

## **Speech of Frene Ginwala**

Two days ago, a preparatory meeting of over 20 parties finally gave shape to South Africa's negotiating table, and set the broad agenda for the negotiations, which are scheduled to begin on December 20th.

Now this agreement comes 1 year and 10 months after the National Party leadership accepted the necessity of negotiating with representative black leaders, and banned the ANC, PAC and other organisations. And the question we have to ask is why has it taken so long to even start negotiations. The answers are important not just for the historical record, but because some of the issues are still unresolved, and will affect the speed with which the negotiations will be able to proceed. And I must at the outset distinguish negotiations from the talks that have happened up to now. Up to now we have been talking about how to get to the point of negotiations. Negotiations on substantive matters will begin on December 20th.

I want to briefly to contextualise what comes now by briefly summarizing what was actually agreed. Firstly we agreed on the name. This may seem strange but for more than a year we had been talking about an All Party Congress which was the ANC's preferred terminology, a Multi-Party Conference which was the National Party's, a Pre-Constituent Assembly Meeting which was the Pan-African Congress's. People were getting tired of putting slashes between all these initials. Now the name will be the Convention for a Democratic South Africa, or Codesa for short.

We agreed also at the weekend on a number of agenda items. Among the main ones are

- the creation of a climate for free political participation
- general political and constitutional principles
- the constitution making body or the process
- transitional arrangements
- the future of what are known as the TVBC states (the four Bantustans that were given independence by Pretoria)
- the role of the international community
- the time frames for the exercise and, most importantly, the implementation of the decisions of Codesa.

So that will be what we have to discuss. We agreed that the venue should be inside South Africa. We have also said it should not be a State venue, so we will have to find one. And there has been a long debate, which is still unresolved, about who will attend this Conference.



At the meetings last week, all the major political parties in the country were invited as were governments of the independent Bantustans. The National Party and the South African government were separately represented, however, the Government delegation is supposed to be only there as an observer.

Those who did not accept the invitation included the three parties of the far right (the HNP, the AWB and the Conservative Party) and, on the left, AZAPO. What we have still to resolve is a request from the Inkatha Freedom Party, who have asked for separate representation of the government of Kwazulu, which is a non-independent homeland, and of 'the Zulu people' through the King. This will be discussed by the Steering Committee. Consideration was also given to the possibility of the Trade Unions participating and it was generally agreed that that would not happen at this meeting. Consideration was given to an economic forum which can discuss economic policy during the transition.

What was absent both in the preparatory meetings and in the formal discussion was the participation of women. There were virtually no women delegates there at all; there were a few women in the supporting staff. There is in the country some talk of forming a women's political party in order to make sure we gain entry.

There was also agreement on foreign participation. There has been resistance until very recently from Pretoria to any foreign participation. What has now been agreed is that ambassadors will be able to participate and that there will be representatives from a number of international organisations, the OAU, the United Nations, the European community and the Non-aligned Movement. What role the international community will play in the actual processing of those issues will be an agenda item to be discussed.

There was a major problem as to who should convene the meetings. This was a problem because until recently Pretoria had assumed that it would act as convenor. This, of course, has been challenged. In the event — since everyone got there one way or the other — the feeling was that we did not need anyone else to convene the next conference. And it has been agreed that two judges, not the Chief Justice, will chair the whole conference. The Chief Justice and the religious leaders which were being opposed as chairpersons, Chief Justice by us, the religious leaders by the government, will now play a merely ceremonial role at the beginning and the closing of the conference.



Now, you may well ask, what on earth are you going to sort out in two days? The idea is that in two days we will demarcate the agenda items, we will then set up working groups to look at each of these issues and also we will have to discuss how decisions are going to be made. The way we made decisions at this preparatory meeting was according to a new doctrine, which I think we invented in South Africa, called 'sufficient consensus'. We turned to this doctrine because we faced a situation in which, if everybody was able to attend and there was no election, no way of gauging strength, you could have a very small political party holding up the whole process by exercising a solitary veto. The doctrine of sufficient consensus enables the chairperson of the conference to decide that despite some opposition, sufficient agreement exists to allow the process to move. In other words there is sufficient consensus. I suspect you will be hearing more of that as the discussions proceed.

