



INNOVATIONS FOR SUCCESSFUL SOCIETIES

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MAKGETLA: My name is Itumeleng Makgetla, it's the 3rd of February 2010, and I am in Johannesburg, South Africa with Mr. Douglas Irvine who was a technical advisor to the Commission on Provincial Government after the 1994 elections. Thank you very much for joining us and consenting to be part of this interview. Before we begin, can I just confirm that this is a voluntary discussion?

IRVINE: *Yes indeed it is.*

MAKGETLA: Excellent. Can we start with your giving a brief overview of your career and how you came to be involved as an advisor to this commission?

IRVINE: *At the time I was head of the department, chairman of the department of political studies at the University of Natal. I had also been very much involved in issues around public management policy for the new South Africa as it were in one way or the other. And I was approached by the government of the province of Natal and asked whether I would be prepared to serve as a technical advisor to the Commission on Provincial Government.*

MAKGETLA: Okay.

IRVINE: *The University of Natal then seconded me full time for two years in that capacity.*

MAKGETLA: And can you describe the brief of the commission and what your relationship was to it?

IRVINE: *The Commission on Provincial Government was set up by the interim constitution, the 1994 constitution to advise the Constitutional Assembly on all matters relating to the provinces as these were to be dealt with in the new final constitution; the constitution scheduled to be adopted in 1996. The commission also had the task of monitoring the transition in the new—the two-year period of transition in the new provinces established by the '94 constitution.*

Previously, South Africa of course had four major provinces and a number of homelands as they were called in various states of dependence or independence technically. And these were re-incorporated—the homelands were, the Bantustans or homelands were re-incorporated into South Africa, but a new system of provincial government was set up which entailed nine new provinces, and the transition obviously was quite a complex affair.

MAKGETLA: And if you were to identify some of the key tasks that you felt the commission was able to sort of fulfill in light of this brief what would you say that they were? I am sure it did many things, but what would you say are the key things that it was able to do?

IRVINE: *Well one has to say that the major debate around the provinces concerned the degree to which South Africa should be a unitary or a federal state. Now that is a debate which goes back, way back in South African history to the period of the time of union for instance in 1910, because the constitution that was adopted in 1910 was a quasi federal constitution. But the provincial powers were—had been whittled away over the years in one form or another and for various reasons. The political debates in South Africa about the state of the final 1996 constitution concerned the degree of the autonomy that the, that the new provinces should have, the extent to which they should have original powers, powers protected by*

the constitution. And that was an extremely intense debate and one which was fraught with complex politics. Not only because of the history of provincial government in South Africa which has generated its own dynamics of debate, but because there were two very important protagonists at least who favored a fairly strong federal model.

One was the party which—the liberal opposition party which was known as the Progressive Party, and then later the Democratic Party and subsequently the Democratic Alliance which has a—had espoused a federal program for South Africa.

The second was the Inkatha Freedom Party, I mean the second major political interest which was very strongly advocating a quasi-federal constitution because it had a particular power base in one province, actually two provinces of the new provinces. One was Natal and Zululand, which became KwaZulu-Natal under the new constitution. And then the Inkatha Freedom Party also happened to have a strong base in the entirely new province called Gauteng, which had been carved out of the old Transvaal. Gauteng is of course the industrial heartland of South Africa and there were many Zulu people and Zulu migrant workers and permanently established workers for that matter living in Johannesburg, in Pretoria and the East Rand. So for the Inkatha Freedom Party the issue of a potential capture of government into provinces was a very attractive possibility.

And then I should mention a third interest which was also, one might say, aligned to some extent with the federal debate though it was a rather peculiar one and that was the right-wing Afrikaner movement, which was advocating the establishment of a separate state, a volkstaat for the, for those Afrikaners who wish to form a separate state as it were. And indeed the interim constitution did set up a council for—to explore volkstaat matters and to make recommendations to the Constitutional Assembly as well.

Now where this intersected with the work of the Commission on Provincial Government was that the debate concerned the demarcation of a possible territorial base for the volkstaat. The volkstaat protagonists began by making extraordinarily extravagant claims for the territory of South Africa but also issues relating to the way in which constitutionally the volkstaat would relate to the South African state you know so this fed into the debate around federal issues one might broadly say.

By contrast the ANC (African National Congress) or more broadly the alliance (Tripartite Alliance of the ANC, the Congress of South African Trade Unions, and the South African Communist Party) had a history of favoring quite a strong unitary state and that was also politically fraught precisely because the pressure of the unitary state was not only pressure for the centralization of power but also an affirmation of the unity of South African territory which had been fragmented under apartheid.

So these were very major issues and the debate around the powers of the provinces was one which was deemed to be so sensitive that this became in fact a task of the special commission set up in order to report to the Constitutional Assembly.

MAKGETLA: And so given that these were all...

IRVINE: I must add that there was yet another dimension which related to the great debate around municipal government, government at the local level, which had not, under the previous South African constitution, enjoyed constitutional protection. Province—municipal government had fallen under the provinces as it were, and municipalities did not have original powers. But, interestingly the—particularly the ANC Alliance, the progressive Alliance one might say, was placing a very considerable emphasis on the importance of local government and were advocating strong powers and indeed original powers for, for local government. Indeed, to the extent that the language of the time had been modified to speak not of the different levels of government but of the three spheres of government, which was quite significant terminologically of course and programmatically.

And so the Commission on Provincial Government also had the task of looking at the powers of local government of the local sphere under the constitution.

MAKGETLA: Just as you bring that up, what do you think was the interest there of strengthening local government? Was it, was it a strategic move do you think, or was it just interest in developing the structures?

IRVINE: Can we pause?

I think that there was a particular interest in local government because of the extraordinary history of South African society as it was manifested at the level of local government. The history of segregation and then the formal history of apartheid had led to the separation of races into distinct residential areas. There was a huge challenge obviously therefore to somehow bring together these distinct segregated areas, which also where segregated economically. I mean with the center of the economic power in the white areas as it were, because business had been very largely discouraged by a range of factors and policies in the what one might call, broadly speaking, the black areas.

So that the challenge of developing an integrated economy, an integrated political economy at the local level was one which was recognized I think pretty universally, but was espoused one might say most passionately by the what one might call the progressive democratic movements and resisted to some extent of course by the more conservative white interests for fairly obvious, material reasons.

So that was one reason why the, why local government was such—of such central importance in the political debates and because it also connected them with the question with—about the extent to which South African society could be democratized and that popular interest and the interest of poor people could be accommodated. It was, it was recognized that indeed the issues around housing, delivery of services and local economic development were going to be absolutely critical as they still remain twenty years on in fact or fifteen years on.

