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CONSTITUTIONAL ASSEMBLY
THEME COMMITTEE 2
STRUCTURE OF GOVERNMENT

**CPG WORKSHOP ON TRADITIONAL LEADERS
AND THE NEW CONSTITUTION:**

(20 - 21 APRIL 1995, PRETORIA)

REPORT

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WORKSHOP ON TRADITIONAL LEADERS AND THE NEW SOUTH AFRICAN CONSTITUTION: 20 - 21 APRIL 1995, PRETORIA

1. INTRODUCTION

- 1.1 The above workshop was hosted by the Commission on Provincial Government in conjunction with the Development Bank of Southern Africa. The Constitutional Assembly was represented by the following members:

Theme Committee 2: B C Bester, S P Holomisa

Theme Committee 3: P de Lille

Theme Committee 5: M Moosa

- 1.2 In general all papers seemed to address the historical perspective of the institution of Traditional Leadership. An all African comparative study on the evaluation and institutionalisation of African Traditional leadership was presented to the workshop. Speakers from several provinces in South Africa bemoaned the historical alignment of traditional leaders to the past apartheid regime. Other speakers accused the new South Africa of wishing to westernise society by robbing rural people of their traditional way of life and introducing democratically elected councillors into rural community life. In the end it was quite difficult to move forward into actually debating the provision of Principle XIII of the new constitution.

Be that as it may, the following points could be useful in preparation for the draft constitutional provisions that embrace Principle XIII.

2. DISCUSSION POINTS: CONSTITUTIONAL IMPLICATIONS

- 2.1 Contrary to popular belief, that because there is consensus on the existence of Traditional Leaders in rural communities, it should be noted, that consensus does not necessarily mean democracy. Further to this debate, Chieftaincy is a system of dominance and subordination hence it is difficult to justify it in a democratic dispensation. (Theme Committee 1,4)
- 2.2 To cater for the what seems to be continued popular support for the existence of traditional institutions, an apolitical and administrative role of traditional leaders should be included in the new constitution A provision for a non-partisan status of Traditional Authorities should be made in the new constitution. The implication

is that traditional leaders should resign from active politics and should they wish to claim their right to traditional leadership.(Theme Committee 2, 6.1).

- 2.3 It is important to entrench rural values in order to curb uncontrolled urbanisation with its socio-economic complexities. It would be unwise to embrace modernity at the price of destruction of the countryside. There is therefore a need to synthesise the old the new ways of life. It is important to always remember that South Africa is part of traditional Africa. We should therefore not isolate leaders from their cultural background. There should therefore be a provision for an elective and non-elective principle in the Second Chamber of the National Assembly. The non-elective part of the chamber could consist of representatives of traditional leaders from provinces in the Second Chamber. Hereditary entitlement should be left untainted.(Theme Committee 2,3) .
- 2.4 The constitution should have clauses that will allow traditional leadership to influence government policies that encourages cultural values that would encourage society to grow towards democratic principles. Cultural values of traditional societies should enjoy protection in terms of the Constitution. (Theme Committee 4).
- 2.5 Customary courts are the primary /first level of dispute resolution in communities under traditional rule. The complexities of a dual legal system becomes apparent. How is one going to identify the inhabitants to be governed by the dual legal system? What happens if a person living in a community under traditional defies the traditional authority in favour of other judicial structures? (Theme Committee 5).

3. LEGISLATIVE IMPLICATIONS

- 3.1 Succession could include women and this should be indicated in detail in the Statutes.
- 3.2 Cultural institutions should be recognised e.g Sick leave should be granted for consulting traditional healers.Legislators will have to accommodate cultural issues in the area of labour laws, matrimonial and property law .

3.3 Traditional Authorities

3.3.1 Powers to allocate land and services should be carefully spelt out in the legislature.

3.3.2 Salaried official status of traditional authorities should be catered for in the legislature.

3.3.3 Local Government structures should provide for elected councillors to report directly to traditional authorities in their areas.

4. CONCLUSION

The workshop was a useful exercise to access information on broad inter African models. It is a pity that stakeholders like CONTRALESA, SANCO and other traditional leaders were not invited. It is unfortunate that the workshop was reduced to debate between the overwhelmingly large delegation of academics and the few politicians present.

The Constitutional Assembly will have to take the above concerns into consideration when planning the Public Hearing on Traditional Authorities and Customary Law scheduled for on May 12 and 13, 1995.

JAMES NENE

THANDIWE MNGADI - KGOSIDINTSI

**WORKSHOP
TRADITIONAL LEADERS AND THE NEW SOUTH AFRICAN CONSTITUTION
20 & 21 APRIL 1995
PARTICIPANT LIST
As at 15h00 on 19 April 1995**

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Traditional Leader	Malekane	Mr, M N
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University of Natal, Durban	de Haas	Ms, M
Rhodes University	Southall	Prof, R
University of the North	Van den Heever	Prof, J A
Wits	Lodge	Prof, T
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Commission on Provincial Government: Workshop on Traditional Leaders and the New South African Constitution. 20-21 April 1995.

Historical Background

Tom Lodge, Department of Political Studies, University of the Witwatersrand.

My talk will refer to three historical periods: the nineteenth century, the interval between the Act of Union and the 1950s, and the Apartheid Era, from the implementation of the Bantu Authorities Act.

African political arrangements in nineteenth century South Africa were rarely despotic. In the case of Eastern Cape communities especially, decision making was shared by a wide group. Here chieftaincies were fairly small. Though clusters of chiefs might be linked through common lineage they were autonomous of each other; amongst such a cluster a senior chief, or paramount would enjoy certain forms of ritual authority but he could not interfere politically in the affairs of other chiefdoms. Chiefs ruled over specific territories or locations. Their control over the lives of the inhabitants of the location was limited in several ways. While land was abundant, chiefdoms were prone to fission: Transkeian communities recognised the right of chiefs sons to break away and start their own chieftaincies. The chieftaincy itself was inherited by the the eldest son of the most senior wife (usually not the first wife). Regencies in the case of minor heirs and succession disputes provided opportunities for commoners to contest the moral authority of unpopular leaders. Chiefs governed through consultation. This was institutionalised in two ways. Chiefs would appoint a body of councillors, not just kinsmen but also people selected on the basis of particular qualities. The chief and his council, or inkundla, would have both judicial and administrative functions though these tasks would normally be undertaken separately. In the case of really significant issues a more general assembly would be called, an imbizo, attended by all heads of households. Ideally, chiefly government worked through consensus. If councillors advised the chief to undertake actions which subsequently proved to be unpopular they might lose their positions and, worse, face the sanction of being "eaten up", having their cattle expropriated. Subjects' obligations to chiefs would include communal labour at certain times, military service when required, and the payment of death dues. As a consequence of such payments and other forms of tribute, including court fines and the proceeds from the dynastic marriage of daughters, chiefs were wealthy but they did not live in a radically different style from ordinary tribesmen. At times of famine chiefs were expected to share their wealth with their subjects. In larger locations chiefs delegated authority through a hierarchy of sub chiefs and ward headmen; in each case these officials in conjunction with circles of advisors performed judicial and administrative duties. Chiefs made a few kinds of

decision on their own of which the most significant was the declaration of war. As the religious leaders of their communities they regulated the agricultural cycle, instigating and leading such communal ceremonies as the doctoring of crops and the harvesting of the first fruits. Chiefs held land on people's behalf and allocated cultivable land for the use of each household. Households might use the same land over generations but this did not signify ownership. Sometimes chiefs also regulated access to grazing land.

Eastern Cape political arrangements were especially consensual and dispersed authority among very small units. In the nineteenth century more centralised and larger scale polities emerged elsewhere, notably among Zulu communities where the kingdom organised the age regiment system to mobilise a large body of men to maintain order, expand the territorial domain of its authority, and undertake communal labour, as well as regulating population growth through controls on marriage. Even so, despite the power of Zulu kings, through most of the nineteenth century they ruled through consultation with councils of advisors and broader assemblies, imbizos.

