

POLITICAL

# Structuring complexity and inclusivity

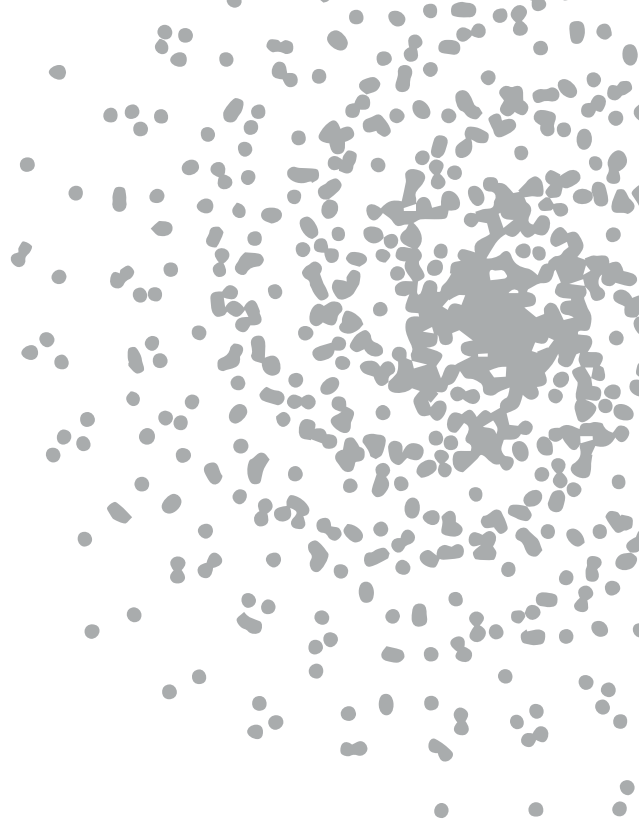
South Africa Peace Process



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# Foreword

HANNES SIEBERT AND ANDRIES ODENDAAL

What is the relevance of South Africa's experience in self-mediation for Cyprus? This is obviously a question that needs to be answered by Cypriots. However, as South Africans who had, in different capacities, been involved in the South African process, we wish to highlight the following issues that may assist in answering this question.

1. The process in South Africa took place during the first half of the 1990s. This was a period of *détente* in international relations. The Cold War was seemingly a thing of the past. It meant, in practice, that South Africa could concentrate on its own problems without debilitating international interference. Currently we live in a different context where international tensions run deep. Cyprus finds itself, both geographically and historically, at the midpoint of serious international frictions. This fact does not at all negate the value of self-mediation for Cyprus, but it does mean that the management of international interests in internal negotiations will require much greater attention and skill than South Africa needed.
2. Perhaps the most important lesson is that deep structural problems cannot be solved without a transformation of relationships. An enormous amount of time and energy went into dialogue that addressed the core psycho-social needs of the different groups. For example, black South Africans needed acknowledgement of the injustices of the past (hence the establishment of a Truth and Reconciliation Commission), affirmation of their dignity considering the historic insult to their humanity, and assurances of their full inclusion in political and economic processes. White South Africans, on the other hand, needed security and an affirmation of their continued participation in the political and economic life of the country. The relative transformation of relationships that resulted because of this multi-level dialogue made a political agreement possible. It was unthinkable that, for example, the new constitution would have been agreed to if the old attitudes had persisted.
3. Another central lesson of the South African experience is the importance of a constant focus on *process*. The process that was followed evolved because of changing circumstances, but also because of a *deliberate attention* to improving it. Lessons were learnt, such as the lesson that negotiations where each party simply keeps on restating their (well-known) positions, are not productive. The "one document" approach not only saved valuable time, but it vastly improved the quality and productivity of negotiations.
4. The negotiation process also evolved in terms of its openness to the public. The meetings of the Negotiating Council were open to the media, while members of the public could witness proceedings on television monitors in an "overflow room". The negotiations in Parliament on a new constitution were open to the public. Proposals from the public were encouraged and welcomed, particularly regarding constitutional proposals. The result was a high level of public approval for the new constitution and a sense of collective ownership of the constitution.

5. It is also significant to note that women had equal representation on the Negotiating Council. Every participating party had two representatives on the Council – a man and a woman. In a society where women did not enjoy equal opportunities, this was a hugely significant statement.
6. The formal dialogue and committees were inclusive of all the representative political stakeholders that were willing to be at the table. It was not just a dialogue between the leaders of the National Party government and the ANC.
7. Sufficient consensus was determined by the Planning Committee (in the case of the Multi-Party Negotiation Process). In effect it meant agreement between the National Party Government and the African National Congress (ANC), being the two main parties. The mechanism of sufficient consensus prevented the process from being blocked by smaller parties, but alienated important players like the Inkatha Freedom Front (IFP) and the Afrikaner Volksfront.
8. In more recent national dialogues such as Yemen, they used percentages of voting to indicate consensus — Plenary and Working Groups: 90%; Consensus Committee: 75%; Discussion and proposal: Until 75% consensus. In the case of Myanmar, the formula for decision-making was “internal consensus” of the three main stakeholder groups.
9. Apart from the negotiations and technical committees in the South African process, there were also multiple bi-lateral dialogue tracks to resolve issues between parties and individual leaders — such as the groundbreaking confidential dialogue between Nelson Mandela and the former chief of the army, General Constant Viljoen. Civil society convened many informal thematic conferences and round-tables and the public broadcaster had multiple “dialogue” programs per week on essential issues.
10. Lastly, the fact that South Africa could navigate its own ship through the stormy waters of such a process is a source of deep national pride. The value of this fact should not be underestimated.

The Cyprus Dialogue Forum (CDF) created a unique track 1.5 dialogue structure to help break deadlocks, strengthen relationships and create structured knowledge-based dialogues between all stakeholders on the island. CDF would be well-placed to facilitate and help create technical and thematic committees within the context of the formal dialogue, but also continue to convene the informal spaces for ongoing conversations and building common understanding.

# Introduction

From the mid-1980s to 1996, the South Africans negotiated a difficult transition from a repressive apartheid state to a constitutional democracy. At the heart of the transition was dialogue, which helped to establish a culture of peaceful negotiations, fostering a culture of constructive cooperation and coexistence, and facilitating a unique example of self-mediation. The process was an inclusive affair – smaller political groups were able to voice their perspectives and shape agreements through formal multiparty negotiating forums. The media began to cover these forums, and the public began to scrutinise them. Several lessons can be drawn from this unique experience – there were some techniques or approaches that were used successfully to build consensus, while others come from the mistakes that were made throughout the negotiation process.