Why did it take us so long to get to this stage? As of February 2nd, 1990, I think whites generally and the Pretoria regime believed that by unbanning the ANC and the major political organisations, and repealing legislation that had become known as the 'pillars of apartheid', not by us I hasten to say, the situation in South Africa would be 'normalised'. Many whites, I believe, expected immediate benefits to be gained through solving some of the country's economic and social problems. Certainly, the authorities saw it as a way of opening the way for engaging Nelson Mandela and other leaders in resolving the country's problems, without first having to make fundamental changes. The question of how much change they were prepared to countenance at that point, or even now, is still open to debate.

However the unbanning of the organisations and releasing leaders did not normalise the situation, it merely took us back to where we were in 1960. The repeal of legislation such as the Group Areas Act took us back to 1950 - and by no stretch of imagination can the system that obtained in that period be accepted as normal in 1991.

So perceptions of South Africa's political reality differed from the outset of this process and that has had important consequences for the way events unfolded. Clearly there were, and there still are, very different perceptions of the nature of oppression in South Africa. Is what we are dealing with structured oppression or simply discrimination? There are also different perspectives on the legitimacy of the Pretoria regime and on the status of the liberation struggle.

The National Party view of apartheid is illustrated in a recent interview given by the Director General of Foreign Affairs, Neil van Heerden, which I saw it reproduced in a



copy of the *Financial Times* on the flight coming over. He casually makes a very telling point when he says, "Now that apartheid is removed, our strategy should be ....". So Clearly in his eyes non-racialism, democracy, and the need for a political dispensation that will allow political participation by all citizens in South Africa has nothing to do with apartheid. With 'apartheid removed', the ANC is expected to operate within the existing political system as a political party. Although not even the National Party suggests that we put up candidates (of the appropriate race) for elections, the demand is there and constantly repeated for the ANC to abandon mass action and other forms of extra-parliamentary activity. Instead we are supposed to join with government in resolving some of the present problems and in that way be co-opted to operate within the apartheid system and its institutions.

In this scenario, what is being ignored is that it is the present constitution that defines the character of the ANC, the PAC and other liberation organisations, in fact of almost any black political party. Because the majority of membership is still outside the South African polity and has no constitutional way of expressing itself where there are serious power relations involved. Unlike a political party, which operates within constitutional parameters and institutions, the ANC must still endeavour to change that constitution and those institutions. Therefore, where necessary, it has to engage the Parliament of the streets, through boycotts, through demonstrations, mass action, strikes and similar activity.

The necessity for this action is incomprehensible to the authorities and to many white South Africans. At the same time there is little comprehension of how the South African government and the ANC are perceived both internationally and internally — legally, and in the political culture. The internal perception is something that goes beyond the usual hostility and lack of allegiance and loyalty that oppressed people feel for any repressive government.

Anti-colonial struggles and international law have developed since 1948 when the National Party came into power. An international convention has made the policy of apartheid a crime in international law, the first occasion that any policy has been so declared since the Nuremberg judgements and the recognition of the crime of genocide. The right of the people to self-determination is now recognised as inalienable. Over the period of UDI in Southern Rhodesia, it came to be recognized that by definition minority governments are illegitimate. In the instance of what was formerly the Spanish Sahara, the right of one colonial power (Spain) to 'decolonise' by handing power over to another (Morocco) without the people in the territories being consulted has been decisively





challenged. Those debates had relevance for South Africa, because Pretoria claimed it had decolonised the bantustans. They may yet be important should there be difficulties reincorporating the TUBC (ex-bantustans) into South Africa. I am sure that we are going to hear tired, out-dated arguments in the talks by those who want to resist the reincorporation.

The United Nations General Assembly has refused to accept the credentials of the Pretoria regime for many years now, while it has recognised the National Liberation Movements, the ANC and PAC as entitled to speak on behalf of the people of South Africa on the international stage. The legitimacy of the liberation struggle was explicitly recognised and even the Security Council — which has in the past not hesitated to exercise vetoes to protect Pretoria — even the Security Council has recognised the legitimacy and the right of the people of South Africa to use 'all means at their disposal' to assert their rights, which is understood to mean 'to take up arms'. Further undercutting Mr De Klerk's claim to a legitimate status, a Security Council resolution has declared the Tri-cameral constitution, from which he now draws his powers, to be 'null and void'.

