. Because all the things that we had sorted out and we debated, with Mandela already, all of them now becomes new issue to debate again, and they started right from the beginning. So in five years time, when they leave, they've just learned how to be in government, then they lose out because we must never replace them again. So there's a huge problem we have in South Africa, of changing our politicians all the time. We do the same in the civil service. I mean, when these new ministers come in all of them get rid of the senior people there. After five years, when you say, I now understand what this portfolio is, this is when they remove you and send there someone else. So there's a huge problem. And instead of us looking at the youth more carefully, and how we want to bring them into politics, and we want to nurture them, get them involved in the issues; they don't get involved in those issues, their role models, because most of our leaders have moved out of the townships, the role models of people in the townships are now thugs, crooks, and people that not role models at all. And the issues of the youth are not being taken up well, with anyone. And then if you get your parties like the EFF that becomes the voice for

them, which is sad, but it becomes a reality. However, as ANC, we still remain broad, we had 1 million members at the last election, more than 10 million people voted for us, so that shows you what goodwill is still in society. That although we've come down from 67 to 57%, the goodwill is still big, that 9 million people that are not our members still vote for us.

**Participant:** The story of the ANC is not a surprise for us. They fought, the leaders became heroes, they came to power and then they started to be corrupted; at the same time new generations are unaware of the heroes of the past. Youth are a big issue. Everyone talks about corruption and about the wave of populism, which the EFF shows. What is the chance of the ANC to solve these two issues and propose an alternative?

Also, about Zuma. Everyone spoke bad about Zuma. He has been criticised that much that he became the scapegoat, but is this a way to hide the structural problems? If he is a political actor that provoked hatred and disgust, how come he became so powerful in the ANC? If he was entrenched so much in corruption, how come he was supported by at least 50 percent of the ANC?

**Participant:** In Turkey, the peace process is parked at the moment, and the polarisation is quite high in the country. When you look back at your experience, what is your advice regarding dialogue, how should we broaden bases as a civil society during difficult times?

**Participant:** You mentioned that by looking back at your history, you would have done something different. What are the things you would have done differently?

**Johnny de Lange:** I think that there are two biggest issues. When we identify real issues, we identify poverty, inequality, as those are the things that we have to fight against. And for me, they are still the biggest

because of South Africa is either the first or second country in the world with the biggest gap between the rich and the poor. So we've got still a lot of problems and a lot of things to do on that side. But unfortunately, I think these two issues you've raised are the ones that are becoming prevalent, because they have political issues. And they'll be used in different ways to undermine a lot of the things that we were wanting to do, and wanting to plan. What worries me often is that, because we've got a scapegoat like Zuma, and as I say things that are coming out now that we are seeing, but he's not the only scapegoat, because with some of these things were happening before. It was already this Watson network of corruption that was taking place, which was largely within the ANC. People in the ANC helped the Watsons to get tenders and contracts. And then ANC people would pay money for those things. So I think the first problem that we have, is that it's difficult for us to respond to it. Because we don't know how to respond to it, how do you respond to your comrades, they said, this guy's corrupt and got a tender, I suddenly have to deal with it. The second part of the problem is that because we have constitutional states, everything has to be done legally. So even when you are sure that someone was corrupt, before you can do anything, before you can take steps against it, you must now legally find the evidence. And then of course put him on trial. Now I told you already had difficulties to prove corruption. Because you don't get someone to talk to you, there's just no way to prove it. So the problem we then have is how you do disciplinary stuff in the ANC. Because it means you now have to go get an investigating wing of experienced people that can investigate this corruption, then you have to have people to go through a disciplinary process, we just not ready for all that stuff. We just did not know how to do it. And I think we don't have the capacity. So what did we do, when Zuma was creating a lot of these problems? We created what we called an integrity committee in the ANC. And these old leaders,

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who are veterans, were sitting on the integrity committee. And if something says something about my integrity, then they'll take me to the integrity committee and the integrity committee will say, okay, you shouldn't stand for that position, or you should face discipline or whatever. All these people on the ANC list now, they who have allegations of corruption, the integrity committee try to find out about them. What they did is they look at newspaper articles and things like this. And then they say, well, these allegations against you, we think you shouldn't stand. But they said that I have rights. I'm an ANC member, who is accusing me? What evidence is there that I've done corruption? So all these old people in the committee don't have the capacity to go and investigate these things. And therefore, it becomes also toothless. So firstly, we don't know how to deal with this issue in the ANC. Because it's so foreign. But secondly, we do not have the instruments and the tools to deal with it. And if we don't, we're going to have huge problems. Because those people, the only thing now why they left and they didn't go to become members of parliament, is because there's a quirk in our pension system. If you are a minister, and you come back to Parliament, and you're not appointed as a minister, you lose a lot on your pension. So these people don't want to lose it. So they've now left not because they were found guilty of corruption, but because their pension doesn't work nicely. So we just do not have the tools to deal with these things. And so we're going to have to create a structure that can investigate crime, that prevents and reports it. And then I've already appeared in front of a disciplinary committee defending someone. And even though those are senior ANC members on the disciplinary committee they like a kangaroo court. So you have a huge problem with even your top leadership do not know how to handle disciplinary hearings, and things like that. And so in any case, you tell me there's a big problem even in government, that whole area that I think is a problem. I must tell you, when I was justice

committee, we created really good laws and expensive laws on corruption in the Justice committee in Parliament, when I was chairing that committee, and when I was a deputy minister, we have brought a lot of laws in place. So our legal framework is very good. But as I'm saying the capacity to do that in the ANC is weak and the police really weak. There is serious crime in our country. Last time I checked, between 10 and 15% of all major crimes in this country, between 85 to 90% of serious crime (murder, rape, robbery), those cases don't even ever come to court, not heard by court and thrown out, they never even come to court. Only 10 to 15% of cases come to court. So our criminal justice system is exceptionally weak so to expect that they going to do these investigations is difficult. And so that is why we had a very good unit that we created, the scorpions, to kind of investigate this kind of corruption. Zuma's crowd, of course, threw that out. And they gave the police the job. And so we are in a very bad situation with that. So our criminal justice system is exceptionally weak and the president has now tried to create a few new mechanisms by creating a special unit in the in the prosecuting authority that will work exactly like the old scorpions used to work. And that will give us at least some capacity to fight serious corruption. The issue of populism is becoming worse and worse because as your leaders get weaker and they've got less moral authority. Then for a politician, your base weapon is populism. So populism has become the order of the day. I didn't tell you that Mr. Trump is a fine example of that. The whole Brexit issue is a fine example. So internationally, if you look at the new president of Brazil, these international events represent clearly a strong trend towards populism and all of its manifestations, and South Africa is now catching up. When we had a strong ANC, an ANC that we could hold together, then populism was very little, and the last 15 years, you would find very few outbursts of populism amongst particularly the ANC and even amongst other parties, but in the last five years as the

ANC has lost its grip as it loses moral authority. The EFF is still able to marginalize them in a way, the problem is that with new ANC members, a lot of them are actually happy so they not going to openly oppose this. So you've got no moral authority in the ANC that's actually standing up against because they are thinking that that is probably the solution. Can you believe that today, the EFF called Mandela a sell-out, today the debate in this country will be Mandela and the leaders of the ANC would sell out - that is where that kind of populism has gone. And that those young people can even say those kind of thing. So what I would want to respond to this, and this leads to other scapegoats, and I'm also very worried about the scapegoat issue. It was important to get rid of Zuma, because of the way he was taking us. The problem is that for a lot of people the problem is now gone. The problem is not gone. The problem is in two areas. Firstly, all the problems that took place, we don't have the capacity to deal with that corruption. But more importantly, is this, the new president, with half the party on the side, to push for open renewal. And he's doing a whole lot of stuff. He appointed that commission of inquiry to look into corruption. A few months before the election, there are not many presidents in the world that will go and look at corruption in their own ranks in the few months before the election, he did that. He has created these special structures in the prosecuting authority to deal with crime and so on. But the problem is this; you've removed Zuma, an individual, but the whole group of people that kept him this way, that group of people of the COSATU and the Communist party that have lifted him to the top, that whole structure, all of those people remain in leadership positions in the ANC. Because there must now be new elections for the provincial leaderships so then only will you start getting new leadership in. So they are all entrenched, the political leadership in the provinces, and the political leadership at the local government level, in the branches. then all these people in eight years, or 10 years, a lot of

these people from his group were appointed into government, as ministers, into deputies positions. So unless legally, there's a reason to remove the ones that are employed, you can't remove them. I have a good example of public prosecutor: the public prosecutor is creating extremely huge problems in this country, she's been given the power to make a decision like a court of law, if she makes a decision, you must implement it, unless you go to court. And that's how powerful she is; she's clearly being used by that group to take up all kinds of issues that she shouldn't be taking up. So that's a prime example, we can see that type of thing happen. But remember all those people that supported them in the branches, they are still there, you can't wish them away. So that whole process of cleaning that out, and cleaning the political process out and getting rid of people is going to take a long time. And as I said getting out of government also takes a long time. So there's a whole process of reopened renewal. And that's why we are hoping that at least Ramaphosa is there for 10 years, that gives you a chance to get the country on the right track. If they are going to get rid of him after the first term, you will have huge problems to try and deal with it. What would I have done differently? I just think that I, if I had the knowledge I have now back when we brought the ANC back into the country and we integrated them as becoming the major driving force. We just got rid of whole other political structures, which I think was a huge mistake because a lot of people with voices then didn't have voices anymore. Those structures in civil society, we gave them no status anymore. We gave them no real appeal anymore. So all those structures to get rid of apartheid need to take on a new form or be taken up in another form. The Western Cape for example, was one of the strongest stretches, we used to monitor this place, we used to make this place uncomfortable. At the elections, the ANC lost the Western Cape completely. I think we had 38%-40% of the votes. 60% of the people and most of most of them are black, in this

province, voted for the old apartheid government. So I think we made mistakes in transforming and bringing the ANC back. And now what we then did with the other structures, and I think we made huge mistakes around how we handled that. I think we made a huge mistake that we didn't have the ability to see the corruption that was taking place. we used to joke about some of it, some people used to joke, for example, what they did when the ANC comes into the municipality. So now all the contracts of that municipality, they are in charge now of the tender - these are people have enough money and experience - suddenly they become part of the tenders, they started giving these tenders to themselves and to their families. We would say stop, and they would say ok, we won't give it to our family anymore. But we'll go to the municipality next door and we will give them and their companies contracts. So these things started to happen but I just think we did not respond correctly. I think the other problem we've had in the ANC is because we would be never status conscious, we don't worry about people's positions, So it becomes important the way you lead in the ANC. Because if you want to be a big leader that would be the same mayor from the city or running local government. For example, a place like Johannesburg, has got a bigger budget than most national departments, and a bigger budget than most provincial governments. And the ANC has never appointed a national leader with status. So we've got this status problem in the ANC that we've created since democracy, which is something that I think is a huge mistake, and something that can be changed. And then the most difficult question. What do I suggest to Turkey? I think that what I've seen in a lot of countries is firstly, you need to start getting a group of leaders that could hold the centre. Very important that you hold the centre; a lot of the things I was telling about how the ANC developed, it's always about how you hold the centre. And then in democracy, the centre changed and it didn't hold. For any transition, you must first have

what can be construed as the centre, and then leaders that have respect in society, leaders that speak on behalf of constituents but also put the interest of the country above group interests. Somehow you have to find ways of creating that kind of cross party - it can be in party as well, as a beginning. It can be in civil society as a beginning, but at some stage, it has to be that you get people that have respect from different areas of society, where they can start saying, hey, we can't go on like this. I mean, no one is going to benefit by this. And then you start creating Roelf Meyers and Cyril Ramaphosas, people that can be trusted by their own groups, but also across groups. And I think a lot of this has to happen in secret; you can't do in the open because people are too aware of their political status. Some people in the party will say that you are selling out to the enemy. You have to do it in a way that suits your society and the way your society operates. And, and once you've got that realization that you cannot go on like this, that is not going to work for anyone. And you then have a group of people that can start talking about what is in the interests of the centre and holding the centre together. And they then have to start being more inclusive. And you start going into society and propagating that. I am a very strong advocate of civil society organizations playing a much stronger role. And that is not a role, like some of them want to take over as if they were government. But to become a moral voice for society, and speak out against things that are wrong. And also, your clergy, your Imams, is very important to get them to start being part of the processes. I know other people do it differently, they use mediators. I'm not a believer in facilitators, I believe that we, South African people, must solve our own problems. You have to talk to each other and say, but comrades this is wrong, we can't go on like this. And that's just my experience from our transition.

