

Transcript of interview with George Bizos, Johannesburg, 30 April 2015

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TT This first question takes one back – it's about Madiba's thinking on the importance of a constitutional state.

Treason trial

GB I think that his evidence in the Treason Trial is of some importance. He was led by Sydney Kentridge. The charge was one of treason, on the grounds that they adopted the Freedom Charter which was a Communist document and according to the authorities and the prosecution it was really an incitement to overthrow the government by violence – that was the treason.

Nelson Mandela was led in evidence in the witness box, and he was cross-examined at length. There are a couple of bundles of his evidence at the Treason Trial. I remember them because we assisted him to put together his statement from the dock in the Rivonia Trial. He asked for a copy of his evidence at the Treason Trial, which we got. And much of his statement from the dock is a repetition of that. There was a good judge among the three, Tos Bekker, and one of the unforgettable questions that I remember to this day was: 'Mr Mandela, you are claiming the right for one man, one vote' – that was the slogan at the time – 'and you know that we whites will find it difficult to accept such a fundamental political change. Are you prepared to ask for something less than that?' And his answer was: 'I am here alone in the witness box. I am a member of an organisation. I can't give you an answer which only my organisation can give you.' And I'm paraphrasing: 'We have been knocking on the door for over 50 years and nothing has been put on the table for us to consider. Put something on the table and we will meet and we will decide what a lesser solution may be.' He meant it.

Formation of MK

The idea of the formation of MK was something that he took the initiative on. He had difficulties in persuading Chief Albert Luthuli. I was privy to some of these talks, not present at them, but Duma Nokwe and I shared chambers at His Majesty's Building, and the ANC – Nelson Mandela, Walter Sisulu, Duma Nokwe, Oliver Tambo – met at His Majesty's Building.

We played a bit of a trick because we knew that my chambers – it was my chambers and then it became the chambers of both Duma Nokwe and me – we knew that my telephone, or my room, was bugged. What we did was, I would find out which one of my colleagues on the floor was away at court and we would go to the room of the absent colleague, and it was really a heavy debate. Nelson Mandela persuaded Luthuli, who used to come to some of these meetings at His Majesty's Building before he was restricted to Groutville.

It was a very lively debate. In fact Duma Nokwe had to leave the country because they found a document in his pocket as he came out of His Majesty's Building, headed, 'The Time has come to V_ against the _'. The police actually respected His Majesty's Building but they kept watch who was coming and who was going. And they stopped Duma and they found this document. A man called Dirker searched him. He didn't arrest him because there was an outcry about policemen arresting politicians without cause and keeping them and no charge being brought. And they said, okay, only a police officer above a certain rank of captain or something, had the right to do an immediate arrest and not a sergeant, or maybe it was one rank above that. But he took the document from him. He was eventually charged and this is why Duma Nokwe had to leave.

Nelson Mandela had given an undertaking to Luthuli that it would be a separate organisation, and that the ANC would have political guidance over it, but would not be party to its policy.

So from that early stage I think that Nelson Mandela was persuaded that selective violence was something that had to be adopted. And when he went overseas his belief was enhanced because of the policies and propaganda of the PAC to the African countries in particular, that the real revolutionary organisation in South Africa was the PAC, because they had formed Poqo in the Eastern Cape. He came back to persuade the people that were left behind, underground workers, that they had to do something about it.

Perspective towards settlement

But he was never convinced that the power of the apartheid state would be defeated by violence. His belief, even during the trial, if you read his statement, was really a preference for non-violence. Although they spoke of revolution they distinguished between violent revolution and substantive, substantial

change without a revolutionary practice. The document that was found at Rivonia – he was in custody at the time that the document was produced in '63 having been sentenced to five years in prison – but he actually was persuaded that there had to be a settlement. He was persuaded. This is something that we discussed regularly whilst we were lawyers doing cases together in the '50s. During the '60s when he went underground, I didn't see him. But after he was brought to the Rivonia Trial he definitely was persuaded that the violence was a prelude. He was never persuaded that there would be violence which would defeat the apartheid government.

He believed together with Oliver Tambo and certainly me and a number of other people, even though I was not in the high echelons – I never became a member of the ANC, and deliberately so, well first of all you couldn't become a member as a white but even later because you theoretically were not supposed to represent people of a political party if you were a member of the organisation. But we were good friends and exchanged views.

Prison initiatives

He had a plan about it even whilst he was a prisoner. I was a regular visitor, I would have a whole day. The ferry would take you there early in the morning, take the children of the warders to the school in Cape Town, wait for the children to come out in the late afternoon, and come. So we had the whole day, except for a break for lunch, for him to go to his cell and have lunch, and I to the warders' canteen, which by the way after ten years changed fundamentally. I was having lunch with the senior officers in a special restaurant for them, and the main dish was lobster.

