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LOOKING BACK 30 YEARS ON THE SOUTH AFRICAN TRANSITION, ITS STRUCTURES AND PROCESSES

1. **Background**

   It is generally acknowledged that the first cracks in the apartheid system appeared in 1976, when the youth of Soweto (near Johannesburg) started to protest against the system that they experienced as unjust. The ANC in exile claimed credit for this uprising. This was met by stern measures by the South African government. That, however, did not quell the internal or external resistance. When the National Party Government used the 1983 General (but whites only) Election to get a mandate to establish a tricameral parliament, thereby including so-called coloureds and South Africans from Asian descent, but cementing the exclusion of Africans, the resistance increased. A variety of internal organisations, ranging from labour unions to community organisations, formed the United Democratic Front (UDF) to channel the resistance. The UDF was, cleverly, established in such a way that it was very difficult for the government to ban it as an organisation.

   The mid-1980's therefore saw South Africa in increasing and more regular conflict. The ANC's armed struggle intensified and the war on the Namibian borders against Swapo and its Angolan allies started to sap the energy of the South African armed forces. The then president, PW Botha, responded to the internal resistance by building a very sophisticated security bureaucracy and declaring a number of states of emergencies, that gave the state (including the military) almost unlimited powers. As a consequence, the international community's pressure on the apartheid government increased and it was especially the introduction of financial sanctions that hurt the government and the economy as a whole. PW Botha's intransigence gave no hope to reformed-minded members of the government, and when he suffered a stroke, he was asked to step down as president.

   The then Minister of Education, FW de Klerk, was appointed as his successor in 1989. At the time seen as a conservative, De Klerk surprised even his closest allies by unbanning the main political organisations and releasing almost all political prisoners on 2 February 1990. Much has been written about the driving forces behind De Klerk's decision, but it can be assumed that the fact that a military solution and victory was not imminent (for either side), that the economy was suffering badly and that international pressure (even from benign countries) was mounting, were all contributing factors. De Klerk himself also cited the fact that it was a morally correct decision, although he has consistently denied a quick Damascus-like conversion (Keynote address at the conference commemorating the 25th anniversary of the 2nd February 1990 speech, Cape Town, 3 February 2015). In addition to all the internal

pressures that lead to this decision, the fact that the Berlin Wall had fallen and that communism was internationally discredited thoroughly, made it easier for De Klerk to take this dramatic and brave step.

All of the above set the scene for a period of transition. Allister Sparks in "Tomorrow is Another Country (1994:116 onwards) describes some of the processes behind the scenes, given that discussions between the ANC's leadership in exile and the Government's intelligence service had already started before 2 February 1990. These meetings were now more focused, dealing with issues such as the return of the exiles and planning for the first meeting between the ANC leadership and the Government inside South Africa.

In an atmosphere still filled with tension and mutual suspicions, the first meeting took place from 2-4 May at Groote Schuur, an official house at the foot of Table Mountain in Cape Town. It resulted in the "Groote Schuur Minute", detailing agreements that would facilitate the release of political prisoners, the return of exiles and the amending of security legislation. At the next meeting in Pretoria on 7 August, Mandela announced the unilateral suspension of the ANC's armed struggle (Sparks, 1994:124).

The scene seemed to be set for more substantive negotiations, but the question remained: How? As a liberation movement the ANC had been in exile for decades and had no reason to negotiate. The UDF had some experience in negotiations in the labour arena. The National Party Government did not have outstanding negotiation skills. Despite the progress made in the abovementioned bilateral accords between the SA Government and the ANC, the biggest stumbling block was the violence that was still plaguing the country, and linked to that the state of emergency in Natal. The major parties (ANC, IFP and Government) blamed each other for the violence. It was clear that no constitutional negotiations were possible before violence, including the role of the armed forces (on both sides), had been addressed.

2. **The South African Peace Process (March – September 1991)**
   2.1 Background
   The South African church community found rare unity on a number of issues (including violence) at a summit in November 1990. In the *Rustenburg Declaration* apartheid was denounced, a call was made for a democratic constitution, a more equitable distribution of wealth and the churches were urged to denounce all forms of violence. Importantly, a commitment was made to establish a committee to coordinate church efforts and call a peace conference of all leaders to put an end to violence. Shortly after this, the South African Council of Churches (SACC) also offered to call a peace conference. The politicians, for a variety of reasons, did not respond enthusiastically to this call and offer.

A progressive business grouping, the Consultative Business Movement (CBM), also made efforts to help facilitate an end to the violence, which was seen as detrimental to the economy and negotiations. Several low key meetings were held with major stakeholders including the SA Government, the ANC and the Inkatha Freedom Party (IFP) in March and May 1991.

2.2 President De Klerk's peace conference

Even though the ANC and its allies blamed the government security forces and a so-called "third force" for the violence, FW de Klerk on 18 April 1991 called a multiparty conference to discuss and address the violence. It was to take place on 24-25 May 1990 in Pretoria. Even though a number of parties and groups welcomed this, the ANC and its allies rejected the unilateral way in which it was convened, and pressed for an "independent" party to convene such a conference, as the Government could not do so, being itself allegedly involved in violence.

A joint meeting of business, labour and church leaders decided to intervene, calling individually on Mr De Klerk and Mr Mandela to reconsider their stance, in the interests of the country. If not, the progress made at a bilateral level could evaporate. Initially, neither wanted to yield and tensions were high.

Fortunately, a "typical" South African compromise was reached: the Government's summit could go ahead, and the ANC would not condemn it publicly, as long as no final decisions were taken. Afterward, the ANC would join an inclusive and all-party process to address the issue of violence. The transition to a peaceful environment in which to negotiate turned away from possible disaster.

Dr Louw Alberts, the co-chairman (with Rev Frank Chikane, leader of the South African SACC) of the Rustenburg conference and a participant in the Rustenburg declaration (but not a clergyman himself), was appointed by the conference with consensus as a one-man facilitating committee for a second peace conference. His appointment received wide support, even from the ANC. Alberts was a past chairman of the Atomic Energy Board and influential in Afrikaans church circles. He was given the power to include other members to make the committee more representative (Gastrow, *Bargaining for Peace,* 1995:16, 25).