**Participant:** You are naturally concentrated on the ANC side, but I would like to know also about the other side, because in the old good days, ANC got roughly 70% of the support, while nowadays it came to 58%. There was a 30% before, now it came up to 40%. So how did the deterioration of ANC affect this 30%? Did it make it more democratic? As you said, they lost in the Western Cape, so the people voted for the apartheid regime. Did it make that regime more democratic? We have similarities in Turkish politics as well. Could you elaborate on that?

**Johnny de Lange:** The ANC deterioration has been over a period of time. And, as you said, we started off with about, let's say, 70%. We controlled eight provinces, eight of the nine provinces, we control all the major cities. But the last local government elections was when we started going down. Because Cape Town remains Democratic Alliance, which is the major opposition party, Johannesburg became DA, the biggest city, one of the biggest cities in Africa. Pretoria, the capital of South Africa became DA and Nelson Mandela's Port Elizabeth also became DA. So you're now governing a country as an ANC. And this is what we were saying. When people started talking again, Zuma, How do we see ourselves as a government to play as we can't even be in control of the major cities of the country, they are in the opposition's hand. And clearly the voters were saying to us that. Now, it's difficult always to work out where these votes went. ANC lost lots of votes because of them forming new parties. first, after a few years of the ANC government, the United Democratic Front was mainly a party that was formed in Eastern Cape area for ANC ministers. Then, after Mr Mbeki was thrown out, and Mr. Zuma was brought in, in that election, Mr. Zuma got 60% of the vote Mr. Mbeki even 40%; lots of them went to form a new party. Then, of course, Julius Malema, the EFF, he left the ANC and formed a new party. So you will see that a lot of these things that are happening are ANC breakaways forming new parties and becoming much of the opposition.

And over a period of time, the DA, which is now the majority opposition party, the old apartheid party was the National Party. And when people in the beginning voted for the National Party still - it was 10-20% votes - but it started disappearing, and the votes went to the DA. So a lot of that remained white, the white votes go to the DA, while the black vote started splintering more and more. So after every election, now it looks like the ANC has another splinter group. Even now in this election, three or four little parties were formed; they're all ANC splinter groups, leaving the ANC for one reason or the other. So really, what is happening is this the ANC that can't hold it together and is splintering. But that there is some percentage of black vote that goes to the old white parties now. I personally think it's still small. But it's there; in this last election, the DA, themselves went backwards. A lot of their white voters, the old National Party voters, the Afrikaners, they voted now for a complete right wing party. What I am worried about in our politics is that we are becoming too splintered now. It's good enough we never created a threshold for our PR system, because we wanted to hear all the voices, but now the problem is too many parties; in the last election, I think there were 40 or 50 parties on the ballot. But now what is happening is a splintering of the party. And that has its own problems. In the one sense you can say okay, we now hearing more voices, in the other sense real power doesn't vest with those opposition parties because even they have to team up with someone else to achieve anything. So that's going you know let's say positive and negative. But I think the biggest loser in all this is like I said, the youth. 85% are not involved in politics. In the Western Cape, the coloured group is the biggest group, about 55-58% of the population. That coloured group almost stopped voting, None of the parties are looking after them anymore. So the biggest losers now are people opting out of politics. And that's terrible.

**Ivor Jenkins:** All right. Johnny, at the beginning, you said you're going to be very subjective in sharing, and I thank you for that. I think everyone could see that you spoke with passion. For me, the key about Johnny's input today is the deep sense of honesty. It is not easy to criticize your party. We are long standing ANC members, we love our party. But I think we seem very honest about talking about our beloved ANC and its mistakes; this is actually how we can probably start and bring about change. Many thanks on behalf of the delegation for sharing a fascinating two hours of discussions.

## DPI Aims and Objectives

### **Aims and objectives of DPI include:**

- To contribute to broadening bases and providing new platforms for discussion on establishing a structured public dialogue on peace and democracy building.
- To provide opportunities, in which different parties are able to draw on comparative studies, analyse and compare various mechanisms used to achieve positive results in similar cases.
- To create an atmosphere whereby different parties share knowledge, ideas, concerns, suggestions and challenges facing the development of a democratic solution in Turkey and the wider region.
- To support, and to strengthen collaboration between academics, civil society and policy-makers.
- To identify common priorities and develop innovative approaches to participate in and influence democracy-building.
- Promote and protect human rights regardless of race, colour, sex, language, religion, political persuasion or other belief or opinion.

DPI aims to foster an environment in which different parties share information, ideas, knowledge and concerns connected to the development of democratic solutions and outcomes. Our work supports the development of a pluralistic political arena capable of generating consensus and ownership over work on key issues surrounding democratic solutions at political and local levels.

We focus on providing expertise and practical frameworks to encourage stronger public debates and involvements in promoting peace and democracy building internationally. Within this context

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DPI aims to contribute to the establishment of a structured public dialogue on peace and democratic advancement, as well as to widen and create new existing platforms for discussions on peace and democracy building. In order to achieve this we seek to encourage an environment of inclusive, frank, structured discussions whereby different parties are in the position to openly share knowledge, concerns and suggestions for democracy building and strengthening across multiple levels.

DPI's objective throughout this process is to identify common priorities and develop innovative approaches to participate in and influence the process of finding democratic solutions. DPI also aims to support and strengthen collaboration between academics, civil society and policy-makers through its projects and output. Comparative studies of relevant situations are seen as an effective tool for ensuring that the mistakes of others are not repeated or perpetuated. Therefore we see comparative analysis of models of peace and democracy building to be central to the achievement of our aims and objectives.

# Demokratik Gelişim Enstitüsü'nün Amaçları ve Hedefleri

## DPI'nin amaçları ve hedefleri:

- Barışın ve demokrasinin inşası üzerine yapılandırılmış bir kamusal diyalogun oluşması için gerekli olan tartışma ortamının geliştirilmesi ve genişletilmesi.
- Farklı kesimlerin karşılaştırmalı çalışmalar vesilesiyle bir araya gelerek, farklı dünya örnekleri özelinde benzer durumlarda olumlu sonuçlar elde etmek için kullanılmış çeşitli mekanizmaları incelemesine ve analiz etmesine olanak sağlamak. Farklı kesimlerin bir araya gelerek Türkiye ve daha geniş bir coğrafyada demokratik bir çözümün geliştirilmesine yönelik bilgilerini, düşüncelerini, endişelerini, önerilerini, kaygılarını ve karşılaşılan zorlukları paylaştığı bir ortam yaratmak. Akademisyenler, sivil toplum örgütleri ve karar alıcılar arasındaki işbirliğinin desteklemek ve güçlendirmek.
- Ortak öncelikleri belirlemek ve demokrasi inşası sürecini ve sürece katılımı etkileyecek yenilikçi yaklaşımlar geliştirmek. Din, dil, ırk, renk, cinsiyet, siyasi görüş ve inanç farkı gözetmeksizin insan haklarını teşvik etmek ve korumak.

Demokratik Gelişim Enstitüsü (DPI), Türkiye'de demokratik bir çözümün geliştirilmesi için, farklı kesimlerin bir araya gelerek bilgilerini, fikirlerini, kaygılarını ve önerilerini paylaştıkları bir ortamı teşvik etmeyi amaçlamaktadır. Çalışmalarımız, demokratik çözümün sağlanması için kilit önem taşıyan konularda fikir birliğine varma ve uzlaşılan konuları sahiplenme yeteneğine sahip çoğulcu bir siyasi alanın geliştirilmesini desteklemektedir.

Kurum olarak güçlü bir kamusal tartışmayı; barışı ve demokrasiyi uluslararası düzeyde geliştirmeye yönelik katılımları teşvik etmek için uzmanlığa ve pratiğe dayalı bir bakış açısıyla hareket ediyoruz. Bu çerçevede barış ve demokratik ilerleme konusunda yapılandırılmış bir kamusal tartışmanın oluşturulmasına katkıda bulunmayı; barış ve demokrasi inşası tartışmaları için yeni platformlar yaratmayı ve mevcut platformları genişletmeyi amaçlıyoruz.

Bu amaçlara ulaşabilmenin gereği olarak, farklı kesimlerin demokrasinin inşası ve güçlendirmesi için bilgilerini, endişelerini ve önerilerini açıkça paylaşabilecekleri kapsayıcı, samimi ve yapılandırılmış tartışma ortamını çeşitli seviyelerde teşvik etmeye çalışıyoruz. DPI olarak farklı projelerimiz aracılığıyla akademi, sivil toplum ve karar alıcılar arasındaki işbirliğini desteklemeyi ve güçlendirmeyi de hedefliyoruz.

## Board Members / Yönetim Kurulu Üyeleri



### **Kerim Yıldız (Chief Executive Officer / İcra Kurulu Başkanı)**

Kerim Yıldız is an expert in conflict resolution, peacebuilding, international human rights law and minority rights, having worked on numerous projects in these areas over his career. Yıldız has received a number of awards, including from the Lawyers Committee for Human Rights for his services to protect human rights and promote the rule of law in 1996, and the Sigrid Rausing Trust's Human Rights award for Leadership in Indigenous and Minority Rights in 2005. Yıldız is also a recipient of the 2011 Gruber Prize for Justice. He has also written extensively on international humanitarian law, conflict, and various human rights mechanisms.