He worked on the warders, that they had nothing to fear. And they had problems, family problems, other problems. He spoke to them in their own language, registered to learn Afrikaans. When Kruger went to see him after the death of Biko – I suppose because his shares were low because of his silly remark about Biko – and asked him, is there something that he can do for him, Mandela said, yes, the works of Opperman, the great Afrikaner poet, were not in the library, and he was studying Afrikaans, he didn't have these works. This was in the '70s. And within a week, the works of Opperman were in the library, with a letter, 'here are books', not from Kruger, from the publishers making it a donation to the library. Nelson's Afrikaans was not perfect; but Alexander's Afrikaans was, and I think that Alexander had something to do with a letter written in Nelson's handwriting and signed by Nelson and sent to the publishers, thanking them profusely for doing this. The final paragraph said, 'But you know, my thanks are not really very effective. I will be calling on you soon to thank you personally.'

And you know the authorities became aware that he was working on the warders. A brigadier came down and Nelson addressed him in Afrikaans. And

he said in anger to Nelson, 'You are ridiculing my language. Your pronunciation is terrible. Speak in English.'

We had the whole day in discussions. We knew that we were being recorded. Because Dave Soggot got onto the ferry to go to the island and there was another white man, only the two of them going early in the morning, and David asked the other white man, 'What are you going to do in the island?' And this white man didn't know that he was an advocate and was a leftist. He said, 'No, I am a technician in the telephone department. Every three months I've got to check the equipment bugging the consulting rooms.' Although we knew even before and we would write key words on a piece of paper, this was confirmation.

Even on my first visit to him in August '64 – it was shortly before Bram Fischer was arrested – he kept up with things and I think that he became persuaded, contrary to the views of Mbeki senior, that a bloody revolution was not an answer, rather the pressure outside the country, the non-cooperation of the people, the campaign against the bantustans – those were things that were likely to bring about the meeting of the government around the table.

TT Going then to the period of negotiations, what debate was there about the sovereignty of Parliament?

GB The constitution was being discussed from about '85. It was the time when he was in hospital. There were calls for his release. Coetsee, the minister of justice, visited him in hospital and he said, 'Can we come to terms and release you into the Transkei?' And Winnie went to visit him then came with a message, 'Nelson wants to see you.' I went.

And to show you, I went there, spoke for about an hour and a half. He looked at the watch and said, 'George, it's a quarter to twelve.' He was being looked after by two lily-white Afrikaner nurses. He said, 'Twelve o'clock is the end of their shift. They have families. I am going to call them in. Would you excuse us please because they have to do things with me. You can come in when the shift is over.' These young women considered him a very important person.

What he told me was that an offer had been made to him, which was made public, to go to the Transkei. He got a message back through the underground that Oliver Tambo and others were concerned: he was ill; he was made an offer; he may make a fundamental mistake in coming to any sort of arrangement without the concurrence of the people in exile and the people inside. And it was at the time when the UDF was quite active and it led to a state of emergency at the time.

He said to me that he'd told Coetsee that he couldn't make any decision on his own. He couldn't consult with the people out of the country and he wanted

me to go to Lusaka and meet Oliver Tambo and the others that were there to ask: how do they feel about this? This is what he told Coetsee. What he told me is, 'Tell them that I am in control. I will not let them down.' It was an emotional meeting between Oliver and me at the hotel. We started at nine o'clock. Security stopped us at three o'clock in the morning because Oliver wanted to know precisely what was happening. I told them, 'Don't worry about Nelson. He's in control. He's not going to embarrass you.'

I came back. It became necessary for me to go for another trip, to London because there was a change of government. Barbara Castle was either minister of foreign affairs or deputy minister of foreign affairs. But she had sent an encouraging message to Nelson and I had to go to her to try and get substantial support from the British government. And it was a very friendly meeting. She greeted me. She knew that I was coming, and that I was coming from Nelson. She embraced me and asked me, 'George, how is dear Nelson?'

Coetsee had some elements in him reminding me of Bram Fischer. He was one of these sort of simple men who was obviously doing the policy and that sort of thing, but he was not inimical. He was quite friendly and I also was scared – if Coetsee was telling the truth, his president didn't know anything about his doings and mine. I was scared that when I come back, particularly from a trip to Zambia, I would be asked by the security police, 'What are you doing there?' And they were looking for me. They refused citizenship twice. I was eventually given citizenship and a passport 20-odd years after I came here. And I thought I would take Johann Kriegler, who was chairman of Lawyers for Human Rights and a judge, and I said to him, 'Your Honour, I need a witness. Would you come to Coetsee with me for one of our meetings? It's over in Pretoria,' and I told him why. He said, 'Ja sure I'll come.'