MAKGETLA: Okay and can I ask you to elaborate on some of the challenges that existed in bringing together the administrations and in creating these new provincial governments?

IRVINE: Yes, I think that the two major points to make is that following the 1994 elections the political leaders, the politicians, those heading provincial and local government, were by and large new, inexperienced people who had very little prior exposure to practical government because these were primarily black people, black South Africans. And by black, I mean African, colored, and Indian as we say in South Africa with whites now very much in the minority at governmental level, I mean, though represented in provincial government to some extent partly because of the nonracial character of the Tripartite Alliance, the ANC, and the South African Communist Party at this point.

So that was one challenge and I was very aware from my work as an engaged political scientist what an enormous challenge it was going to be to—for people to move in policy making from wish-list politics to policies which were thought through and taken through into consideration around implementation issues as well.

So policy analysis in fact and policy—analytical political skills were in very short supply among the new political elite at all levels. Then secondly, the major challenge was that the public service consisted very largely of officials who had served the apartheid state. By and large because the apartheid state was in the service of Afrikaner Nationalism, this meant that a majority of public officials in the state service and indeed provincial and local government, were in most parts of the country, were white Afrikaners, not necessarily well disposed to the new political regime and having to battle among other things with their own racial prejudices.

On the other hand, there was a tradition of—quite a strong tradition of professional impartial professionalism in the South African civil service. It had been subverted to some extent by the, by the agenda of the apartheid state which had made public policy so highly ideological and explicitly so. But, in fact there was nonetheless quite a strong tradition of civil service independence and professionalism one might say. With an emphasis upon one might almost say a Weberian approach to public administration.

Then secondly, in the category of the civil service there was also quite a large body of black civil servants specifically African civil servants who had served in the homelands, under the homeland governments. And while their position was extremely delicate I would say in the new regime as well, so there were these—. The civil service experience I must say was, was one which therefore was in many ways not closely aligned with the new political leadership. And unhappily, I should add as well that homeland governments had been pretty corrupt you know, by and large, so that also there were some very bad practices which were being brought into, into the core of the civil service.

Then there was a very strong, as it developed, there was a very strong pressure of course for transformation of the civil service's racial—demographic profile of the civil service and what that meant in practice was that at the leadership level, at the senior official level, new people again were being brought in who didn't necessarily have, and often didn't have, solid experience in public management.

MAKGETLA: Okay so if we were to take these as two sets of issues, which you know you described initially, the work of the commission was to deal with the powers of the provinces and the context of this debate about South Africa as a federal or

unitary state. But also the administrative concerns associated with monitoring the establishment of these provincial governments. How did the—what was the work of the commission that enabled it to at the end of the day provide recommendations in these areas or to do that work? So for example on the, on the assigning the powers was—you know this was a very politically contentious issue, was this a political debate in the commission, where do the technical side relate to the political?

IRVINE: Right, I should say a little about the actual composition of the commission first before we can see why it worked out as it did. The commission consisted of a number; it was a number that varied, ten to fifteen commissioners who were part time almost entirely. The chair, I think the deputy chair of the commission, as I recall, and one other commissioner were full time.

MAKGETLA: Okay.

IRVINE: The others were part time and I should say that I think that the commissioners were, were people who didn't necessarily have the political status to give a very high profile and political clout to the commission. They were people who, by and large, who had been involved in former provincial governments and experienced in one way or another there or in resistance politics in one way or the other. And also I think there was as well such glamour attached as it were to the new democratic parliament and government you know that really high profile people were drawn to the national level rather than being prepared to serve for two years in a capacity which kind of sidelined them from active engagement with direct politics. You know so there was a certain weakness there probably inescapable in some ways.

In fact the chairman of the commission, Thozamile Botha, who had pretty solid credentials from the struggle particularly in the Eastern Cape, I think got the chairmanship – and I will say this and it's on record – as a kind of political consolation prize because he lost out in a power struggle with someone else for a position in cabinet, as you may be aware. Okay, I won't take it further than that.

MAKGETLA: Okay.

IRVINE: In fact, half way through the life of the commission it was—the chairman resigned from the commission because he was appointed as Director General of the Eastern Cape, which in itself was a poisoned chalice, but that's another story.

MAKGETLA: Okay so.

IRVINE: The principle of balance was of, political balance in a sense was reflected in the commission because the deputy chair was a former senior nationalist, Afrikaner Nationalist, MEC (Member of the Executive Council of the provincial government) from what was the, for the Transvaal at the time. When Thozamile Botha resigned the deputy chair continued for a while and then a new appoint—a new person was appointed as chair of the commission and Mr. Titus—

MAKGETLA: Is that Matthew Titus?

IRVINE: Matthew Titus. But without—but he didn't have I think either the status or the drive to—he was a gentle person and I don't think he had the status or the drive really to position the, the commission very effectively in the debate.

So right, part-time commissioners by and large, oh I should mention one other person, a person called Jimmy Vermaak, an extremely experienced person in provincial government who was full time and who was essentially the person who led the monitoring of the transition in the new, nine new provinces. Right okay, so then the commission appointed three technical advisors. The chief technical advisor, rather confusing he was a person also called Jimmy Vermaak. There were two Jimmy Vermaaks on the commission. In Afrikaans they were known as groot oom Jimmy and klein oom Jimmy, big Uncle Jim and little Uncle Jim because they differed physically, they had the same name.

Now little Uncle Jim was an extremely experienced civil servant in provincial government, he worked for a long time in the Cape Provincial Government at high level. And so he was a technical advisor appointed and he was the—he led the team of technical advisors. Then I was appointed as a technical advisor and the third person, a woman called Tshitshi Mbatha, but in fact she almost immediately on appointment became—fell pregnant. She went on maternity leave and in fact really played no further part—role in the work of the commission.

So essentially, we worked with two technical advisors, and as I mentioned we were full-time appointees. Just in the nature of organization and organization dynamics, when you have full-time technical advisors and part-time commission, the technical advisors by and large drove the process, and I think that is understandable. So what we did as technical advisors was essentially determine the work program for the commission, develop material for consideration by the commission and which the commission then debated in their, in their pretty regular meetings, which were more or less monthly, but you know as required.

And we also established a technical advisory committee. When I say we, it was the technical advisors who established the technical advisory committee, which we tried to make broadly representative of various expert viewpoints. And the technical advisory committee comprised something like ten people I think. Not only experts, but also politically balanced. I mean we tried to you know develop a very credible technical advisory committee. And the technical advisory committee played an invaluable role in assisting us to define issues and to think through topics and problematical areas and so on.

