The 1996 Political Settlement in South Africa:

An Analysis of the Primary Strands of the Negotiations and its Most Public Actors

Paul Graham

IPS Paper 5

Abstract

This paper examines how exclusions, in regards to enfranchisement and land ownership that were essential components of the political settlement following the second Boer war, led directly to the armed resistance of the 1960s. The mutually damaging stalemate between the power contenders and the white government of the day triggered a period of preliminary talks and formal negotiations which resulted in a political settlement, finally codified in 1996. It examines the primary actors – the African National Congress and the National Party, but notes that these parties or movements also had allies and contrary groups. This settlement has lasted at least 18 years, or 20 years, if the interim arrangements which resulted in a democratic election are identified as the turning point. There are no obvious reasons to suggest a re-emergence of politically motivated conflict, however, warning signs suggest that the political settlement is fraying.

About the Publication

This paper is one of four case study reports on South Africa produced in the course of the collaborative research project 'Avoiding Conflict Relapse through Inclusive Political Settlements and State-building after Intra-State War', running from February 2013 to February 2015. This project aims to examine the conditions for inclusive political settlements following protracted armed conflicts, with a specific focus on former armed power contenders turned state actors. It also aims to inform national and international practitioners and policy-makers on effective practices for enhancing participation, representation, and responsiveness in post-war state-building and governance. It is carried out in cooperation with the partner institutions CINEP/PPP (Colombia, Project Coordinators), Berghof Foundation (Germany, Project Research Coordinators), FLACSO (El Salvador), In Transformation Initiative (South Africa), Sudd Institute (South Sudan), Aceh Policy Institute (Aceh/Indonesia) and Friends for Peace (Nepal). The views expressed in this paper are those of the authors and do not necessarily reflect the views and opinions of the Berghof Foundation, CINEP/PPP, or their project partners. To find more publications for this project please visit www.berghof-foundation.com. For further information, please contact the project research coordinator, Dr. Véronique Dudouet, at v.dudouet@berghof-foundation.org.

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List of Acronyms

ANC	African National Congress
APLA	Azanian People's Liberation Army
AU	African Union
CODESA	Convention for a Democratic South Africa
COPE	Congress of the People
COSATU	Congress of South African Trade Unions
DA	Democratic Alliance
EFF	Economic Freedom Fighters
GNU	Government of National Unity
IFP	Inkatha Freedom Party
OAU	Organisation of African Unity
MK	Umkhonto we Sizwe
NP	National Party
NUMSA	National Union of Metal Workers of South Africa
PAC	Pan Africanist Congress
SACP	South African Communist Party
UDF	United Democratic Front
USA	United States of America

1 Introduction

Following the Treaty of Vereeniging which ended the Second Boer war in 1902, it was the South Africa Act of 1909[1] which codified the political settlement which was to prevail until the 1990s' peace process and democratic transition. This Act established South Africa as a self-governing dominion within the British Empire (similar to the status granted to Canada and Australia), effectively confirming the conclusion of colonial rule or, on an alternative reading, the devolution of colonial rule to locally-based elites still with a substantive attachment to the imperial centre.

In 1910, the Union of South Africa was formally established after a failed attempt by the two settler republics of the Transvaal and the Orange Free State to oust the British from their colonies in the Cape and Natal, and to avoid their possible expansion through the interests of mining houses based on gold and diamonds into these same settler republics. The primary beneficiaries of the new Union – European male adults – numbered 349,837 (according to a 1904 census), while the general population was estimated at 5,175,463. In January 1912, two years after the formation of the Union of South Africa, the South African Native National Congress (later renamed the African National Congress – ANC) was established. Despite the native population of South Africa having suffered the travails of conquest and colonisation, having suffered immensely during the Boer Wars, and having been impressed into labour in mines and other commercial activities, despite having established an increasingly thriving independent commercial farming sector and despite a growing educated and intellectual middle class, the petitions of the vast majority of people were ignored in the establishment of the Union of South Africa. Instead, black people were destined to become more and more legally disadvantaged and dispossessed as the century continued.

This paper aims to review the historical events that led up to the new political settlement which presently governs South Africa, codified by the 1996 Constitution.[2] With a particular focus on the transition from an exclusionary regime to an inclusionary state, this paper will analyse the various arenas and mechanisms that were used to negotiate, codify and materialise the political and socio-economic reforms which underpinned the new democratic settlement. It will do so by building upon the author's own personal recollection from that time, as well as primary and secondary sources, including published interviews by actors who directly participated in the transition period. The paper will then conclude with some reflections on the current state of affairs in South Africa and assess whether the peace process in the 1990s laid the foundations to build an inclusive and responsive system of governance.

2 History of Political and Economic Exclusion in South Africa

The Boer War, which lasted from 1899 to 1902, was fought primarily across the great high plateau grasslands which provided the land for the agricultural wealth of the four settler republics of Transvaal, Orange Free State, the Cape and Natal. In an early example of asymmetrical warfare, the initial successes of settler farmers were eventually squashed by the burning of their farm houses, which provided succour to guerrillas, enabled the rounding up of non-combatants into concentration camps, and supported the development of a tactic of small forts or blockhouses, fenced exclusion zones and the pushing of the remaining combatants into dead ends, in which their mobility and stealth became nullified. Captured combatants were distributed to prisoners of war camps in Ceylon, St. Helena, Bermuda, India and Portugal. The surrender, first of the majority leadership and then of the remaining fighters, led to the signature of the Treaty of Vereeniging which established a British post-conflict administration with the aim, after a period of time, of granting self-rule to a new and united South Africa, within

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[1] For more information on South Africa Act of 1909, see www.media.law.wisc.edu/m/jzhy2/cbsa1.pdf (accessed 30 December 2013)
[2] A more detailed account of the various power contenders and their respective roles during and after this transition is offered in a separate paper (see Graham 2014).

the British Commonwealth.[3] South Africa, as a whole, became a part of the British Empire and joined Canada and Australia as jewels in its crown. The settler farmer communities, known generally by the term *Boer* (farmer), represented by a leadership which had held military command during the war, came to dominate the national political landscape.

The enmity on which the war had hinged – between the farmers speaking a version of Dutch which was rapidly indigenising to become the language of Afrikaans, and the English-speaking subjects of the colony and masters of the modernising and rapidly growing urban commercial class – did not get resolved with the end of the war. While the dominant mood was for reconciliation, rebellions led by disgruntled sections of the now Afrikaner community continued. When South Africa fought on the side of Britain in the First and then Second World Wars, significant portions of the Afrikaner community objected; the rebellions were quashed and their leaders became interned by the governments of the day.

In 1948, after the Second World War, and as a result of unremarked demographic and political shifts, a minority party won the majority of parliamentary seats. The United Party led by former state attorney to the Transvaal Republic, Boer General and British Field Marshal, Jan Smuts, who had led the government for 15 years, was replaced by the *Herenigde Nasionale Party* (Reunited National Party) under the theologically-trained D.F. Malan, who had been studying in Utrecht during and after the Boer war. The National Party (NP), fighting on an 'apartheid' ticket, won 70 seats out of 153, with 401,834 votes, while the United Party, committed to gradual guided integration of the black urban population, took a minority 65 seats, with a majority 524,230 votes.