Across the Drakensberg the terminology changed according to different languages and there was considerable variation in the size of political units and the concentration of power within them but again, chiefs tended to govern through consensus. Amongst the Tswana, for example, there were three circles of advisors normally. The chief in day to day governance relied on the help of a close circle of kinsmen and notables, often living in close proximity: Tswana settlement patterns were unusually concentrated. The lekgotla, was a regular assembly of all the headmen as well as specially co-opted individuals. And finally the pitsos attended by all heads of households paralleled the imbizos of the Nguni in the Eastern Cape and Natal. The chief's rule was expected to reflect public opinion, as expressed through the consensus reached at pitsos. The deposition of unpopular chiefs usually took place through the manipulation of succession rules.

Several points need to be made. When people refer to political tradition or custom in black South African history they are usually speaking about these arrangements which existed in the period immediately preceding colonial annexation. The nineteenth century was a period of dynamic political change: what is often understood as traditional or customary was in fact fluid and undergoing alteration. This was an era of state-building and inevitably as political units became larger they became more authoritarian and less consensual.

Secondly, one should not confuse consensus with democracy. Even relatively intimate political communities such as those which existed in the Eastern Cape were not democracies. Consultation by rulers excluded all women and at most included only the heads of households rather than all the male adults living within them.

Discussion at councils and wider assemblies was restricted by the protocol that arose from hierarchy: the chief spoke first, his more important advisors next, and others followed. In such circumstances opposition was likely to be cautious. Decisions tended to be made in the smaller advisory forums and endorsed in the wider assemblies. The requirements for consensus and unity imposed their own constraints on opposition and criticism.

Thirdly, in these arrangements there was very little institutional separation of different kinds of government functions: legislative, judicial, administrative, and spiritual direction were combined in the same office of the chieftaincy. This combination becomes quite difficult to sustain when the scale of politics becomes larger and government becomes more bureaucratic.

In the first half of the twentieth century chiefly power was sharply reduced. This was particularly the case in the Transkei and the Ciskei in which an effort was made to institute a hierarchy of elected advisory councils alongside the colonial bureaucracy of magistrates and civil servants. Magistrates confined chiefs' legal powers to trivial civil issues. Much of the local administration was in the hands of ward headmen, paid by the government and answerable directly to the magistrates. As well as losing their authority in most legal matters chiefs lost control over land. In the 1930s and 1940s the Department of Native Affairs attempted to tightly regulate land use, imposing a series of regulations intended to check overstocking and consequent erosion. Headmen were responsible for administering land rehabilitation measures, a task which made them very unpopular. In some areas the measures were fiercely resisted. Outside of the Eastern Cape chiefs retained more autonomy but even so their authority was checked by magistrates and the imposition of land controls. In general because they were deprived of important administrative functions chiefs kept much of their moral authority. This was despite a process of accentuated social differentiation in many African reserves which defined the economic relationship between the chiefs and their subjects in sharply exploitative terms. From an increasingly impoverished population chiefs continued to exact tribute and payments to supplement the stipends they received from government. In the countryside their political leadership was recognised by modern political organisation emerging in the cities. Between the wars, for example, the ANC maintained in its constitution "House of Chiefs" and in Natal particularly, modern political leaders in both the ANC and the ICU enjoyed strong personal links with the Zulu aristocracy. But notwithstanding their continued prestige in some quarters, the position of chiefs deteriorated through most of the Union period. Quite apart from the formal governmental encroachments on chiefs' authority their power was also eroded by modernisation, in particular the new loyalties and identities caused by urbanisation, industrialisation, christianity, western education, and capitalist social relations.

The Bantu Authorities Act of 1951 attempted to restore chiefly status. It prescribed a hierarchy of authorities within ethnically defined territories. At the most localised level a tribal authority was to embody in modern bureaucratic form the inkundla or lekgotla. Chaired by the chief its members would meet monthly. It would have a secretariat and a treasury. It would send representatives to the next tier of government, the regional authority which in turn would be nominate members of a territorial authority. The Act contained provision for tribal authority elections, but in practice when these first began to be established, in 1953, in the Free State and the Transvaal, their composition was usually decided by the chief and was in any case subject to the approval of the local Bantu Commissioner, who also retained the power to appoint and dismiss chiefs themselves. Ostensibly, the Tribal Authorities had quite limited powers: land allocation, the responsibility for countering soil erosion, providing services such as sanitation and education, and formulating local laws and regulations: all subject to the approval of the Native Commissioner. They could also raise taxes. What was significant, though, was the central position in local government which was assigned to chiefs. As the authorities became established their competence was quite rapidly expanded. This was especially noticeable in the fields of taxation and law. Tribal Authority courts began to handle a much broader range of cases than the old chiefs courts. In Tribal Authority courts there was no legal representation and Bantu Commissioners began transferring a significant number of criminal law functions to them. In civil cases plaintiffs paid a fee for their cases to be heard and were often required to share any damages won through litigation with the chief. Anthropological fieldworkers and political activists commonly testify to a rising tide in the 1950s of complaints directed against the new system because of its manifest corruption and the costs it imposed upon ordinary people. Increased power brought substantial financial rewards: in addition to the fees and levies which accumulated from the administration of justice the new authorities frequently imposed novel forms of taxation which helped to pay for the increases in chief's and headmen's stipends. The remuneration of headmen multiplied ten times during the 1950s. Chiefs were assigned with the main responsibility for promoting land rehabilitation which assumed a fresh and vigorous programmatic form in the late 1950s. It enabled them to expand their own land holdings through the enclosure of grazing ground and new forms of land demarcation.

Though the Bantu Authorities system claimed to recapture the ethos of precolonial African government it tended to accentuate its more authoritarian dimensions. First, and most obviously, it neglected to give institutional expression to the widest forums of chiefly consultation, the imbizos or pitsos. Secondly, chiefly appointment and succession was now fixed through a set of genealogical rules in which the ultimate authority was external. It was no longer possible for tribal communities to manipulate rules in such a way that they could help to influence succession or depose an unpopular chief. Communities themselves were sometimes redefined or

even invented according to the ethnological suppositions of government-employed anthropologists. Similarly, popular discontent with chiefly actions would no longer lead to the dismissal of councillors, for their appointment was, again, subject to external vetting. Thirdly, Tribal Authorities were assuming much wider powers of taxation than what was represented in earlier forms of tribute. Moreover their responsibility for the administration of social services and welfare, including such non traditional items as the provision of pensions, considerably expanded the scope for bribery. Finally, chiefs had become responsible for the administration of externally imposed laws, which, in the case of land rehabilitation measures, were by definition unpopular and which, for a period in the early 1960s, required considerable external force for their implementation.

The Bantu Authorities system was not just a system of chiefly centred local and regional government. For with the elaboration of Pretoria's programme of separate development based on ethnic self-determination in the homelands the Authorities assumed a central role in the development of a modern bureaucratic state. Territorial assemblies evolved into increasingly autonomous legislative bodies in which chiefs were initially to constitute a majority as nominated members. Even when the elective principle was introduced into representative bodies, chiefs as local electoral agents were in any case likely to influence the composition of assemblies so the gradual decreasing share of seats held in legislatures by chiefly nominees did not significantly diminish their control over the political system. At a local level, chiefs also tended to influence candidate nominations. Party politics in bantustans tended to be fairly sporadic affairs with party machineries unusually active only in the run-up to elections. Around the framework of the authorities there developed quite substantial bureaucracies which grew especially quickly in the 1970s and 1980s with Pretoria's concession of full independence of self government. By 1990 homeland public services employed about 300,000 people, and represented a vast field of patronage for chiefly rulers at all levels. The channelling and manipulation of such patronage was one factor in helping to explain the surprising extent to which "traditional" leadership still retains a degree of legitimacy for many rural people.