In contrast, the political stature of the ANC has grown as it has increasingly been accorded recognition and status, even by governments which had previously supported Pretoria without reservation. This status, in the eyes of the ANC, the PAC and the international community, was neither altered nor wished away on 2nd February when the ANC was unbanned.

Pretoria, however, simply closes its eyes to this reality, or possibly may not have appreciated its full significance. Self-deluding propaganda and censorship inevitably affect the perceptions and understanding of those who do the censoring. Time and again since I have returned to South Africa, I have realised just how much of an impact that self-deluding propaganda has on the actions of Pretoria.

For Pretoria, of course, the world is still normal from its own perspective. It assumes it has the legal and constitutional right to rule, which gave it the authority to remain in power and to exclusively manage the transition. Hence the statements, which we constantly had, about the National Party refusing to accept any changes it did not like, about National Party values prevailing whatever anyone else decided, and of course the resistance to an interim government. To this point I will return later.



Now these differing perceptions of the South African political held by the major parties, underlay many of the problems that arose during this intervening period of nearly two years. The actors did not necessarily articulate issues in these terms, but they acted upon the basis of assumptions about their own status.

For the liberation movements also, the situation was not simple or unambiguous - nor indeed was it anything like what we might have envisaged. Commentators have often compared our situation to that in Latin America, but we cannot draw on that experience. As I already explained, we are not faced simply with a situation in which an authoritarian government within a particular political system suddenly unbans political parties that operate in that system. Nor is the situation is precisely similar to that of Angola and Mozambique. Now of course all of us were convinced in the many years of liberation struggle that victory was certain. That was one of our favourite slogans. But, there was never a clear cut and unequivocal scenario of how that victory was going to come about and what would actually happen.

A move to a people's war and the possibility of insurrection were avidly debated and questioned in the columns of the ANC organ *Seehaba*, in other ANC journals and in internal meetings. And many a fantasy was woven of an embattled regime regrouping around the Voertrekker Movement behind a laager formed of ox-wagons and Caspirs, tanks, sneeze machines, rocket launchers and so on, while in the cities and countryside ordinary people took over public buildings, factories and the institutions of power. We have visions of MK Commanders striding at the head of their troupes into Pretoria, Johannesburg and all the cities of South Africa, while peoples formed spontaneously into a national convention to write the new constitution.

Of course, the reality we find today is very very different. We find ourselves legalised in a situation where, de facto, the levers of state powers still remain in the hands of the very authorities against whom we fought for so long. This power covers all the institutions of government, the military establishment and the police — and not only the institutions of the state, but of the economy and in fact wherever legal power is vested. It was one thing to commit ourselves to a negotiated solution as we have done — but another to work out how we could retain any power in this situation, how we could avoid being co-opted, and how we could engage in meaningful negotiations. So we too have faced very serious problems.

Within weeks of the unbanning and the release of Nelson Mandela, the ANC made major and significant concessions. In accordance with the Harare Declaration and the UN



Consensus Declaration of December 1989, Pretoria was required to create a climate conducive to negotiations by releasing political prisoners, unbanning organisations, allowing exiles to return and repealing repressive legislation. Instead of waiting for Pretoria to act on its own timetable, the ANC decided to meet the authorities in order to discuss the removal of the obstacles that stood in the way of the start of negotiations. Pretoria in its turn added the continuation of the arms struggle to the list of obstacles. On the understanding that agreement had been reached on the removal of the other obstacles, the ANC agreed to suspend armed actions

However, we found that agreements reached would not be implemented — either because of bad faith by the negotiators or because implementation was being frustrated by civil servants. We were constantly being told 'the door was open' for exiles to return. In fact, the first time I ever confronted an official of the South African government was on 2nd February on a BBC interview when he said to me 'the door is open, go back home'. But what we found were detailed indemnity forms to be filled in which had to be processed by security police and bureaucrats. Later we faced difficulties of funding and support, when Pretoria refused to allow the UNHCR (the U.N. High Commission for Refugees) to operate on the same basis as it has operated in other countries.