2.3 The facilitated process leading to the National Peace Convention

The appointment of Alberts formally established the facilitating role of church and business leaders in this process. Political parties were deadlocked and realized that they could not go it alone. After Alberts consulted with church and business leaders who were part of the earlier discussions and shuttle diplomacy, a thirteen person facilitating committee was formed. This consisted of church and business leaders across the spectrum, many of whom were also acceptable to the various political parties. The CBM was also represented, and would later be tasked with the secretariat and process arrangements for the Convention. Labour leaders were consulted and played an important role behind the scenes.

A "preparatory meeting for a peace summit" was convened within weeks and set for 22 June 1991 at the corporate headquarters of one of South Africa's biggest companies, Barlow Rand. All political parties as well as business groupings, trade unions and community groupings were invited to the meeting. Only three right wing parties refused to attend. This was the first time that all three major parties (ANC, SA Government and IFP) sat around one table to discuss violence and related issues.

An important feature of this meeting (and this trend would be followed later) was that the leaders of the political parties were not themselves present. This meant that they were not forced to face each other and make positional statements, thereby possibly harming the process. Those who attended on their behalf had mandates to engage in discussions towards solutions. The meeting was closed to the media. Around 120 people attended, representing about twenty organisations. Archbishop Desmond Tutu co-chaired the meeting with a senior business leader, John Hall, who would later become the chairman of the National Peace Committee.

It was the first time that all major (and some minor) political parties sat in the same room – a gathering of more than 80 people at Barlow Park in Johannesburg in March 1991. After hours of positioning by the parties and radical differences of opinion, stalemate and failure loomed. Chairperson Desmond Tutu called for a coffee break. While tense delegates filed out of the hall, he seemed to sit thoughtful, deep in prayer. One of the number of young CBM scribes approached him a while later, with a flip chart containing a flow diagramme of a possible process forward. It was a simple diagramme, outlining practical steps, including the formation of a number of inclusive working groups, to work on specific issues related to the violence.

When the delegates returned, Tutu put the flip chart up and asked the facilitator to talk to it. Within 15 minutes the logjam was broken and a broad process agreed upon unanimously, including appointing working groups and working towards a representative peace conference in the near future. A preparatory committee was appointed to consider the information presented and to establish working groups to draft proposals on how to end the violence. This committee consisted of the facilitating committee, plus three members each of the ANC, the government and the IFP.

At the first meeting of the preparatory committee John Hall was elected chairman, the process was agreed upon and five working groups were appointed. These each consisted of three members of the ANC-led alliance, three from the SA Government, three from the IFP, one religious leader and one business representative. The working groups' themes were:

- Code of conduct for political parties
- Code of conduct for security forces
- Socio-economic development
- Implementation and monitoring
- Process, secretariat and media

The secretarial backbone and coordination were assigned to CBM, while funding was made available by Government. Gastrow (1995:32) describes the work of the working groups aptly: "Each working group produced draft documents that were then referred to the various principals for approval before being referred back to the negotiators to seek fresh consensus for a next draft".

The preparatory committee set 14 September 1991 as the date for what was called the National Peace Convention.

2,4 The National Peace Convention

With the exception of three right-wing parties, all political parties attended the convention in Johannesburg. All the parties signed the National Peace Accord, with the exception of the Pan Africanist Congress (PAC) and the Azanian People's Organisation (AZAPO), who nevertheless declared their support for the spirit and objectives of the accord. The National Peace Accord contained chapters on:

- The principles of the accord (with a number of references to fundamental rights)
- The code of conduct for political parties and organisations
- Security forces: general provisions and Police code of conduct
- Measures to facilitate socio-economic reconstruction and development
- The establishment of a commission of inquiry regarding the prevention of public violence
- The establishment of the National Peace Secretariat, with regional and local dispute resolution committees
- The establishment of the National Peace Committee
- Arrangements for enforcing the peace agreement between the parties
- The establishment of special criminal courts

But even during the Peace Convention, another obstacle threatened the signing ceremony. Hostel-dwelling members of the Inkatha Freedom Party, mostly Zulu's, gathered in the street in front of the Carlton Centre. They had been drinking and were demanding to see King Goodwill Zwelithini – who wasn't attending the Peace Convention. They were becoming aggressive and Chief Minister Buthelezi refused to address them. Some ANC members were becoming agitated and told the organisers that they would walk out if something was not done to calm the unruly crowd. The organisers spoke to Minister Roelf Meyer, who spoke to President FW de Klerk, highlighting the severity of the situation. Based on their previous relationship, the President was able to convince Minister Buthelezi to address the crowd and asked them to disperse. This happened minutes before the meeting was due to start.

2.5 Salient features of and lessons from the peace process

The following features and lessons of the peace process can be identified:

- Because of historic and external circumstances, the political parties (including government) were not able to break the deadlock on the issue of widespread violence in South Africa.
- The three major parties (ANC, SA Government and IFP) displayed remarkable openness at points in this process, which ensured its potential could be explored. It was, however, clear that a government that was suspected of being part of the problem, could not facilitate the process out of the deadlock.

- Neither the churches nor business nor labour could break this deadlock on their own. Each grouping had its own political baggage, and was on its own not acceptable or credible enough to win the support of the major parties for this role.

- Through a joint intervention by the churches and a business grouping (assisted by labour), the deadlock was broken. This was done by focusing strongly on a transparent, open and inclusive process.

- The presence and role of a number of individuals from all sides in ensuring the success of the process cannot be overemphasised. None of these was a mediation professional or practitioner, but most of them had some experience in dispute and conflict resolution, be it in labour matters or community conflict.

- The role of the business organisation CBM was crucial.[1] In the preceding two years it had facilitated a number of workshops between business leaders, labour leaders and members of the United Democratic Front (UDF). Its staff members had learnt the value of "process", an approach that did not focus primarily on the outcome, but on the way discussions were initiated, planned, executed and followed up.