## ABBREVIATIONS

ANC	: African National Congress	MPNP	: Multi-Party Negotiating Process
AWB	: Afrikaner Resistance Movement	NP	: Nationalist Party
AZAPO	: Azanian People's Organization	NPA	: National Peace Accord
CBM	: Consultative Business Movement	NPC	: National Peace Committee
CODESA	: Convention for a Democratic South Africa	NPS	: National Peace Secretariat
COSAG	: Concerned South Africans Group	PAC	: African Pan-Africanist Congress
COSATU	: Congress of South African Trade Unions	RPCs	: Regional Peace Committees
CP	: Conservative Party	SACC	: South African Council of Churches
IDASA	: Institute for Democratic Alternatives in South Africa	SACP	: South African Communist Party
IFP	: Inkatha Freedom Party	UDF	: United Democratic Front
LPCs	: Local Peace Committees		

# Roots of the Conflict

*The roots of the conflict in South Africa can be traced back to its history of European colonisation and apartheid. The imposition of apartheid laws in the mid-20th century by the ruling party, the National Party, further entrenched racial divisions, with non-whites subjected to forced removals, restricted movement, and limited political rights. The African National Council and other anti-apartheid groups emerged to challenge these injustices through protests, civil disobedience, and armed resistance.*

## EUROPEAN COLONISATION AND APARTHEID

Negotiating South Africa's democratic transition in the 1990s was problematic due to the segregation and inequality that existed in the state structure at that time. Historically, the territory that constitutes South Africa has been inhabited by many peoples. By 1990 there were four principal groups: (1) the "coloureds" included the first people of the land, the descendants of the San (predominantly hunter-gatherers) and Khoen (cattle owning nomads) that intermingled with people of European, Asian and African origin, constituting 9.1% of the population of South Africa in 1990; (2) Black Africans who slowly migrated south from central and western Africa during the first millennium of the Common Era, constituting 73.8% of the population of South Africa in 1990; (3) Europeans who settled in South Africa during two successive colonial occupations – i) Dutch (1652-1795) and ii) Britain (1806-1961) - as well as immigrants from a number of countries when diamonds and gold were discovered in the mid-19th century, constituting 14.3% of the population of South Africa in 1990; and finally (4) Indians who arrived in South Africa during 1860s as indentured labourers, constituting 2.8% of the population of South Africa in 1990.

South Africa thus had a multi-racial society since the colonial era during which the Europeans were in control and the non-Europeans mainly served as servants and labourers. Dutch settlers landed in 1652 at the Cape of Good Hope and began to farm the fertile lands with slave labour from Asia and Africa. In 1806, the British gained total control of the region. Many Dutch settlers, who now called themselves "Afrikaners" or "Boere" migrated into the interior to escape British rule, where they founded new colonies, also known as the new 'Boer Republics' of Transvaal and the Orange Free State. Although the Afrikaners saw this movement as a liberation from British oppression, it meant foreign oppression for the African indigenous peoples. Over the century, as the British consolidated their control over the remaining African kingdoms, they also subsumed the "Boer Republics" when they won a war against the Afrikaner Republics (1899-1902). The war was won by, *i.e.*, implementing a scorched-earth policy and detaining Afrikaner and African civilian communities in concentration camps. The Boer Republics acknowledged defeat in May 1902, paving the way for the establishment of the Union of South Africa under British rule.

With the merger of British and Afrikaner controlled territories under the British monarchy and the inauguration of the new Union of South Africa in 1910, the Afrikaners gained dominance, establishing a regime of white supremacy. Racial segregation was implemented through enacting numerous discriminating laws. Almost 87% of all land was reserved for white ownership, and African, Indian, and "coloured" populations were gradually excluded from participation in politics. In 1948, the Afrikaner extremist National Party (NP) gained power and systematically extended apartheid to promote the economic and political power of Afrikaners, leading to one of the most unequal wealth distributions in

the world. People were segregated into racially defined neighbourhoods, and non-white communities were forced to leave designated white-only areas and their movement was restricted and strictly controlled with “pass laws”.

## ANTI-APARTHEID STRUGGLE

The South African Native National Congress, which in 1923 became the African National Congress (ANC), was formed following the establishment of the Union of South Africa, to fight racial discrimination. The ANC and the South African Indian Congress organised a mass civil disobedience campaign in 1952 to broaden the base of organised resistance inspired by Gandhi's earlier campaigns. A Congress of the People was convened by the ANC in 1955 in order to draft a Freedom Charter for all South Africans which influenced political thought, promoted pro-democracy activism, and helped shape the formal negotiations in the future. Popular resistance in the 1950s led to the government outlawing the ANC in 1960, as well as its rival, the African Pan-Africanist Congress (PAC). ANC leaders decided that peaceful protest alone would not be effective in the face of harsh repression and formed an armed division in 1961, known as Umkhonto we Sizwe (or MK). In 1964 opposition leaders, including Nelson Mandela, were imprisoned for life and others were forced into exile. In the years to follow, hundreds of protesters were killed and many imprisoned.

A series of constitutional reforms were implemented by Prime Minister P.W. Botha in 1982. In 1983, a Tricameral Parliament was established with separate chambers for white, coloured, and Indian representatives. The chambers for coloureds and Indians were given some authority over their own affairs, while the white chamber retained control over national issues, with the right to veto the decisions of other chambers. Black Africans' political future remained restricted to the “Black Homelands”. As a result of these constitutional reforms, the National Party was split into two groups, resulting in the formation of the Conservative Party (CP) that resisted these ‘reforms’.

The reforms had the opposite effect, though, leading to an opposition movement among the communities to resist the tricameral system. The ANC-affiliated United Democratic Front (UDF) brought together religious, community, and professional organisations from across South African civil society. They joined forces with the Congress of South African Trade Unions (COSATU) to launch the Mass Democratic Movement, leading to uprisings, strikes and boycotts paralysing the country. As a response, the government imposed a state of emergency in 1985 leading to more violence as thousands were killed and many more arrested. As the country became increasingly ungovernable, the NP leaders realised they could not contain the conflict by minor reforms.