The origins of the apartheid system, however, go back to the early 20th century, as the non-white were excluded from the 1910 political settlement and further dispossessed by the Native Land Act of 1913, which prohibited native inhabitants of South Africa from owning land in 93% of the country.[4] During subsequent years, the oppression of the black majority was further entrenched by habit, regulation, economic exclusion and resource starvation, and all efforts to change the views of the South African political establishment were met with further insults, exclusions and procrastinations, while the imperial centre continued to defer to the South African enfranchised white population.

3   Resistance and Repression

In 1950, the Population Registration Act enforced a strict separation of racial groups along legally-defined categories.[5] This legislative programme became the subject of increasing resistance from a growing number of South Africans across all racial classifications, who organised themselves on a racially-divided basis (for historical and now legislative reasons). In 1955, all these organisations (namely, the ANC, the South African Indian Congress, the SA Congress of Democrats and the Coloured People's Congress) met in Kliptown, where they formed the SA Congress Alliance and produced the Freedom Charter, which would form the basis of demands for freedom

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[3] The Treaty of Vereeniging was signed on 31 May 1902, at Melrose House in Pretoria. It contained an agreement to surrender the independence of the republics in exchange for the repatriation of the prisoners of war; general amnesty with a few exceptions; limited protection of the Dutch language in the courts; various economic safeguards such as the maintenance of property rights; honouring of the republican war debt to a sum of £3 million; generous relief for the victims of war; promise of eventual self-government and an agreement that no decision would be taken regarding the franchise of black people until after the introduction of responsible government. See www.anglo-boer.co.za/intro/peace-treaty-vereeniging.php (accessed 30 December 2013).

[4] For more information on the Land Act, see www.sahistory.org.za/topic/natives-land-act-1913 (accessed 30 December 2013).

[5] In this Act, unless the context otherwise indicated
   1. (iii) "coloured person" means a person who is not a white person or a native;[…]
   (x) "native" means a person who in fact is or is generally accepted as a member of any aboriginal race or tribe of Africa; […]
   (xv) "white person" means a person who in appearance obviously is, or who is generally accepted as a white person, but does not include a person who, although in appearance obviously a white person, is generally accepted as a coloured person". (Online at www.disa.ukzn.ac.za/webpages/DC/leg19500707.028.020.030/leg19500707.028.020.030.pdf (accessed 30 May 2014)

and enfranchisement, and would also become the terrain on which constitutional and legislative transformation of the future democratic state would be fought.

The first clause of this Charter reads:

We, the People of South Africa, declare for all our country and the world to know: that South Africa belongs to all who live in it, black and white, and that no government can justly claim authority unless it is based on the will of all the people; [...] that only a democratic state, based on the will of all the people, can secure to all their birthright without distinction of colour, race, sex or belief.[6]

By 1959, this charter had claimed its first ideological casualty with a schism, as a group of ANC members formed the Pan Africanist Congress (PAC), claimed that the inclusivity of the Freedom Charter undermined the Africanist cause. As apartheid began to bite harder and harder, and as the NP government began to clamp down on the leadership of these opposition groups, their forms of resistance began to evolve. Petitions and the resort to reason, persuasion and indeed demonstration of both civilisation and patriotism, with the hope of appealing to the better nature of the white community for inclusion, were followed by acts of defiance, both organised and more spontaneous (referred to as the 1952 Defiance Campaign).[7]

The post-Second World War period was rife with anti-colonial struggles of various sorts, using various means. It was supported by competing international ideologies and competing international interests. South Africa was not immune to these external trends - it had its own history of rebellion, liberal politics, popular activism, civil disobedience, worker organisation and Christian social justice. Inside South Africa, nonviolent action increasingly focused on the Pass laws which forced Africans to obtain and carry, under threat of summary arrest and imprisonment, an identity document which imposed and entrenched both a tribal and rural identity, and restricted the free movement of people and their access to work. A march to hand in their passes organised by the PAC, on the principle of overwhelming the criminal justice system and embarrassing the white government (resting upon nonviolent principles which had been used by Gandhi in India with success, and which he had developed in South Africa and which were being used simultaneously in the USA by the Southern Christian Leadership Conference under Martin Luther King), went horribly wrong. A panicked police force opened fire on an unarmed crowd, killing 69 people as they ran. The massacre led to global condemnation and within a short space of time, to the withdrawal of South Africa from the Commonwealth and its declaration as a republic on 31 May, 1961.

When ANC President, Chief Albert Luthuli, received the Nobel Peace Prize in 1961,[8] the ANC was already a banned organisation. Its leadership and members, some 156 of them, were embroiled in a Treason Trial which had begun in 1956. All accused were found not guilty in 1961, nevertheless, the exile of Oliver Tambo and others, and the organisation of anti-apartheid solidarity in exile had begun. At the Nobel award ceremony, which Chief Luthuli attended, having been given a respite of 10 days from the third five year banning order which restricted him to his home in rural Natal, the award committee chair referred to the 'passive resistance' campaigns:

Well might we ask: will the nonwhites of South Africa, by their suffering, their humiliation, and their patience, show the other nations of the world that human rights can be won without violence, by following a road to which we Europeans are committed both intellectually and emotionally, but which we have all too often abandoned?[9]

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[6] Online at http://www.anc.org.za/show.php?id=72 (accessed 30 December 2013).

[7] See www.sahistory.org.za/topic/defiance-campaign-1952 (accessed May 30 2014)

[8] While the prize was awarded in 1961, it was for the still vacant award of 1960. Dag Hammarskjöld received the 1961 prize posthumous. See www.nobelprize.org/nobel_prizes/peace/laureates/1960/press.html (accessed 31 December 2013).

[9] Online at www.nobelprize.org/nobel_prizes/peace/laureates/1960/press.html (accessed 31 December 2013).

The award was given on 10 December 1961. Only six days later, the ANC dropped its principled nonviolence stance with the conviction that it would only lead to further deaths rather than significant gains in freedom, and established *Umkhonto we Sizwe* (Spear of the Nation – MK).[10] Its founding manifesto made the following argument:

> *The time comes in the life of any nation when there remain only two choices: submit or fight. That time has now come to South Africa. We shall not submit and we have no choice but to hit back by all means within our power in defence of our people, our future and our freedom. The government has interpreted the peacefulness of the movement as weakness; the people's non-violent policies have been taken as a green light for government violence. Refusal to resort to force has been interpreted by the government as an invitation to use armed force against the people without any fear of reprisals. The methods of Umkhonto we Sizwe mark a break with that past. (ANC 1969)*

MK became a component part of a political military struggle waged from exile and underground, and once the leadership was imprisoned after being arrested in July 1963, it even operated from prison. To use the terms of the research project that this particular paper is part of, the ANC with its armed wing established themselves in the early 1960s as the pre-eminent power contender. The nature of their contention for power remained an amalgam throughout the period prior to the political settlement – sometimes conflictual, at other times coherent – of various modes of struggle: principled violence in defence of the oppressed, violent propaganda to increase the morale of those remaining inside the country, battle in a limited way against the security forces of the country, active non-violence, international diplomacy, the tactics of economic and cultural isolation, popular education for democracy, and exploitation of the spaces for mass organisation that arose as the ideology of apartheid, contradicted the imperatives of the post-war industrialisation of South Africa.

