

Interview with Johann Kriegler, 2 February 2016, Johannesburg (based on notes)

Interaction with Mandela around the 1994 elections

TT What interaction did you have with Nelson Mandela in the context of the 1994 elections?

JK My first contact with Mandela was a phone call fairly early on encouraging me in the work of administering the election, saying that he and the party realised that there were difficulties, and I should know that I had the support of the party and its confidence.

Mandela would call personally, unlike the usual CEO, whose PA calls you to say the CEO would like to speak to you and then you wait for the CEO.

My first face-to-face meeting with Mandela was at a full meeting of the TEC [Transitional Executive Council] presided over by De Klerk four to five weeks before the election. It was a general TEC meeting with reports from various sub-councils.

In mid-April there was a TEC meeting at which Mandela was present where I reported on a meeting with the IFP.

There was at one point talk of a boycott of the elections by the ZCC [Zion Christian Church]. At that time there were several threats of boycott: IFP, Bophuthatswana, Ciskei, and the right wing. I went to meet with Bishop Lekganyane to persuade him to support the process, before Easter. He said that he had invited the leaders of all parties to attend the Easter celebration at Moria to set the right tone for the election, which seemed to imply that he would be encouraging participation. At the Easter meeting I sat in the church next to Mandela for two hours. It was the first time I had talked to him as a person. He was like a grandfather. He recognised people as they came in, explaining that this one was married to that one's sister and so on. He was able to identify them from all over the country by family connections, he really knew his natural constituents. This was the only semi-social meeting I had with him before the election.

Formally I met him in conference at the Union Buildings, reporting back on a visit to Bophuthatswana and subsequent attempts to persuade Mangosuthu Buthelezi to join the process.

The response to my report-back on the unsuccessful trip to Bophuthatswana was, quote, 'We let loose the dogs of war,' made, I think, by Pik Botha, meaning that it would be taken by force.

I also reported to the TEC on attempts to persuade the IFP to join, having gone to speak nominally to the King, de facto to Buthelezi.

I was also present at the meeting of the TEC which decided to impose a state of emergency in Natal.

I received a number of phone calls from Mandela while at the IEC offices, on each occasion encouraging me as before. There was also a TEC meeting on 28 April to extend the voting period, a very difficult meeting, at which FW and the government were very unhappy about the extension, but there was no option. To my knowledge Mandela never visited the IEC offices.

What surprised me at the time, and with hindsight, is that nobody anticipated how bad the election would be administratively. Politically it was fine, everything went peacefully, and there was no intimidation bar a few incidents. In January we had been warned by experts that it couldn't be done and that we should go back to the TEC for an extension. But the TEC had decided that the date was immutable and that the election had to go on, but we didn't realise how difficult it would be.

TT Might it have been one of those moments when historical momentum carries an event no matter what the difficulties?

JK People had been working on reconciliation for decades. There was a sense of political destiny and the political will to succeed was one of the greatest factors in the success. The people wanted it to work and it was going to work. Mandela had that far-sighted vision. Never mind the fact that there are no-go areas, that the ANC can't vote in some of the Free State areas, that the DP couldn't go into areas in Soweto, it was going to work. The Mandela spirit was very important, 'We can do it – let the dogs bark, the caravan moves on'.

I met Mandela again after the election when he had the IEC to a formal luncheon.

Mandela's impact on the position of the judiciary

TT What impact do you think Mandela had on the position of the judiciary in post-1994 South Africa?

JK Mandela had a hand in the creation of the Judicial Service Commission and the process for the selection of judges, which was quite revolutionary and almost unique except for a fairly similar process in Namibia on which some of the same people had worked. (One of those working on both the Namibian and South African processes was Johann van der Westhuizen).

The process of having a multidisciplinary JSC which reported to the legislature which in turn proposed to the executive was unique, especially in its embodiment of the separation of powers. (In the previous dispensation judges were just appointed by the Minister of Justice, after consultation with the Chief Justice or the relevant Judge President.)

I am often asked why democracy works in this unpromising environment, and I have a very personal response to that. One of the major factors, if not the principal one, is the Mandela factor – his attitude to the separation of powers and the rule of law was unflinching and unshakable.

This was exemplified when the Constitutional Court ruled against the President with regard to the Local Government Transition Act, probably the most troublesome of all aspects of the transition given the challenge of uniting segregated living spaces. The court delivered its judgment at 9:45 a.m. By 11 o'clock Mandela was on radio to brief the country. He said, 'If I were to say I was happy with this result it would not be true – but the law is what the courts say, and that is what we must do'. His attitude was, 'We will play hard, but by the rules of the game'.