Kerim Yıldız çatışma çözümü, barışın inşası, uluslararası insan hakları ve azınlık hakları konusunda uzman bir isimdir ve kariyeri boyunca bu alanlarda çok çeşitli projelerde çalışmıştır. Kerim Yıldız, 1996 yılında insan haklarının korunması ve hukuk kurallarının uygulanması yönündeki çabalarından ötürü İnsan Hakları İçin Avukatlar Komitesi Ödülü'ne, 2005'te Sigrid Rausing Trust Vakfı'nın Azınlık Hakları alanında Liderlik Ödülü'ne ve 2011'de ise Gruber Vakfı Uluslararası Adalet Ödülü'ne layık görülmüştür. Uluslararası insan hakları hukuku, insancıl hukuk ve azınlık hakları konularında önemli bir isim olan Yıldız, uluslararası insan hakları hukuku ve insan hakları mekanizmaları üzerine çok sayıda yazılı esere sahiptir.



### **Nicholas Stewart QC (Chair / Yönetim Kurulu Başkanı)**

Nicholas Stewart, QC, is a barrister and Deputy High Court Judge (Chancery and Queen's Bench Divisions) in the United Kingdom. He is the former Chair of the Bar Human Rights Committee of England and Wales and former President of the Union Internationale des Avocats. He has appeared at all court levels in England and Wales, before the Privy Council on appeals from Malaysia, Singapore, Hong Kong and the Bahamas, and in the High Court of the Republic of Singapore and the European Court of Human Rights. Stewart has also been the chair of the Dialogue Advisory Group since its founding in 2008.

Tecrübeli bir hukukçu olan Nick Stewart Birleşik Krallık Yüksek Mahkemesi (Chancery and Queen's Bench Birimi) ikinci hâkimidir. Geçmişte İngiltere ve Galler Barosu İnsan Hakları Komitesi Başkanlığı (Bar Human Rihts Committee of England and Wales) ve Uluslararası Avukatlar Birliği (Union Internationale des Avocats) başkanlığı görevlerinde bulunmuştur. İngiltere ve Galler'de gerçekleşen ve Malezya, Singapur, Hong Kong, Bahamalar, Singapur ve Avrupa İnsan Hakları mahkemelerinin temyiz konseylerinde görüş bildirdi. Stewart, 2008'deki kuruluşundan bu yana Diyalog Danışma Grubunun başkanlığını da yürütüyor.



### **Priscilla Hayner**

Priscilla Hayner is co-founder of the International Center for Transitional Justice and is currently on the UN Department of Political Affairs Standby Team of Mediation Experts. She is a global expert on truth commissions and transitional justice initiatives and has authored several books on these topics, including *Unspeakable Truths*, which analyses truth commissions globally. Hayner has recently engaged in the recent Colombia talks as transitional justice advisor to Norway, and in the 2008 Kenya negotiations as human rights advisor to former UN Secretary-General Kofi Annan and the United Nations-African Union mediation team. Hayner has also worked significantly in the implementation stages following a peace agreement or transition, including Sierra Leone in 1999 and South Sudan in 2015.

Geçiş Dönemi Adaleti için Uluslararası Merkez'in (International Center for Transitional Justice) kurucularından olan Priscilla Hayner, aynı zamanda BM Kıdemli Arabuluculuk Danışmanları Ekibi'ndedir. Hakikat komisyonları, geçiş dönemi adaleti inisiyatifleri ve mekanizmaları konusunda küresel bir uzman olan Hayner, hakikat komisyonlarını küresel olarak analiz eden *Unspeakable Truths* (Konulmayan Gerçekler) da dahil olmak üzere, alanda pek çok yayına sahiptir. Hayner, yakın zamanda Kolombiya barış görüşmelerinde Norveç'in geçiş dönemi adaleti danışmanı olarak ve 2008 Kenya müzakerelerinde eski BM Genel Sekreteri Kofi Annan ve Birleşmiş Milletler-Afrika Birliği arabuluculuk ekibinin insan hakları danışmanı olarak görev yapmıştır. Hayner, 1999'da Sierra Leone ve 2015'te Güney Sudan da dahil olmak üzere birçok ülkede, barış anlaşması ve geçiş sonrası uygulamaları konularında çalışmalar yapmıştır.



### **Arild Humlen**

Arild Humlen is a lawyer and Director of the Norwegian Bar Association's Legal Committee. He is widely published within a number of jurisdictions, with emphasis on international civil law and human rights, and he has lectured at the law faculty of several universities in Norway. Humlen is the recipient of the Honor Prize of the Bar Association of Oslo for his work on the rule of law and in 2015 he was awarded the Honor Prize from the international organisation Save the Children for his efforts to strengthen the legal rights of children.

Hukukçu olan Arild Humlen aynı zamanda Norveç Barosu Hukuk Komitesi'nin direktörüdür. Uluslararası medeni hukuk ve insan hakları gibi yargı alanları üzerine çok sayıda yazısı yayınlanmış, Norveç'te bir dizi hukuk fakültesinde ders vermiştir. Oslo Barosu bünyesinde Sığınmacılık ve Göçmenlik Hukuku Davaları Çalışma Grubu başkanı olarak yaptığı çalışmalardan dolayı Oslo Barosu Onur Ödülü'ne layık görülmüştür.



## **Jacki Muirhead**

**Jacki Muirhead was appointed Chambers Administrator at Devereux Chambers, London, UK, in November 2015. Her previous roles include Practice Director at FJ Cleveland LLP, Business Manager at Counsels' Chambers Limited and Deputy Advocates Clerk at the Faculty of Advocates, UK.**

Şu anda Devereux Chambers isimli hukuk firmasında üst düzey yönetici olarak görev yapan Jacki Muirhead bu görevinden önce Cleveland Hukuk Firması çalışma direktörü, Counsel's Chambers Limited isimli hukukçular odasında şef katip ve Avukatlar Fakültesi'nde (Faculty of Advocates) pazarlama müdürü olarak çalışmıştır.



### **Prof. David Petrasek**

Professor David Petrasek is Associate Professor at Graduate School of Public and International Affairs, University of Ottawa, Canada. He is a former Special Adviser to the Secretary-General of Amnesty International. He has worked extensively on human rights, humanitarian and conflict resolution issues, including for Amnesty International (1990-96), for the Office of the UN High Commissioner for Human Rights (1997-98), for the International Council on Human Rights Policy (1998-02) and as Director of Policy at the Centre for Humanitarian Dialogue (2003-07). Petrasek has also taught international human rights and humanitarian law courses at the Osgoode Hall Law School at York University, Canada, the Raoul Wallenberg Institute at Lund University, Sweden, and at Oxford University.

Kanada'da Ottawa Üniversitesi'nde Uluslararası Siyasal İlişkiler Bölümünde öğretim üyesi olarak görev yapmaktadır. Geçmişte Uluslararası Af Örgütü Eski Genel Sekreteri'ne başdanışmanlık yapan Prof. David Petrasek, uzun yıllardır insan hakları, insancıl hukuk ve uyuşmazlıkların çözümü konularında çalışmalar yürütmektedir. Bu alanlarda önde gelen bir uzman ve yazardır. 1990-1996 yılları arasında Uluslararası Af Örgütü, 1997-1998 yılları arasında Birleşmiş Milletler İnsan Hakları Yüksek Komiserliği, 1998-2002 yılları arasında İnsan Hakları Politikası üzerine Uluslararası Konsey ve 2003-2007 yılları arasında da İnsani Diyalog Merkezi'nde Politika Bölümü Direktörü olarak çalışmıştır.



### **Antonia Potter Prentice**

Antonia Potter Prentice is currently the Director of Alliance 2015 – a global network of humanitarian and development organisations. Prentice has extensive experience on a range of humanitarian, development, peacemaking and peacebuilding issues through her previous positions, including interim Senior Gender Adviser to the Joint Peace Fund for Myanmar and providing technical advice to the Office of the Special Envoy of the UN Secretary General to the Yemen peace process. Prentice has also been involved in various international organisations including UN Women, Dialogue Advisory Group, and Centre for Humanitarian Dialogue. Prentice co-founded the Athena Consortium as part of which she acts as Senior Manager on Mediation Support, Gender and Inclusion for the Crisis Management Initiative (CMI) and as Senior Adviser to the European Institute for Peace (EIP).

Antonia Potter Prentice, insani yardım kuruluşlarının ve kalkınma örgütlerinin küresel ağı olan İttifak 2015'in direktörüdür. Prentice, Myanmar için Ortak Barış Fonu'na geçici Kıdemli Cinsiyet Danışmanı ve Birleşmiş Milletler Genel Sekreteri Yemen Özel Elçisi Ofisi'ne teknik tavsiyeler vermek de dahil olmak üzere insanlı faaliyetler, kalkınma, barış yapma ve barış inşası gibi konularda sivil toplum bünyesinde 17 yıllık bir çalışma tecrübesine sahiptir. BM Kadınları, Diyalog Danışma Grubu ve İnsani Yardım Diyalogu Merkezi gibi çeşitli uluslararası örgütlerde görev yapan Prentice, kurucuları arasında yer aldığı Athena Konsorsiyomu Arabuluculuk Desteği, Toplumsal Cinsiyet ve Kaynaştırma için Kriz Yönetimi İnisiyatifi'nde yöneticilik ve Avrupa Barış Enstitüsü'ne (EIP) başdanışmanlık yapmaktadır.



### **Catherine Woollard**

Catherine Woollard is the current Secretary General for ECRE, the European Council for Refugees and Exiles, a pan-European alliance of 96 NGOs protecting and advancing the rights of refugees, asylum seekers and displaced persons. Previously she served as the Director of the Brussels Office of Independent Diplomat, and from 2008 to 2014 she was the Executive Director of the European Peacebuilding Liaison Office (EPLO) – a Brussels-based network of not-for-profit organisations working on conflict prevention and peacebuilding. She also held the positions of Director of Policy, Communications and Comparative Learning at Conciliation Resources, Senior Programme Coordinator (South East Europe/CIS/Turkey) at Transparency International and Europe/Central Asia Programme Coordinator at Minority Rights Group International. Woollard has additionally worked as a consultant advising governments on anti-corruption and governance reform, as a lecturer in political science, teaching and researching on the EU and international politics, and for the UK civil service.

Catherine Woollard, Avrupa Mülteci ve Sürgünler Konseyi (ECRE) Genel Sekreteri'dir. ECRE, Avrupa ülkelerinin ittifakına dayalı ve uluslararası koruma alanında çalışan yaklaşık 96 sivil toplum kuruluşunun üye olduğu bir ağıdır. Geçmişte Bağımsız Diplomatlar Grubu'nun Brüksel Ofis Direktörü olarak çalışan Woollard 2008-2014 yılları arasında çatışmanın önlenmesi ve barışın inşası üzerine çalışan sivil toplum kuruluşlarının oluşturduğu bir ağ olan Avrupa Barış İnşası İrtibat Bürosu'nun direktörü olarak görev yapmıştır. Conciliation Resources'da Siyaset, İletişim ve Karşılaştırmalı Öğrenme Birimi Direktörü, Transparency International'da Güneydoğu Avrupa ve Türkiye Kıdemli Program Koordinatörü, Minority Rights Group'da Avrupa ve Orta

Asya Program Koordinatörü olarak görev yapmıştır. Hükümetlere yolsuzluk konusunda danışmanlık hizmeti vermiş, akademisyen olarak Birleşik Krallık'taki kamu kurumu çalışanlarına siyaset bilimi, AB üzerine eğitim ve araştırma ve uluslararası politika alanlarında dersler vermiştir.