What conclusions can be drawn from this history which are useful in a discussion of the future role traditional leaders might play in a democratic South Africa?

First of all the idea that it might be desirable to reconstitute the traditional status of chiefs seems especially problematic. Apartheid attempted to accomplish just this through reifying and rigidifying a notion of traditional authority which assumed that tradition is fixed and constant rather than fluid and changing. In any case, unscrambling the historical falsifications imposed by apartheid is bound to be politically contentious: many of today's traditional leaders have quite doubtful claims to the positions they represent.

Secondly, the consensual elements in nineteenth century chiefly authority reflected a symbiotic relationship between chiefs and commoners: chiefs controlled economic surplus but supplied security and protection for their subjects. That relationship is difficult to recapture and the material basis for it collapsed in most homelands long ago. In desperately poor communities chiefs represent an indecently prosperous economic elite.

Thirdly, given a track record in homeland administration of bureaucratic ineptitude, financial venality, and authoritarian politics, to allow traditional leaders to play an ascriptive role in local government structures make these externally ineffective in promoting "people-driven" development.

Despite these considerations, traditional leaders are demonstrably able to mobilise significant political support. This may be attributable to two contradictory factors: the power and control over resources they enjoyed under apartheid and the enduring folk memory of a relatively recent era when chiefly authority was legitimised through community consensus. Given continuing popular support for the institution (though this should be evaluated more carefully than it has been up to present) there is a strong case for assigning it an administrative and political role.

Sources:

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THE ELIMINATION OF TRADITIONAL LEADERS FROM THE NATIONAL POLITICAL SCENE

PROF K MITE

INTRODUCTION

The most peculiar feature of Tanzania's post independence political scene was the deposition of traditional leaders (chiefs) in 1963. This stripping off of the public powers and functions of traditional leaders in mainland Tanzania (Tanganyika) took place with very little resistance both from the traditional leaders themselves, many of whom were absorbed into the local government administrative bureaucracy and from their subjects. The situation in Zanzibar and Pemba was different. In Zanzibar in 1964. But even here there was very little resistance to the deposition of the sultanate

Our treatment of the deposition of traditional leaders and the structures that were created to replace them, will be limited to Tanzanian mainland/former (Tanganyika) since Zanzibar represents a special case of Arab conquest and rule on the East African coast. The first part of this paper deals into the issue of why it was so simple to do away with traditional leaders in Tanzania. Part of the answer to this lies in the nature and characters of the traditional leaders and their relationship to the outgoing colonial system. The second part of the paper looks at the various local structures created to replace traditional leaders at the local level

and the extent to which there have enable democratic participation of the populate

DEPOSITION OF TRADITIONAL LEADERS IN TANZANIA

An Executive decree in 1963 wiped out the powers and functions of all traditional leaders in Tanzania. Two questions need to be answered here. First, why was it so easy to depose the traditional leaders? Second, why was the independence government in a hurry to eliminate traditional authority?

As noted above, the answer to why it was so easy to depose the traditional leaders lies in the nature and characters of traditional leasers. To understand the nature and character of traditional leasers at the independence one has to make an historical regration to the time of the imposition of colonial rule in the various changes that took place since with regard to the position and role of traditional leaders.

In the first instance it should be noted that at the time of the imposition of colonial rule in Tanganika first by the Germans and later by the British, three types of social political organisations were identifiable, namely: The segmentary states (societies) in which the segmentary/creavage system regulated political relations between the different social unites; The single chiefdom states (societies) in which small

traditional leaders maintain power on a small territory and population unattached to any association of chiefdoms on power pyramids; Empire states which had large territorial boundaries and populations under successful military leaders/chiefs. (Shorter 1997. 41-42). What the above points to is the variety of traditional leadership at the imposition of the colonial system.

Secondly, it need be noted that just before the imposition of colonialism the Tanzanyikan political scene had been undergoing tremendous changes as a result of the slave trade that was accompanied with the introduction of fire arms and ivory trade. This had a tremendous effect at the local level leading on the one hand to the breakup of orderly, prosperous and peaceful kingdoms into a great many embattled chiefdoms each seeking its own ties with traders. On the other hand the slave trade lead to the emergency of strong chiefdoms under military leaders controlling the trade routes. (Curtin et al. 1990.04.5). Thus the traditional leadership scene at the time of the imposition of colonialism in Tanganyika varied from place to place.

Thirdly, by the time of colonial imposition, the sultanate of Zanzibar had already extended its rule among the coast of Tanganyika. This had been done through what has come to be known as the Liwali/Akida administrative system. The Liwadi - was the administrative head of an urban area (town) and the Akida's were in charge of the surrounding villages under the Liwali. The Germans on taking

over Tanganyika adopted the Luwali/Akadi administrative system particularly in those areas that had been affected by the Maji Maji revolt (1905-1907) and in other areas where they have had to destroy completely the traditional leaders. Two things need to be noted about the Liwali-Akidla system. First, there were not recruited from the local traditional leaders. The first Akida's come from the coastal aristocracy of traders and later from among the graduates of the earliest German schools set up in the coastal towns (Curtin et al 1990:475. The Liwali and Akida's had no traditional legitimacy among the local population and only ruled because of the support they received from the colonial power. In taking over, the British replaced some of the German personnel but retain the system.

The second point to note on the Liwali, Akida and chiefs is that they were allowed to rule with some rough guidelines about the kind of rule they had to provide. They entered into a colonial revenue system that was characteristically tributary. That is, they collected taxes from their subjects and passed some parts of them on to the European. So long as they can maintain this relationship they were free to order their subordinates in their own way. The tributary relationship lasted until the Europeans secured enough control to place all the traditional leaders in salary, into the power subsequently to remove them. What is to be noted here is that in the early colonial period most of the traditional leaders, both appointed and hereditary, tended to abuse their powers in the process of tax collection. This

weakened the local support for them and undermined their legitimacy: Furthermore, then colonial rule had consolidated, the traditional leaders were reduced to figure heads as they became salaried officials of the colonial system. This did not improve their image among the populace.

Lastly, it is important to take note of the British colonial master's idea of chief. At the British indirect rule system was the fact that every society must have a leader-chief. Where no chiefs or other traditional authorities were visible the British went ahead to develop a recognisable chieftainship. Hand in hand with the development of chieftainship was the creation of "paramount chiefs", that is, chiefs ruling over a federation of chiefs. Thus in Tanganyika paramount chiefs were created for the chagga, nyamwedzi, sukama and kamba tribes. Paramount chieftainship was totally an administrative imposition that faded into oblivion even before the deposition of chiefs. Where paramount chiefs were not created attempts were made to create a council of chiefs to coordinate traditional rule of a specific tribal area. A council of chiefs was established for the haya in Tanganyika.

Under the indirect rule system the British recognised traditional rulers as local authority. This was done under the Native Authority Ordinance of 1927. These local authorities were used to administer law and order, collect taxes, and act as channels of communication between the population and the provincial

administration. However, these local authorities had no jurisdiction over non-African residents within the area and had no autonomy as their decisions were subject to approval by the provincial administration (Mutahaba 1987.19.20)

The British indirect rule system actually altered the character of chiefs/traditional leaders. In the words of Shorten the chief became a tool of the central administration, absorbed in tax matters, in court work and in correspondence. He no longer fulfils the social or economic expectation of his people. Rather he taxed them without being the obvious channel of economies and social benefits (Shorten 1974.46).