- A case in point is the process followed to get from the "preparatory committee" on 22 June to the signing of the National Peace Accord on 14 September 1991. The CBM scribe simply described a possible process, which was accepted and broke the logjam. This "process thinking" was alien to most political groupings, but was crucial to arrive at the successful signing of a national peace accord.

- The presence of business, church and labour groups in the working groups assisted in making the politicians focus not on the ultimate prize, to win an election, but on searching for a mutually accepted process to address the complicated issue of violence in the country.

- Finally, the utilisation of smaller working groups consisting of a variety of organisations, became a useful tool to lower the political temperature, to focus on the issues separately in an otherwise very complicated problem, and to make step by step progress. The fact that agreements by the working groups were referred to the political principals provided a certain measure of safety to all concerned. This iterative process often went on and on, until agreement was reached.

2.6 Conclusion: the implementation of the National Peace Accord (NPA)

The two bodies established by the NPA, the National Peace Committee (NPC) and the National Peace Secretariat (NPS) started their work soon afterwards. The NPC consisted of representatives of the original process and met regularly to monitor progress and discuss challenges.

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[1] CBM was not a traditional employer body. It was a loose grouping of 40 progressive business leaders who understood that unless violence was addressed and a democratic government elected, the economy and the country would suffer even further. It was not a traditional mandated business organization, and rather specialized in facilitating discussions through consultative processes, hence the name "Consultative Business Movement". After the 1994 election it merged with another business-based organization to form the National Business Initiative (NBI), mobilizing business resources and facilitating support from business as a whole for the new South Africa.

The NPS set up regional and local dispute resolution committees, creating an impressive network of committees across the country. These consisted of political, church, business and community representatives. These committees achieved much in a short time. In essence, the thousands of men and women involved in these committees, prepared the way for a peaceful democratic election and transition a mere three years later.

3 The South African Constitutional Negotiation Processes (Dec 1991-Nov 1993)
3.1 The CODESA process

The signing of the National Peace Accord and its implementation did not immediately lead to constitutional negotiations. The ANC and the NP Government still had to sort out a number of issues between them. And trust had to be strengthened.

Earlier, the NP Government had publicly stated that it wanted a convention of existing political parties to meet to negotiate the future constitution. The ANC, on the other hand, wanted an elected and therefore legitimate constituent assembly to do this. The two parties remained far apart in their views.

Despite this, agreement was reached to start constitutional negotiations in December 1991. Some preparatory work was done and on 21 and 22 December 1991, the first plenary of what was called the Convention for a Democratic South Africa (CODESA) took place at Kempton Park near Johannesburg. It was meant to proclaim to the nation that nineteen political parties had agreed to start the process of constitutional negotiations. Even though the two-day meeting experienced a few glitches, serious negotiations started in early 1992. One of these glitches was a public spat between the president FW de Klerk and the president of the ANC, Nelson Mandela. This was due to a misunderstanding and miscommunication about the armed wing of the ANC.

The negotiations were conducted in five working groups, on the model of the peace process. The working groups consisted of four representatives of each political party. The working groups gave feedback to a representative management committee, but resentment from the side of the working groups towards the management committee emerged early. There was therefore no central body where multi-party agreements could be tested and taken forward. The working groups almost became a law unto themselves. In the end, only one working group (number three) dealing with the issue of an interim government produced agreements that would later be built upon in the post-CODESA process.

All of this (and other factors that will be discussed below) lead to the CODESA 2 plenary never taking place. The CODESA process ended in deadlock, and after the Boipatong massacre on 7 June (see 4.2.1 below), the ANC formally withdrew from the constitutional talks.

Looking back, there were clearly major political reasons why CODESA failed. Those included the nature of the transition, the percentage needed to change the future constitution, the

form of state (and powers of the regions), and the protection of minorities. The parties also did not yet trust each other enough.

There were, however, also structural and process reasons why CODESA failed. The major flaws in the CODESA process were:

- The structure of the five working groups and the absence of a central negotiating body were unworkable. The size of the working groups (almost eighty people per working group) was too large to do any serious negotiation. The process that was followed in the working groups was geared towards grandstanding and not compromise. The various parties would state their positions on any subject on paper, and then presented it orally. This entrenched positions, especially after the media had published it. There was therefore little leeway for compromise.
- The working groups consisted entirely of politicians, with no technical expertise or input provided for. Working Group 3 was the only one that utilised technical input, and was the only one that reached some form of agreement. The politicians were not yet skilled and mature enough to make the process work.
- All of this constituted a lack of compromise-seeking and deadlock-breaking mechanisms.
- The overall administration of CODESA was perceived as party-political, with only the three biggest parties partaking in it (until the IFP left the process, after which only the ANC and SA Government ran it). A similar suspicion was levelled against the daily Management Committee, a small committee charged with the coordination of the various processes. The role of CBM was limited to functioning as secretariat, reporting to the politicians heading the administration.

These flaws did not in themselves make CODESA fail, but did not facilitate its success either. They became lessons to be heeded when the next round of negotiations was due to start.

3.2   The Multi-party Negotiations Process (MPNP)

3.2.1   Background

Shortly after CODESA deadlocked, a number of incidences of violence took place, all of which indicated growing polarisation between the parties, but also between different groupings within each party. The most important was the violence in a township on the East Rand called Boipatong on the night of June 17th. Thirty eight people (among them women and children) were killed by a group of armed Zulus from one of the hostels. Suspicions of the apartheid armed forces complicity were rife. In an attempt to topple the hated homeland system, the ANC organised a march in Bisho, the capital of the Ciskei homeland, on 7th September. What was planned as mass and peaceful demonstration turned out to be a massacre when the armed forces of the homeland opened fire on the marchers and killed twenty eight people and wounded two hundred.