MAKGETLA: Was this—the decision to establish this technical advisory committee was that in terms of the constitutional provisions for the commission?

IRVINE: No.

MAKGETLA: Or was this something you decided?

IRVINE: That is something we decided.

MAKGETLA: Okay and so can you describe—you know you said that you would basically as a technical advisor would determine the work programs. I assume that would be with the other—with the full-time commissioners? Or can you describe?

IRVINE: Yes, well in discussion with the full-time commissioners and obviously with the approval of the commission as such. Now let me tell you in fact how we, how we then proceeded.

MAKGETLA: Okay.

IRVINE: Which was that part of the work of the commission on the constitutional side as opposed to the provincial monitoring side entailed, you know, close analysis of the constitutional provisions of the interim constitution and the constitutional—and the proposals emanating from different parties and interests which were going to be fed into the discussion documents and some policy documents. And so there was quite a lot of analytical work, we might say, there which entailed commenting on proposals and so forth. But also, what we did was to define with the help of the technical advisory committee key areas, which needed to be thought through in relation to provincial—to the powers of provincial government and provisions for provincial government in the new final constitution.

And we having defined those areas, what we then proceeded to do—and this was my task essentially—was to setup a series of very high-level workshops around these issues, drawing in again experts and interested parties and so on to talk through the issues. And on the basis of the workshops, then develop and boil down the—a set of possible positions for the commission to think through and to adopt and endorse.

And so for example the topics, I'm not going to be exhaustive here at all, but, for example, the powers of provincial government under the new constitution, but also financial provisions in the constitution, the powers of local government in the new constitution, the—and not only powers but functions. What was developing as well, of course, was the notion of cooperative governance, which entails overlapping powers as it were between national, provincial, and local governments. As you know, there is very considerable and extended debate around which powers should be exclusive and which should be joint powers among the different levels or spheres of government.

There was also the issue of traditional leaders in the constitution, which was absolutely fraught. We ran a fascinating workshop on that drawing in the experience of a number of other African countries, as well. We were able to debate this—discuss this issue and possible approaches to it. That remained, by the way, unresolved in the, in the new '96 constitution, and in fact for well over a decade afterwards and is still pretty contested in many ways.

MAKGETLA: And when you say unresolved?

IRVINE: The definition of the powers of traditional leaders.

MAKGETLA: Okay.

IRVINE: Which is still a fairly murky area in South African politics and which impinges pretty much on local government, of course, and issues around land allocations, service delivery, and so on, and how this articulates particularly in a province such as KwaZulu-Natal with the, with the powers and responsibilities of the metropolitan authorities or the district and local municipalities. I say particularly in

KwaZulu-Natal, but in other provinces. But in KwaZulu-Natal the apartheid state and the history of segregation prior to that and of the settlement had led to what one could really only call a real patchwork quality on the political and physical landscape by way of the areas which were under the control of the Zulu authority, the KwaZulu homeland authority, and the province and local municipalities, and an absolute physical kind of inter-digitation, which was the term that we used at the time.

And so those were just some of the areas—the issues, but there were a number of these, and we developed positions or assisted the commission to develop positions on these. And then the really fascinating work, the second phase of the work began, because that entailed feeding this into the Constitutional Assembly as the debates went on. Now the Constitutional Assembly was technically Parliament, but effectively the work of the Constitutional Assembly was devolved to a number of committees in which I would say possibly 100, 150 members of Parliament were actively involved. The debates—these committees were focused on, you know, particular themes in the constitutional debate and hammered out the provisions and recommendations, and then those were fed back to the plenary Constitutional Assembly in due course.

And the Commission on Provincial Government was involved prior—well the topics we were dealing with touched on the work of three committees, which were dealing in one way or another with issues around provincial power or where these issues were pertinent. And so in fact what—when—what happened was that though the commission as based in Pretoria, we found ourselves—and I say we, and I mean by this the chair, the deputy chair, and the two technical advisors—very frequently in Cape Town because we were monitoring the debates in the committees. But in the course of monitoring the debates in the committees in fact, we got drawn into them as well. So that we actually played—we found ourselves playing a part in the continuing dialogue within the committees in one way or the other. And—

MAKGETLA: And which were those committees? Okay, we can come back to that?

IRVINE: We will have to come back to that. I'll actually have to look at the report of the commission I think.

MAKGETLA: Okay, good.

IRVINE: It was, it was—certainly one was relating to you know the powers of provinces, the other was relating to financial provisions under the constitution, financial institutions and the powers and financial powers and responsibilities that should be allocated to the different levels of government.

And I suspect that I'm not sure that the third probably was the committee dealing with local government issues. In fact, I'm pretty sure of that, that is what it was. You know, they tend to blur in one's mind after all these years as it were. But what we did find, which was quite fascinating as well, was just personally was that the Constitutional Assembly, the committees of the Constitutional Assembly began in a very leisurely way to debate high issues of principle and you know and there was a war of position and then of course within the, within the committees in the nature of things over a period of 18 months going on two years, you know, something of a collective consciousness would emerge as well,

of the committee itself. And a sense of urgency also increased as the deadline for the adoption of the new constitution in June 1996 started to loom at the beginning of '96. Because in fact the process had been pretty slow, and because issues were very complex among other things, and so about six weeks before the deadline, possibly two months I can't—before the deadline, suddenly the Secretariat of the Constitutional Assembly and the management of the Constitutional Assembly realized that a deadline was looming. So the active members of the Constitutional Assembly, that is these members of the committees, were as it were transported to a remote part of the country and locked away for something like two weeks and told to finalize the damn constitutional text. And we found ourselves, the two technical advisors, the Commission on Provincial Government roped into that as well, so that was absolutely fascinating.

MAKGETLA: Where did this happen? Was this in Cape—in the Cape?

IRVINE: *It was in the Cape and in fact the place that where we were taken to was in Arniston on the coast, a convention center, and kind of locked away there and told to finalize the issues. And this is just a personal anecdote, but it's quite telling in some ways because, you know, people signed up for these committees. Now these were new committees dealing with particular clauses in the constitutions as well as provisions you see, signed up as a matter of interest. And one of them dealt with the powers, the general powers of the provinces, and another dealt with financial provisions in the constitution and specifically related to provinces among other things and so. Well the—there were two of us who were technical advisors and we could only go to two committees. I mean there were a number of others which were also of interest.*

My colleague, Jimmy Vermaak, went to the one on the powers of provinces, and I went to the one on financial powers on provinces about which I know very little. But in fact this was a subject which didn't interest many people, so that I found myself on a very small committee in fact with Alec Erwin, and I happen to know Alec in a different context, and in effect we wrote the provisions for financial powers of provinces.