## Council of Experts / Uzmanlar Kurulu Üyeleri



### **Bertie Ahern**

Bertie Ahern is the former Taoiseach (Prime Minister) of Ireland, a position to which he was elected following numerous Ministerial appointments as well as that of Deputy Prime Minister. A defining moment of Mr Ahern's three terms in office as Taoiseach was the successful negotiation of the Good Friday Agreement in April 1998. Mr Ahern held the Presidency of the European Council in 2004, presiding over the historic enlargement of the EU to 27 member states. Since leaving Government in 2008 Mr Ahern has dedicated his time to conflict resolution and is actively involved with many groups around the world. Current roles include Co-Chair of The Inter Action Council; Member of the Clinton Global Initiative; Member of the International Group dealing with the conflict in the Basque Country; Honorary Adjunct Professor of Mediation and Conflict Intervention in NUI Maynooth; Member of the Kennedy Institute of NUI Maynooth; Member of the Institute for Cultural Diplomacy, Berlin; Member of the Varkey Gems Foundation Advisory Board; Member of Crisis Management Initiative; Member of the World Economic Forum Agenda Council on Negotiation and Conflict Resolution; Member of the IMAN Foundation; Advisor to the Legislative Leadership Institute Academy of Foreign Affairs; Senior Advisor to the International Advisory Council to the Harvard International Negotiation Programme; and Director of Co-operation Ireland.

Tecrübeli bir siyasetçi olan Bertie Ahern bir dizi bakanlık görevinden sonra İrlanda Cumhuriyeti Başbakanı olarak görev yapmıştır. Bertie Ahern'in

başbakanlık yaptığı dönemdeki en belirleyici gelişme 1998 yılının Nisan ayında Hayırlı Cuma Anlaşması'yla sonuçlanan barış görüşmesi müzakerelerinin başlatılması olmuştur. Ahern, 2004 yılında Avrupa Konseyi başkanlığı görevini yürütürken Avrupa Birliği'nin üye ülke sayısının 27'ye çıktığı tarihsel süreçte payı olan en önemli isimlerden biri olmuştur. 2008 yılında aktif siyasetten çekilen Bertie Ahern o tarihten bu yana bütün zamanını çatışma çözümü çalışmalarına ayırmakta ve bu amaçla pek çok grupla temaslarda bulunmaktadır. Ahern'in hali hazırda sahip olduğu ünvanlar şunlardır: The Inter Action Council Eşbaşkanlığı, Clinton Küresel İnsiyatifi Üyeliği, Bask Ülkesindeki Çatışma Üzerine Çalışma Yürüten Uluslararası Grup Üyeliği, İrlanda Ulusal Üniversitesi Arabuluculuk ve Çatışmaya Müdahale Bölümü Fahri Profesörlüğü, Berlin Kültürel Diplomasi Enstitüsü Üyeliği, Varkey Gems Vakfı Danışma Kurulu Üyeliği, Kriz İdaresi İnsiyatifi Üyeliği, Dünya Ekonomik Forumu Müzakere ve Çatışma Çözümü Forumu Konsey Üyeliği, Harvard Uluslararası Müzakere Programı Uluslararası Danışmanlar Konseyi Başdanışmanı.



### **Dermot Ahern**

Dermot Ahern is a former Irish Member of Parliament and Government Minister and was a key figure for more than 20 years in the Irish peace process, including in negotiations for the Good Friday Agreement and the St Andrews Agreement. He also has extensive experience at the EU Council level, including as a key negotiator and signatory to the Constitutional and Lisbon Treaties. In 2005, he was appointed by the then UN Secretary General Kofi Annan, to be a Special Envoy on the issue of UN Reform.

Geçmişte İrlanda Parlamentosu milletvekilliği ve kabinede bakanlık görevlerinde bulunan Dermot Ahern, 20 yıldan fazla bir süre İrlanda barış sürecinde anahtar bir rol oynamıştır ve bu süre içinde Belfast Anlaşması (Hayırlı Cuma Anlaşması) ve St. Andrews Anlaşması için yapılan müzakerelere dahil olmuştur. AB Konseyi seviyesinde de önemli tecrübeleri olan Ahern, AB Anayasası ve Lizbon Antlaşmaları sürecinde de önemli bir arabulucu ve imzacı olmuştur. 2005 yılında dönemin Birleşmiş Milletler Genel Sekreteri Kofi Annan tarafından BM Reformu konusunda özel temsilci olarak atanmıştır.



### **Prof. Dr. Aşkın Asan**

Professor Dr. Aşkın Asan is an executive board member of the Maarif Foundation, a member of Turkey's Democracy Platform, and a faculty member at Istanbul Ticaret University. Elected as a Member of the Turkish Grand National Assembly from Ankara, Prof. Dr. Asan served as a vice president of the Parliamentary Assembly of the Mediterranean and was a member of the Turkish Delegation of the Parliamentary Union of the Organisation of the Islamic Conference during her time in parliamentary office. She is a former Deputy Minister of Family and Social Policies (2011-2014) and was Rector of Avrasya University in Trabzon between 2014-2017.

Maarif Vakfı Mütevelli Heyeti üyesi ve Türkiye Demokrasi Platformu kurucu üyesi olan Aşkın Asan, 23. Dönem'de Ankara Milletvekili olarak Parlamentoda görev yaptı. TBMM'de Akdeniz Parlamenter Asamblesi (APA) Türk Grubu Başkanı, Milli Eğitim, Gençlik ve Spor Komisyonu ve İKÖPAB Türk Grubu Üyesi oldu. 2011-2014 Yılları arasında Aile ve Sosyal Politikalar Bakanlığı Bakan Yardımcısı görevini yürüttü. 2014-2017 yılları arasında Avrasya Üniversitesi'nin rektörlüğünü yapan Asan, şu an İstanbul Ticaret Üniversitesi öğretim üyesidir.



### **Prof. Dr. Mehmet Asutay**

Professor Dr. Mehmet Asutay is a Professor of Middle Eastern and Islamic Political Economy & Finance at the Durham University Business School, UK. He researches, teaches and supervises research on Islamic political economy and finance, Middle Eastern economic development and finance, the political economy of the Middle East, including Turkish and Kurdish political economies. He is the Director of the Durham Centre for Islamic Economics and Finance and the Managing Editor of the Review of Islamic Economics, as well as Associate Editor of the American Journal of Islamic Social Science. He is the Honorary Treasurer of the BRISMES (British Society for Middle Eastern Studies); and of the IAIE (International Association for Islamic Economics).

Dr. Mehmet Asutay, İngiltere'deki Durham Üniversitesi'nin İşletme Fakültesi'nde Ortadoğu'nun İslami Siyasal Ekonomisi ve Finansı alanında profesör olarak görev yapmaktadır. Asutay Türk ve Kürt siyasal ekonomisi, İslami siyasal ekonomi, ve Ortadoğu'da siyasal ekonomi konularında dersler vermekte, araştırmalar yapmakta ve yapılan araştırmalara danışmanlık yapmaktadır.



### **Ali Bayramođlu**

Ali Bayramođlu is a writer and political commentator. Since 1994, he has contributed as a columnist for a variety of newspapers. He is currently a columnist for *Al-Monitor*. He is a member of the former Wise Persons Committee in Turkey, established by then-Prime Minister Erdoğan.

Yazar ve siyaset yorumcusu olan Ali Bayramođlu uzun yıllar günlük yayınlanan Yeni Şafak gazetesinde köşe yazarlığı yapmıştır. Recep Tayyip Erdoğan'ın başbakanlığı döneminde oluşturulan Akil İnsanlar Heyetinde yer almıştır. Bayramođlu köşe yazılarına şu an Al-Monitor'de devam etmektedir.



### **Prof. Christine Bell**

Professor Christine Bell is a legal expert based in Edinburgh, Scotland. She is Professor of Constitutional Law and Assistant Principal (Global Justice) at the University of Edinburgh, Co-director of the Global Justice Academy, and a member of the British Academy. She was chairperson of the Belfast-based human rights organization, the Committee on the Administration of Justice, from 1995-7, and a founder member of the Northern Ireland Human Rights Commission established under the terms of the Belfast Agreement. In 1999 she was a member of the European Commission's Committee of Experts on Fundamental Rights. She is an expert on transitional justice, peace negotiations, constitutional law and human rights law. She regularly conducts training on these topics for diplomats, mediators and lawyers, has been involved as a legal advisor in a number of peace negotiations, and acted as an expert in transitional justice for the UN Secretary-General, the Office of the High Commissioner for Human Rights, and UNIFEM.

İskoçya'nın başkenti Edinburgh'ta faaliyet yürüten bir hukukçudur. Edinburgh Üniversitesi'nde Anayasa hukuku profesörü olarak ve aynı üniversite bünyesindeki Küresel Adalet Projesinde Müdür yardımcısı olarak görev yapmaktadır. İngiliz Akademisi üyesi de olan Bell, 1995-1997 yılları arasında Belfast merkezli İnsan Hakları örgütü Adalet İdaresi Komisyonu başkanı ve Belfast Anlaşması şartları çerçevesinde kurulan Kuzey İrlanda İnsan Hakları Komisyonu kurucu üyesi olarak görev yaptı. 1999'da ise Avrupa Komisyonu Temel Haklar Uzmanlar Komitesi üyeliğinde bulundu. Temel uzmanlık alanları Geçiş Dönemi Adaleti, Barış Müzakereleri, Anayasa Hukuku ve İnsan Hakları olan Prof. Bell, aynı zamanda bu konularda diplomat, arabulucu ve hukukçulara eğitim vermekte, BM Genel Sekreterliği, İnsan Hakları Yüksek

Komiserliđi Ofisi ve UNIFEM'in de dahil olduđu kurumlarda hukuk danışmanı olarak görev yapmaktadır.



## Cengiz Çandar

Cengiz Çandar is currently a columnist for *Al-Monitor*, a widely respected online magazine that provides analysis on Turkey and the Middle East. He is a former war correspondent and an expert on the Middle East. He served as a special adviser to the former Turkish president, Turgut Ozal. Cengiz Çandar is a Distinguished Visiting Scholar at the Stockholm University Institute for Turkish Studies (SUITS).

Kıdemli bir gazeteci ve köşe yazarı olan Çandar uzun yıllar Radikal gazetesi için köşe yazarlığı yapmıştır. Al Monitor haber sitesinde köşe yazarlığı yapmaktadır. Ortadoğu konusunda önemli bir uzman olan Çandar, bir dönem savaş muhabiri olarak çalışmış ve Türkiye eski Cumhurbaşkanı merhum Turgut Özal'a özel danışmanlık yapmıştır.