What can be deduced from the above is first the diverse character of traditional leadership in Tanganyika of the time of independence. There were those traditional leaders/chiefs who had been imposed or kept in power by the colonial masters. These completely lacked legitimacy and support from their subjects. Secondly, the position of the hereditary leaders had been completely undermined by the colonial system and their positions turned into those of paid agents. This had ended their legitimacy in the eyes of their subjects. It is because of this partaining situation at independence that the traditional leaders were deposed into little resistance from them or the public at large.

Turning to the question of why the independence government deposed the chiefs one encounters two sets of answers. The first set of the answers is the government's own rationalism of the more. Two basic arguments have been advanced by the government against traditional leaders. The first argument is centred on the undemocratic nature of the traditional leaders. Elections are considered to be central to the democratic system. People must exercise their democratic right of choosing their own leaders. This does not only involve the election of leaders at the national level, but also for the local government. Traditional leaders were seen as an impediment to local government election. In Tanganyika the local Government Ordinance of 1954 came to replace the native Authority Ordinance of 1927 which has instituted traditional leaders as local Authorities. This called for the election of members to the local District Councils. The question then became, should traditional leaders stand for local elections? Their positions as traditional leaders would already prejudice the elections in their favour. The other alternative would be to have traditional leaders as ex-officio members of the council. Given their number, this would shift the weight of local council in favour of traditional leaders rather than elected officials.

The above leaders to another problem tried to democracy and that is, of the representativeness of the democratic institutions. If the council were to be dominated by traditional leaders who were not elected by the people, then they

would not be democratic. People must be afforded to choose their own representatives to all the institutions of government. This then would exclude the traditional leaders. Traditional leaders were therefore seen as obstacles to the democratization of the local institutions - both in terms of allowing people to choose their own leaders and of having peoples's true representatives on the institutions. Traditional leaders had to give way to democratic institutions and systems of governance/.

The second argument advanced by the state against tradition leaders, is the treat of division of the country on tribal lines. The continuation into existence of traditional lecturers would lead to a conflict of loyalty, loyalty to the nation and central authority and loyalty to the tribe and chief. National Unity and the necessity for national unity demanded the elimination of tribal loyalties represented by traditional leaders.

The argument of national unity and national building represented the of the new leadership that any of authority at the centre would encourage the forces of disruption. The deposition of chiefs and tractional leaders represented nothing else but the centralization of power. The new government not secure enough in its position to allow the development of alternative centres of power as noted by the Matalaba (1987). In actual fact not only were tractional leaders

abolished but also all local organisations that were under the community rather than central control (Kleeimer 1983). The district councils which had provided the pretext for the abolition of chiefs were stripped of all their functions in 1969 under the transfer of functions Act and completely abolished in 1972. The primary cooperatives that had flourished with independence were also abolished in 1972. It took another ten years to re-establish elected local governments - under the local government (District Authorities) Act of 1982 and cooperatives.

What should be stated here is that whereas traditional leaders were deposed in the pretext of democracy in terms of the people's right to choose their representatives, the structures that were created to replace the traditional leaders were neither democratic non representative of the people. In actual fact, people's participation in their affairs diminished in the process. In the following section we look at the established local government structures.

LOCAL GOVERNMENT STRUCTURES IN TANZANIA

At the top of the local Government structure during the colonial period was the District Officer (Commissioner). This was the man in charge of the police and hence responsible for law and order. He judged and administered punishment and ensured that all were collected and was in charge of all the traditional

leaders-chiefs and agents in the District. This was the man responsible for the general administration of the district. By the end of the German colonial period in Tanganyika 22 such districts had been created. By the end of the British colonial period in 1962 there were 55 districts. Because of the expanse of the country and the difficulties in communication several districts were grouped together to form a province. The provincial commissioner harmonised the administrative and development activities in the various districts and constituted the main communication channel between the districts and central government, in the colonial situation the governor. There were about 10 provinces in Tanzania at the time of independence in 1962.

The District and provincial officers constituted the backbone of the colonial administration. These general administrative officers were therefore chosen with care and in many instances had to pass through a period of special training. These were the people who came into dairy contact with the local population and the traditional leaders. These territorial administrative divisions and structures were retained by the post independence governments but they also became the centre of government reforms. These reforms have had broader impact at the lower levels of local government. We shall briefly look at these reforms in Tanganyika (Tanzania mainland).

The first major reform at this level was with regard to the appointment of District and Provincial commissioners, generally known in Tanganyika as Area and Regional Commissioners. These two positions were regarded as key and sensitive by the Africanisation Commission in 1962 and had therefore to be immediately Africanise. This in practice meant the immediate replacement of the civil service district and provincial commissioners by political and one should add party men. The Regions and Regional Commissioners' Act of 1962 and the Area Commissioners' Act of 1962 were intended to affect these changes.

These new political and party heads of the district and provinces, while being in control of the newly established district councils, were not in control of the functional officers representing central ministries in the provinces and districts. This made it difficult to coordinate the developmental activities of both the councils and the central government in their areas. It was this lack of coordination and the financial difficulties being faced by the councils that were used as excuses for the next major local government reforms in 1972.

The 1972 reforms have come to be known as the decentralisation reforms reforms in Tanzania. These involved first the abolition of the elected district councils and their replacement by the District Development and Planning Committees now mainly constituted by civil servants and party officials in the

District. Secondly it involved the creation of Development Directorates at the District and Provincial levels. These Directorates were headed by Regional/District Development Directors under whose command came all the government functionaries in the District and Province. The appointment of these high calibre functionaries from the central government to the regions was intended to facilitate the planning and implementation of the central government plans. The third aspect of the reform was the elevation of Regional Commissioners to the level of central government Ministers, thus giving them full control of their regions. A fourth element of the reform and may be the most forgotten was the predominance of the district and regional party structures over the District Development and Planning Committees and the Regional Development Committees. Apart from the civil servants, who were also required to be party members, the other members of the committees were party officials. This was the beginning of party supremacy over government structures at the local level. Party supremacy had already been asserted at the national level with the expulsion of 9 members of parliament from the party by the National Executive Committee of the Party in October 1968 which automatically excluded them from parliament. Party supremacy was to become the major element in the next set of local government reforms in 1982.

The 1982 Local Government (District Authorities) Act lead to the reintroduction of District Councils in January 1984. The election of councillors,

however, was subject to approval both the Village / Ward and District party structures. Apart from being party members the candidate for council posts had to be approved by the General District Party meeting. In the final analysis the District Executive Committee of the party came to be the controller of all district affairs. Thus power lay not with the re established district councils but with the District Executive Committee of the Party. This remained the position until the reintroduction of the multiparty system in the country in 1993.

Apart from the Council of Chiefs or District Councils in which the various chiefs and traditional leaders were represented, the administrative competency of the traditional leaders was below the district level. The main structures below the district were from the bottom - the Village in which the headman was in charge, then the Ward under which were grouped a number of villages and often under a sub chief or Sultani and finally the Division which grouped together a number of wards. This was under the chief or the main traditional leader. The deposition of traditional leaders in 1963 took place at the divisional and ward levels where traditional leaders were replaced by ward and divisional officers. In some instances the very traditional leaders became ward and divisional officers but were now subject to transfers from their traditional areas to other areas. Because of this element of transfer many of the traditional leaders opted out of the new arrangements.

A few comments need to be made with regard to the new ward and divisional officers. First and foremost was the limited powers of the new officers. The judicial functions of the traditional leaders were now placed under the primary court magistrate operating at the ward and divisional levels. This process had began before the end of the colonial period and was to be intensified after independence. Unlike in other neighbouring countries, there was no traditional law system in Tanzania. The judicial system was a uniform system and operated throughout the country. The ward and divisional officers had to focus their attention on developmental issues. These new officers were to supervise the Village Development Committees launched in May 1962. The VDC comprised of villagers elected at mass open meetings, the Village Executive Officers and the functional field staff and teachers within the area. These were replaced by the Ward Development Committees in 1969.