Trust was at an all-time low, also between the ANC and SA Government. The only communication that took place was informal phone calls and meetings between the two chief negotiators, Cyril Ramaphosa of the ANC and Roelf Meyer of the Government. This led to a bilateral summit on 26 September in Johannesburg. The result of this meeting and its preparations was a "Record of Understanding" between the ANC and the Government. The details of this agreement are not relevant here, but suffice it to say that the two main negotiating parties had realised that they needed each other to get to an election as soon as possible, in order to end the violence and save the economy. The agreements in the Record of Understanding were cemented by the two parties in two "bosberade" (workshops in the bush) in December 1992 and January 1993. This led to an all-party planning conference on 5 and 6 March 1993. Twenty six parties now took part and careful planning went into the process this time, taking note of the flaws in the CODESA process. The MPNP therefore started with important differences to processes and structures, as compared to CODESA.

This fact did not shield the process from a number of major crises, amongst them the assassination of the South African Communist Party leader Chris Hani on 10 April (with only statesmanship by Nelson Mandela and restraint by all parties that averted a possible catastrophe), a raid by the police on the offices of the PAC on 25 May, a violent invasion of the negotiation venue (the World Trade Centre) by a group of right-wing militants on 25 June and the massacre of twelve church goers on Sunday 25 July 1993. It seemed that these crises, instead of disrupting or slowing the process down, actually strengthened the resolve of the major players to speed up the process (Sparks: 189).

The major political issues that had to be resolved were not different from those in CODESA. The technical committees (see below) focused on seven issues:
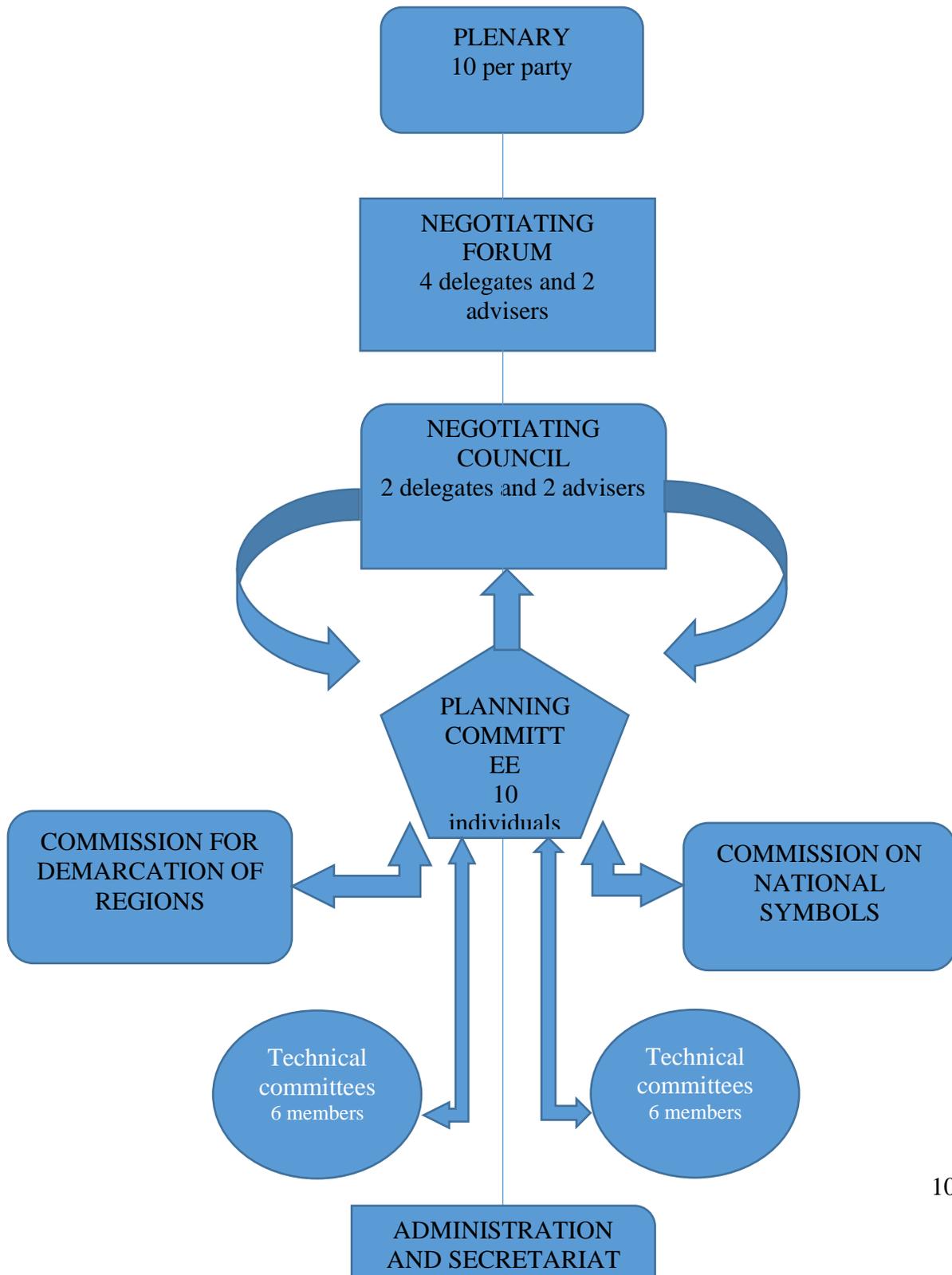
- Constitutional issues (including the form of state and the powers of the regions);
- Violence;
- Fundamental Human Rights;
- Transitional Executive Council;
- Independent Electoral Commission;
- Independent Media Commission; and
- Discriminatory legislation

The process worked well and an Interim Constitution was accepted by the Negotiating Council in the early hours of the morning of 18 November. The election date was set for 27 April 1994 and an Interim Government of National Unity would govern until the next election in 1999.

3.2.2   Elements that contributed to success in this process

3.2.2.1 The structure of the MPNP

The way that the negotiations process was structured, had a fundamental effect on the success thereof. Diagrammatically, it can be depicted as follows:

PLENARY
10 per party

NEGOTIATING
FORUM
4 delegates and 2
advisers

NEGOTIATING
COUNCIL
2 delegates and 2 advisers

PLANNING
COMMITT
EE
10
individuals

COMMISSION FOR
DEMARCATION OF
REGIONS

COMMISSION ON
NATIONAL
SYMBOLS

Technical
committees
6 members

Technical
committees
6 members

ADMINISTRATION
AND SECRETARIAT

The *Plenary Session* of the MPNP was seen as the body to confirm any (and in actual fact the final) agreements reached by the negotiating bodies. The plenary met only once, in November 1993, when the interim constitution was accepted formally.