And I'll tell you another story, and this is verging on the indiscreet, but having gone through the Arniston experience, you know, obviously that was a great leap forward as it were for the finalization of the constitutional text, but there were some matters which were still to be resolved, and the committees were working late into the night. Literally, on the last week before the finalization of the constitution, the committee which was working on the powers of local government in the new constitution still had a blank. They deferred the debate. They had not been able to agree on it, all kinds of reasons, and my very experienced colleague Jimmy Vermaak sat down and wrote out a set of powers which local—which he thought local government should have, and we gave them to the committee in which Pravin Gordhan was playing a prominent part. He took them on board like that, because you know these powers looked fairly boring in many ways. You know markets and abattoirs and other kinds of things, but what is it that local government should have real power over.

And these were incorporated and this I think is extremely revealing, not only because it's a funny anecdote, but also that you know in the huge political debates around the principles of the constitution, which are extremely important

of course, the fact that the devil is in the detail often gets over looked and this illustrated it, illustrates it extremely well I think. You know, what had warranted a really very thorough canvassing didn't receive it, and a bit of it—in fact I mean I don't think the provisions are bad, but it's just fortunate that the recommendations that were accepted were reasonably sensible.

MAKGETLA: Can I ask you about that because, you know, you have these committees, which comprise people with very explicit political orientations. When these matters are brought before them, how do they debate them? Do they just, I mean, what the nature, was there a chair who—I mean, you would imagine that perhaps that there had been a mediator to provide that role of saying, you know, let's debate these very specific things. There could have been some movement, or was there—how did that work?

IRVINE: *In the Constitutional Assembly itself, in the committees?*

MAKGETLA: Within these committees when you were debating this.

IRVINE: *Yes, well I mean the formal committees set up under the, under the Constitutional Assembly did have obviously a chair and representatives of the different political parties. Given the disproportion, that's not quite the word, but given the proportions of the different political parties in Parliament, with the huge dominance of the ANC in relation to the old Nationalist Party, which was of course then still separate, and the Democratic Party, Progressive Party, whatever it was called at that time, Democratic Party, and a number of other minor parties. What that meant was that the committees themselves tended to have a fairly overwhelming membership from the ANC.*

The smaller opposition parties, even the Nationalist Party in the Government of National Unity and the Democratic Party were quite hard pressed actually to deploy people, a sufficient number of people for different committees. There was a manpower, person power problem on that. And going back to what I said much earlier, of course, the ANC MPs were, by and large, had no prior experience in government, so there was something of a, I think one might call it, not a structural problem, but a cultural problem, as it were, which was quite a challenge.

And so the chairs of the committees had to play a very important role here in shaping the debate in a way which would be creative, but also come to concrete outcomes. And in particular, there were three people who played an absolutely crucial role in the Constitutional Assembly, and that was Cyril Ramaphosa as the chair, and Roelf Meyer who was his Nationalist counterpart, and Colin Eglin (of the Democratic Party). It was—Colin was a person of very considerable parts and experience and, I would say, good judgment. And he played a—he was respected by all sides, and he played a very important role actually in the Constitutional Assembly, you know, as a unacknowledged third member of the triumvirate, one might say.

MAKGETLA: Great, well I understand you have another commitment to go, to but I hope we will be able to pick up some of these issues.

IRVINE: *I would be very happy to talk further if you would like to.*

MAKGETLA: Thank you very much.

MAGKETLA: It's the 4th of February, 2010. I'm in Johannesburg, South Africa with Mr. Douglas Irvine again discussing his work on the Commission on Provincial Government. We'd like to continue discussing the work that the commission did to decide or help advise on the powers of the provinces. In this regard, if you could just maybe—you had some contribution to make on the structural or the recommendations that you made to the constituent assembly based on this.

IRVINE: *Yes. The commission as we know had two major functions. One was to make recommendations to the Constitutional Assembly on all matters relating to provinces to be incorporated or not incorporated in the constitution, as it were. And then secondly, to monitor the transition in the nine new provinces during the constitution-making period from '94-'96.*

On the constitutional issues, the commission initially analyzed the interim constitution, which had been finalized in mid-1993, together with a whole set of constitutional principles which had emerged from the political negotiating process. We then made initial comments and recommendations to the Constitutional Assembly on the provisions as relating to provincial government as they were contained in the interim constitution. Those preliminary recommendations and comments were made by the commission or submitted by the commission to the Constitutional Assembly in early 1995, in March.

Then 1995 saw the constitutional discussions in the Constitutional Assembly gathering momentum quite significantly in the latter part of the year. In the second half of the year, the Constitutional Assembly had actually arrived at a working draft of the new, as it were, constitution, which was to be the final constitution. In November '95, the Commission on Provincial Government submitted quite detailed responses to the provisions contained in the working draft. Those had already advanced quite significantly from the original interim constitution of '93.

Then there was a really intensive period of discussion where broad principles by and large had been accepted, and the details of the constitution were now being hammered out. Though that is somewhat an artificial distinction, because there were some major issues which were still unresolved as it were.

By the end of the first quarter of 1996, the Constitutional Assembly had actually produced the fifth edition of the draft constitution. In April '96, the commission made recommendations and comments on that fifth edition. Now the fifth edition of the constitution was really the penultimate draft constitution. There was still quite a lot of detail which was to be hammered out in the course of April and May, but the constitutional deadline was mid-year. It was achieved with a final sprint, as it were, to the finishing line by mid-year, but with some matters to be tidied up in fact after the constitution was adopted by Parliament.

The adoption of the constitution by Parliament, of course, was the occasion at which Thabo Mbeki made his—introduced the debate and the procedures with his very famous speech, "I am an African." I was there to hear it. That was, for me, one of the most emotional moments in my life as a political scientist and a South African. That's rather by the way.

On matters relating to the constitution, when one simply says we dealt with all matters relating to provinces, that might sound fairly dry, but in fact, what we were engaging with were the constitutional principles which had been hammered out in the negotiating process and the way in which these might be translated into a constitution, and ways in which the proposals within the constitution might accord with those or deviate from them.

We were engaged with issues around the constitutional principles, looking at issues relating to the amendment of the new constitution, because obviously provincial powers and participation could play a very significant part there. We were looking at recommendations and issues around provincial constitutions because at the time there was actually quite strong pressure for provinces to be able to develop their own constitutions as well. That is an issue which has really by and large I think faded from the political debate, but it was a particularly important issue for KwaZulu-Natal at the time. The KwaZulu-Natal provincial legislature, in fact worked very vigorously on developing a provincial constitution during that time.