By the early 1970s, this contradiction provided the space for significant trade union organisation. A series of strikes in 1973 led to the 1979 formation of a trade union federation – the Federation of South African Trade Unions (FOSATU), which would in turn lead to the Congress of South African Trade Unions (COSATU) in 1985, with 33 member unions. Following a legislative reform recommended by the government-established Wiehahn Commission (Lichtenstein 2013), the union movement provided a legitimate and legal base for continued organisation towards the extension of people's rights – but within the narrow confines of workers' rights and within the limits of the 'factory gates'.

The regime's motivation for the extension of rights may well have come from the twin urges to regulate and control spontaneous worker resistance, and to appease a global community which had its own domestic policy pressures and international economic interests in the future of South Africa; but a crack was opened in the apartheid edifice. Similar cracks were being exploited within civil society. On university campuses, student politics took on national issues and organised nationally, and within communities and churches, a black consciousness ideology emerged from dialogues between local church leaders and the black liberation theologies of the Americas, along with the home-grown movement led by Steve Biko.[11] In 1976, a student[12] protest, again intended to be peaceful and short lived, was attacked by the police and over the course of a few weeks, hundreds of students were killed and many thousands fled into exile to join the already exiled ANC and PAC. Between 1976 and the early 1980s, localised civic movements, health groups, professional associations, church social action agencies and anti-militarisation groups began to establish themselves to make demands on the state, especially at local level, to substitute and defend themselves from the uncaring and predatory state. The risks to the white South African state

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[10] A fig leaf of independence of leadership and action from the ANC was established for MK.
[11] Steven Bantu Biko was a founder of the Black Consciousness Movement (BCM), President of the South African Students' Organisation (SASO) and a seminal figure in the development of black consciousness through his organising, speaking and writing – some of the latter is captured in 'I write what I like' (1978). See www.sahistory.org.za/people/stephen-bantu-biko (accessed 30 December 2013).
[12] The protesters were actually secondary scholars, whose primary issue was the manner in which they were being forced to learn subjects in Afrikaans, which was for them both a third or fourth language and that of the white regime which was oppressing them.

grew, and with it grew a national security consciousness and a militarisation of all aspects of the state.[13] Newspapers were banned, civic leaders detained and, in the case of Steve Biko, tortured to death.

4 Furthering Apartheid: Separate Development

Meanwhile, apartheid planners were constructing the grand vision to create a South African state in which the white population would be demographically superior and able to dominate the broader Southern African region. At the same time, they continued to benefit economically from a decades old migrant labour system, in which the mines of the Witwatersrand were serviced by the people of Southern Africa, now largely freed from their British colonial past but still economically tied together.

By the late 1950s, the plan 'Separate Development' was launched, in which a series of defined reserve territories would be slowly given their independence, much as Britain had given white South Africa first self-rule, then dominion status, after which it had become an autonomous republic. All black people would become citizens of these separate homelands, for which an immense administrative bureaucracy was established and was even given an acronym – the TBVC[14] states. Separate public services, state capitals, the trappings of independence, such as legislative buildings, international airports, and defence and police forces, were all constructed. The homelands developed political parties, and within the restrictions of their 'toy' kingdoms, engaged in political competition and elections. A puritanical white South Africa, dominated by the Dutch Reformed Church, allowed the construction of casinos in these states which then acted as sources of revenue and legitimation.[15] Within these pseudo states, corrupted and compromised at their birth (despite the efforts of some of their initial leadership to offer them as potential equivalents of the marginal organising space created by union reform), spontaneous resistance by people forced to be citizens, rebellions and coups by competing elites, and strategic infiltrations by exile and underground movements, all created a series of linked but individually fragmented competitions for power and sources of destabilisation.

Each of these elites and movements also created future competitors for the space opened up by the negotiations and the political settlement of the 1990 to 1996 period. By 1982, there were ten homelands, four with

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[13] Outside the scope of this particular project, one should point out that the wars being fought in Rhodesia, Mozambique and Namibia, for independence, all had significant impact on both the aspirations to freedom of black people in South Africa and an increasing militarisation of the white state, which used conscription to fuel its army in Namibia and various Low Intensity Conflict tactics to maintain a level of destabilisation in Mozambique and Rhodesia which was in favour of colonial governments, and then to undermine the incoming revolutionary governments which succeeded them.

[14] Short for Transkei, Bophuthatswana, Venda, Ciskei states.

[15] This development provided some of the more obvious points of anti-apartheid cultural expression, such as in the protest song 'Sun City' written in 1985 by Steven Van Zandt and recorded by Artists United Against Apartheid:

We're rockers and rappers united and strong
We're here to talk about South Africa we don't like what's going on
It's time for some justice it's time for the truth
We've realized there's only one thing we can do
I ain't gonna play Sun City
Relocation to phony homelands
Separation of families I can't understand
23 million can't vote because they're black
We're stabbing our brothers and sisters in the back
I ain't gonna play Sun City
Our government tells us we're doing all we can
Constructive Engagement is Ronald Reagan's plan
Meanwhile people are dying and giving up hope
This quiet diplomacy ain't nothing but a joke
I ain't gonna play Sun City
Bophuthatswana is far away
But we know it's in South Africa no matter what they say
You can't buy me I don't care what you pay
Don't ask me Sun City because I ain't gonna play

independence (Transkei, Bophutatswana, Venda and Ciskei) and six with limited self-government (Gazankulu, Lebowa, Qwaqwa, KaNgwane, KwaNdebele and KwaZulu). Attention could now be given to reforms in the central state to deal with pressures from inside the country and from abroad. A reform package was announced which would make significant changes to the South African constitution. It would introduce a form of municipal level "African" representative structures and provide for three national assemblies: one for coloured elected representatives, one for Indian representatives and one for the then existing larger and dominant white Parliament. This tri-cameral system would also mean some form of national representation within the Cabinet for those who participated. Better hidden were the much greater powers which would be provided for the President of South Africa, who would move from being a ceremonial head of state reliant on Parliament and the Prime Minister, to an executive head of state who would in fact wrest power from the Parliament.

5 The Endgame

Resistance to this package of reforms sprang up across South Africa. Based on the plethora of civil society groups that had begun to emerge in the late 1970s and early 1980s and using the language of mass mobilisation, a civil society umbrella body called the United Democratic Front (UDF) was established in 1983. The UDF was committed, in large part, to the principles of the 1955 Freedom Charter and situated itself within the Congress tradition (Seekings 2000). All above ground and legal means were used to both stop the reforms (which were in any event driven through) and more importantly, to create a situation of simultaneous un-governability and autonomous self-government.