The *Negotiating Forum* had a short life. As the second highest body it was to have publicly finalised the agreements of the initially smaller and initially closed Negotiating Council. However, when the Negotiating Council was enlarged to two delegates and two advisers per party, and opened to the media, the need for the Forum fell away and it delegated all its powers to the Negotiating Council at its second and final meeting in June 1993.

The *Negotiating Council* became the main negotiating body, consisting of two delegates and two advisers per party (one of whom had to be a woman). After receiving reports from various bodies, it would debate the issues and reach agreements or accept the recommended agreements. These then found their way into the draft interim constitution and various draft Bills.

The Negotiating Council amongst others received reports from the *Planning Committee*, a body consisting of prominent negotiators serving in their individual capacities, but nevertheless spanning the political spectrum. The Planning Committee played a very important role in the process, because the individuals serving on it accepted joint responsibility as "guardians" of the process. And although the Planning Committee was not mandated to take decisions on any substantive matters, its role in pre-empting and averting problems was a decisive factor in the success of the MPNP.

The Negotiating Council also received regular reports from seven *technical committees.* The membership of these consisted of non-party political "experts", who were nevertheless acceptable to the participants (and often suggested by them). Although spanning the professional spectrum, most of the technical experts came from the legal profession. The most important flaw in the CODESA process (no or little technical input) was avoided in this way. Instead of political parties putting their positions orally to each other in the Negotiating Council, written submissions were made to the technical committees, thereby avoiding grandstanding and entrenching of positions in public. Most of the technical committees' reports to the Council already contained the seeds of compromise and were interest-based (as opposed to fixed position) proposals. In this way, the technical committees, although formally prohibited from "meddling" in political decision-making, acted as *compromise-seeking and deadlock-breaking mechanisms.* In the few instances where technical committees could not come up with an acceptable compromise, the matter was either dealt with by the Planning Committee or by an ad hoc task group, consisting of both technical committee members and politicians.

A fairly informal and less known "structure" of the Planning Committee was the so-called *"sub-committee"*, consisting of Mac Maharaj (ANC), Fanie van der Merwe (SA Government) and Ben Ngubane (IFP) (the latter until the IFP withdrew from the process). Without overstating the case, it can be said that this sub-committee did as much and more than any other to keep the process on track. Acting as "trouble shooters", advisers, shuttle diplomats and strategists, and keeping a low profile, they were very effective in helping to resolve almost any issue. They acted as the ultimate deadlock-breaking mechanism.

A last relevant structure was the *Administration.* The lessons from CODESA were learnt, and politicians were left out in favour of the CBM, contracted on a not-for-profit basis to provide administrative and secretarial services to the entire process. The CBM provided a core component of staff, and in addition parties nominated persons with the necessary skills to serve in the administration. The personnel were therefore non-partisan and acceptable to all parties. The experience of the CBM in the peace process and in CODESA could be put to good use. The head of the administration, seconded from CBM for this purpose, was expected to act objectively toward all parties, but also had a mandate from the major parties (and the Planning Committee) to report timeously any difficulties that might arise and harm the process. The fact that all participants could trust the administration, the secretariat and the production of agendas, minutes and reports, contributed to a successful process.

3.2.2.2 The processes of the MPNP

The most important process factor was the constant *flow of reports and subsequent referrals* between the technical committees and the Negotiating Council, through the Planning Committee. This allowed for increasing clarity and consensus seeking. The processes of the MPNP were designed to be as *flexible and informal* as possible. In the Negotiating Council, debates were to the point and focused on the issues at hand. The imposing of time limits were rare.

The above was made possible by excellent rotating chairpersons. They came from a panel of eight appointed by Council from the ranks of the parties, and were known for their skills in chairing meetings. While person X chaired one day, the next day's chairperson would be deputy chair, thereby ensuring some continuity. The MPNP developed its own unwritten "code of conduct" and participants were held to it. One or two government ministers had to learn this the hard way when they wanted to use the more robust parliamentary manner of speech in the Council.

In the interests of *transparency*, the media and diplomatic liaison officers were allowed to attend meetings of the Negotiating Council. The public also benefited from the greater transparency by being given the opportunity to submit proposals to any technical committee (and the commissions) on a variety of issues. In the event of members of the public wanting to witness the proceedings, the Administration used a "media overflow" room with television

monitors to afford them the opportunity. Various youth groups and researchers made use of this facility.

Although not a structured process, one of the most important factors that ensured success, was the building of *personal relationships and trust* between the negotiators. This happened when working long hours to reach a deadline, sharing the danger of an attack by rightwingers and experiencing the sweet taste of success through mutually acceptable compromise. These relationships and trust helped the process when the inevitable challenges arose.

Unlike CODESA, large groups of party politicians were not expected to negotiate complex issues. The technical committees received written submissions from parties and sought compromise and consensus. This was then reported to the Negotiating Council, but only after the Planning Committee had noted the content and the processes utilised. The "sub-committee" referred to above was an additional consensus-seeking and deadlock-breaking mechanism. In extreme cases of differences, deadlocks would sometimes be addressed outside the formal negotiations process. The ANC and SA Government made use of "bosberade" (meetings in the bush) to address these issues in an informal setting.

Much of the success of the MPNP was attributable to what can be called a "process alliance" between the two main parties. For very different reasons, they agreed on a speedy resolution of the constitutional issues, the drafting of an interim constitution and an election date. Most other parties also agreed to this, and could not be said to be "outside" the process. It was really only the IFP and to some extent the more conservative parties that felt alienated. And in the end, all parties participated in the April 1994 election.

The politicians also became more sensitive about and skilled in "process management" in the MPNP. There was furthermore a realisation that it was in the interest of the process to assist all parties to manage their constituencies. For example, when the NP Government was under pressure from its conservative members about the negotiations, the ANC tacitly supported a "whites only" referendum, to enable the NP Government to return to the negotiation table. In the same vein, after major breakthroughs/progress media conferences were held, first jointly, and then as parties, to assist the parties to manage constituencies.