# Mapping the issues: The road to formal negotiations

*The root causes of South Africa's conflict encompassed political, economic, security, and sociological dimensions. The struggle was marked by efforts to address a unitary state that excluded the majority of its population, while minority rights were also a concern. Economically, disparities in wealth and ownership fuelled tensions between different racial groups, while violence and the legacy of apartheid added further complexity. Confidence-building measures, including secret talks and the release of political prisoners, laid the groundwork for formal negotiations to commence.*

## CORE ISSUES – THE HURTING STALEMATE

The conflict in South Africa was multifaceted; it had political, economic, security and sociological dimensions. South Africa's unitary statecraft excluded the vast majority of its population. On the other hand, the white community feared the political repercussions of a black majority. The challenge was in developing a political regime that would address legitimate demands for inclusion while respecting minorities' rights. Whites, in particular, had no geographical base, in South Africa where they were the majority, but lived as minorities in all the provinces. This made the challenge more complex as it eliminated the possibility of creating a geographically based federal state. Both major parties held contradictory views: the ANC advocated for a majoritarian state with a central government that would be elected by the whole population. The NP wanted safeguards for minority rights and a form of consociational democracy to counter majoritarianism.

Economically, the black community favoured a distributive economic policy that would address the injustice done and repair the devastation wrought by past exclusionary practices. Meanwhile, the white community feared losing private property and perhaps much of their savings if a radical transformation of the economy occurred. The ANC sought a distributive economy and to reform the ownership of the economy, including nationalising mines. On the other hand, the NP was a strong advocate of a market economy. A compromise would have to be reached between these positions whilst considering the extreme levels of inequality and poverty, along with an extremely weak economy.

With regards to security, the colonial history of South Africa was plagued by violence that had become embedded in the political and socio-economic structures of the country. Historically, black communities suffered disproportionately from violence. In particular, the police were responsible for ensuring compliance with laws that enforced discrimination and inequality. Eventually, the black community saw the police and the justice system as extensions of the inherent violence of the system whereas the white community viewed the police as their defenders against anarchy. There was a dramatic increase in violence during the 1980s. More than 1,000 people per year died because of political violence between 1985 and 1990 and these casualties were overwhelmingly from the black community. The government blamed the lawlessness on the ANC's calls for 'ungovernability' whereas the ANC blamed the government and its security forces for the acts of violence. Most deaths occurred in the 1980s because of the conflict between ANC followers and followers of the Inkatha Freedom Party (IFP) under Chief Mangosuthu

Buthelezi. The IFP, a Zulu nationalist party with ethnic and regional roots, argued for a form of federation which would serve its interests better than a unitary state. Although Buthelezi had previously been a member of the ANC, the two parted ways because Buthelezi decided to work with the government to implement its federalist policy. The ANC and IFP fought one another as a proxy war, with the government aiding the IFP with training and weapons. All in all, negotiations were required to address the challenge of stopping the violence and restoring stability.

Multiple sociological themes also had to be addressed for the implementation of a peace process, such as the issue of amnesty. There was a divide between the NP, who demanded a blanket amnesty, and the ANC and civil society, who demanded answers for the crimes committed in the past. Finding a balance between peace and justice proved to be a dilemma. Furthermore, interactions between different races in South Africa had been dominated by deep-rooted feelings of inferiority and superiority due to the nature of apartheid. Lastly, success in negotiations was also dependent on the level of trust between the parties. However, the history of South Africa had been riddled with agreements that have been broken. Therefore, it was crucial for the parties to construct an environment of trust and confidence.

## CONFIDENCE BUILDING – ‘TALKS ABOUT TALKS’

The ANC and the NP started to communicate, albeit secretly, via civil society initiatives in the mid-1980s. These exploratory 'talks about talks' led to the establishment of personal relationships between the parties and created confidence that a settlement could be reached. In particular, three initiatives stood out: secret meetings between the imprisoned Nelson Mandela and Kobie Coetsee, the Minister of Justice, over a period of five years; eight secret meetings held between October 1987 and 1990 facilitated by Consolidated Gold Fields, a London-based mining company with large South African investments, between the ANC and prominent academics associated with the NP; and the 'Dakar Safari' process organised by the Institute for Democratic Alternatives in South Africa (IDASA) whereby a group of Afrikaner opinion-makers had face-to-face meetings with exiled ANC leaders.

The election in 1988 brought F.W. De Klerk, a pragmatic reformist, to power. A meeting of the Mass Democratic Movement in December 1989 adopted a resolution supporting the ANC's Harare Declaration, which outlined negotiation prerequisites, thus providing broad support for the possibility of a negotiated settlement. During the opening of parliament on 2 February 1990, De Klerk made a historic speech and announced the lifting of the ban on the ANC and on other banned political organisations, as well as the release of imprisoned political leaders, most prominently Nelson Mandela, who had been imprisoned for 27 years. By taking this step, the exiled leadership of the ANC were able to return to the country. Formal negotiations were set to begin.

# The National Dialogue: Formal Negotiations

*The ANC and NP decided to self-mediate the transition process, eschewing international mediation due to past experiences. Confidence in their ability to negotiate successfully led to the construction of a progressive and inclusive process, culminating in self-mediated negotiations. These negotiations involved various political factions and resulted in two successive multi-party processes (CODESA and MPNP) aimed at drafting a new constitution.*

## OWNING THE TRANSITION – SELF-MEDIATION

By watching their counterparts in Zimbabwe and Namibia participating in the peace negotiations directed by international mediators, the ANC recognized that the best course of action was to avoid international mediation, which was, in their opinion, biased. The NP also wanted to avoid international mediation after encountering US and British pressure during the Namibian negotiations. Furthermore, intense international criticism and pressure had been exerted on the NP due to the apartheid regime, and they felt an international mediator would not be fair to them. In the confidence-building stage, both actors developed sufficient confidence in their ability to negotiate a successful outcome. Therefore, a progressive and inclusive process was gradually constructed by South African leaders, assisted by civil society and technical experts. In the end, most of the negotiation was self-mediated.

## SETTING THE SCENE

South Africa's transition to democracy was not a singular event, but rather the result of a variety of dialogues. Groote Schuur was the location of the first formal meeting between the NP government and the ANC, which took place on 2-4 May 1990. The outcome was the Groote Schuur Minute with resolutions on the release of political prisoners, immunity for returning exiles, and the ongoing violence in the country. In their joint statement, the parties declared their commitment to stabilise the country, conduct negotiations and establish effective communication channels.

The second meeting in Pretoria took place on 7 August 1990. As part of the Pretoria Minute, the ANC announced the suspension of the armed struggle. On the other hand, the NP promised that the state of emergency would be lifted in Natal and that the legislation regarding security would be reviewed. As part of the DF Malan Accord signed in February 1991, commitments derived from the working group on political offences were agreed upon, as well as the terms of the ANC's suspension of armed struggle. According to the agreement, the ANC would not launch attacks, build underground structures, threaten, or incite violence, infiltrate men and materials into the country, or train men for armed action.

