

CAPE PROVINCE TRADITIONAL LEADERSINTERIM POSITION PAPER ON THE FORM OF STATE SUBMITTED TO THE
TECHNICAL COMMITTEE ON 19 MAY 19931. INTRODUCTION

We received a notice to submit proposals on the form of State last week and in view of the urgency and the time given to us, we were unable to come up with a firm position.

2. PRELIMINARY VIEWS

There are two prevailing points of view within our delegation in this matter, vis :

2.1 A UNITARY STATE

Some members within the delegation are of the view that since we are negotiating a future of one country in terms of both National and Internal law, we should not consider dividing the country at this stage. This view is based on the desire of having one country - one nation - so that we could promote peaceful

co-existence amongst all the different populations of our country. It is the feeling of the proponents of this viewpoint that it is only if we adopt this approach that we can speedily transform this society. They fear therefore that if we adopt a Federal State this might delay and perhaps derail the whole process as the existence of boundaries of the States to be federated may lead to fierce disputes especially amongst traditional leaders.

2.2 FEDERAL STATE

There is equally a strong view that South Africa should be a federal state composed of all different states. These states will be composed by and large by the different population groups in our country. It is the view of the proponents of this type of a state that in doing so we would address the prevailing fears against domination by other different population groups. It is also clear from this view that the existing regional boundaries should be kept with minor amendments.

2.3 COMPROMISE

There is in our prima facie view a need of an acceptable compromise between these views. We are not certain at this stage whether the prevailing view of "regionalism" is the best possible compromise in the circumstances.

Be that as it may whether we have a unitary or federal option we are firmly of the view that a second chamber should be provided for in a new Constitution.

LOCAL AND REGIONAL GOVERNMENTS

1. LOCAL GOVERNMENTS

A clear distinction between rural and urban systems of administrations should be created.

The authority of traditional leaders in traditional communities otherwise known as rural communities should be preserved and promoted. The authority of traditional leaders contrary to the popular belief is one of the most democratic forms of governments in Africa. A traditional leader or ruler is the leader of

the community and in accordance with people's cultures and values always act on the advice of the people. In accordance with this view coupled with a desire of the people to take active role in the administration of their own affairs (self determination) we propose that there should be traditional authorities consisting of Councillors democratically elected by the community and accountable to it. The traditional leader should of course be a chairperson of the Council. We believe that it will be only through this system of Government that the traditional communities will also be developed.

We are also of the view that in the proposed regions the traditional system of government should be preserved. In accordance with this view, Kings should like other traditional leaders always act on the advice of Councillors democratically elected. In region(s) where there will be two or more kingdoms we propose that the kingdoms may perform their duties as branches of regional governments. They may be called sub-regional governments.

Should the regional governments have parliaments of their own, provision should be made for a second chamber of the traditional leaders at this level as well.

CAPE PROVINCE TRADITIONAL LEADERS

POSITION PAPER ON CONSTITUTIONAL PRINCIPLES SUBMITTED TO THE
TECHNICAL COMMITTEE ON 19 MAY 1993

1. INTRODUCTION

1.1 We are of the firm view that the democratic future we are building in order to have a concrete foundation should be based on the entrenched and valued institution of the entailing masses of this country - Traditional leadership.

1.2 Traditional leaders were legitimate rulers of this part of the world until we and our people were conquered by the Colonial powers.

2. ROLE OF TRADITIONAL LEADERS

2.1 Our forefathers led the struggle against Colonial rule and we believe that the ongoing struggles are a continuation of the struggle waged by our forefathers.

2.2 We therefore strongly believe that the

democratic society we are creating in order to be sustainable and credible should take into account the people's entrenched traditions, values and customs of which traditional leadership is an integral part.

2.3 We believe that we should have regard to the constitutional developments in other states in Africa in order to appreciate the relevance and value of this institution. We would like to cite the following examples :

2.3.1 ZAMBIA

Colin Legum who edited speeches by Dr Kenneth Kaunda in a volume entitled Zambia Independence and Beyond states that the onerous task of clearing the desks for the independence in Zambia was borne by Dr Kaunda whom he styles "the forgiving victor". If the view held by historians who analysed the fall of the Holy Roman Empire, is that the surprising thing is not that it crumbled when it did, but that it lasted as long as it did, the

surprising thing is that the role of traditional leaders has never been underestimated.

If there is any lesson to be learned from the man and his times particularly in respect of constitutional development of Zambia, it is that the traditional leaders were never elbowed out nor put in a lumber room. Kaunda left no doubt as to what the role of traditional leaders was going to be.

The role of traditional leaders is firmly entrenched in the constitution so much so that a provision was made for the "House of Chiefs". To quote once more from the work of Colin Legum : "It is our intention that the status and standing of this House should be maintained within the framework of the Constitution, and that Ministers should obtain the advice and opinions of this House on all matters which are a direct concern of the Chiefs

and their peoples."

2.3.2 BOTSWANA

Here the traditional leaders participated in the making of the Constitution. (See Journal of Modern Political Studies published in 1965 by Professor J. H. Proctor in an article entitled The House of Chiefs and the Political Development of Botswana.

The establishment of the "House of Chiefs" in Botswana was as a result of the traditional leaders' direct participation in the Constitution making process of that country. Proctor rightly opines that to have denied the Chiefs a position at the centre would have been a serious affront, especially since they had functioned as a major link between the tribes and the Government. It was also realised that they still possessed sufficient influence in their tribal areas to hinder the

implementation of a Government policy if they chose to do so. It was realised that tribesmen still looked to the Chiefs for leadership and often regarded them as the only personification of political authority.

2.3.3 GHANA

In Ghana the first involvement of Chiefs was in 1949 in the Coussey Committee on Constitutional Reform which had strong representation from the traditional elements. Again one of the main parties campaigning for independence, the National Liberation Movement drew its main support from the traditional authorities and their supporters. As a result of their endeavours, Ghana established a "House of Chiefs" at independence - "No African of the Gold Coast is without some admiration for the best aspects of chieftancy."

The promulgation of the new Ghananian Constitution left no one in doubt about the unique position of Chiefs. It reads : "The institution of chieftancy together with its traditional councils as established by customary law and usage is hereby guaranteed."

2.3.4 NIGERIA

In Nigeria there has always been two Houses viz :- the House of Assembly and the House of Chiefs. Doubtless Nigeria has had a number of coup d'etats (four successful, two unsuccessful) but the House of Chiefs has operated undisturbed except in 1965 when both were dissolved. Chiefs therefore are the anchor in Nigeria and how well has Horatios kept the bridge.

2.3.5 OTHER COUNTRIES

Zwaziland and Lesotho are also

examples where traditional leadership is firmly entrenched.

We also believe that in Namibia Sam Nujoma would not have won the first election without the support and his commitment to the preservation of the institution of traditional leaders.

WE THEREFORE STRONGLY RECOMMEND THAT :

1. The set of Constitutional principles should also expressly provide for the recognition and preservation of traditional leadership.
2. The new Constitution to be drafted and adopted by a Constituent Assembly should provide for the second chapter to be composed of Traditional Leaders and other influential figures in various communities (e.g. "Peers").

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