4.   Lessons from the Peace Process and the MPNP

4.1 The pre-negotiation phase

- Parties to a conflict or a major difference of opinion should first (come to/be helped to) realise that what they experience at the present was sub-optimal, and that a better state of affairs was possible. This is often the most difficult, because the party in power (with authority) would not acknowledge this easily. The aggrieved party would try to use any means at its disposal to put pressure on the other, often even violence. In South Africa's case, the ANC had tried since the mid-fifties to get the apartheid government to

listen to their concerns. It was only after many lives had been lost on both sides that FW de Klerk accepted in 1989 that the system of apartheid would never be sustainable or just. He consequently became willing to negotiate and demonstrated this willingness by releasing political prisoners and unbanning his future negotiating partners.

- If the situation the parties find themselves in, is violent, none of the parties on their own could break the deadlock that was brought about by the oppression, violence and counter violence. Not even churches, business or labour may be trusted enough to break the impasse. In South Africa's case, a joint effort was needed from churches, business and labour to break the deadlock and bring the parties to a table. In some instances, the international community could help, but often even this would not be the case.

- The addressing of violence and conflict may be the main obstacle to negotiations, but it may not be the only one. Situations of high complexity often have a number of factors that serve as both cause and effect for the continuation of conflict or dissatisfaction. To manage complexity, these have to be identified and addressed one after the other, or in parallel. In South Africa's case, the violence that plagued the country was the main stumbling block for constitutional negotiations to begin.

- The main themes in the South African peace process were linked to the violence, but also included socio-economic development, as the parties realised that without a change in the material circumstances of the majority of citizens, violence and conflict may never be resolved. The main themes in the MPNP primarily had a constitutional and transitional emphasis, including issues linked to the planned election. But it also still had violence on the agenda, as well as discriminatory legislation. The point is that at any given time in a process, a number of issues would be immediately relevant, some would be carried over from the past and some would be in preparation for future processes. The mediator/facilitator would have to understand that in a complex situation, these issues are never "finally" resolved.

- An agreement should be made early on the question who would carry the costs of the negotiations. If this was not decided, it could become a stumbling block for progress.

4.2 The preparatory negotiation phase

- Once parties are in principle willing to negotiate, the so-called "rules of engagement" must be agreed upon first. Often parties to conflict are in an understandable hurry to start negotiating the substantial issues, but do not understand that failing to agree the "process" issues first might have a negative impact on their ability to reach sustainable agreement on the more difficult issues. Cognisance should be given to both the specific circumstances of the conflict, but also lessons learnt and principles of other similar situations that had been resolved successfully.

- Based on the lessons of the South African experience, this preparatory phase of negotiation should include the following:

  - *Venues* for negotiations can be highly symbolic, being experienced either positively or negatively. In the South African process, the urgency outweighed the symbolism. But it was ensured that the venue was not associated with one of the parties, especially not a government building. The World Trade Centre was essentially a glorified warehouse, but with the added advantage that it was conveniently situated near the airport and that it could in a short space of time, be adjusted to suit the needs of the parties.

  - Agreement on the *administration and secretariat* should be dealt with before any other issues are dealt with. Again, a government department or consultancy working for one of the parties is not the ideal and acceptable body to gain acceptance and trust. An international agency may be suitable, but lack of knowledge of the local circumstances may be a hindrance. A church, community or business-based organisation (or a combination of the three) may be the best option. In South Africa, the CBM's track record of facilitating meetings with the political actors before the peace and constitutional processes started, made them an ideal choice. But the individual heading up the administration should personally also have credibility and be able to gain and keep the trust of the parties. It is a good idea not to have the mediator also be the administrator or secretariat. This would tie his or her hands from fulfilling other important functions.

  - It is also important to agree on the *structures* of the negotiating process beforehand. Here sometimes a process of trial and error is inevitable. CODESA is a case in point. But the way the structures are set up, also has to do with the negotiation maturity of the parties. A wise practitioner may be able to advise the parties about the best way, but the parties will still have to experience it for themselves. Sometimes pressures from immature but eager negotiators will make this choice very difficult. A few lessons from the South African process may be helpful:
    - Keep the structures simple, by having only one negotiating body and one additional body that would ultimately publicly agree to the negotiated agreements.
    - Make use of technical experts in small committees to avoid grandstanding by the parties on every occasion. The negotiating body should receive reports from the technical committees that already contain recommended agreements.
    - Establish a low profile but trusted "coordinating committee" consisting of respected and trusted individuals from the spectrum of parties. They should be the "process guardians" of the whole process, but should not have authority to take decisions on substance.

- The *name of the process* may seem an innocuous issue, but could impact on the credibility of the outcomes. This could become a problem especially when a process failed and the parties decide to start a new one. In South Africa's case, it took weeks of arguing to compromise on the generic (and fairly unimaginative!) multiparty negotiations process (MPNP), because some parties had a view that CODESA was a failure and that the name should not be used again.
- On the face of it, a relatively simple issue is how exactly the *process* should work. But not giving this enough thought and "stumbling" into the first meetings without agreeing on this formally, could be a severe test for the process.
  - o In the first place, it should be determined how *decisions* should be made: by majority vote, by consensus, or something in between. Consensus seems almost an automatic choice, and if there are only a few parties, it may be the best way. On the other hand, where there are multiple parties, differing in size and influence, there is the danger that a small party may hold the whole process to ransom by not agreeing to even the most straight forward agreement. In the South African experience, with exactly such a scenario, the mechanism of *sufficient consensus* was applied. This meant that if a recommendation was made and it had enough parties supporting it to take the process forward, there was sufficient consensus. Conversely, if enough parties opposed it so that progress was not possible, there was no sufficient consensus. In practice, this meant that when the ANC and its allies and the NP-Government and its allies agreed, there was sufficient consensus. This, however, can alienate some parties and lead to them withdrawing from the process – as had happened with the IFP and the right-wing parties. The sufficient consensus rule should therefore be applied with great circumspection.
  - o A second process that should be determined is how the recommendations arrive on the table of the main negotiating body. It is untenable to have a large group of politicians trying to reach consensus on complicated issues. The *technical committees* in the South African process worked well. The various parties made written submissions to these committees, and in closed meetings they debated the issues, looking for points of agreement and formulating possible compromise agreements.
  - o The *iterative process* as described above, meant that the members of the technical committees serve as a first consensus-seeking mechanism. This is done by the members being fully aware of the various views on the issue. The parties get a chance to discuss the proposed agreement at the main negotiating body, and if they do not agree, it is referred back for a second round. This iterative process should be formalised, so as to prevent any grandstanding or public deadlocks.
  - o A fourth issue is the question whether *the media* should be present in the negotiations to make the process *transparent*. On the one hand, it is clear