The bilateral negotiations, however, were not considered inclusive enough to proceed with a full transition to a democracy. The ANC was the largest of the opposition political parties, but its members belonged to several factions. Along with the ANC, the anti-apartheid movement also encompassed

various other political groups, some of which were opposed to negotiations. Different political groups also existed within the white population, ranging from those who opposed negotiations to those who advocated for full equality. Several parties, the largest being the IFP, were also formed to promote the interests of certain ethnic groups or their homeland governments. There is no doubt that the ANC and the NP dominated the negotiations. Without their consent, it was impossible for an agreement to be reached.

In light of the ongoing – and even increasing – violence during the negotiation period, the multi-party process split into two separate tiers: one for establishing violence prevention structures, and the other the negotiation of a new constitution.

## **DEALING WITH VIOLENCE: NATIONAL PEACE ACCORD (NPA)**

Anti-apartheid activism was largely non-violent for much of the twentieth century. However, during the 1960s, armed struggles were launched to force the government to abandon its policies, prompting state security forces to respond with violence. In the absence of mechanisms and instruments for dealing with the political conflict, animosity and tensions erupted into violence. The level of political violence skyrocketed from 1985 to 1991, with a 307 percent increase in fatalities. There was a growing concern among South Africans by 1990 that the violence could derail constitutional negotiations. This crisis led to the negotiation by the political parties of South Africa of the 1991 National Peace Accord (NPA), which was aimed at preventing violence. To implement the agreement, the NPA established a network of structures across the country that dealt with violence exhibited by political parties and security forces.

### **The National Peace Convention: The Facilitators and the Process**

The first initiative came from the churches when a landmark national conference involving all Christian organisations except two took place in November 1990. Participants adopted the Rustenburg Declaration that denounced apartheid and called for a democratic constitution and a more equitable distribution of wealth. They also decided to convene a peace conference. The South African Council of Churches (SACC) was, however, unable to convene a peace conference in March 1991 due to opposition from the IFP, which viewed the SACC as collaborating with the ANC.

In parallel with the church initiative, several large corporations formed the Consultative Business Movement (CBM). As a result of a series of private meetings with leading figures, the CBM became credible as a possible facilitator of negotiations on both the NPA and the new constitution. Following mounting pressure to respond to political violence, President De Klerk announced a peace summit for late May 1991. While the IFP welcomed this initiative, the ANC and others rejected it as a propaganda stunt, claiming the government had no credibility to initiate such a process. To move the process forward, CBM and senior church leaders decided to act. As a result, they convened an emergency meeting, inviting leaders of other key associations of business associations and the COSATU. In backchannel discussions with key politicians, a consensus developed that allowed the government summit to be viewed as an independent event.

The SACC, ANC, and some others did not attend the summit, but delegates still expressed their opinions on the causes and proposed solutions for ending violence. The conference appointed Louw Alberts to facilitate a second peace conference. As part of his tasks, he was instructed to form a 'facilitating committee' that could convene a more representative meeting. In the end, a 13-person committee of representatives from the church and business community was formed under a rotating chair. The committee determined that the main political leaders should not negotiate directly, as it would be difficult for them to make concessions to reach an agreement. As an alternative, the committee decided that junior representatives should participate in a forum out of the limelight so that consensus could be built. The facilitators would consult with the main parties, coordinate their efforts, and identify acceptable proposals. A quiet preparatory meeting was held by the committee in late June. Nearly 120 representatives were appointed from all political groups except three white right-wing parties. It was an historic moment: the NP, ANC, and IFP met for the first time to discuss violence. Another novel development was the participation of the PAC in a forum where the government was also represented.

Following discussions on the causes and potential solutions to violence, the participants resolved to establish a preparatory committee and set up working groups to formulate recommendations. A preparatory committee was formed by adding nine members, three each from ANC, IFP and NP, to the existing non-partisan facilitating committee. The preparatory committee established five distinct working groups to formulate recommendations on key topics: (a) code of conduct for political parties; (b) code of conduct for security forces; (c) socio-economic development; (d) implementation and monitoring; and (e) process, secretariat, and media. Each working group consisted of three representatives from the government, the ANC, and the IFP, as well as one religious and one business representative. The administrative support was provided by the CBM.

A National Peace Convention was held on 14 September 1991 following a series of deliberations, negotiations, and draft agreements. This was a remarkable event, bringing together senior political leaders, civil society, churches, and business associations under one roof for the first time. Eventually, the drafts were combined to form the National Peace Accord which was signed by 27 political, trade union and government representatives. However, the NPA was not unanimously endorsed as some key stakeholders had more radical views and refused to sign. On the one hand, the PAC, and the Azanian People's Organization (AZAPO) refused to sign because they refused to participate in any structure involving the government. On the other side, the CP, the right-wing Afrikaner Resistance Movement (AWB) and Herstigte Nasionale Party did not attend or sign. Three of the homeland governments also refused to sign; Ciskei signed but later withdrew from implementation. Despite this, the majority committed themselves to implementing the NPA.

## NPA: Objectives and Principles

South Africa's first structured peace-making and peacekeeping system was created by the NPA. Even though the NPA was signed by the political parties, violence was often attributed to them. Each signatory was required to monitor the other's adherence to the code of conduct. It was a requirement that political parties and organisations condemn violence publicly, refrain from promoting or using violence and cooperate with authorities. The security forces, especially the police, were subject to specific rules and guidelines.

The agreement was based on several principles: promotion of good governance, mutual responsibility, and accountability; and recognition of the fundamental rights and freedoms of conscience and belief,

speech and expression, association, movement, peaceful assembly, and peaceful political activity. The history of oppression and intolerance made these commitments especially noteworthy. Poverty was recognized as a driving force behind some of the most extreme violence, along with intense political rivalry. Consequently, the NPA provided for economic and social reconstruction to help and involve affected communities. Moreover, it emphasised the need for immediate rehabilitation or reconstruction of areas affected by violence.

## **NPA: Structures**

The NPA stipulated mechanisms for implementing violence prevention at the national, regional, and local levels. These structures were mainly financed through the national budget, with private sector and foreign aid agencies providing additional support. The budget was initially administered by the Department of Justice, but in 1993, bureaucratic delays and a perception of government control led to its transfer to the National Peace Secretariat.