The second aspect to note was that these officers were often foreign to the localities in which they operated. This is a procedure that was also mostly followed at the appointment of District and Regional Commissioners, the rationale being the elimination of tribal or ethnic tendencies from local and central government institutions. This, however, had an adverse effect in that these people had no commitment to the areas in which they operated and had very little knowledge and understanding of the local conditions. Besides, most of the officers were former

young party activists. It is this lack of commitment to the localities, the absence of linkages between the new officers and the localities and their lack of experience that prompted criticisms over the removal of traditional leaders.

Thirdly the substitution of chiefs with new officers did not expand the peoples' choice of their leaders. The officers were government appointees and their allegiance remained with the government that paid their salaries. Despite the establishment of Village Development Committees and later on Ward Development Committees, peoples' participation in their development process remained limited. While the development committees had the task of identifying development projects in their areas, the choice of what projects to implement remained with the district/central government that provided the funds. This had the effect of discouraging the committees and lessening their participation into their activities.

Peoples' participation, particularly in the early 60's was centred on the self help projects in which the people provided free labour. However, the mushrooming of these projects increased demands on government resources, to the extent that these two had to be curtailed.

The major change at the local level in Tanzania, however, came in 1975 and was focused at the level of the village and is an outcome of central government's concerted efforts to move the country's population into demarcated villages. Most

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of Tanzania's rural population lived in dispersed small villages consisting of few households of normally kith and kin. From 1971 onwards government efforts were concentrated on moving most of the people into large village units of 250 households. This process reached its peak in 1974-75. This prompted the government to come out with a novel village administrative structure. This was done under the Villages and Ujamaa Villages (Registration, Designation and Administration) Act of 1975. The act provided for the official registration of all villages. This involved the demarcation of proper village boundaries and the constitution of a village government with full authority over the demarcated village.

The village government comprised of an elected Village Chairman and twenty five elected members. The only limitation on the election of both the chairman and members of the village government is that they had all to be party members and their candidature had to be approved by the party. In practice the party branch chairman automatically became the village chairman and the party branch secretary, a central party nominee, became the village secretary. (Miti 1982). It is the above interlinkage between the party and the village leadership prompted the description of the move as an attempt by the party to control all aspects of life in Tanzania.

Both in principle and practice the institution of the village government was the most innovative and democratic move in the country. The act provided for the

village assembly constituted by all the people in the village over the age of 18 years. The village assembly elected the village government and approved all the village plans and programmes. At the assembly equality of the sexes was assured since the determination of issues was not by households, that had left men in dominant positions, but by individuals. The village government was responsible for all village affairs, which included production, security, education, health etc. To manage its affairs the village government was empowered to establish various committees with responsibility over specific matters. The village government was constituted as a corporate body and a legal persona.

The main weakness of this new innovation of village administration was the absence of well defined structures at the intermediate levels of the ward and division. This has led to a break in the chain of communication between the district administration and the villages. If improvements have to be made it is at this level.

LESSONS FROM TANZANIA'S LOCAL GOVERNMENT EXPERIENCE.

A number of conclusions and lessons can be drawn from the Tanzanian experience presented above. First and foremost is the fact that the term 'traditional

leaders' covers various forms of local leadership in the country each with various functions and powers. One should therefore be careful in making blanket ~~generalisations~~ about traditional leaders and in making common recommendations as to their future status. Secondly it must be acknowledged that traditional leadership has undergone massive internal transformations from the times of the colonial wars of conquest and subjugation to the apartheid system of government. The response of traditional leaders in these upheavals differed. Some sided with the new masters against their own people, while others defied the new masters and got replaced by others and in some instances the conquerors and masters created new leadership structures within the vanquished societies. Given the above changes and transformations the term traditional leader takes on various meanings. One must therefore be clear as to what is specifically meant by traditional. How traditional are the traditional leaders?

Thirdly, local support for traditional leadership has often been taken for granted. As long as the people did not rise against or challenge their traditional leaders it was assumed that they supported them. This blanket belief in peoples' support for traditional leadership is premised on the assumption that traditional leadership forms the centre of the local peoples' culture. The people are still embedded in their culture and therefore still support the pillars of that culture - traditional leaders. This type of logic is definitely wrong. A lot has changed in the

African societies. The so called pre colonial culture is gone for ever. Besides, traditional leaders have not always behaved and acted within the limits of the old cultural sphere. The fact that in Tanzania traditional leaders could be deposed with a stroke of the pen tells of the fallacy of peoples' support for traditional leaders. It is one thing for traditional leaders to claim peoples' support in their struggle with the central leadership but another thing to verify this.

Fourthly traditional leaders have played and continue to play a crucial administrative role in their localities. They have in many instances been the governments in their areas. Given this fact there are two possible alternatives: to replace them with responsible and equally efficient structures or retain them and transform them into new instruments of development. Each of these alternatives is fraught with problems. It is not easy to transform ~~to transform~~ an age old system. The people who have long been involved in the system, the traditional leaders, are going to contest the erosion of some of the powers and privileges that such changes must entail. The changes on the other hand might be seen by those advocating the elimination of traditional leaders as merely cosmetic and aimed at retaining the age old exploitative feudal system. Equally creating new structures to take over the traditional functions has its dilemmas. The people to manage these new structures may not be as experienced and efficient in local management. The new structures often demand peoples participation which might not be forthcoming and thus

hamper the proper working of these structures. The conclusion from the above is that careful thought must be taken before a decision is made to retain or abolish traditional leaders. There might be no blanket solution for the whole country. It might be that traditional leadership need to be maintained in some parts of the country and replaced in others.

Fifthly, the basic dilemma with the traditional leaders has been their incompatibility with the democratic system. Democracy has come to be understood in terms of people electing their leaders and being represented by people they have elected. Elections and representation has not been problematic at the central level because traditional leaders never operated at that level. Problems have arisen at the local level. The basic question has often been " What relationship should exist between the elected organs and institutions and the traditional system?" This has often boiled down to which organ is superior. One wonders whether the question can be reduced to the simple issue of what roles should be played by each.

Lastly one should not rule out the possibility of creating new forms of organisation at the local level. The village government system in Tanzania points to a way of establishing new democratic system at the local level. There are in South Africa already new forms of organisations and structures at the local level. The potential for these structures need to be appreciated.

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THE PLACE OF CHIEFTANCY in the NEW SOUTH
AFRICAN STATE

BY

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1. Historical Background

The phenomenon of Kingship / Chiefship¹ in the history of African political systems dates as far back as the African neo - lithic, over 7000 years ago. This was the beginning of food production economy in Africa. Its onset from about 5000 to 4500BC marked the beginning of the known sedentary communities. This meant that some kind of organised political and military authority was now needed to regulate the new civil society; that is, to ensure the security of the communities and to protect basic human rights.

The obvious way of attaining this goal, was for the prospective subjects to surrender their will, individually and collectively in their mutual interest, to the nascent communities with individuals of proven leadership abilities at the helm. Usually these were men and women who had distinguished themselves as military leaders or great social leaders, or even great cattle raiders and hunters. Once the people had thus acknowledged the leadership of these individuals, an investiture of sorts was considered to have taken place. The ruler assumed office and acquired all the symbols of power on the understanding that he / she would continue to serve the interests of the people.

The important point to note here, is that the founders of Kingdoms / Chiefdoms acquired their positions of power through neither hereditary procedures nor popular elections, although under specific circumstances consultation or lobbying would have been inevitable. There were no electioneering or sloganeering campaigns. They earned their positions in the crucible of political, military and economic practice. Merit, proven merit alone, was the decisive factor. It was from the second generation of rulers² that Kingship / Chiefship became hereditary.