We were also dealing with matters relating to provincial government, to the powers of provincial government, as these were, to be set out in the constitution, but also to matters relating to provincial legislatures, the executives in the provinces, public administration, and staffing in the provinces, and so on, and the financial and fiscal issues relating to provincial government.

The commission was also supposed to deal with issues around finalizing the boundaries of the nine new provinces, but actually that proved to be beyond the competence of the commission because of provisions in the constitutional principles as I recall it. So that the commission in fact didn't engage with that issue, but made some observations about it. Which would prove to be very pertinent in South African subsequent political history because they were some quite significant tensions in areas, in some provinces where the boundaries had not been finalized. It continues to be a sensitive matter in the political debate currently.

Another major area which was extremely interesting related to the composition of Parliament itself, because of the issue around the second chamber, because the interim constitution still went along with a Senate reflecting the previous constitutional structure of government. But there was also a great debate about whether the second chamber should be a chamber representing provinces and what that might entail. And in fact eventually a Council of Provinces was adopted as the second chamber. There was a lot of principled discussion around that in an international comparative context, one might say as well, in the details of who and what should be represented in the Council of Provinces should such a body be set up.

The commission was also concerned with looking at a whole range of issues around local government, which was, as I've said, previously something which had not been dealt with within the constitution of South Africa previously, but now was to be built in to the constitution, in the final constitution, issues around the powers and functions of local government. All of this fed into an extremely interesting debate, an interesting theoretical debate, but also a very practical one about the nature of intergovernmental relations. The Commission on Provincial Government in fact went so far as to recommend that a new institution should be

set up, namely a Council for Intergovernmental Executive Relations, which was one of its major recommendations, and I think is the most important one which was not accepted in the end. It's illustrative of the real intense debate around how the new system should operate and how issues of cooperation might be dealt with.

That was a political issue at the time because with the quasi-federal structure that was emerging, even if it was not to be a fully federal system at any rate with original competencies and powers for provincial and indeed local government, how were—what was government to be coordinated, if there were to be different political groups or parties in power in the different provinces. That was an issue at the time, and actually I believe it is still an issue for the future as well.

Two rather odd, what might strike one as rather odd matters for the Commission on Provincial Government to deal with, concerned traditional authorities. The ways in which the powers and competencies of traditional authorities might articulate with local and provincial government, especially, and then also the issue around the Volkstaat, as I have mentioned previously. The Commission on Provincial Government didn't make any detailed comments on the work of the Volkstaat Council, but we did interact with them to a very considerable extent because their recommendations were likely to impact, or could have impacted significantly on the boundaries of provinces, and so on. In the event the Volkstaat issue was not resolved in the final constitution of 1996, and as a political issue it tended to evaporate in subsequent years, which is rather an extraordinary business, but still it was a very sensitive and was deemed to be politically a divisive issue at the time.

In dealing with these various issues, the Commission on Provincial Government ran five major workshops in the course of its life in 1995. These were concerned, initially, with identifying key issues in the constitutional debate relating to provincial and local government. Secondly, a workshop on financial and fiscal issues. Then a workshop on traditional leaders, for which we drew on the experience of other countries in Africa, and in fact, had people coming in from all over Africa to talk about their experiences and institutional arrangements and so on in accommodating traditional leaders. That proved to be too thorny a task for the Constitutional Assembly to finalize, and in fact, it is in many ways still a continuing debate within the South African polity. We ran a further workshop focusing specifically on local government and then a workshop on intergovernmental relations and the institutionalization of those relations.

In addition to those major workshops, we had any number of think-tank meetings, advisory meetings, and interactions with other specialists and so on. And of course, as I have mentioned previously, interactions with other technical advisors in the Constitutional Assembly and the members of Parliament comprising the committees, relevant committees in the Constitutional Assembly.

The commission made, as one can imagine, a large number of recommendations and detailed recommendations across these broad areas to the Constitutional Assembly. Many were relatively minor, but, in looking at the Report of the Commission on Provincial Government, which I have read through once again, having not thought about it much for the last 15 years or so, I see that the commission made something like 50 or more recommendations, which one might consider quite significant. I don't want to exaggerate by calling them major, but

quite significant recommendations to the Constitutional Assembly which were actually incorporated into the text of the constitution. The commission also made a number of quite significant recommendations which were not incorporated. About twenty in all, I think, including the one that I alluded to already about setting up the council for intergovernmental executive relations.

Just, if I may, to give you some taste of the kinds of matters that the commission dealt with and made recommendations on that were adopted and taken into the constitution, I'll just make a selection here. For example, general principles for cooperative governance should be established in the new constitution and that intergovernmental cooperation, consultation, and coordination should be required and provisions should be made for structures to promote the principles of government, intergovernmental relations. As we know, cooperative governance, in fact, is one of the major constitutional principles of the new '96 South African constitution.

That, in relation to provincial parliaments, provincial legislatures, provisions should be made to limit the number of members of those bodies, and that these provisions should be included in the new constitution, so that provinces couldn't simply inflate their parliamentary legislatures unduly. The eligibility to become a member of a provincial legislature should include residential requirements, such as actually living in the province in which you represent.

MAGKETLA: That wasn't that case previously?

IRVINE: *No, it wasn't previously the case. And that there should be, at a higher level for instance, that special provisions for passing bills amending the constitution in regard to provincial powers and function should be included. That those should be given special constitutional status and that certain constitutional principles to entrench the constitutional position of the provinces should be incorporated. So a degree of inflexibility, as it were, regarding provincial structures should be incorporated into the constitution.*

Provincial employees, for example, should be expressly included as part of the public service. That might sound obvious, but again, given the fact that South Africa was reintegrating the territories of which had been—in the homelands had enjoyed various degrees of autonomy under South African law, at any rate, or independence even. This was a provision to establish a national public service, as it were, including provincial employees.

Then, on financial and fiscal matters, here's one which again seems obvious, but I think it is extremely important that it was made explicit. The right of provinces and local governments to an equitable share of revenues collected nationally should be retained, and provisions should be made for consultations with the provinces and local government representatives in regard to those allocations. Balancing that, a restriction on provincial rights to raise taxes and levies, and that taxes, levies, and duties imposed by the provinces should not detrimentally affect national economic policies.