Between 1983 and 1988, thousands of people were detained, many died in confrontations with the police and then the military, as they were deployed domestically, and States of Emergency were declared. Municipal accommodations were made, with negotiations leading to informal alliances of 'township leaders' and white representatives and officials, in order to enable services to continue and be improved. Leadership was both national and dispersed, with large numbers of people playing a significant and diverse role in creating a challenge to the Apartheid state. By the early 1980s, the preconditions for terminal unsettling of the previous political settlement of white inclusion and black exclusion, had been achieved.

At the same time, it seemed likely that this was a war to the death, with no side able to come out victorious. However, by mid-1987, the question of a negotiated settlement was on the table and groups like Idasa were taking domestic actors from the white community to meet, in semi-clandestine forums, leaders from the exiled ANC. In October that year, the ANC responded publicly, setting out its preconditions for negotiations while at the same time insisting that the white Government had no real interest in such negotiations: *"We therefore have no choice but to intensify the mass political and armed struggle for the overthrow of the illegal apartheid regime and the transfer of power to the people"* (ANC 1987). In the same statement they thanked the Organisation of African Unity (OAU, later the African Union – AU) for supporting their position in a summit statement. Two years later, in 1989, the OAU produced the Harare Declaration (OAU 1989) which now codified the conditions under which the ANC and the countries of Africa would consider negotiations to be a legitimate means to end the apartheid state and *"transform their country into a non-racial democracy"* (OAU 1989). On 8 January 1990, on the 78th anniversary of the ANC and still speaking from exile, the organisation reviewed the previous year and then set out the conditions under which they would enter negotiations:

It still remains for the Pretoria regime to create a climate conducive to negotiations. In putting forward this universally accepted demand, we are not asking for special favours. We are asking that all who should participate in any process of negotiations should enjoy equal political opportunities. On this historic occasion, we reiterate that the democratic forces of our country will not be terrorised into negotiations and cannot be expected to enter into such a process until they enjoy the same freedoms to engage in political

activity as does the National Party... Therefore, whether the potential for a political settlement is transformed into reality remains the urgent responsibility of the Pretoria regime. (ANC 1990a)

6 Talks about Talks

Less than a month later, to the surprise of most, if not all, the President of South Africa, F.W. de Klerk, opened the white Parliament by announcing, after informing the Parliament of the Law Commission's work on human rights and constitutional proposals, some *"far-reaching decisions in connection with the most important obstacles in the way of negotiation"* (de Klerk 1990). These decisions included the unbanning of the ANC, the PAC, the South African Communist Party and a number of subsidiary organisations; the release of prisoners serving only political sentences; and the lifting of most security and emergency restrictions. A set of justifications followed, designed to placate a white electorate and security establishment, after which he announced the imminent release of Nelson Mandela and, as a good lawyer, he summarised for those who may have been listening and not understood, that he had heard and was responding to the ANC directly on their concerns:

> *Today's announcements, in particular, go to the heart of what Black leaders – also Mr Mandela – have been advancing over the years as their reason for having resorted to violence. The allegation has been that the Government did not wish to talk to them and that they were deprived of their right to normal political activity by the prohibition of their organisations. (de Klerk 1990)*

In May 1990, there was the first public face-to-face meeting to construct both a modus operandi and an agenda for negotiations. It took place at Groote Schuur, the residence of the President. The State was represented by the incumbent Government at a Cabinet level – excluding opposition parties represented at that time in the white Parliament, those represented in the other chambers, as well as all heads of the homelands.[16] On the other side of the table and with a publicly declared expectation that a two-sided table would be the route followed for all further negotiations, was a delegation of eleven.[17] The group intentionally represented a broad front – representatives from the political and military commands of the ANC, from prison and exile, men and women, white and black from various regions, the ecumenical church and the UDF. The group was backed by a gathering of a broader leadership group just outside Cape Town, where journalists were able to meet the ANC above ground for the first time. This was a charterist[18] group, and it excluded other black resistance movements such as the PAC and the Azanian People's Organisation (AZAPO) – which considered itself the successor organisation to Biko's Black Consciousness Movement.

Two more significant meetings took place in 1990 – the first was a Groote Schuur Working Group which was tasked with the details of managing the return of exiles, problems associated with impending criminal charges and various other related problems. This technical working group included legal and intelligence leadership from the ANC, and on the National Party side, similar cabinet-level personnel and senior security staff.[19] By August, a much smaller high level meeting at the Pretoria house of the President resulted in the Pretoria Minute, which recorded the ANC announcement of the suspension of *"armed actions"* and the joint *"serious concern about the general level of*

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[16] In the House of Assembly (white chamber), the second largest party was the Conservative Party – to the right of the Government and a breakaway from the National Party on issues of race, security and negotiations. To the left was the politically-liberal (in western terms) Democratic Party with 34 seats out of 178. The House of Representatives (coloured chamber) was dominated by the Labour Party with three small opposition parties, while the House of Delegates (Indian chamber) had 7 parties, a number of independent Member of Parliaments and Solidarity as its largest party.

[17] The individuals present were Archie Gumede, Ahmed Kathrada, Joe Modise, Beyers Naude, Thabo Mbeki, Ruth Mompati, Alfred Nzo, Nelson Mandela, Joe Slovo, Walter Sisulu, and Cheryl Carolus.

[18] Charterists espoused the Freedom Charter, and also the institutions which had been present then or had emerged from these over time.

[19] Members of the Steering Committee of the Groote Schuur working group included Messrs Zuma, Maduna, Nhlanhla, Pahad, Phosa and Ndlovu for the ANC; Minister Coetsee, Deputy Minister Meyer and Messrs Van der Merwe, Swanepoel, Louw and Viall, Major General Knipe and Brigadier Kok for the Government.

violence, intimidation and unrest in the country, especially in Natal" (ANC 1990b). The concluding two paragraphs establish the climate-setting period of 'free political activity' and also made the case for a more inclusive approach:

> *[W]e do not pretend to be the only parties involved in the process of shaping the new South Africa. We know there are other parties committed to peaceful progress. All of us can henceforth walk that road in consultation and co-operation with each other. We call upon all those who have not yet committed themselves to peaceful negotiations to do so now. Against this background, the way is now open to proceed towards negotiations on a new constitution. (ANC 1990b)*

So the negotiations tone and style was beginning to be set – high level meetings together with technical working groups, very strong public communication from the ANC and almost no public communication from the Government side, very good and concise documentation of meetings and plans, and an inclusive approach with the ANC and NP playing leadership roles.

From the start, violence and peace were major sticking points on the agenda. The ANC suspended the armed struggle for the time being but refused to end it, arguing that the negotiations could either fail or be a smoke screen designed to capture everyone, in an as yet hidden security plot. Despite the Government's commitment to free political activity, the everyday use of state violence against people in the streets, and the inability or unwillingness of Government to end the proxy wars and community destabilisation processes – aspects of Low Intensity Conflict strategy – which had been in place throughout the 1980s (Metz 1987), meant that even the talks about talks were at risk.

