

WHAT TO THINK ABOUT THE GIRAFFE-LIKE INTERIM CONSTITUTION AND ITS
"TOGETHERNESS"

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The agreement reached at the multi-party negotiations on the interim constitution is a remarkable accomplishment. The "elite settlement" to end the centuries-long white monopoly of political power and racial discrimination, is something close to a miracle .

Our euphoria about the settlement should, however, not blind our eyes for the imperfections of the agreement concocted through a multiplicity of compromises. In saying this I do not want to detract anything from the hard work, the perseverance and the dedication of those responsible for the historic agreement. They deserve our unqualified gratitude.

Looking at the interim constitution from some distance and detachment, it looks - like any animal sewn together by a committee - very much like a (constitutional) giraffe with nine legs of which only two or three can stand on its own fiscal feet.

Given that Kempton Park has "created" this awkward-looking "interim animal", we can hardly be grateful enough towards the ANC for standing firm from the outset in its demand that the constitution should be written in two phases and that the elected Constituent Assembly will have the responsibility to write the final constitution.

South Africa has plodded on for too long with constitutions without legitimacy. We cannot afford to repeat these mistakes. We should therefore not underestimate the importance of the task of the Constituent Assembly to bestow incontestable legitimacy on the final constitution. Hopefully the principles laid down at Kempton Park as guidelines for the final constitution, will not have a too restrictive effect on the capacity of the Constituent Assembly to

"create" a final constitution that will not only have legitimacy, but will also be efficient and an affordable one.

These last two considerations clearly did not receive the needed attention at Kempton Park. Consequently the interim constitution will have to be streamlined rather drastically to turn the giraffe-like animal into a workhorse able to serve South Africa for at least a hundred years or more.

Some of the matters that need to be reappraised are proportional representation, the number of the elected office bearers in the assemblies and senates on both national and provincial levels, the number of ministers, prime ministers, etc. Equally important is the affordability of the high degree of federal decentralisation and the voting procedures for national and provincial assemblies.

Although a system of proportional representation was inevitable for the first election, this system have several disadvantages. It contains the possibility to add yet another big institution to our present system of Big Corporations, Big Bureaucracies and Big Parastatels. With proportional representation the political parties can easily develop into gigantic organisations controlled by power-drunk party bosses. Big party bureaucracies are inclined to deprive the political system of individual creativity and adaptability. It will also be against the grain of democracy for the common man.

As a result of the Verwoerdian policy of Separate Development we have at present far too many elected office bearers and too many ministers, bureaucrats, etc. It seems as if we have not learnt our lesson. We are well on our way again to creating too many "separate governments" and too many separate or provincial bureaucracies. Countries like the USA and Germany can afford the luxury of a multiplicacy of "separate" federal governments. As a relatively poor and developing country, South Africa cannot afford this luxury.

The ANC has made important concessions on federalism in an attempt to draw as many parties as possible into multi-party negotiations. In the end the idea of federalism was watered down rather drastically by the decision to have a single ballot paper for both national and

provincial elections. The electoral is now deprived of a truly federal choice. As the result of too many compromises the interim constitution has created a kind a federal system that will on the one hand probably be too costly and rather inefficient, but on the other hand without a federal culture. This kind of federalism is a federal system that is not federal. It cannot be maintained.

The new government will be confronted with a difficult "timing" problem when it has to decide at what point during the five transitional years the final constitution should be written. If it starts too quickly many of the weaknesses of the interim constitution will still not be visible. If it starts too late some of the disadvantages and wild upshoots of the interim constitution may already have become institutionalised. Then it will not be easy to root them out. My preference will be that the Constituent Assembly should make haste slowly in writing the final constitution. The country now needs constitutional breathing space, while the "new team" also needs governing experience before deciding on the final constitution.

While we have reason for reservations about what was included in the interim constitution, we have perhaps more reasons for gratefulness about what was not included. In accordance with its slogan of "powersharing without domination", the NP put forward a strong plea for a statutory entrenched minority veto. If this request was granted, it would have caused so many political stalemates that the country may have become almost ungovernable.

Instead of a statutory entrenched minority veto, the NP got what Joe Slovo has described aptly as "togetherness" for five years in a government of reconciliation.

It is still too early to decide what the merits and demerits will be of this "togetherness" in the interim government. One possible advantage, from an ANC point of view, is that the ANC will not have to carry the full burden of the "teething in" problems. It will be possible to shift parts of this burden on the shoulders of the NP and the other partners in "togetherness".

One important disadvantage of "togetherness" is that there will not be a clean break with South Africa's ignoble past. Although it is almost too ghastly to acknowledge, we should not be unaware of the fact that a "revolutionary transition" could have had many advantages. It would have enabled the new government to start with a clean slate. It would then have been possible to get rid immediately of all the ugly baggage of the past - i.e. the legacy of both apartheid and the white monopoly of political power.

But given the vulnerability of the South African economy - seriously damaged by the too long Struggle between (mainly white) Establishment and the (mainly black) Liberationists - we have reason to regard ourselves lucky to have an awkward giraffe-like "elite settlement" instead of a bloody "revolutionary transition". But this does not discharge us from the responsibility to be alert about the possible disadvantages of an "elite settlement".

A distressful possible disadvantage of the "government of togetherness" is that the other parties (and especially the NP) will be in a position to hamper the ANC in its task to dismantle the extensive "network of patronage" created and extended by the NP during its 46 years of uninterrupted governance.

The ANC must be aware of the fact that the majority of the patronage granted by successive NP governments, has to a large extent become an integral part of the bourgeois establishment. It will therefore be rather difficult to sniff out and to root out the privileges created by patronage and corruption.

The ANC must also be aware of the fact that the NP did not settle for nothing for some measure of "power-sharing". The "togetherness" will enable the NP to play the role of watchdog in an attempt to protect the vested interests of its constituency.

One of the arguments regularly put forward by protagonists of the bourgeois establishment, is that for the sake of economic growth capitalist interests should be left as intact as possible. Although there is merit in this argument, it is nonetheless necessary to distinguish clearly between "vested interests" conducive to economic

growth and "vested privileges" (created by patronage) with little relevance for economic growth. Although it will not be easy to distinguish in practice between "vested interest" and "vested privileges" it is important that the ANC is not hampered in its efforts to destroy "vested privileges" rot and branch.

Looking at the network of patronage from an economic and fiscal point of view, the necessity to dismantle the network of patronage appears to be almost obligatory. We can explain this point convincingly by changing our ~~method~~ *metaphor*

During the last 46 years everyone of the six NP heads of state, has put its own "gravy trains" on track without doing its bit to detail enough of those "created" by his predecessors. Even mr De Klerk has been too much a captive of the sectional interests of his bourgeois constituency to clean up the patronage and corruption of his predecessors to the necessary degree.

We must be realistic enough to realise that the ANC-dominated government will also need "space" - and open tracks - to put its own "gravy trains" on track. At the same time the new government will be lobbied strongly by the poorer half of its constituency to put several "rescue trains" on track towards squatter camps and certain rural areas. It will therefore have no choice but to "derail" many of the old "gravy trains" rather quickly to open up tracks for its own "gravy trains" and for the highly needed "rescue trains".