Relating to traditional leaders, for instance, an open-ended provision that in respect to traditional leaders, the new constitution should provide only for the recognition and protection of the institution and the establishment of councils to represent such leaders. Nothing further, leaving it as an open question.

Relating to local government, and strengthening the position, the constitutional position there, a recommendation that powers relating to local government should be dealt with in the special chapter relating to local government and not simply under the provinces. It's symbolic, but indicative of an enhanced status. Then, quite explicitly, that national and provincial government encroachment on local government terrain should be prohibited. And so on and so forth.

I think, yet again, in the field of local government, that the electoral provisions and structure in local government should accommodate both ward representation and proportional representation.

Right. I think that, I mean there are many others of course, but that gives something of the flavor of the kinds of recommendations and practical impact of the work of the commission.

MAGKETLA: Thank you. I'd like to ask you about some of that because it is opening a lot of questions. Firstly, regarding traditional authorities, can you describe what the issues were that you hoped to deal with, for example, when you convene the workshop? What were some of the perspective roles that traditional authorities were thought to play, or what were the demands being made by traditional authorities? How were these being presented?

IRVINE: *I think that one of the issues which we were concerned with was to assess the role that traditional authorities were already playing in the life of their communities, where they exercise their authority. These varied widely, because different peoples in South Africa have different forms of traditional authority. These differed pretty widely, but one of the elements which was extremely important is that the traditional authorities do exercise powers under customary law in their local communities. So the way in which customary law and the—particularly decisions and sanctions under customary law relate to South African ordinary law and the new provisions protecting human rights incorporated in the new constitution.*

That was an extremely interesting and really sensitive debate, of course, since the new constitution was an extremely progressive constitution and adopted a Bill of Rights which incorporated, not only as it were the traditional liberal human rights, but also social and economic rights. It was in many ways perhaps one of the most—one might even say the most advanced human rights constitution in the world. So its relation to customary law was a very sensitive issue.

Then there was the whole question of the institutionalization of traditional authority and the structures and representation of the traditional authorities' incorporation of traditional leaders into the national and provincial institutional structures of government, or whether there should be separate chambers with advisory powers and so on and so forth.

Then I think this is a third element which is related to customary authority, but is also sufficiently distinct for it to be a major issue and again a continuing one, which is the authority of traditional leaders over land and the allocation of land use, and how that articulates with the powers and functions of local government, particularly in service delivery. These were some of the major issues.

MAGKETLA: Can I ask you about the second point that you brought up, which is the institutionalization of traditional authority and how they were incorporated into various structures of government? I wish to ask, did you have a sense that they were—you know. The commission was doing its work after a series of negotiations so it wasn't the first time these issues have been considered. Were you receiving, in submissions and hearings, in the workshop, the sense that traditional leaders were demanding incorporation? Was it the political parties, the ANC (African National Congress), the NP (National Party of South Africa) and others who were saying that this was something that was on the agenda, that they should be and they should be in certain ways? How was this—how did you perceive what the challenge was and the demand?

IRVINE: *Well the political demand was really, really interesting, or the political challenges, because—. This is a dreadful generalization, but to sketch things really broadly, by and large, the ANC, significant elements within the ANC leadership, were what one might call modernists or modernizing people who had very little patience with the notion of traditional authority. Here we are talking about people particularly thoroughly urbanized, people committed to a program of human rights, and so forth. Though there were certainly elements obviously within the ANC from the more rural areas as it were, who were arguing for some accommodation of traditional leadership.*

But the strongest pressures were coming from KwaZulu-Natal, for fairly obvious reasons: the very prominent position of traditional authority in Zulu culture and in the government of the KwaZulu homeland and a very strong political role.

But also other areas, for example, what was the Northern Province, there were four, had been four independent homelands with their own governments and authorities who had enjoyed very considerable popular support and base and continue to do so. So that isn't simply, as it were, the KwaZulu-Inkatha agenda. That was a different agenda.

An even more complicated one in Northwest Province which was the base for what had been a quite powerful homeland, Bophuthatswana, with a very powerful political leadership, which had also been almost the basis for sparking what one might call a Civil War prior to, or in course of the constitution negotiations prior to the democratic elections. Again, a very conservative base there arguing for pretty full powers for the traditional leadership.

MAGKETLA: So this workshop that was held, do you recall some of the key debates or what you took away from that workshop?

IRVINE: *Yes. As I've already indicated, in fact, we didn't produce detailed recommendations on traditional leadership because, and traditional authorities, simply because the matter was so very complicated and fraught, both institutionally and politically, in the political dynamics. But we canvassed, for instance, various institutional and constitutional arrangements in various African countries, such as Ghana, and Botswana and a range of other countries which, in varying ways, accommodate or don't accommodate traditional leaders. I think, well I can't speak for the commission, but I can simply speak for myself, I think we decided it was all too much of a puzzle to be resolved neatly.*

MAGKETLA: Okay. Just trying to understand the sequencing of events, I mean I understand the recommendation that you made to the constituent assembly, but at this time, was there an understanding that there would be a house of traditional leaders, or was this something they developed later? Do you have a sense of that?

IRVINE: *Actually, searching my memory, I can't give you an absolutely firm answer but I'm pretty sure that there was a sense that there would be a house of traditional leaders.*

MAGKETLA: Okay. Did that—?

IRVINE: *An understanding.*

MAGKETLA: An understanding. Okay. And that kind of came out of some of those comparative works?

IRVINE: *Yes. They did.*

MAGKETLA: Okay. So the other question I have is about the house, so the National Council of Provinces.

IRVINE: *Right.*

MAGKETLA: The sort of second house of the National Legislature. Can you explain, again, was this because the Senate had existed that there was some sense that there should be another similar provision or again, what were the concerns that gave rise to calls for that?

IRVINE: *I think that one has to put that discussion in the context of South Africa's previous experience of a second chamber in the Senate. Also, debates internationally around the role of a second chamber. Firstly, I think one can safely say that under the—as it turned out in practice, under the Constitution of the Union of South Africa, the prior constitution, the second chamber consisted of Senators representing provinces and a number of other interests, but that by and large the second chamber had become a retirement home for elderly politicians. And that had been supported by and exacerbated by the dominance of a particular party which was the Nationalist Party, which was a strongly centralist party in many ways at the executive level. Though within Afrikaner nationalism there had been quite a strong history of provincial identities. As a, particularly as the apartheid system that developed and hardened, it became government from the center. The Nationalist Party dominated three of the four provinces in South Africa anyway, so that the Nationalist majority of Senators simply became acquiescent, voting fodder in that arrangement.*

So the Senate was, one might almost say, redundant as a check on government, so there was a real debate around that. Do we need a second chamber? If we have a second chamber, what role should it play? What would warrant such a second chamber? The notion of a second chamber, for that matter, I think wasn't something which sat in very congenial way with the ANC, for that matter, which was also looking towards a kind of hegemonic dominance in South Africa, but couldn't be certain of the extent of the continuing electoral support and so on.