Having begun with the perception that the National Party was led by a man of integrity and was genuinely seeking a negotiated solution, the feeling grew that in fact the levers of state power were being manipulated in order to weaken the ANC and hence to force it in whatever negotiations followed to make compromises over the types of changes that we believed were necessary in any political dispensation. There was considerable anger at the grass roots and within the ANC leadership.

This was further fuelled by the escalating violence and the failure of the security forces to control that violence. Instead of the normal process of the police investigating and finding the evidence, we were told that evidence had to be supplied by the victims. And, of course, there was mounting reports and evidence of police involvement in crimes and the failure of Pretoria to act on those reports. So by September 1990, the National Executive of the ANC was considering breaking off all talks with the government. The view was being expressed more and more that whether De Klerk could not control the police or would not control the police was a debate that might be of relevance in one context but in another was totally irrelevant because in neither case would he make a credible negotiating partner. Because he could not deliver.



Apart from the human aspect, the frightening violence made it difficult for the ANC to organise. It worked, and still works to intimidate and frighten people off from showing their political allegiance or expressing their views, and it undermined the climate of free political debate that was required for negotiations.

Earlier this year, the ANC finally refused to have any further dealings on the constitution with the government and issued an ultimatum requiring Pretoria to address the issue of violence by meeting the various deadlines. With little publicity, the log jams began to shift — prisoners were released before the 30th of April, nearly 5,000 indemnity forms were suddenly processed, and the Cabinet was reshuffled.

But the most significant shifts came in the events leading up to the Peace Accord and in the agreements that were reached there. Initially, Pretoria unilaterally decided to call a Peace Conference — a meeting to deal with the question of violence. Mr De Klerk phoned President Mandela and informed the ANC what was happening and when. There had been no prior consultation or discussion. Once again there was the assumption that Pretoria had the right to take unilateral decisions about the process of change — an assumption that the ANC, on this occasion, explicitly rejected. We demanded from the government de facto recognition as an equal partner in determining the processes, and refused to participate unless this was accepted. Though there is no formal agreement to that effect, in practice that is what is now happening.

De Klerk's Conference went ahead, and was boycotted by all the democratic and anti-apartheid forces. The ANC, in the meantime, had proposed a Conference convened by neutral individuals or organisations, and we later supported a proposal initiated by the church and business. Through a face saving formula, Pretoria was able to support this initiative also, and so the Peace Accord was born.

In the leadup discussions and in the content of the Accord, both sides had made concessions. The government implicitly accepted that it could not act on its own, and accepted the need for neutral conveners and neutral chairing of any meeting where agreements had to be reached. Within the Accord itself, Pretoria accepted the need for joint management of certain sectors of the state pending a final settlement. (I am now talking of joint committees, the police and the ANC for security for monitoring and a whole range of other activities). On its side, the ANC effectively accepted that the existing constitutional institutions — including the Tri-cameral Parliament would have to be used to make necessary changes and provide legislative backup to agreements that were reached.





Now this a very major concession, but strangely it has gone unnoticed, perhaps because it seems a return to what previously was seen as 'normality'. But what it does mean is that in the Peace Accord there is an acceptance that agreements that we reach will then have to be legislated for by the existing institutions. The reasons for this are obvious; there is no other way. De Klerk wants constitutional continuity so that some right-wing general does not go to the courts to say he won't accept orders from a new government. We equally do not want a police general going to the courts and refusing to obey the orders of the new government on the ground that there is no constitution or continuity. It is thus in the interests of both of us to make sure of a smooth transfer of power to whatever new structures are actually agreed.

Many substantive issues even in the Peace Accord remain unresolved, especially the question of banning culture weapons. Revelations that the government was secretly funding Inkatha precipitated a strategic shift in the ANC approach. There was disquiet over the use of government machinery and taxpayers' money to try and weaken the ANC while strengthening the National Party or forces supporting it. This has been growing all the time. With evidence of direct funding for Inkatha, the ANC felt that it could no longer depend on Pretoria to create the necessary climate for negotiations. This was significant because, as I said earlier, under the Harare and UN Declarations, the right climate had to be created before negotiations could begin.