that one cannot negotiate complex issues in public. On the other hand, any process should be transparent enough to generate public trust and credibility. The balance seems to lie in having the media attend the meetings of the main negotiating body only. Regular media conferences worked well in the South African process.

- The parties should agree beforehand on *deadlock-breaking mechanisms*, so that in the event of seemingly irreconcilable differences, the whole process is not jeopardised. This could take the form of bilateral or trilateral meetings between the main parties, outside of the formal process. It could also be decided that some form of arbitration or mediation will be followed. A decision will depend on the circumstances. It may be that there are trusted individuals in or outside the process who can be called upon. Linked to this, it is equally important to build into the process *trust building mechanisms*, for example structured socialising by the negotiating parties. This was a very important underlying factor in the South African process, where informal break-aways at crucial times assisted tremendously, together with the effect of a few beers or whiskeys..

- Before formal negotiations can begin, there should be at least relative agreement on *the objective(s) of the negotiation process*. By this is not meant the substantive outcomes, because that would obviate the need for negotiation. There should be agreement of what the outcome(s) of the process should be. In the South African case, the objectives were to negotiate an interim constitution and pave the way for democratic elections in terms of that constitution. That put them on the same proverbial page.

- A sensitive issue is whether one can take it for granted that politicians intuitively "know" how to negotiate effectively. Often they don't. The *preparation of negotiators* through training by the individual parties or by an outside person/body in negotiation principles may be instrumental in reaching a mutually acceptable outcome. There is a major difference between what is called "horse-trading" and principled negotiation. The one consists of grandstanding, positioning and destroying the opponent. No sustainable solution can come from approaching a complex problem in this way. Negotiating on the basis of certain principles (such a looking for sustainable compromises, putting yourself in the shoes of the other parties, generating options to work with, etc) has the potential to come to a lasting agreement. A less known fact in the South African process was the influence of a Harvard professor of constitutional law, Roger Fisher. He offered to host workshops for the main parties on principled negotiation.[2] The SA Government and the ANC

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[2] Fisher's seven principles for effective negotiating are as valuable today as it was in the historic Camp David agreement between Egypt and Israel (Fisher: 1981):
- Separate the people from the problem: build relationships; Focus on interests, not positions; Invent options for mutual gain; Use objective criteria; Develop your BATNA (best alternative to a negotiated agreement); Ensure well-crafted and executable commitments and communicate constructively what was intended to constituencies.

accepted, the IFP and the right-wing parties did not. It was clear throughout the process that the two main parties had an advantage over the others in applying negotiating techniques like generating options for mutual gain.

4.3 The negotiation phase

There are valuable lessons to be learnt from the South African process:

- The majority of parties must be visibly committed to the process, notwithstanding what the outcomes might be. This was true of the "process alliance" between the ANC and SA Government.
- The complexity of such negotiations should be actively managed. This means amongst others, that:
  - There must be clarity on the overall objective, by breaking down the "big issue" into its constituent parts, and addressing each of those in correct sequence. If you can create a common vision of the future, compromises are possible.
  - It also means keeping an eye on the goal and not to be distracted by external events over which you have no or little control. The multiple crises that hit the South African process, such as the assassination of a prominent leader, could easily have derailed the process. The fact that the parties actually sped up negotiations because of the assassination, meant that they kept their eye on the ultimate goal.
  - But it also means that flexibility and adaptability are important. If the parties sense that their constituencies need more information or better management, they should take time out to attend to that.
  - In complex situations, parties should use constructive ambiguity optimally. This means purposefully leaving formulations in agreements vague and open to interpretation, to enable progress. If you try to push a point home in the wording of a resolution, it could mean that some parties may not be able to agree to that – even "in principle". And at a crucial and sensitive point in the process, it may be more important to keep the parties in the process than scoring points on a detailed resolution.
- Self-imposed deadlines should be used constructively, even if they seem unrealistic. They can focus the minds and make progress possible. On the other hand, if not reaching deadlines becomes a habit, the process will lose its integrity.
- In the hurly and burly of negotiations, with issues being referred back and forth, and late night deliberations, it is of utmost importance that the documentation (reports, agendas and minutes) are kept accurately and are provided on time. If this is not the case, it will bog down the process at crucial times.

- In the event of opposing sides nearing a deadlock on a certain issue, it is always better to look for objective (often international) criteria that had already been used to resolve such an issue. An example is the two thirds majority needed before the South African constitution can be changed, as opposed to 51% or 75%.
- A softer issue, but nevertheless important, is the continuous building of personal relationships and trust across party lines. Structured social interaction, a sense of belonging and contributing to the process and creating an atmosphere of trust are important factors.
- The parties must be willing to participate in an iterative process to seek the strongest possible consensus. The four quadrant analysis of Roger Fisher (what is the problem, what are its causes, what possible approaches are there and who should do what tomorrow) is a simple and excellent tool to be used again and again (Fisher, *Getting to Yes*, 1981).
- In complex negotiations, there are no quick fixes. The South African process, although pushed hard by the ANC and SA Government in the last phases, had to learn this the hard way when CODESA deadlocked and violence increased.

5   External and internal "mediative" or facilitative interventions

It is an interesting feature of the South African process that there was never any formal mediation from outside parties or the international community. The South Africans, through trial and error, decided that they would "do it themselves".