Then there was a strong lobby, which really came from the environ academe in some ways and the body which was the Human Sciences Research Council, pressing for a second chamber which might in some ways resemble the second chamber in Germany, in the Federal Republic, representing, strongly representing particular territorial interests, and so on. So there was actually a considerable theoretical legal constitutional debate around the second chamber in those perspectives.

So, in fact one finds that from the initial interim constitution, which still had a provision for Senate, the debate shifted quite rapidly in the first six months or so of the constitution making process into looking at possible alternatives such as a Council of Provinces. This actually began to have quite considerable resonance so the issue then became rather more one of detail. The principle, I think, established itself quite rapidly that the Council of Provinces, that provinces need to be represented specifically. And other interests, local governments, the issues of whether local government should be represented in the Council of Provinces also were quite intensely debated.

MAGKETLA: Given then the Senate in the past had become redundant, was anything done, were any suggestions made to prevent this new structure from having a similar fate?

IRVINE: *Yes, particularly the institutional arrangements for membership for the Council of Provinces, which incorporates representatives of the provincial governments themselves. So that the Council of Provinces is not simply, as it were, a second chamber sitting in isolation from the provinces, actually rooted in the provincial governments and the membership in provincial governments.*

MAGKETLA: Where previously the Senators had been chosen from the provinces but not from the provincial government.

IRVINE: *But not from provincial government.*

MAGKETLA: I see. OK. In your opinion, if you look at the role that the council has played, do you think that has strengthened it?

IRVINE: *Yes, I do think so. I think that there has been more attention to issues relating to provincial powers and interests than there might have been otherwise. But I would say that the Council of Provinces is—will actually become much more interesting, come into its own as an institution as and when the political landscape in South Africa becomes a bit more complex, and where you have a wider range of interests and parties actually represented in the provinces, and so on.*

MAGKETLA: Thank you. That's very interesting. Can we shift gears a little bit to look at the, some of the work that the Commission did to monitor the creation of new provincial administrations?

IRVINE: *Certainly.*

MAGKETLA: There were certain things that you mentioned, and also in reading some of the Commission's report that stood out, such as the recommendation that they be—that employees within the provincial administrations be part of the national civil

service. And I understand from the Commission's report that there was a problem with provincial legislators setting up separate salary scales and other. Can you describe—maybe you want to contextualize that issue in the formation of new provincial administrations.

IRVINE: Yes. Right. The new provinces, and remember there are nine provinces as opposed to four provincial administrations previously. The new provinces took over not only the civil servants from the previous provinces, who I must say were by and large reasonably professional and worked within a tradition of relative professionalism and political neutrality. I use that term pretty advisedly about 'relative', but still I think there was a professional ethos among many of the provincial members of the public service. However, the provinces also, the new provinces, took over the civil services from the former homelands, which were very variable, but by and large much less qualified, somewhat chaotic, and so on. So there was this huge challenge of accommodating this body of civil servants, in fact, who were far too numerous actually for the requirements of the nine new provinces, in any case.

There was also some initial pressure, which was to strengthen quite a lot in the next few years, for the, as it were, racial transformation of the civil service. What happened was that, I think, a very poor and ill-advised device was introduced to address both the issues I mentioned. That is that there were too many civil, public servants and also that the racial profiling was problematical given the history of the country. That was that a voluntary severance package was introduced. The consequence of that was that many of the more experienced civil servants seized the opportunity, partly because they, I think, were somewhat skeptical and possibly politically disaffected to some extent and didn't want to work that much with the new regime and the new order. But also because they were competent people who could take a package and go find a job elsewhere in the private sector or whatever. Whereas the under-qualified people didn't take the voluntary severance packages, and so government was stuck with them. That was a major issue and one which the commission flagged for the attention of the Public Service Commission nationally and also in the provinces. I think that is something of a legacy which we still live with in many ways.

MAGKETLA: Where did the voluntary severance package idea come from? Was that in the constitution or was that from the department of public service administration?

IRVINE: Yes. I don't think that was—it wasn't written into the Constitutional Principles. It was the working arrangement which was devised.

MAGKETLA: In subsequently, I read of a moratorium that was placed of retrenchments.

IRVINE: I honestly can't make a comment there because I can't remember that.

MAGKETLA: OK. That's something to look up then. In terms of this process of new premiers coming in and deciding their administration and trying to work out what to do with this large number of civil servants, do you recall, or what was your sense of the process by which they evaluated who was available, who they needed and how they rationalized their structures? Was that something that the commission had any say on? Or was that something they did independently?

- IRVINE: No, the commission didn't have a say in that. These were issues that the members of the commission probed on their visits to the provinces, and there were very variable different approaches. I think there are some comments and rubric in the report of the commission. But you know, the fact is that these matters were handled very differently in the different provinces, so one couldn't generalize.*
- MAGKETLA:** So maybe you could describe, then the purpose of the commission's visits to these provinces. What sort of issues they would look into or how they saw their role or relationship to these new administrations?
- IRVINE: Firstly, the commission had the explicit function of monitoring and reporting on the transition, so that was simply a process of assessment and evaluation of how things were going. But given the composition of the commission, and in particular the member of the commission who was primarily responsible for the transitional monitoring process, that is Jimmy Vermaak, a commissioner, but also other members of the commission who had experience of provincial government and administration. A lot of the interactions with the provinces, as I was aware of, this was not so much from the technical advisors, but from commissioners themselves, one might say, was almost avuncular to give advice and encouragement where necessary. This was not so much within the explicit remit of the commission but I think was taken on board quite seriously.*
- MAGKETLA:** So in a sense, would you say this helped to address some of the perhaps management deficit and the lack of government experience among some of the incoming political figures?
- IRVINE: I would like to think so. I can't give you any concrete examples, but I think the relationship with the provincial governments, which I saw on the visits to the provinces at times, was more often than not cordial, and the comments of the commissioners were listened to with attention.*
- MAGKETLA:** Were there, in trying perhaps to persuade or offer advice to some of the provincial governments, did the commission or commissioners who were involved turn to any other actors, perhaps within the Ministry or other commissions, institutions for support for a particular input or for a view?
- IRVINE: I can't recall any. This didn't feature very large—if there were informal contacts, possibly, but this was certainly not part of the ordinary process, I would say.*
- MAGKETLA:** One other question related to how you worked for the provincial administrations is that if you, in trying to monitor their work, relied on information from them, how were you able to get the necessary information and in turn ensure its credibility? Was there anything you could do? Were there any sources in particular that you used? Or did you feel that you were getting fairly accurate information from them?
- IRVINE: I think that the information that the commission got was probably reasonably accurate, but there are probably areas where the commission didn't get information. And the commission didn't really have teeth, I think, to extract the information. I would say that the paradigm for that relationship with the provinces themselves was really conversation.*

MAGKETLA: Was this, was this a problem that they didn't have teeth to extract the information or not?