Nelson and Oliver knew that there were some who would say that, 'We will march with our AK47s down Church Street, occupy the Union Buildings and become the new government.' And they were Marxists, trained partly in East Germany or the Soviet Union. All this of course was taken into consideration. But neither Oliver nor Walter Sisulu nor Nelson believed that it was a solution. There had to be a settlement. And we started working on a constitution from '85. There was Arthur Chaskalson, who founded the Legal Resources Centre, who was one of the counsel at the Rivonia Trial, by academic record and by practice a lawyer's lawyer.

There were people, as difficult as it is to believe, in the security police and one or two of the prosecutors, who would speak to us in confidence about what was happening behind the scenes. Arthur was '*die slim Jood*' and I was '*die linksgesinde Griek*', we were not to be trusted. But the government was speaking about a new constitution. What they said was that there would be a federal state with five or six independent bantustans and a central government

dominated by whites while the others would be free to do what they want in their federal independent states. They even appointed a Judge Olivier, to work on this constitution. Much to their surprise at the end of '88 he published his report which said that it's unworkable, only fundamental rights for all the citizens in a unitary state. What better could we wish for? And Arthur and I, Kriegler and others, started a campaign in the legal profession, that it had to be a democratic state, a unitary state, franchise for everyone.

Incidentally, when Mandela was transferred to Pollsmoor and particularly to Victor Verster, I had open door to Victor Verster for the whole day; Gregory and his son would make lunch and buy wine – and I kept Nelson informed. He had the right even though he was alone in Victor Verster, he had the right to call for people to visit him, say 'I want to see Walter Sisulu, Kathrada from Pollsmoor; I want to see Sexwale from Robben Island.' And this would happen. So he wasn't in isolation. He was of course 100 percent behind our opposition to this so-called democracy on which they hoped Olivier would give a judge's commission favourable report. They didn't even succeed in doing that!

A constitution for all

On his release the ANC didn't have an office. We had a couple of people who had come back from exile – Albie Sachs, Kader Asmal, Skweyiya, Pius Langa, a couple of others, there were 10 or 11 of us. He was out for about two months. He came to our meeting at the Johannesburg Hotel where we had hired a consulting room. I was reporting what was happening and I am sure the others that also had access to him, about what we were doing. He sat down with us. He came late for the meeting. We started at nine; he came at about 10.30 and spent the morning with us.

What he told us was, 'Do a constitution, not a constitution which is only good enough for the African National Congress or the black people. Do a constitution that guarantees the rights – and he was quite plain – we have to persuade the 'enemy' (in inverted commas) that they will not be thrown into the sea. Their properties will not be taken away. Their freedom is not going to be taken away. We will not behave the way they did. Do a constitution that will bring about unity of purpose.'

And we worked on it. We worked hard on it. There was opposition to it. There were meetings at Codesa. The people against it were the IFP, which wanted a sort of KwaZulu province but with a constitution which they drew up. In our interim constitution, any provincial constitution could be done by the province but it had to pass the test of consistency with the national constitution to be decided by the Constitutional Court. To give you an idea, the IFP – with an Afrikaner lawyer who became an IFP Member of Parliament for about three periods, Koos Van Der Merwe, and an Italian from America, Ambrosini – did a constitution which we opposed after the national constitution had been

confirmed as compliant with the 34 fundamental principles that had been agreed to at Codesa. We were not alone in opposing it, and a unanimous judgement was given by the Constitutional Court, which rejected it completely – they said that there were no less than 42 contradictions between it and the national Constitution and that though the list was not exhaustive, there were other reasons, 42 were enough!

There was this union, COSAG – IFP, Mangope, Gqozo, and AVF (Afrikaner VolksFront). I was at Codesa, as the adviser of Zola Skweyiya who was too busy with the politics of negotiation. I was his legal advisor, but representing the ANC view and there was Lionel Mtshali from IFP, and fortunately Leon Wessels for the Nationalists – we became quite friendly, and we still are-There had to be substantial consensus on everything. We were in a group which had to put into legalese everything that may have been agreed to at the other three groups. We had eye contact, Wessels and I, and Mtshali wouldn't say anything, but when either Wessels or I would say, 'It would appear that there is substantial consensus', Mtshali would stand up, not having said a word throughout the debate, and say, 'What substantial consensus? We have not yet spoken and I want to say that I oppose everything that both of you said and therefore there is no consensus.' We had to ignore him eventually.