## **Andy Carl**

**Andy Carl is an independent expert on conflict resolution and public participation in peace processes. He believes that building peace is not an act of charity but an act of justice. He co-founded and was Executive Director of Conciliation Resources. Previously, he was the first Programme Director with International Alert. He is currently an Honorary Fellow of Practice at the School of Law, University of Edinburgh. He serves as an adviser to a number of peacebuilding initiatives including the Inclusive Peace and Transition Initiative at the Graduate Institute in Geneva, the Legal Tools for Peace-Making Project in Cambridge, and the Oxford Research Group, London.**

Andy Carl çatışma çözümü ve barış süreçlerine kamusal katılımın sağlanması üzerine çalışan bağımsız bir uzmandır. Barışın inşasının bir hayırseverlik faaliyetinden ziyade adaletin yerine getirilmesi çabası olduğuna inanan Carl, çatışma Çözümü alanında çalışan etkili kurumlardan biri olan Conciliation Resources'un kurucularından biridir. Bir dönem Uluslararası Uyarı (International Alert) isimli kurumda Program Direktörü olarak görev yapan Carl, halen Edinburgh Üniversitesi Hukuk Fakültesi bünyesinde Fahri Bilim Kurulu Üyesi olarak görev yapmaktadır. Barış inşası üzerine çalışan Cenevre Mezunlar İnsiyatifi bünyesindeki Barış ve Geçiş Dönemi İnsiyatifi, Cambridge'te yürütülen Barışın İnşası için Yasal Araçlar Projesi ve Londra'da faaliyet yürüten Oxford Araştırma Grubu gibi bir dizi kurum ve oluşuma danışmanlık yapmaya devam etmektedir.



### **Dr. Vahap Coşkun**

Dr. Vahap Coşkun is a Professor of Law at University of Dicle in Diyarbakır where he also completed his bachelor's and master's degrees in law. Coşkun received his PhD from Ankara University Faculty of Law. He has written for Serbestiyet and Kurdistan24 online newspaper. He has published books on human rights, constitutional law, political theory and social peace. Coşkun was a member of the former Wise Persons Commission in Turkey (Central Anatolian Region).

Dr. Vahap Coşkun Diyarbakır'da, Dicle Üniversitesi Hukuk Fakültesi'nde öğretim üyesidir. Lisans ve lisansüstü eğitimini Dicle Üniversitesi'nde tamamladıktan sonra Ankara Üniversitesi'nde Hukuk Doktoru tamamlamıştır. Serbestiyet ve Kurdistan 24 online gazetesinde makale yazan Coşkun, insan hakları, anayasa hukuku, siyasal teori ve toplumsal barış konulu kitaplar yayınlamıştır. Coşkun, Akil İnsanlar Komisyonu'nun İç Anadolu bölgesi üyesiydi.



## Ayşegül Doğan

Ayşegül Doğan is a journalist who has conducted interviews, created news files and programmes for independent news platforms. She studied at the Faculty of Cultural Mediation and Communications at Metz University, and Paris School of Journalism. As a student, she worked at the Ankara bureau of Agence-France Presse (AFP), the Paris bureau of Courier International and at the Kurdish service of The Voice of America. She worked as a programme creator at Radyo Ekin, and as a translator-journalist for the Turkish edition of Le Monde Diplomatique. She was a lecturer at the Kurdology department of National Institute of Oriental Languages and Civilizations in Paris. She worked on political communications for a long time. From its establishment in 2011 to its closure in 2016, she worked as a programmes coordinator at IMC TV. She prepared and presented the programme “Gündem Müzakere” on the same channel.

Bağımsız haber platformlarına özel röportaj, haber dosyası ve programlar hazırlayan gazeteci Ayşegül Doğan; Metz Üniversitesi Medyasyon Kültürel ve İletişim Fakültesi'nin ardından eğitimine Paris Yüksek Gazetecilik Okulu'nda devam etti. Okul yıllarında, Fransız Haber Ajansı-AFP'nin Ankara, Courier International'ın Paris bürosunda ve Amerika'nın Sesi Kürtçe servisinde gazeteciliği deneyimledi. Radyo Ekin'de programcı, Le Monde Diplomatique Türkçe'de çevirmen gazeteci olarak çalıştı. Paris'te yaşadığı süre içinde Doğu Dilleri ve Medeniyetleri Enstitüsü Kürdoloji bölümünde okutmanlık yaptı. Uzunca bir süre siyaset iletişimi ile ilgilendi. 2011'de kurulan IMC TV 2016'da kapatılana dek; program koordinatörü olarak çalıştı. Aynı kanalda “Gündem Müzakere” programını hazırladı ve sundu. Halen ülkesindeki pek çok meslektaş gibi etik ilkelere bağlı; bağımsız bir gazeteci olarak çalışma arayış, istek ve heyecanını koruyor.



**Prof. Dr. Fazıl Hüsnü Erdem**

Dr. Fazıl Hüsnü Erdem is Professor of Constitutional Law and Head of the Department of Constitutional Law at Dicle University, Diyarbakır. In 2007, Erdem was a member of the commission which was established to draft a new constitution to replace the Constitution of 1982 which was introduced following the coup d'état of 1980. Erdem was a member of the Wise Persons Committee in Turkey, established by then Prime Minister Erdoğan, in the team that was responsible for the South-eastern Anatolia Region.

Fazıl Hüsnü Erdem Dicle Üniversitesi Hukuk Fakültesi Anayasa Hukuku Anabilim Dalı Başkanıdır. 2007'de, 1980 darbesinin takiben yürürlüğe giren 1982 darbe anayasasını değiştirmek üzere kurulan yeni anayasa hazırlama komisyonunda yer almıştır. Erdem, 2013'de Türkiye Cumhuriyeti Hükümeti tarafından Demokratik açılım ve çözüm süreci kapsamında oluşturulan Akil İnsanlar Heyeti üyesidir.



### **Prof. Dr. Salomón Lerner Febres**

Professor Dr. Salomón Lerner Febres holds a PhD in Philosophy from Université Catholique de Louvain. He is Executive President of the Center for Democracy and Human Rights and Professor and Rector Emeritus of Pontifical Catholic University of Peru. He is former President of the Truth and Reconciliation Commission of Peru. Prof. Lerner has given many talks and speeches about the role and the nature of university, the problems of scholar research in higher education and about ethics and public culture. Furthermore, he has participated in numerous conferences in Peru and other countries about violence and pacification. In addition, he has been a speaker and panellist in multiple workshops and symposiums about the work and findings of the Truth and Reconciliation Commission of Peru. He has received several honorary doctorates as well as numerous recognitions and distinctions of governments and international human rights institutions.

Prof. Salomón felsefe alanındaki doktora eğitimini Belçika'daki Université Catholique de Louvain'de tamamlamıştır. Peru'daki Pontifical Catholic Üniversitesi'nin onursal rektörü sıfatını taşıyan Prof. Salomón Lerner Febres, aynı üniversite bünyesindeki Demokrasi ve İnsan Hakları Merkezi'nin de başkanlığını yapmaktadır. Peru Hakikat ve Uzlaşma Komisyonu eski başkanıdır. Üniversitenin rolü ve doğası, akademik çalışmalarda karşılaşılan zorluklar, etik ve kamu kültürü konulu çok sayıda konuşma yapmış, şiddet ve pasifizm konusunda Peru başta olmak üzere pek çok ülkede yapılan konferanslara konuşmacı olarak katılmıştır.



### **Prof. Mervyn Frost**

Professor Mervyn Frost teaches International Relations, and was former Head of the Department of War Studies, at King's College London, UK. He was previously Chair of Politics at the University of Natal, Durban, South Africa and was President of the South African Political Studies Association. He currently sits on the editorial boards of International Political Sociology and the Journal of International Political Theory, among others. He is an expert on human rights in international relations, humanitarian intervention, justice in world politics, democratising global governance, the just war tradition in an era of New Wars, and ethics in a globalising world.

Londra'daki King's College'in Savaş Çalışmaları bölümünün başkanlığını yapmaktadır. Daha önce Güney Afrika'nın Durban şehrindeki Natal Üniversitesi'nde Siyaset Bilimi bölümünün başkanlığını yapmıştır. Güney Afrika Siyaset Çalışmaları Enstitüsü Başkanlığı görevinde de bulunan Profesör Frost, İnsan Hakları ve Uluslararası İlişkiler, İnsancıl Müdahale, Dünya Siyasetinde Adalet, Küresel Yönetimin Demokratikleştirilmesi, Yeni Savaşlar Döneminde Adil Savaş Geleneği ve Küreselleşen Dünyada Etik gibi konularda uzman bir isimdir.



## **Martin Griffiths**

Martin Griffiths is a senior international mediator and currently the UN's Envoy to Yemen. From 1999 to 2010 he was the founding Director of the Centre for Humanitarian Dialogue in Geneva where he specialised in developing political dialogue between governments and insurgents in a range of countries across Asia, Africa and Europe. He is a co-founder of Inter Mediate, a London based NGO devoted to conflict resolution, and has worked for international organisations including UNICEF, Save the Children, Action Aid, and the European Institute of Peace. Griffiths has also worked in the British Diplomatic Service and for the UN, including as Director of the Department of Humanitarian Affairs (Geneva), Deputy to the Emergency Relief Coordinator (New York), Regional Humanitarian Coordinator for the Great Lakes, Regional Coordinator in the Balkans and Deputy Head of the Supervisory Mission in Syria (UNSMIS).

Üst düzeyde uluslararası bir arabulucu olan Martin Griffiths, uluslararası bir arabulucudur ve yakın zamanda BM Yemen Özel Temsilcisi olarak atanmıştır. Asya, Afrika ve Avrupa kıtalarındaki çeşitli ülkelerde hükümetler ile isyancı gruplar arasında siyasi diyalog geliştirilmesi üzerine çalışan Cenevre'deki İnsani Diyalog Merkezi'nin (Centre for Humanitarian Dialogue) kurucu direktörü olan Martin Griffiths 1999-2010 yılları arasında bu görevi sürdürmüştür. Çatışma çözümü üzerine çalışan Londra merkezli Inter Mediate'in kurucuları arasında bulunan Griffiths, UNICEF, Save the Children ve Action Aid isimli uluslararası kurumlarda da görev yapmıştır. İngiltere Diploması Servisi'ndeki hizmetlerinin yanı sıra Birleşmiş Milletler bünyesinde Cenevre Ofisi'nde İnsani Faaliyetler Bölümü'nde yönetici, New York ofisinde Acil Yardım Koordinatörü yardımcılığı, Büyük Göller (Great Lakes) bölgesinde İnsani Yardım Koordinatörü, Balkanlarda BM Bölgesel

Koordinatörü ve BM eski Genel Sekreteri Kofi Annan'ın BM ve Arap Birliđi adına Suriye özel temsilciliđi yaptıđı dönemde kendisine bař danıřmanlık yapmıřtır.



### **Kezban Hatemi**

Kezban Hatemi holds an LL.B. from Istanbul University and is registered with the Istanbul Bar Association. She has worked as a self employed lawyer, as well as Turkey's National Commission to UNESCO and a campaigner and advocate during the Bosnian War. She was involved in drafting the Turkish Civil Code and Law of Foundations as well as in preparing the legal groundwork for the chapters on Religious Freedoms and Minorities and Community Foundations within the Framework Law of Harmonization prepared by Turkey in preparation for EU accession. She has published articles on women's, minority groups, children, animals and human rights and the fight against drugs. She is a member of the former Wise Persons Committee in Turkey, established by then Prime Minister Erdoğan, and sits on the Board of Trustees of the Technical University and the Darulacaze Foundation.