The continuation in office of the National Party government was now recognized as the main obstacle to progress. It was therefore decided to move speedily to convene an All Party Congress, which would decide on the removal of obstacles and pave the way for an Interim Government. It is this decision, and the rigour with which it has been pursued, that brought about the preparatory meeting of this last weekend. The process was facilitated by the intense lobbying and consultation in which both sides have engaged in the last two months.

Since its unbanning, the ANC has had discussions with every black political party in the country, except the parties in the Indian House of Delegates (the Indian community refuses to come separately into any discussions). As a result, there is an informal grouping around certain common understandings of the negotiating process among black political parties, among traditional rulers who have been organised under Confradesa, and among some of the Bantustan governments. The Patriotic Front which met six weeks ago brought these organisations, the political ones, together with trade unions, civil and



other community organisations. The common understanding of the negotiating process encompasses —

*Firstly, a participatory process*, including an elected constituent assembly; because what we are opposed to is the tradition in South Africa of constitutions being decided at the top and then being opposed. Even whites at a popular level have not been involved in constitution making in the past and there is a very strong feeling that we need a participatory process as much to make the constitution democratic as to ensure support for the difficult decisions that a democratic government is going to have to take.

*Second, a common understanding that the present government cannot unilaterally supervise the transition.* Hence there is a need for some kind of transitional authority or Interim Government that commands broad support.

Now the present broad grouping is, to me as an exile, a very strange one. I must say I find ANC headquarters these days very strange. We find homeland leaders, suspect for decades, tramping in and out of meetings, we find the Democratic Party, we find the Labour Party from the House of Representatives, we find General Holomisa, we find the ex Regent to the Zulu King and leader of the BOP coup attending meetings of the National Executive Committee and so on. So, in a sense, the World has changed from that very simple thing of us versus the police and the 'baddies', and what we are finding now is that a lot of the people we had characterised as 'baddies' are now seeing the process of change and coming across. I am not suggesting any particular motivation, but they are beginning to see that since there is going to be a democratic process. They better decide whether they want to be with the National Party or with the forces for change.

Now among all these groups that I have mentioned, you will have noticed, I am sure, that I have not mentioned the IFP. Our relations with the IFP have been problematic for some considerable time. We have resisted the attempt lately in some quarters to project the IFP, the ANC and the government as a Troika that could decide what happens in South Africa. This almost halted the recent preparatory meeting which was to have consisted of five or six of the major political parties as a preparatory committee for these talks. After there had been preliminary agreement on these lines, the IFP said no, there would have to be only the ANC, the government and the IFP. At which point the other homeland leaders started going to Mr De Klerk and saying — 'but why that homeland and not us'. So you then began to get challenges to the IFP, coming not from the ANC but from other homeland leaders. Even though relations are problematic, at the talks themselves last week, IFP supported ANC positions to a considerable extent. So



perhaps there are changes coming there but I would not predict that any breakthrough will happen. What we do have is a broad front including many of the elements that De Klerk had assumed would support him.

On the other hand the National Party has also been busily canvassing and having its talks at a bi-lateral and multilateral level. It has made *in roads*, especially in the coloured and Indian community. The control of the media in South Africa makes it very difficult for any opposing views to be heard broadly. And, this is why, one of the items on the agenda for the Codesa will be the control of the SABC and an attempt to make sure that it is open to all participating parties.

What was a surprise, however, was the isolation of the Pretoria regime, over this weekend, on the question of who should be in the chair. They had accepted for some considerable time now that neither the government nor the National Party could chair or convene any of these talks. Then they put forward the idea of the Chief Justice, who for us is, quite as much as the National Party, a symbol of a state in the constitution we are trying to change. So we were opposed to this. What has happened is two other judges, the first black judge and another relatively junior judge in the Transvaal, have been elected as Co-Chairmen. The Chief Justice will have a ceremonial role in opening the Conference and calling upon the religious leaders to lead the prayers.