### **NATIONAL LEVEL STRUCTURES**

A 60-person National Peace Committee (NPC) was formed by representatives of all signatory parties and the preparatory committee, which was co-chaired by Bishop Stanley Mogoba and business leader John Hall and operated on a consensus basis. The NPC was mandated to oversee the implementation of the NPA; address any political obstacles affecting its implementation; and monitor political party compliance with the codes of conduct. A National Peace Secretariat (NPS), headed by Anthonie Gildenhuys, supported the NPC. In addition to executing the orders of the NPC, the NPS established and coordinated the regional committees. A representative from the Department of Justice, a representative of the legal profession, and representatives of five political parties were selected to serve on the seven-person NPS which also operated on a consensus basis.

An independent, five-member Commission of Inquiry (Goldstone Commission) was also established at the national level to inquire into the causes of political violence, to identify the perpetrators and to recommend solutions. A distinguished group of senior members of the judiciary and legal profession served under the leadership of Justice Richard Goldstone. As well as examining past events, they also looked at situations that could lead to violence, for instance upcoming elections or demonstrations. Also established was a Police Board designed to improve policing and police-community relations.

### **REGIONAL LEVEL STRUCTURES**

A total of eleven Regional Peace Committees (RPCs) were established across the country, except for the four independent homeland governments that did not sign the NPA. Political and religious groups, unions, business groups, local authorities, security forces, and other relevant organisations participated in each RPC. Through mediation, supervision, and facilitating preventive action, RPCs were tasked with preventing violence in their region and decisions were made by consensus. As part of their work, they reported on the causes of violence to national structures, coordinated regional activities, and provided support to local committees. The Minister of Law and Order also appointed Police Reporting Officers, nominated by the Bar Association, at the regional level. These officers investigated allegations of police misconduct and supervised the Complaints Investigation Unit.

## LOCAL LEVEL STRUCTURES

Local Peace Committees (LPCs) were established in each region, eventually totalling over 260 across the country. Every LPC was designed to reflect the composition of that community and include members of key stakeholders and reported to their RPC. A key function of LPCs was to promote trust and reconciliation locally and to mediate conflicts. Their work included promoting compliance with the agreements, liaising with the local police and judiciary, and implementing regional and national initiatives. LPC members gained experience in conflict resolution, facilitation of meetings, and negotiation skills. Several regions had special Justices of the Peace capable of launching their own investigations into the violence. Locally, the Department of Justice also established Special Criminal Courts in coordination with the legal profession. Their purpose was to handle unrest-related cases more quickly and effectively than existing courts, and they operated according to special rules.

## The NPA and Constitutional Negotiations

Although aimed at ending the violence, the NPA played a crucial role in negotiations on the constitution. When the constitutional negotiations were suspended, the NPA structures remained active, providing a communication channel between the signatory parties. Further, many of the party representatives involved in negotiating the NPA were also involved in negotiating the constitutional framework. Relationships developed through the NPA process. The methods of resolving disputes proposed by the business and church circles served as an asset in later negotiations. The NPA's country-wide structures for preventing political violence appeared to have contributed to the stability of the country during constitutional negotiations.

# Fail Again, Fail Better: CODESA I and II

From the start, the ANC demanded an elected assembly to draft the new constitution. The argument was that a democratic state can only be built on an inclusive and democratic basis, whose constitution must be written by the people through their elected representatives. On the other hand, the NP and other smaller parties representing minority constituencies were concerned that an elected assembly would negate the purpose of negotiations and result in majority rule without constitutional safeguards and called for a multi-party forum where all political parties would agree to a new constitution by consensus and hold a referendum to approve it. In the end, this dispute was resolved by the decision to hold a multi-party conference where all parties, regardless of their size, were to be equally represented to determine the fundamental principles of the constitution and the structure of a transitional government. A transitional government would be elected with a mandate to negotiate the final constitution. This first multi-party conference for negotiations took the form of the Convention for a Democratic South Africa (CODESA).

## PREPARATION FOR CODESA

An All-Party Preparatory Meeting involving most political parties and homeland governments was held at the end of November 1991 to determine the structure and working methods of CODESA, presided over by two senior judges. The participants agreed on the agenda, the formation of a steering committee to assist with the convention, and the international observers to be invited (the United Nations, the Organisation of African Unity, the Movement of Non-Aligned Countries, the Commonwealth, and the European Community). It was further agreed that the convention would discuss the constitutional principles, the constitution-making process, as well as the transitional arrangements.

## PRINCIPLE OF SUFFICIENT CONSENSUS

As a rule, decisions were taken based on consensus, failing which the device of sufficient consensus was introduced: consensus was to be sought, but if it could not be reached, the members of the Planning Committee would determine whether sufficient agreement had been reached for negotiations to proceed. However, in practice, sufficient consensus meant consensus between the NP and the ANC. Most of the smaller parties were capable of being persuaded by their influence. As well as the formal process, bilateral bargaining was conducted on the side-lines. Several parties were not in favour of this principle, particularly the IFP and the PAC, and challenged its application. Nonetheless, by using this method, moderate parties were motivated to reach an agreement in the face of any pressures exerted by the extreme parties.

## CODESA I: PARTICIPANTS AND PROCESS

The first CODESA plenary session was held on 20 December 1991 with 238 delegates from 19 participating parties and nearly 1,000 international observers. The participating parties of CODESA were: The government, the ANC, the NP (representing itself separately from the government, albeit with identical views), the IFP (while Buthelezi personally boycotted the sessions), the South African Communist Party (SACP), the Democratic Party, the Dikwankwetla Party, the Nyandza National Movement, the Intando Yesizwe Party, the Labour Party, the Transvaal and Natal Indian Congress, the National People's Party, Solidarity, the United People's Front, the Ximoko Progressive Party; and the homeland governments of Transkei, Bophuthatswana, Venda, and Ciskei. While most political parties participated, some organisations both on the far left (such as the PAC and AZAPO) and on the far right (such as the CP and the Herstigte Nasionale Party) refused to attend. COSATU applied for CODESA participation but was denied.

A Declaration of Intent was adopted by the delegates which included the basic principles on which the negotiations would be conducted. Accordingly, it was agreed, among others, that:

- (a) South Africa would be a united, democratic, non-racial and non-sexist state;
- (b) The Constitution would be the supreme law, guarded over by an independent, non-racial and impartial judiciary;
- (c) There would be a multi-party democracy with the right to form and join political parties and with regular elections on the basis of universal adult suffrage, whereby the electoral system would be that of proportional representation;
- (d) All citizens would enjoy universally accepted human rights, freedoms and civil liberties including freedom of religion, speech and assembly protected by an entrenched and justiciable Bill of Rights and a legal system that guarantees equality of all before the law.