By agreeing amongst themselves that a commitment to peace and a suspension of the armed struggle met the basic demand of abjuring violence, talks continued. But violence intensified during 1991 as the internecine war in KwaZulu and Natal, which had been steadily continuing since 1987, spilt over into the Witwatersrand and elsewhere. By the end of 1991, with both sides increasingly frustrated and the ANC convinced that their earlier fears of lack of intent by the National Party were to be realised, church and business leaders (with strong support from the unions) coaxed the political leadership into a conference which produced the National Peace Accord. This conference brought together, for the first time, an exceptionally inclusive group of political role players – all the political parties, homeland leaders, traditional leaders, churches, business associations, trade unions and the media. Twenty-seven groups signed the accord which included clauses for managing violence, dealing with issues of socio-economic development, codes of conduct for political parties and the security forces, and a substantial set of mechanisms and structures for managing the implementation of the Accord (Spies 2002). With these in place, and staffed by myriads of volunteers from churches and the business community, certain types of violence were, to some extent, taken off the table as potential stumbling blocks. An unintended outcome was that a large number of citizens became intimately involved in protecting the negotiation process and becoming engaged with the state and the security apparatus – often for the first time.

Furthermore, the success of this activity and the level of background work that was undertaken for its success indicated that large-scale inclusive negotiation processes might indeed be possible, and would be needed if the chief protagonists were not to be derailed by forces outside the tent.

7 Formal Negotiations

This paper cannot do justice to the detail of the three substantive rounds of negotiations which took place, beginning with the Convention for a Democratic South Africa (CODESA) in December 1991, collapsing at the CODESA II sessions in May 1992 and then being re-established and concluded at the 'no name' Multi-Party

Negotiating Forum in Kempton Park in 1993.[20] Each of these rounds had a multi-sided 'table'. CODESA opened with a fanfare; 228 delegates from 19 parties present under the chair of the sitting Chief Justice and the soon to become Chief Justice, signed a Declaration of Intent. A number of parties were not present, believing that external mediation was necessary or that there were unresolved issues, but by far, the majority were present. Indeed, those absent from the negotiations have in retrospect turned out to have dwindled in voter support or entirely disappeared as political actors. Amongst this group were the Conservative Party, the PAC and AZAPO.

In all three rounds of negotiations, the assumption was that citizens and their interests were being mediated through the political parties at the table. Similarly, it was agreed that the various armies and militias were also under the political control of one party or another, and that therefore they did not need to be at the table in their own right. The ANC chose to establish a forum to which it regularly reported on the progress of the elections. Some civil society groups established newsletters and journals which conveyed some of the more important decisions being made and interpreted them, and the media had free access and covered the talks voluminously and with varying degrees of accuracy. There was not a great deal of bidding from external organisations to be at the table, and the legitimacy of the negotiating parties was taken largely for granted. The NP did have to manage the broader white constituency and the potential risk of losing seats in the Parliament to the Conservative Party. By-elections continued for the House of Assembly which followed a constituency-based First-Past-the-Post (FPTP) electoral system. In 1991 and 1992, the Conservative Party won seats previously held by the NP and began to point to a white swing away from the Government – the ANC's chief negotiating partner.

Rather than call an election, de Klerk called for a referendum which the ANC grudgingly accepted as critical to maintaining the constituency of the NP, even though it meant another vote from which the majority were to be excluded. The question put was: *Do you support continuation of the reform process that the state president started on 2 February and which is aimed at a new constitution through negotiations?* 69% of the 2, 799, 805 voters said yes; 875, 619 voters said no.[21] The referendum provided the "yes" campaigners the opportunity to promote the negotiations and their principles for the negotiations, and this step certainly incorporated a significant segment of the white community into supporting the process, if not the final outcome of the talks.

The collapse of the somewhat stage-managed public negotiations under the rubric CODESA[22] on the back of further massacres, was a set-back that was resolved by a back channel of the chief negotiators on the ANC and National Party government side. By September 1992, a Record of Understanding had been signed by the President of South Africa, Mr. F.W. de Klerk and the President of the ANC, Nelson Mandela.[23] Able to refer back to the terms of the National Peace Accord, the parties re-affirmed their commitment to remove obstacles to negotiations and to deal with issues of government continuity and the principles for a constitution-making body which would also act as an interim/transitional Parliament – in a number of places, these terms were synonymously used to overcome the obstacle of the parties using different terminology.

The Record of Understanding enabled the two parties to return to a set of negotiations which convened with 26 parties present in a negotiation planning conference in March 1993. This time, the commitments to stay together stuck and the assassination of the highly-revered ANC and MK leader, Chris Hani, on 10 April 1993, did not upset the table. By the end of the year, the negotiators had prepared two significant documents which would set the stage for a transitional authority, elections, a government of national unity and a constitution-making process which would conclude its work with the signing of the Constitution under which South Africa is now governed, Act

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[20] A summary of the entire constitution-making process is included at www.constitutionalcourt.org.za/text/constitution/history.html#1992 (accessed 30 December 2013)

[21] See www.sahistory.org.za/topic/1992-whites-only-referendum-or-against-negotiated-constitution (accessed 30 December 2013).

[22] The acronym was supported by a rather fancy logo and is perhaps the main reason why common parlance uses the term "CODESA talks" to describe the much more complex negotiation process in South Africa.

[23] Record of Understanding between ANC and Government, 26 September 1992. Online at www.anc.org.za/show.php?id=4206 (accessed 30 December 2013).

108 of 1996. They had also constructed a process and a machine which enabled them to move forward expeditiously on technical, political and contentious matters.

Three tactics stand out. The first was the decision to use the term 'sufficient consensus' for which there was a working definition - much less legal than those looking back would prefer. On any decision that could not achieve a full consensus, the guiding principle was that it would move forward if those parties which had a primary interest, or could exert a substantive veto, agreed. In the main, this meant that if the governing National Party or the ANC, which through its own organisation and that of its partners such as COSATU had the weight of numbers on the street, agreed, then sufficient consensus had been met. But the negotiators did use it in more general ways too. Secondly, contentious matters could be set aside for later deliberation, and a number of them – like the role, relationship to the state and powers of traditional leaders – were deferred to the very end and even beyond the negotiations. This principle of deferred decision-making was underpinned by a belief that certain 'sticking points' were the result of unrealistic fears which would diminish as people began to live with one another. Thirdly, technical groups and lower level working groups shuttled the detail of negotiations between them and various stakeholders who had particular interests and expertise but who were not around the table. So many options for solutions to particular problems and many potential drafts were available, that they enabled apparent impasses to be finessed. The central consensus of the negotiations was that there would be a unitary, non-racial state. The ANC and the NP were acting as guarantors of this consensus, while two right-wing armed groups stood in opposition to it, for various reasons.