İstanbul Üniversitesi Hukuk Fakültesi'nden mezun olduktan sonra İstanbul Barosuna kayıtlı olarak avukatlık yapmaya başlamıştır. Serbest avukatlık yapmanın yanı sıra UNESCO Türkiye Milli Komisyonu'nda hukukçu olarak görev yapmış, Bosna savaşı sırasında sürdürülen savaş karşıtı kampanyalarda aktif olarak yer almıştır. Türkiye'nin Avrupa Birliği'ne üyelik süreci gereği hazırlanan Uyum Yasaları Çerçeve Yasasının Dini Özgürlükler, Azınlıklar ve Vakıflar ile ilgili bölümlerine ilişkin hukuki çalışmalarda yer almış, Türk Ceza Kanunu ve Vakıflar Kanunu'nun taslaklarının hazırlanmasında görev almıştır. İnsan hakları, kadın hakları, azınlık hakları, çocuk hakları, hayvan hakları ve uyuşturucu ile mücadele konularında çok sayıda yazılı eseri vardır. Recep Tayyip Erdoğan'ın başbakanlığı döneminde oluşturulan Akil İnsanlar Heyetinde yer almıştır. Bunun yanı sıra İstanbul Üniversitesi ile Darulacaze Vakfı Mütevelli heyetlerinde görev yapmaktadır.



### **Dr. Edel Hughes**

Dr. Edel Hughes is a Senior Lecturer in Law at Middlesex University. Prior to joining Middlesex University, Dr Hughes was a Senior Lecturer in Law at the University of East London and a Lecturer in Law and the University of Limerick. She was awarded an LL.M. and a PhD in International Human Rights Law from the National University of Ireland, Galway, in 2003 and 2009, respectively. Her research interests are in the areas of international human rights law, public international law, and conflict transformation, with a regional interest in Turkey and the Middle East. She has published widely on these areas.

Dr. Edel Hughes, Middlesex Üniversitesi Hukuk Fakültesi'nde kıdemli öğretim üyesidir. Daha önce Doğu Londra Üniversitesi Hukuk Fakültesi ve Limerick Üniversitesi'nde görev yapan Hughes, doktorasını 2003-2009 yılları arasında İrlanda Ulusal Üniversitesi'nde Uluslararası İnsan Hakları Hukuku alanında tamamlamıştır. Hughes'un birçok yayınının da bulunduğu çalışma alanları içinde, Orta Doğu'yu ve Türkiye'yi de kapsayan şekilde, uluslararası insan hakları hukuku, uluslararası kamu hukuku ve çatışma çözümü yer almaktadır.



### **Kadir İnanır**

**Kadir İnanır** was born in 1949 Fatsa, Ordu. He is an acclaimed actor and director, and has starred in well over a hundred films. He has won several awards for his work in Turkish cinema. He graduated from Marmara University Faculty of Communication. In 2013 he became a member of the Wise Persons Committee for the Mediterranean region.

Ünlü oyuncu ve yönetmen Kadir İnanır, 100'ü aşkın filmde rol almış ve Türk sinemasına katkılarından dolayı pek çok ödüle layık görüşmüştür. 1949 senesinde Ordu, Fatsa'da doğan İnanır, Marmara Üniversitesi İletişim Fakültesi Radyo-Televizyon Bölümünden mezun olmuştur. 2013 senesinde barış sürecini yönetmek amacıyla kurulan Akil İnsanlar Heyeti'ne Akdeniz Bölgesi temsilcisi olarak girmiştir.



### **Prof. Dr. Ahmet İnsel**

Professor Ahmet İnsel is a former faculty member of Galatasaray University in Istanbul, Turkey and Paris 1 Panthéon Sorbonne University, France. He is Managing Editor of the Turkish editing house, *Iletisim*, and member of the editorial board of monthly review, *Birikim*. He is a regular columnist at *Cumhuriyet* newspaper and an author who published several books and articles in both Turkish and French.

İletişim Yayınları Yayın Kurulu Koordinatörlüğünü yürüten Ahmet İnsel, Galatasaray Üniversitesi ve Paris 1 Panthéon-Sorbonne Üniversitesi'nde öğretim üyesi olarak görev yapmıştır. Birikim Dergisi yayın kolektifi üyesi ve Cumhuriyet Gazetesinde köşe yazarıdır. Türkçe ve Fransızca olmak üzere çok sayıda kitabı ve makalesi bulunmaktadır.



### **Avila Kilmurray**

Avila Kilmurray is a founding member of the Northern Ireland Women's Coalition. She was part of the Coalition's negotiating team for the Good Friday Agreement and has written extensively on community action, the women's movement and conflict transformation. She serves as an adviser on the Ireland Committee of the Joseph Rowntree Charitable Trust as well as a board member of Conciliation Resources (UK) and the Institute for British Irish Studies. She was the first Women's Officer for the Transport & General Workers Union for Ireland (1990-1994) and from 1994-2014 she was Director of the Community Foundation for Northern Ireland, managing EU PEACE funding for the re-integration of political ex-prisoners in Northern Ireland as well as support for community-based peace building. She is a recipient of the Raymond Georis Prize for Innovative Philanthropy through the European Foundation Centre. Kilmurray is working as a consultant with The Social Change Initiative to support work with the Migrant Learning Exchange Programme and learning on peace building.

Avila Kilmurray, Kuzey İrlanda Kadın Koalisyonu'nun kurucusudur ve bu siyasi partinin temsilcilerinden biri olarak Hayırlı Cuma Anlaşması müzakerelerine katılmıştır. Toplumsal tepki, kadın hareketi ve çatışmanın dönüşümü gibi konularda çok sayıda yazılı eseri vardır. Birleşik Krallık ve İrlanda'da aralarında Conciliation Resources (Uzlaşma Kaynakları), the Global Fund for Community Foundations (Toplumsal Vakıflar için Kürsel Fon) , Conflict Resolution Services Ireland (İrlanda Çatışma Çözümü Hizmetleri) ve the Institute for British Irish Studies (Britanya ve İrlanda çalışmaları Enstitüsü) isimli kurumlarda yönetim kurulu üyesi olarak görev yapmaktadır. 1990-94 yılları arasında Ulaşım ve Genel İşçiler Sendikası'nda

Kadınlardan Sorumlu Yönetici olarak çalışmış ve bu görevi yerine getiren ilk kadın olmuştur. 1994-2014 yılları arasında Kuzey İrlanda Toplum Vakfı'nın direktörlüğünü yapmış ve bu görevi sırasında eski siyasi mahkumların yeniden entegrasyonu ile barışın toplumsal zeminde yeniden inşasına dair Avrupa Birliği fonlarının idaresini yürütmüştür. Avrupa Vakıflar Merkezi tarafından verilen Yenilikçi Hayırseverler Raymond Georis Ödülü'nün de sahibidir.



### **Prof. Ram Manikkalingam**

Professor Ram Manikkalingam is founder and director of the Dialogue Advisory Group, an independent organisation that facilitates political dialogue to reduce violence. He is a member of the Special Presidential Task Force on Reconciliation in Sri Lanka and teaches politics at the University of Amsterdam. Previously, he was a Senior Advisor on the Sri Lankan peace process to then President Kumaratunga. He has served as an advisor with Ambassador rank at the Sri Lanka Mission to the United Nations in New York and prior to that he was an advisor on International Security to the Rockefeller Foundation. He is an expert on issues pertaining to conflict, multiculturalism and democracy, and has authored multiple works on these topics. He is a founding board member of the Laksham Kadirgamar Institute for Strategic Studies and International Relations, Colombo, Sri Lanka.

Amsterdam Üniversitesi Siyaset Bilimi Bölümü'nde misafir Profesör olarak görev yapmaktadır. Sri Lanka devlet başkanına barış süreci için danışmanlık yapmıştır. Danışmanlık görevini hala sürdürmektedir. Uzmanlık alanları arasında çatışma, çokkültürlülük, demokrasi gibi konular bulunan Prof. Ram Manikkalingam, Sri Lanka'daki Laksham Kadirgamar Stratejik Çalışmalar ve Uluslararası İlişkiler Enstitüsü'nün kurucu üyesi ve yönetim kurulu üyesidir.



## **Bejan Matur**

Bejan Matur is a renowned Turkey-based author and poet. She has published ten works of poetry and prose. In her writing she focuses mainly on Kurdish politics, the Armenian issue, minority issues, prison literature and women's rights. She has won several literary prizes and her work has been translated into over 28 languages. She was formerly Director of the Diyarbakır Cultural Art Foundation (DKSV). She is a columnist for the *Daily Zaman*, and occasionally for the English version, *Today's Zaman*.

Türkiye'nin önde gelen şair ve yazarlarından biridir. Şiir ve gazetecilik alanında yayımlanmış 10 kitabı bulunmaktadır. 2012 yılının başına kadar yazdığı düzenli köşe yazılarında Kürt siyaseti, Ermeni sorunu, gündelik siyaset, azınlık sorunları, cezaevi yazıları ve kadın sorunu gibi konuları işlemiştir. Yapıtları 28 değişik dile çevrilen Matur, çok sayıda edebiyat ödülü sahibidir. Diyarbakır Kültür ve Sanat Vakfı Kurucu Başkanlığı görevinde bulunmuştur.



### **Prof. Monica McWilliams**

Professor Monica McWilliams teaches in the Transitional Justice Institute at Ulster University in Northern Ireland. She currently serves on a three-person panel established by the Northern Ireland government to make recommendations on the disbandment of paramilitary organisations in Northern Ireland. During the Northern Ireland peace process, Prof. McWilliams co-founded the Northern Ireland Women's Coalition political party and was elected as a delegate to the Multi-Party Peace Negotiations, which took place in 1996 to 1998. She was also elected to serve as a member of the Northern Ireland Legislative Assembly from 1998 to 2003. Prof. McWilliams is a signatory of the Belfast/Good Friday Agreement and has chaired the Implementation Committee on Human Rights on behalf of the British and Irish governments. For her role in delivering the peace agreement in Northern Ireland, Prof. McWilliams was one recipient of the John F. Kennedy Leadership and Courage Award.

Prof. Monica McWilliams, Ulster Üniversitesi'ndeki Geçiş Dönemi Adaleti Enstitüsü'ne bağlı Kadın Çalışmaları Bölümü'nde öğretim üyesidir. 2005-2011 yılları arasında Kuzey İrlanda İnsan Hakları Komisyonu Komiseri olarak Kuzey İrlanda Haklar Beyannamesi için tavsiyeler hazırlamaktan sorumlu olarak görev yapmıştır. Kuzey İrlanda Kadın Koalisyonu'nun kurucularından olan Prof. McWilliams 1998 yılında Belfast (Hayırlı Cuma) Barış Anlaşması'nın imzalanmasıyla sonuçlanan Çok Partili Barış Görüşmeleri'nde yer almıştır.