## STRUCTURES

During the first plenary, five working groups were formed to work on major topics, and a Management Committee was formed to supervise the process. Also, a second plenary session was scheduled for March 1992. Each party was represented by one delegate and one advisor on the Management Committee. Its activities were assisted by a secretariat and a Daily Management Committee, whose administrative staff was provided by the CBM and the Department of Constitutional Development. Several sub-committees were formed to deal with specific issues. The first addressed the representation of traditional leaders and others who applied to participate; the second addressed gender issues.

To each working group, each party nominated two delegates and two advisors. A total of five working groups have been established to work on the following: (a) creation of a climate for free political activity; (b) constitutional principles; (c) transitional arrangements; (d) future of the 'independent homeland' states; (e) timeframe and implementation. The working groups met twice a week. The management of the agenda and work programme was the responsibility of each group's steering committee. Interim reports were prepared by the groups and presented to the Management Committee, which would then present agreed proposals to CODESA plenary for approval and ratification. The CODESA quickly became an important forum for political discussion, and the negotiators formed strong connections over time.

## CODESA II AND BREAKDOWN

The CODESA process was criticised for the following reasons: While the public was invited to submit their opinions on the constitutional principles to CODESA's working groups, there was no outreach to educate the public and influential stakeholders were not consulted on key issues. The lack of transparency was later criticised by some delegates and negotiations collapsed before they could be opened to the media. The argument was also made that developing a cohesive agreement package through working groups was challenging. A further consequence was that success in one group and failure in another strained the entire process, in part because there were no mechanisms developed to overcome deadlocks.

There were also some problems with the format of these talks. Each working group consisted of approximately 80 people and each party presented its position in writing and verbally on every issue which turned out to be a tedious and lengthy process. Moreover, this system encouraged positional bargaining that was counterproductive. While all parties were represented on the management committee, consensus-seeking was not encouraged.

By March 1992, there was no progress being made by the working groups. When conservatives criticised the NP for not representing white voters, De Klerk held a referendum to seek and determine the level of support among the white community for the negotiations. The result was an overwhelming success for the NP, affirming the white community's support for a negotiated settlement. Having strengthened its position, the NP returned to the process determined to resist the ANC's efforts to form an interim administration. In the meantime, a second plenary session was scheduled for 15-16 May to ratify agreements for the next phase.

However, no consensus was reached by the parties regarding the interim governance arrangements and the principles for establishing the political structure. In principle, they agreed that a temporary government would be formed, and an interim constitution would be drafted by an assembly. Nevertheless, disagreements arose regarding the number of votes required to adopt the constitution and whether an additional chamber of parliament would be necessary or useful. The ANC was worried that a permanent constitution would not be drafted once an interim constitution was in place. The NP, on the other hand, sought a system that would allow it to have an effective veto which would ensure its survival as a political actor in the new structure.

Prior to the plenary, however, Working Group 2 on constitutional principles remained deadlocked, whereas Working Groups 1, 3 and 5 reached an agreement. The plenary meeting was marred by tensions between negotiators, despite the presence of television cameras and journalists. In the end, a subsequent plenary was agreed upon, since Working Group 2 could not reach an agreement.

# THE INTERMISSION

## Return to Mass Action

Shortly after the failure of CODESA II, in June 1992, Boipatong, a Black township in what is today the Gauteng province, was attacked by armed men believed to be IFP supporters. Forty-nine people died and many were injured. Announcing the suspension of all negotiations, both bilaterally with the government and multilaterally through CODESA, the ANC requested a meeting of the UN Security Council to discuss the issue. At the same time, the Tripartite Alliance of the ANC, SACP, and COSATU announced 'mass action' (protest actions such as marches, boycotts, and strikes). As violence continued and intensified following the suspension of negotiations, several initiatives were launched to bring in a mediator. After a two-day UN Security Council debate in mid-July, Cyrus Vance was appointed Special-Representative of the Secretary-General, tasked with investigating the violence and recommending ways of resuming negotiations. A UN observer mission comprised of 50 members was formed shortly thereafter.

## Channel Bilateral and Record of Understanding

Although the CODESA process collapsed, both the ANC and the NP, having invested a lot of political capital for a negotiated solution, remained committed to find a way forward. Therefore a 'bilateral channel' was established in August 1992 to maintain a confidential dialogue. The ANC's Cyril Ramaphosa and the NP's Roelf Meyer were the main actors in this respect. Significant progress was made, resulting in Mandela and De Klerk signing the Record of Understanding on 26 September. The Record, among others, included an agreement on the formation of an elected assembly to act as an interim parliament which would also draw up a constitution based on the principles agreed in the prior multi-party negotiations. The parties also agreed that in future negotiations, they would first reach a bilateral agreement on issues before going to other parties for multilateral negotiations. The ANC and NP teams met privately towards the end of the year to formulate political strategies and improve their working relationships. As a result of successive bilateral meetings thereafter, a common negotiating position emerged as a basis for their joint participation in future multilateral forums.

# The Last Tango: Multi-Party Negotiating Process

## NEGOTIATION PLANNING CONFERENCE

In the meantime, the IFP and the CP protested and rejected the principles of the agreement and joined with several homeland governments and Afrikaner parties to establish the Concerned South Africans Group (COSAG). However, the COSAG members began to realise that by not attending multilateral forums, their influence on the outcome would be minimal and decided in January 1993 to resume multiparty negotiations, provided that the new negotiating process would be devised in consultation with them.

The COSAG was against the continuation of CODESA or any process with that name. To promote greater inclusivity in the negotiation process, the conference was named as the Negotiation Planning Conference. The Negotiation Planning Conference took place in early March, providing an opportunity for the political parties to revamp the negotiation process and resolve some of the objections to CODESA. It was further agreed that the principles agreed upon in CODESA would only serve as a guide. The conference resolved to establish a new negotiating forum, the Multi-Party Negotiating Process (MPNP), to meet on 1 and 2 April 1993.

## MULTI-PARTY NEGOTIATING PROCESS

### Participants, Structures, and the Innovations to the Process

At first, the MPNP was as inclusive as possible: 26 parties participated - the government, political groups, homeland governments, and traditional leaders. It was the first time that the PAC, the CP, and Volksunie took part in the negotiations; only the far-left AZAPO and some extreme Afrikaner parties, such as the AWB did not take part. Regardless of their estimated support, all 26 political groups participated on an equal basis.