Nobody, except one minor Bantustan party supported the National Party on this decision. Even the IFP supported the idea that the Chief Justice should not chair. And this to us was quite a pleasant surprise, if I may put it that way, because it did show that there were significant shifts within the parties that had traditionally supported the National Party.

There are crucial issues still outstanding. The first is the question of the transitional authority, Interim Government or transitional government (even on the agenda we have had to use all those words). Initially the proposal from the liberations movements was that there should be full transfer of sovereignty to an Interim Government. The reasons for this were obvious. There was a feeling that we could not trust the present government to maintain a neutral stance in the interim period. We certainly could not trust them to supervise the new elections. But, lately some have wondered whether a transitional government with full sovereignty is such a good idea. Any Interim Authority or government, whatever its standing, will be a coalition government. By definition, coalition governments favour the status quo; you have to take a positive position to make a change.



So there is a danger involved in going into an Interim Government and finding ourselves unable to make changes. The result, of course, will be that we then have responsibility but no power. Under those circumstances we are likely to lose support and there will be serious problems with our own supporters. So a lot of rethinking is now going on about whether we want a full Interim Government .

Another problem is that we believe that any Interim Authority should have a limited time span. If you have a fully sovereign government, you can't just walk out. If we did that, the National Party would get hold of important agencies. We would leave them in control and nothing would change. A possibility now is that we would might assume authority over certain vital areas. The media, the SABC, security, defence — these are obvious areas which would have to be controlled by some joint authority.

Handling the economy with an Interim Government is also difficult. We would obviously want to allocate national resources in a very different way to the way the government is doing now. If we went into the Ministry of Housing, we would certainly want to deal with the funding of housing very differently. If we went into the Department of Education we could not accept schools paying different subsidies for white children and black children. These are not situations which we want to do even for a temporary period.

So, the debate on the Interim Government within the ANC, among the democratic forces, is still wide open in terms of what actually we will ask for when we come to the negotiating table. On its side, the present government, having refused to transfer any sovereignty at the beginning, has argued that all that is needed is some leaders from the liberations movements to join the present cabinet. The government is anxious to engage us in responsibility for areas like Education, Housing and the Budget so that the responsibility for problems land on our shoulders as much as theirs.

Another vital question is timing. When will an Interim Government will take authority? The probability is that an Interim Government can only come into being when we have agreed on issues, such as the constitutional principles such as the mechanisms for actually arriving at a Constituent Assembly .

The Constituent Assembly is itself a matter on which there are grave and major differences. At no point does it appear that the government is prepared to countenance the Constituent Assembly. It would like Codesa to become, in fact, the constitution-making body. However, as I have indicated Codesa is not based upon popular





participation and does not give any indication of the strength of the parties who are engaged in the negotiations.

But perhaps problem of all is agreeing on the principles that will underly the new Constitution. Now the National Party appears to have abandoned its previous dream of a new Constitution based on group rights with an electoral system based on racial and ethnic groups. Nonetheless, their latest proposals strangely seem to revert to group and ethnic concepts. While racial and ethnic definitions of groups are abandoned, the National Party defines participatory democracy as based on the effective participation of political parties not of individual citizens of society. And it is the effective participation of individual citizens that is the true barometer of a genuine democracy.

Furthermore, the National Party still totally rejects the principle of majority rule regardless of any safeguards or checks of balances that might be devised. So, though we have general agreement among all the parties that there will be guarantees of rights, a multi-party system and so on, there is a chasm between us on the fundamental principles of democracy as well as the nature of the future of South Africa. To the National Party, it would appear that the political and social institutions of the new society should maintain in perpetuity the divisions created by apartheid.

The liberation movement recognises there is a legacy of apartheid but we seek new institutions that will overcome this legacy and help to create a common society, however far away the fulfilment of that prospect may be. Thus the differences between us are not simply about mechanisms — whether you have an Interim Government or not, whether you have a Constituent Assembly or not — but they are about the very objectives of the liberation struggle and the character of the new South Africa. The message is that we are in transition from apartheid but at the moment there is no clear notion of where we are going and, unless we agree on the ultimate desination, any agreement on mechanisms will have no meaning and the struggle in South Africa will have to continue until we are able to give meaning to the objectives for which so many people have fought.