## **Hanne Melfald**

Hanne Melfald worked with the Norwegian Ministry of Foreign Affairs for eight years including as the Senior Adviser to the Secretariat of the Foreign Minister of Norway before she became a Project Manager in HD's Eurasia office in 2015. She previously worked for the United Nations for six years including two years with the United Nations Assistance Mission in Afghanistan as Special Assistant to the Special Representative of the Secretary-General. She has also worked for the United Nations Office for the Coordination of Humanitarian Affairs in Nepal and Geneva, as well as for the Norwegian Refugee Council and the Norwegian Directorate of Immigration. Melfald has a degree in International Relations from the University of Bergen and the University of California, Santa Barbara, as well as a Master's degree in Political Science from the University of Oslo.

Hanne Melfald, başkanışmanlık dahil olmak üzere 8 yıl boyunca Norveç Dışışleri Bakanlıđı bünyesinde çeřitli görevlerde bulunmuş, 2015 yılından itibaren İnsani Diyalog için Merkez isimli kurumun Avrasya biriminde Proje Müdürü olarak çalışmaya başlamıştır. Geçmişte Birleşmiş Milletler bünyesinde görev almış, bu görevi sırasında 2 yıl boyunca Birleşmiş Milletler'in Afganistan Yardım Misyonunda BM Genel Sekreteri Özel Temsilcisi olarak görev yapmıştır. Ayrıca Birleşmiş Milletler Cenevre Yerleşkesi bünyesinde bulunan Nepal İnsani Yardım Koordinasyon Ofisinde de görev almıştır. Bir dönem Norveç Sığınmacılar Konseyi ve Norveç Göçmenlik İşleri Müdürlüğünde çalışan Hanna Melfald Norveç'in Bergen ve ABD'nin Kaliforniya Üniversitelerinde aldığı Uluslararası İlişkiler eğitimini Oslo Üniversitesinde aldığı Siyaset Bilimi yüksek lisans eğitimiyle tamamlamıştır.



## Roelf Meyer

Meyer is currently a consultant on international peace processes having advised parties in Northern Ireland, Sri Lanka, Rwanda, Burundi, Iraq, Kosovo, the Basque Region, Guyana, Bolivia, Kenya, Madagascar, and South Sudan. Meyer's experience in international peace processes stems from his involvement in the settlement of the South African conflict in which he was the government's chief negotiator in constitutional negotiations with the ANC's chief negotiator and current South African President, Cyril Ramaphosa. Negotiating the end of apartheid and paving the way for South Africa's first democratic elections in 1994, Meyer continued his post as Minister of Constitutional Affairs in the Cabinet of the new President, Nelson Mandela. Meyer retired as a Member of Parliament and as the Gauteng leader of the National Party in 1996 and co-founded the United Democratic Movement (UDM) political party the following year. Retiring from politics in 2000, Meyer has since held a number of international positions, including membership of the Strategy Committee of the Project on Justice in Times of Transition at Harvard University.

Roelf Meyer, Güney Afrika'daki barış sürecinde iktidar partisi Ulusal Parti adına başmüzakereci olarak görev yapmıştır. O dönem Afrika Ulusal Kongresi (ANC) adına başmüzakereci olarak görev yapan ve şu an Güney Afrika devlet başkanı olan Cyril Ramaphosa ile birlikte yürüttüğü müzakereler sonrasında Güney Afrika'daki ırkçı apartheid rejim sona erdirilmiş ve 1994 yılında ülkedeki ilk özgür seçimlerin yapılması sağlanmıştır. Yapılan seçim sonrası yeni devlet başkanı seçilen Nelson Mandela kurduğu ilk hükümette Roelf Meyer'e Anayasal İlişkilerden Sorumlu Bakan olarak görev vermiştir. Roelf Meyer 2011-2014 yılları arasında Güney Afrika Savunma Değerlendirme

Komitesine başkanlık yapmış, aynı zamanda aktif olan bazı barış süreçlerine dahil olarak Kuzey İrlanda, Sri Lanka, Ruanda, Burundi, Irak, Kosova, Bask Bölgesi, Guyana, Bolivya, Kenya, Madagaskar ve Güney Sudan'da çatışan taraflara danışmanlık yapmıştır.

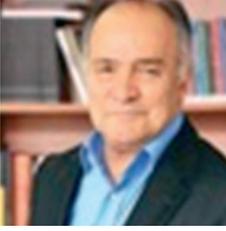


### **Mark Muller QC**

Mark Muller, QC, is a senior advocate at Doughty Street Chambers (London) and the Scottish Faculty of Advocates (Edinburgh) where he specialises in public international law and human rights. Muller is also currently on the UN Department of Political Affairs Standby Team of Mediation Experts and is the UN Special Envoy to Syria in the Syrian peace talks. He has many years' experience of advising numerous international bodies, such as Humanitarian Dialogue (Geneva) and Inter-Mediate (London) on conflict resolution, mediation, confidence-building, ceasefires, power-sharing, humanitarian law, constitution-making and dialogue processes. Muller also co-founded Beyond Borders and the Delfina Foundation.

Mark Muller Londra merkezli Doughty Street Chambers Hukuk Bürosu'na ve Edinburg'daki İskoç Avukatlar Birliği'ne bağlı olarak çalışan tecrübeli bir hukukçudur. Uluslararası kamu hukuku ve insan hakları hukuku alanında uzman olan Muller, Afganistan, Libya, Irak ve Suriye gibi çeşitli çatışma alanlarında uzun seneler çatışma çözümü, arabuluculuk, çatışmasızlık ve iktidar paylaşımı konusunda danışmanlık hizmeti vermiştir. 2005'den bu yana İnsani Diyalog için Merkez (Centre for Humanitarian Dialogue), Çatışma Ötesi (Beyond Borders) ve Inter Mediate (Arabulucu) isimli kurumlara kıdemli danışmanlık yapmaktadır. Harvard Hukuk Fakültesi üyesi olan Muller bir dönem İngiltere ve Galler Barosu İnsan Hakları Komisyonu başkanlığı ve Barolar Konseyi Hukukun Üstünlüğü Birimi başkanlığı görevlerini de yürütmüştür. Kültürel diyalog yoluyla barışı ve uluslararası anlayışı teşvik etme amacıyla İskoçya'da kurulan Sınırlar Ötesi (Beyond Borders) isimli oluşumun kurucusu olan Muller halen BM Siyasal İlişkiler

Birimi bünyesindeki Arabulucular Destek Ekibinde Kıdemli Arabuluculuk Uzmanı olarak görev yapmaktadır.



## Avni Özgürel

Mehmet Avni Özgürel is a Turkish journalist, author and screenwriter. Having worked in several newspapers such as *Daily Sabah* and *Radikal*, Özgürel is currently the editor in chief of the daily *Yeni Birlik* and a TV programmer at TRT Haber. He is the screenwriter of the 2007 Turkish film, *Zincirbozan*, on the 1980 Turkish coup d'état, *Sultan Avrupa'da* (2009), on Sultan Abdülaziz's 1867 trip to Europe; and *Mahpeyker* (2010): *Kösem Sultan*, on Kösem Sultan. He is also the screenwriter and producer of 2014 Turkish film, *Darbe* (Coup), on the February 07, 2012 Turkish intelligence crisis. In 2013 he was appointed a member of the Wise Persons Committee in Turkey established by then Prime Minister Erdoğan.

Gazeteci-yazar Avni Özgürel, uzun yıllar Milliyet, Akşam, Sabah ve Radikal gibi çeşitli gazetelerde haber müdürlüğü ve köşe yazarlığı yaptı. 2013 yılında Türkiye Cumhuriyeti Hükümeti tarafından Demokratik açılım ve çözüm süreci kapsamında oluşturulan Akil İnsanlar Heyeti üyesidir. 1980 darbesini konu eden belgesel film *Zincirbozan* (2007), Sultan Abdülaziz'in 1867'de Avrupa'ya yaptığı yolculuğu konu eden *Sultan Avrupa'da* (2009), *Mahpeyker: Kösem Sultan* (2010) ve 7 Şubat Milli İstihbarat Teşkilatı (MİT) operasyonunun anlatıldığı "Darbe" filmleri senaristliğini ve yapımcılığını üstlendiği projeler arasındadır. Özgürel, şu anda *Yeni Birlik* gazetesinin sahibi ve genel yayın yönetmenidir. Ayrıca TRT Haber'de program yapmaktadır.



### **Prof. John Packer**

Professor John Packer is Associate Professor of Law and Director of the Human Rights Research and Education Centre (HRREC) at the University of Ottawa in Canada. Prof. Packer has worked for inter-governmental organisations for over 20 years, including in Geneva for the UN High Commissioner for Refugees, the International Labour Organisation, and for the UN High Commissioner for Human Rights. From 1995 to 2004, Prof. Packer served as Senior Legal Adviser and then the first Director of the Office of the OSCE High Commissioner on National Minorities in The Hague. In 2012 – 2014, Prof. Packer was a Constitutions and Process Design Expert on the United Nation’s Standby Team of Mediation Experts attached to the Department of Political Affairs, advising in numerous peace processes and political transitions around the world focusing on conflict prevention and resolution, diversity management, constitutional and legal reform, and the protection of human rights.

Dr. John Packer Kanadâda Ottawa Üniversitesi Hukuk Fakültesi’nde doçent ve İnsan Hakları Araştırma ve Eğitim Merkezi (Human Rights Research and Education Centre) müdürüdür. 20 yıl boyunca Packer BM Mülteciler Yüksek Komiserliği, Uluslararası Çalışma Örgütü ve BM İnsan Hakları Yüksek Komiserliği gibi Cenevre’de bulunan hükümetler arası örgütlerde çalışmıştır. 1995’ten 2004’e kadar Lahey’de Packer Kıdemli Hukuk Danışmanı, ardından da Ulusal Azınlıklar Yüksek Komiserliği birinci müdürü olarak görev almıştır. 2012-2014 yıllarında Packer BM Arabuluculuk Uzmanlar Ekibi siyasi ilişkiler biriminde Anayasa ve Süreçlerin Tasarımı Uzmanı olarak yer aldı. Dünyadaki birçok barış süreci ve siyasi geçişler konusunda danışmanlık yapan Pecker, çatışma önleme ve çözümü, çeşitlilik yönetimi, anayasa ve hukuk reformları ve insan hakları korumasına odaklanmıştır.



## Jonathan Powell

Jonathan Powell is the founder and CEO of Inter Mediate, an NGO devoted to conflict resolution around the world. In 2014, Powell was appointed by former Prime Minister David Cameron to be the UK's Special Envoy to Libya. He also served as Tony Blair's Chief of Staff in opposition from 1995 to 1997 and again as his Chief of Staff in Downing Street from 1997 to 2007. Prior to his involvement in British politics, Powell was the British Government's chief negotiator on Northern Ireland from 1997 to 2007 and played a key part in leading the peace negotiations and its implementation.