Usually their heir apparent was the King's eldest son or the King's sister's eldest son, depending on whether the community involved was a patrilineal or matrilineal society³. The system of succession was based on a belief in the genetical principle that the King's offspring and / or his blood relation were most likely to possess similar leadership qualities, that the King had possessed. This became a *raison d'etre* for the hereditary Kingship system.

¹ In this document the words King and Chief have the same meaning, and have therefore been used inter - changeably.

² Generation as used in this document, refers to the first line of rulers following the demise of the founder, King who were, broadly speaking self - made rulers.

³ Patrilineal societies trace their lines of descent and succession on the male side while matrilineal societies trace their descent and succession on the female side.

A point of constitutional importance that emerges from the preceding paragraphs is that the King / Chief did not, strictly speaking, derive his power from "the will of the people through majoritarian elections" although he was aware that any abuse of that power could lead to his deposition, usually by institutional death.

2. Historical Justification and Rationale to Have a King

Initially the people were virtually compelled by the exigencies of conditions of primeval warfare and social insecurity to surrender their will to *him / her* (their common will). Thereafter it was taken for granted. Theoretically, therefore, the King was invested with unlimited powers, in concert with his / her councillors over his / her subjects within societally determined parameters. This explains the presence, in the African traditional political systems, of a *seemingly* heightened degree of autocratic consensus authority. It also explains the African concepts of leadership and followership. The King was an embodiment of power, wisdom and sound judgment of the people. He was a spiritual link with the gods and the ancestors. He controlled, on behalf of the people "sechaba" all forms of existence. He thus inspired reverential fear. In this context, his decrees could not be questioned.

In practice, however, the King was no more than a constitutional figure head. There were built - in constitutional counter - balances weighted against his power. The first and perhaps, the most important over and above the councillors, was the "Pitso" (Sesotho), Bhunga (Xhosa) and Bandla (Zulu). These were representative assemblies or parliaments that were held at the Kings Royal Residence to deliberate on all social, political, judicial and cultural matters. They were open to all adult persons, including non - citizen passers - by⁴. Their decisions were reached by consensus. Ordinarily the King, though present and listening, did not take part in the debate. After free and thorough discussion, a decision was recommended. It was then presented to the King through his senior - most courtier. It was at this stage that the King could make his comments and / or observations, if he had any to make. If, following the Kings comments, there was anything that needed to be reconsidered, reviewed or discussed further the decision was referred back to the Assembly. If the King raised no contentious matters, then the recommendation was made a decision by the King and it became a lawful decision. It was announced throughout the Kingdom in the name of and as the King's decision. For example : The King has decreed that a certain Mabitsi⁵ / Mphato should raid a

⁴ The views of passers by were often invaluable. They were considered to be neutral and unbiased. Hence the saying "Molato o a hlomwake mosepido" (A case is judged by a passer - by traveller).

⁵ "Mabitsi" is a name of young men who were circumcised together. Because they are generally of the same age range, the group is sometimes referred to as an age - set or age - grade.

neighboring chiefdom and capture cattle and other war loots . It is clear from this, that it would be done as he directed. Foregoing the King was never a tyrannical monster in the sense of Hobbesian leviathan⁶. The people ruled themselves through him and in his name.

The second constitutional check on the King's power was the Royal Council or King's Council. This was a body of royal courtiers or councilors who constituted an Advisory Council. Initially they were neither the relatives of the King nor his appointees. They were mature and seasoned statesmen who had distinguished themselves in the service of the Kingdom : by unswerving loyalty to the community and state and fierce defence of the interests and rights of the people. As a general rule, they resided at the Royal Court. They advised the King on regular basis, undertook diplomatic missions and generally, saw to it that the affairs of state were conducted in a manner that was most likely to safeguard the rights and interests of the people. If the King, by his behavior or actions or utterances seemed to endanger these rights and interests, the courtiers could arrange his permanent removal from the throne in accordance with the community's conventional rules and procedures. It can be seen from this that the Councilors were not only advisors of the King and protectors of the Kingdom, but they were also representatives of the people. Furthermore, they had to see to it that there was discipline, law and order in the Kingdom. The King was conscious of these constitutional constraints on him. He was fully aware of the dire consequences of breaching them. In a real sense, therefore, African Kings and Chiefs were servants of the people. Chancellor Williams, sums up the situation :

"They (the Councilors) were the direct representatives of the people. The voice of the King was in fact, the voice of the people, without which he could not act on any matter of importance, or even talk alone with strangers."

We must now turn to the main purpose of this presentation. It is twofold. Firstly, we must attempt to distill the political elements in the African political system outlined above and then show why the elements should be incorporated in the New South African constitutional structure, and how this can be done. Secondly, we need to identify the main political concepts, ideas and assumptions that lay at the roots of "a government" in the African traditional system and which must inform the constitution making process for the new South Africa.

⁶ Thomas Hobbes, a British political philosopher claimed that civil society needed a leviathan, a sort of a monster - ruler, if "a war of all against all" was to be avoided.

3. Decision - Making Process in African Traditional System

The first element that stands out is the institution of an open parliament or assembly, called "Bunga, 'Ibandla and Pitso / Kgotla in Xhosa, Zulu, Sesotho and Tswana, respectively. This institution, as has already been noted, was and to a degree still completely representative and democratic until, to varying degrees got corrupted by colonialisational apartheid system. Their decision making process, however, was not based on majoritarian democracy. They reached decisions by consensus. It can be taken for granted, therefore, that the principle of government by consensus form an important part of our people's concept of democracy. It is plausible to suggest that it was the adoption of the principles of (sufficient) consensus that made it possible for South Africans to effect transition without civil strife in their country. Needless to say, in our constitution - making for the new South Africa, the principle should be given a pride of place. The need to take a leaf out of the experiences of other African states up north cannot be over - emphasised. The notion of "the winner takes all" based on the principle of "european" majoritarian democracy has proved to be dysfunctional, to say the least.

4. Concept of Loyalty

The second political element that stands out distinctly in the African constitutional practice, is the hereditary royalty and succession. From the standpoint of meritocracy, this element is difficult to justify and to uphold. From all accounts it would seem manifestly inimical to the principles of consensus democracy and meritocracy. In point of fact modification and adaptation of the institution of hereditary royalty and succession to the modern system of government is both possible and desirable. For, behind and beneath this institution lies the belief that the offspring's and / or blood relations of a successful King are most likely to be similarly and equally successful. It is for this reason that chieftaincy should as described under 2 above not only be retained, but should also remain hereditary. The King should remain primus inter pares (i.e. first among equals). It is the ignoring of this reality that is at the root of much of the political instability in most other parts of Africa. The President and / or the Prime Minister was expected by the overwhelming majority of the Africans to govern them along this way. But they inconsistently and erratically followed the "West minister" democracy.

5. Suggested Structure to Incorporate Chieftancy in the New South African Constitution

African people understandably find it difficult to be shifting their political confidence and loyalties from one upstart to another in four or five year rapid successions. The chiefs should be part of and in control together with their elected councillors, of local government, in their areas. They should particularly be in charge of the traditional, customary and ritualistic issues of their people.

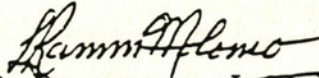
All the chiefs in a province should be constituted into the House of Chiefs (HOC). This means that there will be nine such houses in the country. Each house shall elect from among its members and agreed number, of chiefs to represent its interests at provincial levels. The Provincial Houses of Chiefs will elect their representatives into a single National House of Chiefs. At the Provincial level the elected chiefs representatives will sit in the Provincial Legislature as ex - officio member. He will also report to the Premier. The subnational representatives will represent the HOC at National Level. There will be, needless to say, possibly nine such representatives. The possible nine chiefs shall be constituted into a Council of Chiefs (COC). The council shall elect from among its number a specified number of chiefs who will sit in the National Assembly, as ex - officio members. The Council's Chairperson shall report to the State President on all matters relating to the work of the Council.