Agreements were negotiated by a Negotiating Council, which was central to the process. They met three or four days a week almost continuously from April through November. Upon reaching sufficient consensus, the Negotiating Council submitted its recommendations to the Plenary, composed of 208 members representing 26 parties, for ratification. In the Negotiating Council, each party had two delegates, including at least one woman, and two advisers. In the original form of the process, it was envisaged that a Negotiating Forum would be situated between the Plenary and Council, but over time the Council assumed its responsibilities.

The Negotiating Council received reports from the Planning Committee, a body made up of 10 members from diverse political parties and chaired on a rotating basis. The judges were no longer involved in the process. These members were appointed primarily on basis of their personal ability to work well across party boundaries. Their task was to manage the process of dialogue and ensure its productivity. They

were not mandated to make any decisions on substantive matters but had to advise on the process to follow and to anticipate and pre-empt potential deadlocks.

Technical Committees were also extensively used by the Negotiating Council which were composed of non-partisan experts who enjoyed the confidence of all political parties. They sought to reach compromises and methods to break deadlocks. Rather than presenting their views orally, the parties drafted written submissions, which were then considered by the Technical Committees who compiled these in reports where a compromise was often suggested, and proposals were often based on interests instead of positions. The Planning Committee considered their reports and prepared resolutions for the Negotiating Council's consideration. A 'one-text' approach was used by the Negotiating Council where the proposals were collectively discussed. If the Technical Committees failed to reach a compromise, either the Planning Committee or an ad hoc task group consisting of politicians and technical experts resolved the issue.

The CBM provided an independent secretariat and administrative support for the process. A well-qualified team led and staffed the CBM. Their responsibilities stretched well beyond administrative duties. They collaborated closely with the Planning Committee and played a significant role in developing the process.

## **Inclusiveness, Public Ownership, Transparency and Media**

The media coverage of these forums improved over time with the result that the negotiations became more accessible to the public. Through public consultations, many political parties involved their constituencies indirectly in the negotiation process which made these processes more inclusive and transparent. A wide range of issues were open for proposals from the public to technical committees. These initiatives contributed greatly to the sense of public ownership of the process as well as to the legitimacy of the new state structures. They created conditions that led to a radical change in South Africa's formerly exclusionary and secretive political culture.

## **The Road to Elections**

The point of no return had been reached by June 1993 when the Negotiating Council agreed to set the election date for 27-29 April 1994. This required ratification by the plenary, leading to intense bargaining over the framework of constitution-making. As a concession to keep COSAG involved in the process, the ANC proposed that the new state would be structured on national, regional and local levels, with democratically elected governments at each level. Despite this, when the ANC and NP declined the IFP's request for a discussion on a federal structure, the COSAG members walked out of the process. On the other hand, the withdrawal strengthened the ANC-NP procedural alliance because it was now more likely to succeed.

MPNP members engaged in intensive negotiations from July to August about various interim constitution drafts and the structure of a Transitional Executive Council. The latter would serve as the central governing authority during the transitional phase. Its main purpose would be to ensure fair and free elections. It was agreed that an elected constituent assembly would draft the constitution, conforming to agreed principles. A Bill of Rights would also be included in both the interim and final constitutions.

On 18 November 1993, the plenary of the MPNP adopted a comprehensive package agreement that became the basis of South Africa's democratisation process, including an electoral act and the interim constitution that established transitional institutions and specified non-negotiable constitutional principles. The next step was holding the first democratic elections in South Africa.

## CHALLENGES TO THE PROCESS

Through the entire process, violence and threats of violence were constant. In April 1993, weeks following the start of the MPNP, Chris Hani, the popular secretary general of the SACP, was assassinated. Mandela appealed for calm amidst turmoil as it became obvious that the killing was intended to disrupt the negotiation process. Thus, the ANC and the NP leadership recognized the urgency of reaching an agreement. A new Declaration of Intent was agreed by the Negotiating Council to accelerate the transition, emphasising the urgent need to reduce violence. Furthermore, several hundred white paramilitaries invaded the negotiation venues at the World Trade Center in late June. The event, though, mostly served to undermine the image of the perpetrators. When the Plenary ratified the election date, violence erupted throughout the country. However, this essentially served to bolster the moderate parties' commitment to the negotiation process.

The COSAG was disbanded in October 1993 only to re-emerge shortly as the Freedom Alliance, consisting of the Afrikaner Volksfront, the IFP, the Ciskei and Bophuthatswana homeland governments, and the CP. It was feared that if these constituencies were not represented in the elections, they might undermine the transition and the constitution-drafting process. Therefore, the ANC and the NP made numerous attempts to come to an agreement with the Freedom Alliance and the PAC. As late as July 1993, the PAC's armed wing (APLA) continued to engage in armed struggle. They initially refused to join CODESA and they did not sign the NPA. Even though they had reservations, they attended the MPNP and in the end participated in the elections and took seats in the Constitutional Assembly.

In the case of the IFP, there was a low-level civil war with the ANC. In fact, a constitution for a federal state was announced by the IFP in 1993 as a threat to secede. When dissatisfied, Buthelezi habitually stepped away from the process. Several bilateral meetings were held with the IFP in the first months of 1994 to prevent the boycott of the April elections. The only time international mediators - a team led by Henry Kissinger and Lord Carrington - were brought in was at this point. There was a demand from the IFP that the elections be postponed until the mediation produced a result, a request the ANC rejected. With the help of the CBM, a member of the mediator team, Washington Okumu, a Kenyan academic, mediated an agreement between the IFP, the ANC, and the NP. IFP participation in elections, recognition of the Zulu Kingdom, and international mediation of outstanding issues regarding Zulu King were outlined in the agreement. However, the promise of referring outstanding matters to international mediation failed to materialise, leaving Buthelezi disillusioned. Eventually, the IFP withdrew from the constitution-writing process, and tensions between the IFP and the ANC continued until a peace agreement was reached in 1996.

Under the leadership of General Constand Viljoen, the Afrikaner Volksfront was formed in May 1993 and aspired to create a "Volkstaat" - a state exclusively for Afrikaners. In addition to senior and very popular former army generals, the party claimed to have 50,000 former soldiers at its disposal. As a result of the MPNP's refusal to accept their demand for an Afrikaner "Volkstaat", they became disillusioned with the process and eventually withdrew from it. There were fears that right-wing forces would mobilise and

lead to civil war. Viljoen, however, decided not to pursue a military option after the 1994 Bophuthatswana crisis where an invasion attempt by the white supremacist AWB of the area ended in humiliation. Viljoen resigned as co-leader of Afrikaner Volksfront shortly after the incident citing irreconcilable differences, and later confirmed the registration of the Freedom Front as a political party. Through negotiations with the ANC, he was able to secure the inclusion of the principle of self-determination for all South African communities in the constitutional principles. As a result, the Freedom Front registered for the elections. The result was that all the major political parties participated in the elections held on 27-29 April 1994.