On the white side, the opposition was largely race-based and centred on marginalised farming communities and the impoverished urban class within the white community. Members of the army were involved in this movement. Towards the conclusion of negotiations, this group, under the leadership of the *Afrikaanse Weerstands Beweging* (Afrikans Resistance Movement – AWB), had invaded the Multi-Party Negotiating Forum venue, temporarily holding the negotiators hostage. On the other side, the Inkatha Freedom Party (IFP), a party-based manifestation, born in 1990 out of the much older Inkatha Cultural Liberation Movement, was continuing a low intensity war with the ANC around KwaZulu and Natal, and in the urban centres around migrant hostels dominated by Zulu men.[24] It took a sceptical approach towards the negotiations. If present at all, it sent lower level leadership while Dr. Gatsha Buthelezi, President of the IFP and head of the KwaZulu homeland Government, remained on the sidelines, nursing old grievances against an ANC of which he had once been a member.

Fearful of continued violence and a possible secession of one of the most populated regions of the country, various conciliators continued to persuade the IFP to join the settlement - which they did, four days before the founding elections in 1994 and without any of their supposed pre-conditions for entry having been met, but with an expectation that they may be after the election.

8 Codification: Constitution-Making Process

As noted above, the South African negotiation process was a well-documented one. Agreements and documents were developed by all the parties and between the parties. There was a strong reliance on these to establish progress and record milestones.

Three documents stand out in particular. Two of them were prepared in advance of the settlement, and the third one – the Final Constitution – concluded it. The first document prepared by the Multi-Party Negotiating Forum was a set of 33 principles which were to form the basis - not only of the planned Interim Constitution which would serve to bridge the gap between the present and the future -, but would also be used to evaluate the Final

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[24] This war claimed between 12,000 and 15,000 lives. It has its own history of peacemaking, in which the current President of South Africa, J. Zuma played a prominent role.

Constitution. A 34th principle was inserted much later, when separate and last-minute negotiations with right-wing groups, who had chosen not to join the negotiating process, indicated a willingness to take part in the political settlement on a contingent basis. Their willingness to do this was partly the result of a misconceived, opportunistic and amateurish alliance with the deposed leader of one of the homelands after a coup with a view to establish a defensible and independent Boer run territory.[25] The 34th clause opened the door for *"any community sharing a common cultural and language heritage"* to have the right to self-determination if there is *"substantial proven support"* for that right (Constitution of the Republic of South Africa 1993).

The second document was the Interim Constitution, understood to be the outcome of an exclusive deal between parties which might or might not have democratic legitimacy, based on an election. Much of the groundwork for the Final Constitution, was however, laid at this point, with a few significant choices made which, together with the 34 principles, have created an inclusive society which, to date, no organised grouping with significant social support has sought to overthrow or destabilise.[26] Individual rights were to be protected, not group rights; minority protections were to be offered through a proportional system of election and the subsequent representation of minority parties in decisions of legislatures; democracy was to be both representative and participatory, with freedom of association allowing interest groups of various sorts to form and have access to decision-making; equality would only be tempered by laws promoting *"the amelioration of the conditions of the disadvantaged"* (Principle V); the Constitution would be supreme rather than the President or Parliament. A Bill of Rights included in the Interim Constitution foreshadowed and was defended by the first statutory but independent public institutional guarantors of citizens' rights – a Public Protector and a Human Rights Commission

9 Founding Elections and the Government of National Unity

With negotiations concluded, an Interim Constitution legally adopted by the existing legislative process, with a very short-term Interim Authority and independent Election Commission acting as managers and arbiters, South Africa conducted a universal suffrage election under democratic rules and with a partially completed democratic constitution, in April 1994. Elections were held for a National Assembly of 400 Members of Parliament and for nine Regional Assemblies of varying sizes which would govern provinces whose administrations did not yet exist. 19 parties stood in the race for the National Assembly, with seven finally being represented.[27] These parties included those from the negotiating forum as well as a number of new hopefuls, espousing religious, linguistic or merely eccentric interests.

The ANC and the NP between them, garnered some 83% of all votes cast (62.6 % and 20.4 % respectively), rewarding their role in the negotiations. An additional 13% went to the two factions that had entered the settlement late, IFP and a party that emerged from the white right-wing negotiations, the Freedom Front. The liberal opposition party in the previously white Parliament survived into the new dispensation with seven seats, and the PAC and ACDP between them took the remaining seven seats. This Assembly, an upper house with regional representation, and various technical experts and working groups, then set out on a two year broad-based consultative process to establish the Final Constitution. At the same time, a Government including representatives of the three most popular parties was established, led by President Mandela, Deputy President de Klerk and a

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[25] The affair collapsed amid great media attention and some of the gruesome detail of this now incidental, but at the time, highly visible challenge to the negotiated settlement is captured by the AWB protagonists in their telling of the event: www.volkstaat.net/index.php?option=com_content&view=article&id=1075:conflict-in-bophuthatswana-1994&catid=57:awbeng&Itemid=101 (accessed 31 December 2013)

[26] A long running trial of an attempted destabilisation has recently concluded after ten years with the conviction of the principals of the failed plot: See http://mg.co.za/article/2013-10-30-faith-anger-meets-boeremag-sentence (accessed 31 December 2013).

[27] The parties were (in order of number of votes gained): ANC, NP, IFP, Freedom Front, Democratic Party, Pan African Congress, African Christian Democratic Party (ACDP), Africa Muslim Party, Africa Moderates Congress Party, Dikwankwetla Party of SA, Federal Party, Minority Front, Soccer Party, Africa Democratic Movement, Women's Rights Peace Party, Ximoko Progressive Party, Keep it Straight and Simple, Workers' List Party, Luso-SA Party. Regional lists varied, with some additional parties choosing only to compete provincially.

Cabinet in which IFP President Buthelezi had the portfolio of Home Affairs. Section 84 of the Interim Constitution codified an agreement reached between the NP and the ANC, proposed by the ANC, after considerable internal debate, that a Government of National Unity (GNU) would be mandatory for the first five years after the democratic elections. Any party which received 80 or more seats would be able to nominate an Executive Deputy President, and, in terms of §88, any party with 20 or more seats could be represented in the Cabinet, with membership of the Cabinet being determined on the basis of proportionality rather than being drawn only from the majority party or at the behest of the elected President.

After 1994, Mandela's Cabinet had 27 portfolios, six of which were held by the National Party and four by the third largest party, the IFP. In terms of the Interim Constitution, a Deputy Presidency was offered to the IFP, who declined but did obtain some very significant portfolios, including Home Affairs and Education. The relationship between the main parties became fractious, and Deputy President de Klerk took the decision to leave the GNU in 1996 (de Klerk 1996), citing the normalisation of politics, the lack of GNU provisions in the 1996 constitution, and the greater influence he thought may be exerted as a party in opposition. The IFP remained in the GNU until its expiration in 1999, and then continued to hold Cabinet seats as the ANC maintained a symbolic and voluntary form of unity Government, an approach which continues to date.