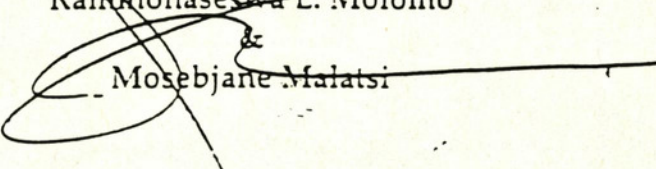
6. Some of the (immediate) Tasks of Chiefs

In pursuance of an elective principle each Chiefdom should be constituted into electoral urban and rural areas. Each of these shall be divided into wards (in urban areas) and villages or combination of villages (in rural areas). The chiefs should be left in control of their Chiefdoms along the lines spelt out above under 3 & 5. At the time of local government elections they shall have overall control of the conduct of the elections in their chiefdoms. They will, for an example, help prepare voter registration lists, participate in appointment of returning officers, receive and keep record of nominated candidates and demacate their chiefdoms into electoral wards and / or group of villages. They will also ensure that all political parties, organisations and individuals who wish to contest the elections have unfettered freedom to do so, in an atmosphere of complete security.

After the elections each chief shall call upon the party that has won the elections to form the town council (in urban areas) and / or local council (in rural areas). Each council will then elect from among its number a mayor (in urban areas) or a area chief councilor (in rural

areas). All the councils shall be answerable to the Chief, who will in turn report to the Premier. Both, the Mayor and the Area Chief Councilor will report to the Chief, but shall also liaise between the Chief and the Premier.

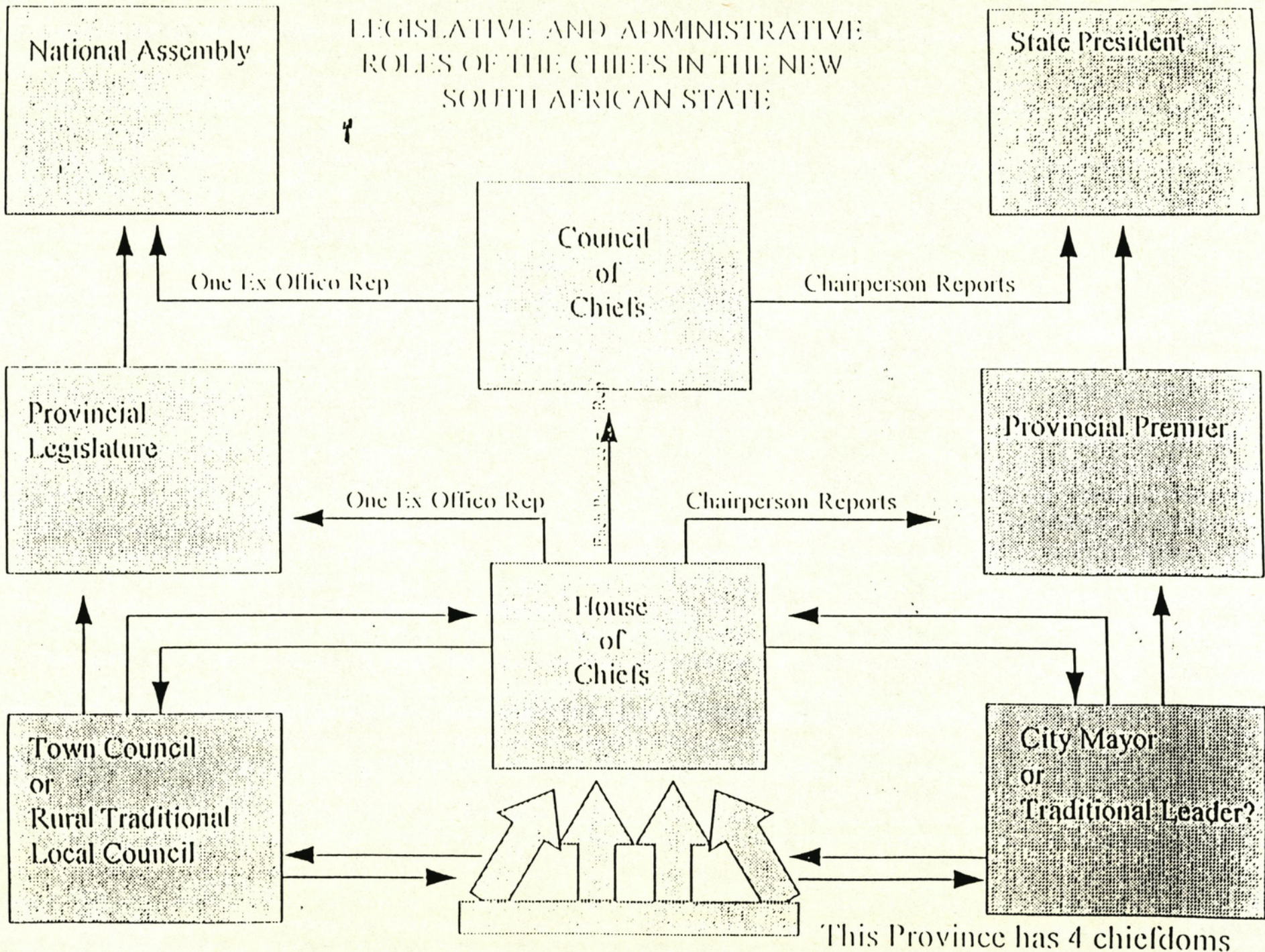

Rammonaseswa L. Molomo


Mosebjané Malatsi

7. Structure Reflecting Proposed Legislative and Administrative Roles
of the Chiefs in the New South African State

LEGISLATIVE AND ADMINISTRATIVE
ROLES OF THE CHIEFS IN THE NEW
SOUTH AFRICAN STATE

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POLITICS AND THE CHIEFTAINCY

THE BOTSWANA EXPERIENCE

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CAPE TOWN - 1995

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POLITICS AND THE CHIEFTAINCY.

INTRODUCTION

Botswana has witnessed a major transition in its tribal leadership since the attainment of independence in 1966. Prior to this period and for several years into the seventies, the Chieftainship was held by descent. Towards the mid seventies and more recently, tribal groups have started to elect their leaders into the Chieftaincy according to the Chieftainship Act (1966) [1]. This trend is more pronounced in the lower ranks of the Chieftaincy and has more prominence in those areas defined as tribal communities much more than in the tribal territories.

Tribal territories have been defined as those areas under the tribal leadership of a paramount chief which are occupied by a tribal group with communal right to land in the territory. These areas have a common tribal leadership in the presence of a paramount Chief, even though the people residing in the area do not belong to the same tribal group. What has occurred is that over time tribal groups will have migrated into the tribal territory and will have been incorporated as components of the 'principal' tribe. In these areas, tribal leadership has continued to be occupied by descent up to the present day.

In the tribal communities there are no paramount chiefs. The positions of wardhead or Sub-Chief in the tribal communities have shown more compliance to the Chieftainship Act where appointment to the Chieftaincy is based on capability and merit rather than on descent.

Prior to independence and during the British Protectorate, land in the areas demarcated as tribal territory was held under the custody of the paramount

Chief. He held it in trust for the tribes in his territory. The Chief, and through his subordinates had the responsibility for allocation, determination of use, settlements, adjudication and arbitration over land. However, the British "Orders in Council" passed 1890 [2], state that Chiefs Khama of Bangwato, Sebele of Bakwena, and Bathoen' of Bangwaketse "abandoned all rights and jurisdiction in and over certain portions of their former territories" and handed them over to the British as "Crown Lands".