IRVINE: *I think it was recognized as a limitation by the commission itself.*

MAGKETLA: So if you were to have done something—?

IRVINE: *A limitation on its work, as it were.*

MAGKETLA: If you were to have done things differently, what do you think could have been done?

IRVINE: *On the transition, I would say that the real problem was that the commission's term in office, which was essentially two years, was far too short from the point of view of being able to be an effective body, to be an impartial commentator and advisor to the provincial governments, as it were, in the technical capacity. Doing things differently, I would say that it would have been very advisable for that function of the commission to have been formalized, say for the first five years or so of the new system.*

MAGKETLA: It terms—.

IRVINE: *As it turns out—sorry, just to round that off. The commission, by the end of its period of office, had probably acquired a better overview of the provincial system and the dynamics at work and the needs and so on, than any other body in South Africa. It was a pity, a great pity, that that—what had been learnt there, and the experience and the connections that had been built up were lost.*

MAGKETLA: Were there any other sort of unforeseen obstacles that arose in the commissions working?

IRVINE: *Yes. I touched on those in our earlier conversation, but that was that the membership of the commission was unstable for various reasons. That I think did have a detrimental impact on the—well, yes. I think it did. I mean, on the perceived status of the commission. I think that I put it that way. I mean at the technical level in the interactions with the Constitutional Assembly, I don't think it mattered that much. But, the commission did really, after Thozamile Botha's departure, lack a public champion, as it were.*

MAGKETLA: That public champion would have been able to perhaps—what would that have done for the commission in terms of its mandate?

IRVINE: *I think it might have strengthened the impact of the commission behind the scenes in the political debates, in particularly in the debates within the dominant party at that point. I mean I use that term because we tend to forget that it was a government of national unity which accommodated both the ANC and the National Party, but particularly I think within the ANC in the government of national unity at that point, there might have been greater receptivity if there had been a more prominent champion for the commission.*

MAGKETLA: To some of the recommendations that were made—.

- IRVINE:* Yes, I mean, you know, the debates might have been carried more actively into discussions which were internal to the party as it were.
- MAGKETLA:* Just to clarify, where you had this membership instability, was some of that, there were personal reasons, but also was this because they were professionals who were much in demand or was it because they had personal interest or what would you say was the range?
- IRVINE:* I think there was a range there, but one of the things which my conversation with you has reminded me of was the enormous excitement and attraction of serving in Parliament at the time, the Parliament as the Constitutional Assembly, and as the focus, not only for power, but for participation in it. The initial batch of members of Parliament elected in 1994 were of a quite remarkable caliber in many respects. They were really outstanding people. People wanted to be where the action was, wanted to be in Parliament. So that I think that the commission as a, well quite literally, a peripheral institution, of a technical institution, wasn't glamorous. It worked fairly quietly. I think that members of the commission found it relatively easy to say they wanted to be engaged elsewhere. But you should ask that—you should put that question to some members of the commission themselves if you happen to see them.
- MAGKETLA:* Okay, excellent. Just two more questions if that's alright. I read of attempts in this commission Report by the Ministry to question its existence. And there was a comment that there was a concern that some of the objectives cut across other commissions. Did you recall that sort of evolving perception of the Ministry towards the commission?
- IRVINE:* In fact, the Department of Constitutional Development under which the commission functioned had a—the Department of Constitutional Development, I should say at that point, the Minister was Roelf Meyer from the previous regime as it were. Roelf Meyer was also together with Cyril Ramaphosa one of the two managers of the constitutional process, Constitutional Assembly. And certainly my impression when we met two or three times, we being the commission met with the Minister of Constitutional Development, was that he felt that the work of the commission was cutting across some of the work of the department. That was probably replicated as well in the more informal debates around constitutional issues within the political parties.
- MAGKETLA:* How did the commission respond to that? Was there anything you could do? Or do you think there could have been—?
- IRVINE:* I don't think so. The commission was a technical party and it was not—it was a party which was not operating with a—on a predetermined agenda. I really do believe that it was pretty open-minded, given the composition of the commission itself which comprised representatives of different provinces, different parties, and a number of other experts, really. So that the commission had to find its own position on issues and by and large that entailed the development of consensus. So the commission didn't have an agenda and I don't think it could have done very much more other than possibly strengthening access to the key people in the Constitutional Assembly, in the constitutional debate. That's what I mean by key people there.

MAGKETLA: Do you have any reflections on how you achieved that consensus within the commission and is there anything you would suggest to others trying to learn from this experience about what was helpful, what worked?

IRVINE: *Institutions are—they have their own dynamics. Bodies develop their own dynamics, a sense of identity. If one goes back to the founding fathers of the American constitution of 1789, principles get hammered out, they get debated, but the very process itself develops a degree of solidarity with all the differences. One saw that on a large scale in the South African Constitutional Assembly. Though there were many points of difference among the representatives of the political parties, nevertheless, there was also a degree of solidarity which emerged though sometimes erupting into really contentious exchanges and so on around principles. That's the large scale.*

In the small scale, in bodies such as the Commission on Provincial Government, I think that the commission was fortunate in having members, none of whom was subscribed to a hard-line ideological line. I think that that's important. So in an ideal world, one would say that any such body should have people who are open rather than simply advocates of a particular line, making the distinction for instance between representatives and delegates. Members of a commission like that can't be under instruction. They've got to actually use their own wisdom and judgment.

On the other hand, what I would say is that the commission would have been stronger if its members had been full time. I think that that, to me, was one of the major weaknesses of the commission, that the commissioners were part time. Their attention was divided; their time was relatively limited.

MAGKETLA: Excellent. Thank you. You've been extremely generous with your time and this has been a very interesting conversation. Is there anything else that you would like to add?

IRVINE: *Nothing except to say that I've found it quite fascinating to think myself back into that period. Thank you so much.*

MAGKETLA: Thank you.