## ELECTIONS

Based on the interim constitution finalised at the MPNP, elections were held on 27-29 April 1994. There were some minor disputes and technical difficulties, as well as concerns over the accuracy of the results, yet voter turnout was overwhelmingly high, and the elections went smoothly. Mandela was elected as the President and voters supported the ANC with 62.6%, followed by the NP with 20.4%, IFP with 10.5%, and the Freedom Front with 2%. As a result, the ANC formed a Government of National Unity with the NP and the IFP. The event marked a pivotal point in the history of the country; achieving full political inclusion for the black community was finally realised.

# Drafting the Constitution

*The Constitutional Assembly, composed of representatives from both houses of Parliament and seven political parties, was responsible for drafting South Africa's constitution within a two-year timeframe. The process emphasised inclusivity, accessibility, and transparency, with extensive public participation through written submissions, oral statements, and online feedback.*

## CONSTITUTIONAL ASSEMBLY

Both houses of the newly elected Parliament, the National Assembly, and the Senate, made up the Constitutional Assembly. 7 political parties were represented by 490 members, based on the percentage of votes they received. Several deadlock-breaking measures were taken to avoid delays as the constitution had to be finalised within two years. For the new constitution to be adopted, it would have to comply with the 34 principles agreed in the MPNP and be approved by a two-thirds majority. Otherwise, the assembly must approve it by simple majority, followed by a 60% approval rating in a national referendum. The Constitutional Court would determine whether a text adopted by the Constitutional Assembly adheres to the principles. The level of consensus achieved during the process was remarkable. Despite the IFP's withdrawal from the process, the Constitutional Assembly overwhelmingly approved the final text on 11 October 1996.

## Structures

A Constitutional Committee was established by the Constitutional Assembly, consisting of 44 members. The purpose of the Constitutional Committee was to serve as the main body for negotiation and coordination and the parties were represented in proportion to their number of seats in the Constitutional Assembly. As a smaller decision-making body, compared to other multiparty forums, and one that met frequently, the Constitutional Committee was of central importance to the process. A Management Committee was formed by the Constitutional Committee to manage the negotiations, ensuring that the process ran smoothly and that the deadlines were met.

A total of six theme committees consisting of 30 appointed members each were established to examine the 34 constitutional principles. There were six committees that discussed: (a) the character of the democratic state; (b) the structure of government; (c) the relationship between levels of government; (d) fundamental rights; (e) the judiciary and legal systems; and (f) government institutions. Each theme committee was supported by a technical committee of three to four experts, as well as several ad hoc expert committees to examine certain topics. By receiving the views and submissions of all stakeholders, the theme committees facilitated the inclusiveness of the process. In this regard, the committees acted as the main communication channel between the Constitutional Assembly and the public.

Whenever there was serious disagreement in both the theme committee and Constitutional Committee on certain topics, a ten-member subcommittee was formed whose membership varied depending on the subject. An independent panel of constitutional experts was also appointed to resolve conflicts, avoid deadlocks between parties, and provide technical advice.

## Principles of the Process: Inclusivity, Accessibility and Transparency

Three fundamental principles guided the Constitutional Assembly's work: inclusivity, accessibility, and transparency. For the process to be inclusive, it was essential that the constitution was drafted with input from all segments of the society. Therefore, it was ensured that, along with the political parties present in the Constitutional Assembly, the opinions of the civil society and individual citizens were also sought. Secondly, it was necessary to engage the public more actively than just invite submissions for the process to be accessible. Lastly, all meetings of the Constitutional Assembly and its structures were open to the public, and all materials were accessible online, making the process transparent.

In December 1994, a Media Department, as well as a national advertising campaign, were launched to inform the public about the Assembly's work. The Constitutional Assembly invited South Africans to submit written submissions, make oral statements at public meetings or use the internet to express their opinions. Local civil society organisations helped the Assembly reach out to communities that would be difficult to reach by media, resulting in nearly 1.7 million submissions in total. Submissions were compiled into reports that included agreements, convergences, and suggestions for resolving contentious issues.

In December 1995 and January 1996, over four million copies of the working draft constitution, as well as explanations and graphics, were distributed and a further 250,000 submissions were received and processed. In the end, almost 7 million copies of the final document were distributed in all 11 official languages, as well as an illustrated version. As a result of the public participation initiatives, the majority of the public felt they had a chance to be part of the creation of the Constitution which has increased the public ownership of the constitution drafting process.

# Conclusion

The 1990s presented South Africa with an exceptional opportunity to resolve its protracted conflict - the hurting stalemate meant the time was ripe for action. By collaborating with an active civil society, South African leaders slowly built a transition process from an apartheid state into a democratic state. Self-mediation was a unique feature of the South Africa peace process. Both the ANC and the NP played a significant role in negotiating a settlement. Both sides, however, insisted on involving as many participants as possible, as this would provide a better basis for stability and acceptance of the new political system, promoting joint ownership of both the process and the end product. It was also important to adopt the idea of 'sufficient consensus' to avoid small players using vetoes as a means of disrupting the multiparty processes.

The South African constitutional negotiating process had matured in the MPNP since the lessons learned from the CODESA process failures had been considered. A noteworthy method utilised in the MPNP was the "one-text" approach whereby using third parties and experts to create common texts, parties were able to reach compromises despite their differences. Initially secretive, the process gradually became more transparent and encouraged public participation. Although the negotiations unavoidably involved an elite group, significant efforts were made to ensure broad public involvement. Most notably, the Constitution was drafted through an inclusive process, and despite South Africa's many social, economic, and political challenges today, it has become the glue that holds the country together, due to a sense of ownership of the public of the process and the end result.

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## USEFUL WEBSITES

Heart of Hope - [Source Link](#) (The website is hosted by the Nelson Mandela Foundation but was compiled and authored by Padraig O'Malley. It is the product of almost two decades of research and includes analyses, chronologies, historical documents, texts of the agreements, and interviews from the apartheid and post-apartheid eras).

We, the People South Africa - [Source Link](#) (The objective of the website is to bring the story of the making of the Constitution to one place, including archives of CODESA, MPNP, and the Constitutional Assembly).

South Africa History Online - [Source Link](#) (The website serves as a comprehensive resource for South African political history, featuring a general chronology and detailed accounts of events, along with access to many documents, videos, and images in its archives).



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