The one attempt to establish a panel of international mediators on the form of state (unitary versus federal) did not materialize. In fact, this team under the leadership of Henry Kissinger, left on the same day that they arrived!

By far the majority of the parties did not want to use international or other mediators. Perhaps one should look for an answer in the international situation at the time. The global circumstances made the Western superpowers unacceptable to the ANC, because they were seen to be "pro-SA Government". And although communism was dying and the Eastern Bloc was falling apart, these countries were unacceptable to the SA Government.

Having said that, it remains true that many outside parties had an indirect influence on the process at crucial stages, call it "facilitating" circumstances, interventions, organisations and individuals. Enough had been said about the role of the churches, labour, business and civil society above. One indirect intervention is mentioned by Friedman (*The Small Miracle,* 1994: 167). During the deadlock between CODESA and the MPNP, the CBM convened (with the tacit support of the three major parties) a panel of national and international constitutional experts, broadly acceptable to all parties. They were asked to advise on the powers of the regions that would emerge from the negotiations. The ensuing report on regions was produced and presented in a non-threatening manner to the main parties. This report was used by its authors (most of whom were appointed as the experts in one of the

technical committees) to diffuse the issue of the powers of the regions and the formulation of the report was used almost unchanged in the interim constitution.

The diplomatic community also played an indirect but often important role, using diplomatic channels to convey messages to and from the international community.

Finally, it must be noted that the way the process was managed contained elements that were inherently mediative or facilitative. Amongst these are the following:

- The intervention by the churches and business to break the political deadlock around violence.
- The way the technical committees in the MPNP were used as consensus-seeking and sometimes deadlock-breaking mechanisms.
- The iterative way in which reports by the technical committees served at the Planning Committee, on its way to the Negotiating Council was essentially mediating. The same is true of the way in which the Council could refer it back to the Planning Committee, the technical committee, or even the subcommittee. These same committees also served as deadlock-breaking mechanisms.
- The head of the administration had an unofficial mandate to be on the look-out for issues that could hinder or harm the process and report this to the lead negotiators of the main parties.
- The panel of rotating chairs ensured trust in the objectivity of the formal meetings.
- The practice of using sufficient consensus as the decision-making mechanism ensured at least that polarising voting did not take place.
- The building and maintaining of personal relationships and trust (over time) between some key figures.
- The fact that the two main parties had some form of training in principled negotiation acted as a foundation and ensured that individuals in the parties themselves, sometimes took on a mediating role.

6   **Conclusion**
A number of conclusions can be drawn from the above:

With regard to the South African peace process, it is clear that when political parties cannot break the deadlock around a specific issue (such as endemic violence), help must be sought elsewhere. But even then it may require a joint effort, as groupings such as business, labour or the churches may not be able to break the deadlock on their own. In South Africa's case, the role of the Consultative Business Movement (CBM) and its "process facilitation" was invaluable. In addition, the use of smaller working groups consisting of a variety of organisations, was useful to lower the political temperature, to focus on the issues separately in an otherwise very complicated problem, and to make step by step progress.

With regard to the South African constitutional process, it is useful to distinguish a pre-negotiation, preparatory negotiation and proper negotiation phase. With regard to the *pre-negotiation phase,* it became clear that in situations of high complexity there are often a number of factors that serve as both cause and effect for the continuation of conflict or dissatisfaction. To manage complexity, these have to be identified and addressed one after the other, or in parallel. At any given time in a process, a number of issues would be immediately relevant, some would be carried over from the past and some would be in preparation for future processes.

With regard to the *preparatory phase,* the so-called "rules of engagement" had to be agreed upon first. This included decisions on the venue for the negotiations, agreement on the administration and secretariat, the structures of the negotiating process and the name of the process. In addition, the issue of how exactly the process should work, had to be addressed. This included how decisions were to be made, how the recommendations should arrive on the table of the main negotiating body (e.g. through the work of technical committees), what deadlock-breaking mechanisms there should be and whether the media should be present in the negotiations to make the process transparent. Before formal negotiations can begin, there also had to be at least relative agreement on the objective(s) of the negotiation process. And (even if it was ex post facto) it was necessary and important to ensure the preparation of negotiators through training.

With regard to the *proper negotiation phase*, the majority of parties (especially the biggest two) had to be visibly committed to the process, notwithstanding what the outcomes might be. The complexity of the negotiations was actively managed, amongst others by self-imposed deadlines. It was important that the documentation (reports, agendas and minutes) were kept accurately and were provided on time. In the event of opposing sides nearing a deadlock on a certain issue, it was always deemed better to look for objective (often international) criteria that had already been used to resolve such an issue.

A softer issue, but nevertheless important, was the continuous building of personal relationships and trust across party lines. Structured social interaction, a sense of belonging and contributing to the process and creating an atmosphere of trust were important factors.

The parties showed themselves to be willing to participate in an iterative process to seek the strongest possible consensus and compromise. And both sides (indeed all sides) compromised. It a fiction of some minds that only one party gave in.

Finally, an interesting feature of the South African process that there was never any formal mediation from outside parties or the international community. The South Africans, through trial and error, decided that they would "do it themselves". Having said that, it remains true that many outside parties had an indirect influence on the process at crucial stages, call it "mediative" or "facilitating" circumstances, interventions, organisations and individuals.

The way in which the South African peace and constitutional negotiations processes were structured and managed, was significant and definitely had a positive impact on its eventual success. The mechanisms and processes used often had a mediative and facilitative nature, leading to what could be called "self-mediation". Though not a blue print, the lessons of these processes can be utilised with good effect in other similar situations.

Finally, these lessons from 30 years ago should be heeded by today's politicians and especially the governing party. The country finds itself in a situation where we once gain have a government losing legitimacy fast. Perhaps it is time for at least an economic Codesa, because it is clear that the present government is not able or trusted to get us out of the economic abyss we find ourselves in, especially as it is linked to the lingering effects of state capture, corruption, racial transformation and cadre deployment. May our trip down memory lane be more than that..