Ortadoğu, Latin Amerika ve Asya'da yaşanan çatışmaların çözümü üzerine çalışan ve devletten bağımsız arabuluculuk kurumu olan Birleşik Krallık merkezli Inter Mediate'in kurucusudur ve İcra Kurulu Başkanındır. 2014 yılında Birleşik Krallık Başbakanı David Cameron tarafından Libya konusunda Özel Temsilci olarak atanmıştır. 1995-2007 yılları arasında Birleşik Krallık eski Başbakanı Tony Blair kabinesinde Başbakanlık Personel Daire Başkanlığı görevinde bulunmuş, 1997 yılından itibaren Kuzey İrlanda sorununun çözümü için yapılan görüşmelere Britanya adına başmüzakereci olarak katılmıştır. 1978-79 yılları arasında BBC ve Granada TV için gazeteci olarak çalışmış, 1979-1994 yılları arasında ise Britanya adına diplomatlık yapmıştır.



### **Sir Kieran Prendergast**

Sir Kieran Prendergast is a former British diplomat who served as the Under-Secretary General for Political Affairs at the United Nations from 1997 to 2005 and as High Commissioner to Kenya from 1992 to 1995 and to Zimbabwe from 1989 to 1992. During his time at the UN, Prendergast stressed the human rights violations and ethnic cleansing that occurred during the War in Darfur and was involved in the 2004 Cyprus reunification negotiations. Since his retirement from the UN, he has conducted research at the Belfer Center for Science and International Affairs (United States) and is a member of the Advisory Council of Independent Diplomat (United States). Prendergast also holds a number of positions, including Chairman of the Anglo-Turkish Society, a Trustee of the Beit Trust, and Senior Adviser at the Centre for Humanitarian Dialogue.

Birleşik Krallık Dışişleri Bakanlığı bünyesinde aralarında Kıbrıs, Türkiye, İsrail, Hollanda, Kenya ve ABD’de diplomat olarak çalışmıştır. Birleşik Krallık Dışişleri ve Milletler Topluluğu Bürosu’nun (Foreign and Commonwealth Office) Güney Afrika’daki Apartheid rejimi ve Namibya konularıyla ilgilenen birimine başkanlık etmiştir. Bir dönem BM Siyasal İlişkiler Biriminde Müsteşar olarak çalışmış, BM Genel Sekreteri’nin Barış ve Güvenlik konulu yönetim kurulu toplantılarının düzenleyiciliğini yapmış, Afganistan, Burundi, Kıbrıs, Demokratik Kongo Cumhuriyeti, Doğu Timor gibi bölgelerde barış çabalarına dahil olmuştur.



## **Rajesh Rai**

Rajesh Rai was called to the Bar in 1993 with his areas of expertise including human rights law, immigration and asylum law, and public law. He has been treasurer of IMCB Chambers (London) since 2015 and has also been a Director of an AIM-listed investment company where he led their renewable energy portfolio. Rai is a frequent lecturer on a wide variety of legal issues, including immigration and asylum law and freedom of experience (Bar of Armenia), minority linguistic rights (European Parliament), and women's and children's rights in areas of conflict (cross-border conference to NGOs working in Kurdish regions). He is also Founder Director of HIC, a community centred NGO based in Cameroon.

1993 yılında İngiltere ve Galler Barosu'na kaydolmuştur. İnsan Hakları Hukuku, Göçmenlik ve Sığınma Hakkı hukuku ile Kamu Hukuku temel uzmanlık alanlarıdır. Kamerun'daki HIC isimli sivil toplum örgütü ile Uganda'daki Human Energy isimli şirketin kurucusudur. Bir dönem The Joint Council for the Welfare of Immigrants – JCWI – (Göçmenlerin Refahı için Ortak Konsey) direktörlüğünü yapmıştır. Başta İngiltere ve Galler Barosu İnsan Hakları Komisyonu adına olmak üzere uluslararası alanda özellikle Avrupa, Asya, Afrika, ABD ve Hindistan'da çok çeşitli hukuki konular üzerine seminerler ve dersler vermiştir.



### **Sir David Reddaway**

Sir David Reddaway is a retired British diplomat currently serving as Chief Executive and Clerk of the Goldsmiths' Company in London. During his previous career in the Foreign and Commonwealth Office, he served as Ambassador to Turkey (2009-2014), Ambassador to Ireland (2006-2009), High Commissioner to Canada (2003-2006), UK Special Representative for Afghanistan (2002), and Charge d'Affaires in Iran (1990-1993). His other assignments were to Argentina, India, Spain, and Iran, where he was first posted during the Iranian Revolution.

Halen çeşitli özel şirket ve üniversitelere danışman, yönetim kurulu üyesi ve konsültasyon uzmanı olarak hizmet etmektedir. 2016 yılının Ocak ayından bu yana Londra Üniversitesi bünyesindeki Goldsmith Koleji'nde Konsey üyesi ve Goldsmith şirketinde yönetici katip olarak görev yapmaya başlamıştır. Bir dönem Birleşik Krallık adına Türkiye ve İrlanda Cumhuriyeti Büyükelçisi olarak görev yapan Reddaway bu görevinden önce Birleşik Krallık adına Kanada'da Yüksek Misyon Temsilcisi, Afganistan'da Özel Temsilci, İran'da ise Diplomatik temsilci olarak görev yapmıştır. Bu görevlerinin yanı sıra İspanya, Arjantin, ve Hindistan'da diplomatik görevler üstlenmiştir.



**Prof. Naomi Roht-Arriaza**

Professor Naomi Roht-Arriaza is a Distinguished Professor of Law at the Hastings College of Law, University of California (San Francisco) and is renowned globally for her expertise in transitional justice, international human rights law, and international humanitarian law. She has extensive knowledge of, and experience in, post-conflict procedures in Latin America and Africa. Roht-Arriaza has contributed to the defence of human rights through legal and social counselling, her position as academic chair, and her published academic works.

Prof. Naomi Roht-Arriaza Amerika Birleşik Devletleri'nin San Francisco şehrindeki UC Hastings College of the Law isimli Hukuk okulunda öğretim üyesi olarak görev yapmaktadır. Geçiş Dönemi Adaleti, İnsan Hakları İhlalleri, Uluslararası Ceza Hukuku ve Küresel Çevre Sorunları gibi konular uzmanlık alanına girmektedir.



### **Prof. Dr. Mehmet Ufuk Uras**

Mehmet Ufuk Uras is a co-founder and member of social liberal Greens and the Left Party of the Future, founded as a merger of the Greens and the Equality and Democracy Party. He was previously a former leader of the now-defunct University Lecturers' Union (Öğretim Elemanları Sendikası) and was elected the chairman of Freedom and Solidarity Party in 1996. Ufuk resigned from the leadership after the 2002 general election. Ufuk ran a successful campaign as a “common candidate of the Left”, standing on the independents' ticket, backed by Kurdish-based Democratic Society Party and several left-wing, environmentalist and pro-peace groups in the 2007 general election. He resigned from the Freedom and Solidarity Party on 19 June 2009. After the Democratic Society Party was dissolved in December 2009, he joined forces with the remaining Kurdish MPs in the Peace and Democracy Party group. On 25 November 2012, he became a co-founder and member of social liberal Greens and the Left Party of the Future, founded as a merger of the Greens and the Equality and Democracy Party. Ufuk is a member of the Dialogue Group and is the writer of several books on Turkish politics.

Prof. Dr. Mehmet Ufuk Uras İstanbul Üniversitesi İktisat Fakültesi'nde lisans, yüksek lisans ve doktora öğrenimini tamamladıktan sonra, milletvekili seçilene kadar İstanbul Üniversitesi İktisat Fakültesi, Siyaset Bilimi ve Uluslararası İlişkiler Bölümünde yardımcı doçent doktor olarak görev yapmıştır. 22 Temmuz 2007 genel seçimlerinde İstanbul 1. Bölge'den bağımsız milletvekili adayı olmuştur. Seçimlerin sonucunda %3,85 oranıyla yani 81.486 oy alarak İstanbul 1. Bölge'den bağımsız milletvekili olarak 23. dönem meclisine girmiştir. Seçimler öncesinde liderliğinden ayrıldığı Özgürlük ve Dayanışma Partisi (ÖDP) Genel başkanlığına 11 Şubat 2008'de yapılan 5. Olağan

Kongresi'ni takiben geri dönmüştür. 17 Haziran 2009 tarihinde, partinin dar grupçu bir anlayışa kaydığı düşüncesi ve sol siyasetin daha geniş bir yelpazeye ulaşması iddiasıyla bir grup arkadaşıyla Özgürlük ve Dayanışma Partisi'nden istifa etmiştir. ÖDP'den ayrılışıyla birlikte Eşitlik ve Demokrasi Partisi kuruluş sürecine katılmıştır. DTP'nin 19 kişiye düşüp grupsuz kalmasından sonra, Kürt sorununun parlamentoda çözülmesi gerektiğini savunarak Barış ve Demokrasi Partisi (BDP) grubuna katılmıştır. Ufuk Uras, seçim sürecinde, kuruluş çağrısını yaptığı Eşitlik ve Demokrasi Partisi'ne üye olmuştur. 25 Kasım 2012'de kurulan Yeşiller ve Sol Gelecek Partisinin kurucularındandır ve aynı zamanda PM üyesidir. Uras'ın çok sayıdaki yayınları arasında "ÖDP Söyleşileri", "İdeolojilerin Sonu mu?" (Marksist Araştırmaları Destek Ödülü), "Sezgiciliğin Sonu mu?", "Başka Bir Siyaset Mümkün", "Kurtuluş Savaşında Sol", "Siyaset Yazıları" ve "Alternatif Siyaset Arayışları" "Sokaktan Parlamenta" "Söz Meclisten Dışarı" ve "Meclis Notları" adlı kitapları da bulunmaktadır.



### **Prof. Dr. Sevtap Yokuş**

Professor Dr Sevtap Yokuş is a Law Faculty Member at İstanbul Altınbaş University in the Department of Constitutional Law. She holds a PhD in Public Law from the Faculty of Law, İstanbul University, awarded in 1995 for her thesis which assessed the state of emergency regime in Turkey with reference to the European Convention on Human Rights. She is a widely published expert in the areas of Constitutional Law and Human Rights and has multiple years' experience of working as a university lecturer at undergraduate, postgraduate and doctoral level. She also has experience of working as a lawyer in the European Court of Human Rights.

Prof. Dr. Sevtap Yokuş İstanbul Altınbaş Üniversitesi Anayasa Hukuku Anabilim Dalı öğretim üyesidir. İstanbul Üniversitesi Hukuk Fakültesi Kamu Hukuku Doktora Programı bünyesinde başladığı doktorasını “Avrupa İnsan Hakları Sözleşmesi'nin Türkiye’de Olağanüstü Hal Rejimine Etkisi” başlıklı tezle 1995 yılında tamamlamıştır. Akademik görevi sırasında lisans, yüksek lisans ve doktora aşamasında dersler veren Prof. Dr. Yokuş özellikle Anayasa Hukuku ve İnsan hakları Hukuk alanında uzmanlaşmıştır. Ayrıca Avrupa İnsan Hakları Mahkemesi’ne başvuruda pratik avukatlık deneyimi de bulunmaktadır.













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