Criticism of the GNU and Sunset Clauses[28] arose very early on in the political settlement – with accusations that they were limiting transformation, and in particular, the restructuring of the economy and the restitution programme, including that for restitution of land. By 1995, unionist Philip Dexter, was arguing that transformation in the public service was being unduly held back by the myths of the Sunset Clauses and these arguments have been reprised with increasing fervour. Whether they take account of the constraints of the political settlement or the very limited nature of the actual clauses is a matter for debate (Dexter 1995).

From May 1994 to October 1996, legislators had two jobs – to seek to govern and restructure the old system, and to construct a new one. To do this, they adopted and adapted the old Parliament – dusting it off and breathing new life into what had become a sterile and isolated institution; and they established a separate office for the Constitutional Assembly. This office was tasked with more than just facilitating the work of the Assembly and its various technical teams, but also with soliciting input from the citizenry at large, interest groups and sectors, and with public education about the constitution and the constitution- making process. There are many reasons why this approach was adopted, but not least amongst them was the very dear place in the lives of many new legislators for the Freedom Charter, the Convention of the People and the seeking after input from people all over the country, which preceded it. By the time the Constitution was ready for signing, it already had significant legitimacy even from the political margins. And from those quarters where that support was lukewarm or even sceptical, there was sufficient realisation of its public momentum to give it the space to live. Violence on the right had dropped immediately after the 1994 election, demonstrating the political imperative which had driven it. Organised violence of former scale and purpose has not returned.

10   Materialisation: State Reform after 1994

State-building and legislative transformation began immediately after the new Government was inaugurated. In some cases, as with the Provinces, bits and pieces of previous Provincial and National Administrations were cobbled together or torn apart, in order to establish the Administrations which would take on the limited but important functions established in the Interim Constitution. Local Governments, which had originally been at the forefront of establishing various forms of joint government, oversight by mixed forums, and negotiated settlements of their own, now became becalmed. They had formed an amalgam of racial ghettoes and racially defined

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[28] The creation of agreed principles which would have an expiry date on which they would cease to apply. In the South African context, these included the insistence on a Government of National Unity, the electoral system, and certain other transitional measures.

legislatures, some with and many without legitimacy, resulting in serious weaknesses in both representation and service provision in large parts of the country. New institutions required for the new South Africa included a Finance and Fiscal Commission to mediate the competing fiscal interests of the national, provincial and local legislative units; the latter had constitutional status from the start, autonomy and devolution of powers, within a unitary state structure. At the national level, a single public service had to be constructed out of the tatterdemalion remains of ten homelands, white, coloured and Indian administrations, various arrangements for the administration of urban blacks, and those components of provincial administration which were now determined to be national competencies. A new Department of Education had to find a way to amalgamate all these schools, teachers of varying qualities and terms of employment; a police service had to construct itself as a civilian rights-based service, from a range of police forces in which employment had been a refuge only for those who could stand being vilified by communities opposed to apartheid, or who had no other choice of employment. The challenges were endless and debilitating.

At the same time, the Constitution imposed duties of transformation on that first Government which matched the expectations of the previously disenfranchised, while the previously privileged were, through the negotiated settlement, allowed to safeguard many of their privileges and advantages, both social and economic. These obligations were more easily implemented in the Parliament which imposed on itself a punishing schedule of repeal, amendment and promulgation of laws to conform, first with the Interim Constitution and then with the Final Constitution. In aspects of transparency of government, participation by citizens, and availability of information which had previously been hidden from view, much was also achieved.

On the cultural front, the highly politicised nature of the international sporting boycotts had left a legacy of politically-astute administrators with good connections internationally and with the new Government. The rapid re-inclusion of the country in international sport resulted in overly sentimental trips by white South Africans to places they had been unable to visit in the past, and myriad international teams accepting the grateful and generous hospitality of sporting codes starved for international competition in South Africa. The diplomatic achievement of Mandela in embracing the national rugby squad and their winning of the Rugby World Cup has now become the subject of a book and film (Carlin 2008), but it did indeed establish Mandela at least as a leader of the whole nation rather than of the ANC and its supporters alone.

Ten years of steady but unspectacular economic growth from 1994 to 2004 (du Plessis and Smit 2006) could not, however, solve the backlog of problems created by years of discrimination and neglect and by the previous ten years of economic decline. A massive state funded housing programme increased the stock of formal housing, even at a very low level of quality, but did little to reduce the number of informal dwellings – housing densities merely changed and the constant immigration of political and economic refugees, and asylum seekers from other parts of Africa and particularly from the fragile states of the Democratic Republic of Congo, Somalia and Zimbabwe, drove the development of whole new informal settlements.

Contention over macro-economic policy and over the extent to which the Government may or may not have involved its allies in determining that policy, has led to fractious and interminable disagreement. While not changing the policy which has remained largely consistent, it has put pressure on the ruling pact, which, after the withdrawal of the NP from the unity Government, has been almost entirely an ANC Government. The schooling system has not recovered from both the spatial division of the past and the intentional discrimination of Bantu Education. These spatial divisions have been intensified by class divisions as those able to migrate to more affluent parts of the city, untrammelled by legal constraints, now do so. Despite efforts to counter this tendency, one could perhaps say that there are now poor and poorly functioning black schools and better quality non-racial schools which more closely match the aspirations of South Africans and the intentions of the Constitution.

The second last paragraph of the Interim Constitution, in a clause that appeared only late in the negotiations announces: *"In order to advance such reconciliation and reconstruction, amnesty shall be granted in respect of acts,*

omissions and offences associated with political objectives and committed in the course of the conflicts of the past" (Act 200 of 1993). From this bald statement emerged perhaps the most thorough-going post-settlement activity designed to establish a socially cohesive country. The legislation that established the Truth and Reconciliation Commission was passed in 1995 as the Promotion of National Unity and Reconciliation Act. The Commission[29] had three committees – Human Rights Violations with an investigative mandate; Reparation and Rehabilitation; and the Amnesty Committee. Victim hearings and amnesty hearings were held in public and broadcast widely, and are generally held to have been of considerable cathartic value. The report was initially delivered to the ANC Government in 1998, and an even later final report was accepted without much enthusiasm. Victim compensation remains outstanding for many and a number of investigations which suggested the prosecution of perpetrators who did not apply for amnesty, have not yet been resolved.

11 Socio-Economic Exclusions

In 2010, a National Planning Commission under the joint leadership of Minister Trevor Manuel (previously long serving Minister of Finance) and Cyril Ramaphosa (ex-union boss turned magnate and now Deputy President of South Africa), together with 24 academics and specialists, prepared a diagnostic report which, unlike its final recommendations, received widespread and rapid support.