We did get a constitution. We didn't succeed in having it confirmed the first time round because hardly any powers were given to provinces, and they said for that reason some more were needed. So then we thought of this, that a budget would only be passed if it was passed by a majority of the provinces as a draft. It would go to Parliament but they would be consulted during the working period. Ismail Mahomed was one of the judges when I appeared for the government to certify the Constitution and he said during the argument, 'I'm not going to tell you whether you have cured the complaint, but if you have, it will be just past the mark.'

Traditional leadership

TT That touches on the place of traditional leadership in a democratic constitution – what did you see of Mandela's views on that?

GB In a democratic country, even if you have a king, in the United Kingdom, in the Nordic countries, in Spain, you have a king but he has no executive powers in a democratic state. No executive powers. This is what I have just recently said in a lecture published on the LRC website and I'm expecting His Majesty to react, or some of his acolytes. But Nelson Mandela was completely against it. He had respect for cultural rights of the indigenous people.

Botswana has I think found an answer. They have their chiefs but they have third-tier government. The chief is an ex officio member without voting power. He's the titular head like the Queen in England ever since Magna Carta. This is

what the Magna Carta did for John II, it said, 'The land belongs to the people,' it doesn't belong to the duke.

Tense moments with De Klerk

TT There were some tense moments between Mandela and De Klerk – were you present during any of them?

GB Nelson picked up the phone very often as a matter of course to De Klerk. He lost his temper at Codesa and more particularly at the prize-giving in Oslo.

It didn't received publicity in Oslo. But he expected De Klerk to apologise in accepting the prize. There was controversy about it. There were people who were telling Nelson, 'Say thank you, I am not prepared to share it'. But Nelson knew that he had to play up to De Klerk. He called him 'Mr President' before the election.

I was there in Oslo with Nadine Gordimer and a couple of others. And there was a ceremony. The acceptance was first by De Klerk, who said, 'Both of us made mistakes.' Barbara Masekela was there and Karl Niehaus was there for the Afrikaans. He and I helped with Mandela's speeches. We went after the speech to his suite to tell him that, 'You are expected to speak tonight at the prime minister's dinner. What do you want to say?' Barbara would make notes, we would fill in and he would look at it and change it and ask questions. And he asked, 'Is it going to be open or is it going to be a closed dinner?' Barbara said, 'No, no. It's a prime minister's dinner by invitation only and there will be no press people there.' He said, 'You know you all look tired. You've been working too hard. I don't need a speech.'

When he's called upon to speak, he said, 'Mr De Klerk,' –not 'President' – 'Mr De Klerk told you that we both made mistakes. What mistakes did we make, Mr De Klerk? Was it our mistake that we were tortured on Robben Island, some of us buried in sand and your warders urinated on our heads? Was that a mistake?' And he went on ... 'Was that a mistake? Was that a mistake? Killing people?' I've never heard him so angry. We had breakfast at adjoining tables —not De Klerk and his wife, not Nelson and his daughter. The other Nationalist there was Pik Botha. At the breakfast they moved away. Botha came to me and said, 'That was disgusting behaviour on the part of Mandela and in future my president will speak last so that he can give a response to your president.' They were supposed to come to Sweden together but they took a plane home.

Demonstrating respect for law

TT Another moment of anger was the case that Louis Luyt brought over the rugby. He told journalists that 'it made his blood boil', but he controlled that.

GB He behaved very well. He was advised not to give evidence in that case by Fink Haysom, his official advisor, that 'You don't have to give evidence. You'll win anyway on appeal'. 'No, no, no,' he said. 'I want to give evidence.' And he wanted to show that he didn't want as president any sort of prerogative. When the judge ruled against him he appealed to the Constitutional Court. Luyt made the mistake of asking Arthur to recuse himself from that appeal. He also spread the rumour that Arthur was a member of the Communist and Arthur made a statement saying he'd never been a member of the Communist Party or indeed for any length of time of any other party. The case was won by Nelson.

Even in his divorce, he didn't want it to be thought that he should be treated differently. He also behaved very well. He was not living with Winnie when she was charged with the Stompie case. He asked me to do the case for her because he said that I had often defended him and if I did not defend her this time the inference would be drawn that he had abandoned her and he didn't want her to be abandoned. And he came to court in the late afternoons in order to go out with her from court so that pictures can be taken, that he was still on her side. But things changed.

TT Concerning the Shell House shooting, and Madiba's statement in the Senate that he had given the order to defend the building and 'kill if necessary', you said previously that at the time of the TRC amnesty hearings it emerged that he had given the order to defend Shell House, but not that he had said to kill. Was this in the affidavit submitted to the amnesty committee by Madiba (which Gary Kruser refers to) and if so where would one be able to find it?

GB I am not sure if there was an affidavit or not, but it was established in consultation with Mandela (before the Senate or after, during the TRC period) that he had given instruction defend Shell House – but had not said, 'to kill if necessary'.