> *For those South Africans who are excluded from the formal economy, live in informal settlements, depend on social services which are either absent or of very poor quality; the political transition is yet to translate into a better life. The continued social and economic exclusion of millions of South Africans, reflected in high levels of poverty and inequality, is our biggest challenge. (National Planning Commission 2010)*

Given that the twin demands prior to the political settlement were for citizenship (i.e. vote, equality before the law, and public and private dignity) and for return of the land, the failures to resolve claims for restitution of land demonstrate the difficulties of transformation beyond political and civil rights. In a submission on the proposed amendment of the Restitution of Land Rights Act in 2013, think tank Plaas made the claim that resolving merely the existing backlog would take an additional 15 years (Cousins et al. 2013).

Since the release of the diagnostic report, civil protest, which was already high, has continued, and relations with the police have deteriorated, resulting in numerous incidents of violence on the streets and retaliation by the police. A series of violent disagreements between an emerging new union[30] and a member union of COSATU has resulted in workplace instability in the mining sector, which is already economically stressed. A tragic massacre of miners who appear to have been disillusioned with the unions and distrustful of their management is still under investigation by a judicial commission.[31]

COSATU itself is more fractious than normal and its relationship with its primary political ally, the ANC, has been tested.[32] Detailed study of civic protests, lumped together as 'service delivery' protests, has underscored their growing frequency and geographic spread. The Multi-Level Government Initiative at the University of the Western Cape records the basic issues driving these protests as "Housing and Land", "Water or Poor Service Delivery", "Electricity" (fees and shortages), "Ignored Grievances", and "Infrastructure". Between 2007 and 2013, the

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[29] The TRC Commissioners were drawn from the church, civil society and professional bodies: Archbishop Desmond Tutu (chairperson), Dr. Alex Boraine (Deputy Chairperson), Mary Burton, Advocate Chris de Jager, Bongani Finca, Sisi Khampepe, Richard Lyster, Wynand Malan, Reverend Khoza Mgojo, Hlengiwe Mkhize, Dumisa Ntsebeza (head of the Investigative Unit), Wendy Orr, Advocate Denzil Potgieter, Mapule Ramashala, Dr. Faizel Randera, Yasmin Sooka and Glenda Wildschut.
[30] The Association of Mineworkers and Construction Union (AMCU)
[31] The massacre of 32 miners took place near Marikana in August 2012 following days of civic disturbance and mob killings. A judicial commission was instigated: see www.marikanacomm.org.za/ (accessed 31 December 2013).
[32] At the time of writing the largest union affiliate, NUMSA, has withdrawn from the alliance. The implications of this withdrawal remains unknown.

numbers have been growing by more than 100% per year and the number of those that have become violent has also been growing by more than 100% per year (de Visser and Powell 2012).

What strikes the observer is the increasing distrust that exists between state officials and citizens, which makes the resolution of such disputes complicated and extended. In a number of cases, despite the history of commitment to conflict resolution, heavy handed state tactics have replaced consensus building. These geographically dispersed and localised rebellions presently pose no threat to the nature of the state nor to the political settlement. They have, however, increased the levels of friction and potential harm in the machinery of government, and placed strain on the relationships between citizens, the state and elected representatives.

12   Perceived Threats to Constitutional Democracy

Despite the commitment to constitutionalism which stands at the centre of the political settlement and on which the present consensus is based, there are perceived threats to this consensus from within the governing party. A piece of technical legislation governing the preservation and classification of government documents (the Protection of State Information Bill) has become a running battle between civil society groups suspicious of the Government's motives for the draconian drafting of the bill and a Minister for Intelligence seemingly even at odds with members of his own parliamentary caucus who have subsequently been whipped into line. That bill and various uses of the left-over security related legislation of apartheid years have revealed a streak of defensiveness and secrecy within the present ANC Government, which had perhaps been dormant in the earlier years after the political settlement. A schism in its Youth League has set loose an unpredictable trajectory for a new political formation called the Economic Freedom Fighters, attracting young people who feel excluded from the economic outcomes of the political settlement and led by a charismatic bully calling himself the Commander in Chief, [33] who is able to speak with conviction and lack of inhibition about those social cleavages and discontents which the Diagnostic Report describes. A presidential review, now with its terms of reference cleansed of a deep suspicion that the courts stand in the way of the elected government,[34] is reviewing the work of the Constitutional Court and other courts in contributing towards transformation. While those working on the review are both independent and professional, the original motivation for this review is likely to resurface once the report is received, leaving the court potentially vulnerable to political interference. The Public Protector,[35] too, is facing some tough challenges as she adjudicates complaints aimed at the executive from a public too easily associated with previous privilege, and perhaps now too disempowered to believe in the efficaciousness of the vote and the deliberations of Parliament beyond the tyranny of the majority.

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[33] Julius Malema was the erstwhile President of the ANC Youth League. Ejected with other members of his executive on disciplinary grounds, and under investigation for fraud and tax evasion, he has regrouped outside the ANC; EFF members, with their distinctive red berets, are becoming more visible. Opinions on its impact are mixed, with some pointing to his poor administrative record in the ANCYL and others to his street credibility and personal charisma.

[34] See for example the interview with Secretary General Mantashe reported in www.sowetanlive.co.za/columnists/2011/08/19/judiciary-must-be-de-politicised (accessed 24 July 2014)

[35] The Public Protector (or Ombudsman) is a Presidentially appointed but autonomous and tenured office established by Chapter Nine of the 1996 Constitution responsible for enquiry into improper conduct of state affairs, inter alia. The present incumbent is a woman.

13 Conclusion

If by inclusiveness, a political inclusiveness and consensus about the political settlement is meant, then South Africa has now been through almost 20 years without any serious challenge to this settlement. There are no obvious organised power contenders and the former power contenders are legitimately governing on the basis of consistent success in four national elections. The country has had four different Presidents – all from the ANC, but internally elected by different factions of that party. There has been some continuity of policy and no serious challenge to the primacy of the constitution passed in 1996.

Since 1995, the Afrobarometer and its predecessor survey in South Africa, have been asking questions about national identity and whether adult citizens feel that they are South Africans first or whether they treasure a different self-defined identity. From the start, black South Africans have maintained a common identity – normally with response rates above 9 out of every 10 respondents. The white respondents have always been a bit more tentative but response rates have always been above 6 in 10 and more often closer to 8 in 10.[36] So, the project of building a democratic non-racial society is still supported by the vast majority despite any policy reservations that they may have on a day-to-day basis.

There are a number of matters of concern which suggest that the settlement is in danger of becoming unsettled – and that this will be driven not by the previous power holders but rather by those whose exclusion was not intended. Indeed, the political settlement was designed specifically to include the black majority – while threading the needle between the necessary economic and administrative transformations, the fears of the privileged, and the constraints of the global economy, an economy that is itself in the throes of an unpredictable transformation. As South Africa begins the celebration of 20 years of democracy, the political settlement that incorporated the conflict partners and their allies, and created a formally codified and initially materialised understanding based on a significantly inclusive negotiation, may now be fraying - not at the edges, but from below. These developments are not resulting from unforeseen pressures on the settlement or a lack of inclusion, but rather from the unfulfilled aspirations of inclusion and the inability to deliver on the economic and social inclusion which that political settlement implied.

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[36] See www.afrobarometer.org (accessed 31 December 2013).

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