Most Batswana believe that according to Tswana custom the tribes had to show their gratitude to the Queen by granting choice portions of their territories, traditionally called "sehuba", for use at the discretion of Her Majesty the Queen of England.

Territories and Communities

When Botswana became independent from the British in 1966, the new government endorsed the pre-independence boundaries and tribal occupation definitions which were in place and thus eight tribal territories were established. Portions of the former "Crown Lands" were redesignated "State land". The State Lands are now the areas where all Botswana urban centres and freehold commercial farms are. What remained of the "Crown Lands" became the present day tribal communities of which there are four.

The Constitution of Botswana [3] describes those tribes living in the territories as "principal" and these are Bakgatla,

Bakwena, Balete, Bangwato Bangwaketse, Barolong, Batawana and Batlokwa. It further describes tribes living outside the territories as communities "organised in a tribal manner" [4].

These tribes live in the North East, Chobe, Gantsi and Kgalagadi communities.

The Nature of the Chieftainship

In the tribal territories the Chieftainship is a communal management tradition which was developed in periods even earlier than the era of British protection. With the passage of time, there has been a grouping of tribes, generally through the process of boundary demarcations which did not recognise original tribal boundaries. As a result of this grouping, those tribes which had more members or occupied the areas longer than any other gained predominance over others and it is usually from among whom them that a paramount Chief was chosen.

There are also other tribal groups who will have, during the course of history, either been captured and assimilated into the major tribe or who would have chosen affiliation.

In the tribal communities tribal groups are more varied and smaller and no tribal predominance is evident. In these districts the Chieftainship is different from that in the territories and each small tribal group has its own Chief but no administrative structures exist which group the tribes under a paramount Chief.

In two of the tribal community areas, Gantsi and Kgalagadi, small groups of nomadic tribes exist. For these groups no structured tribal leadership as demonstrated in the territories or communities exists. It is only amongst those nomadic people who have since sought permanent settlement that conformity to the structures described can be found. The nomadic communities have had smaller communal groups, often limited to members of one family. The leadership of the groups therefore tended to rest with the eldest male member of the group, who became Chief of his clan.

Land Rights

The tribal territories had communal ownership of land. Traditional consultation processes were used to allocate land to tribesmen in their territories. The lands so allocated remained in perpetual use by the tribesmen and their offspring and reverted to the tribe only if the tribesmen ceased to use them for the purposes they were allocated for.

In the "Crown Lands" at that time, the tribal communities could use the land almost in the same manner as in the territories. With the exception of nomadic communities, settled tribes had their Sub-Chiefs perform duties similar to those performed by Chiefs in the territories. It was understood, however, that the tribal communities, had no security of tenure to land in that they did not have "tribal ownership of the land they occupied. In fact, the "Orders in Council" of 1890 in stating that the Chiefs Khama, Sebele, and Bathoen' "abandoned portions of their territories" implies that "Crown Lands" were apportioned from the territories of the three Chiefs [5] and handed over to the Queen. The tribes who lived on the Crown lands were therefore allowed to do so at the discretion of the Queen and had no security of tenure or communal rights.

House of Chiefs

The House of Chiefs was introduced at independence under the Constitution of Botswana [6]. The eight tribal territories are represented in the House of Chiefs by their tribal Chiefs who are ex-officio members of the House. The tenure of office of the ex-officio member is for as long as the member is Chief of the tribes in his territory.

The tribal communities are represented in the House of Chiefs by an elected member. Since the tribal communities have no paramount Chief for their district, the various Sub-Chiefs of the tribal groups in the district nominate from amongst themselves a district representative. The elected member has a five year tenure, at the end of which the district nominates another representative or return the current candidate.

TYPES OF CHIEFS:

(1) A Tribal Chief

A Tribal Chief is appointed under the Chieftainship Act [7]. The traditional procedure is that the tribal elders in a tribal territory nominate a person as tribal Chief for approval and appointment by Central Government. Such selection is limited to the descendants of the previous Chief who are of age and in the line of descendency for the chieftaincy.

The tribal Chief is empowered, after following traditional consultation, to appoint a Chief's Representative, a Deputy Chief and a Headman, to cover the various villages in the district allocated under his jurisdiction. The appointees represent the Chief and conduct tribal administration in their villages and wards on his behalf.

(2) A Regent

A Regent is a person appointed to act as tribal Chief in the case where the person appointed to be tribal Chief is below the age of 21 or if the designate is undergoing a course of education.

(3) Tribal Authority

This is an appointment made by the President in instances where a vacancy

exists in tribal Chieftaincy. The Chieftainship Act [8] confers all powers and duties of the Chief on the Tribal Authority. The appointment is understood as temporary pending the recognition and appointment of a Regent or the substantive Chief.

(4) Sub Chiefs

Sub-Chiefs are appointed by the Minister for Local Government under whom all the Local Authorities fall e.g. Land Boards and District Councils. The Sub-Chiefs are leaders of various tribes found in a tribal community area. In these areas there will be as many Sub-Chiefs as there are tribal groups who are recognised by the Minister. Some Sub-Chiefs are selected by descent as happens in the territories but others are selected by a majority vote at a Kgotla meeting, any person who gets the majority can become a Sub-Chief, regardless of his standing in the community. This system tends to be more democratic compared to the selection by descent.

FUNCTIONS OF CHIEFS:

(1) The duties and functions of all types of Chiefs are similar. In each case the Chief or Sub-Chief is the custodian of tribal rights and peace keeper for his tribe.

(2) The Tribal Territory Chief who is also the paramount Chief, represents his area, and all tribes resident in it, as ex-officio member of the House of Chiefs. The tribal communities however are represented by a member elected by the district Sub-Chiefs from among themselves [9].

(3) The Chief, or Sub-Chief, administers the Local Police force in his area. The Local Police force is appointed by the Chief or Sub-Chief to assist in the

execution of his official duties [10].

(4) The Chief or Sub-Chief presides over the customary court in his area of jurisdiction and administers tribal issues under customary law. The Chief or Sub-Chief has supervisory powers over the customary courts and these are used as communal meeting places where matters of development or general interest to the tribe are discussed, debated and resolved. Disputes and other judicial matters are also tried and judged at the customary court [11].

D. THE ROLE OF THE HOUSE OF CHIEFS (NATIONAL)

The House of Chiefs is an advisory body to the National Assembly concerning the enactment or amendment of legislation. The House of Chiefs may also discuss or debate any matter of national concern which they believe has a bearing on tribal interests.

Ministers of government working on legislation or national policy which they believe has tribal implications are expected to consult with the House of Chiefs.

E. THE ROLE OF CHIEFS (DISTRICT LEVEL)

At the district level there are four Local Authorities which are categorised by function. Each Local Authority interacts with the others in the administration of their various functions. The four Local Authorities are Tribal Administration, District Council, Land Board and District Administration.

Tribal Administration Act

The Chief derives his jurisdiction from the Tribal Administration Act [12].

The Tribal Administration functions are designed to administer, control, teach and guide the communities to exercise discipline and to secure commitment and contribution to the running of the community. Tribal Administration plays a key role in development and in its capacity to mobilise and consult the community. It is under the Tribal Administration that the Chief's control over the Local Police and the Customary Court are exercised.

The District Council

The District Council is a politically elected body which has the responsibility for economic and political development of the district. The Chief is an ex-officio member of the Council. The Tribal Administration interacts with the Council directly at policy level [13].

The Land Board

The Land Board are custodian and administrators of tribal land, they are appointed under the Tribal Land Act. Part of their membership is appointed by the community at a kgotla meeting and the other by the Minister. Tribal Land Boards operate both in tribal territories and tribal communities. In spite of the distinction implied in The Constitution in its definition of territories and communities, the Tribal Land Act assumes equal communal use in both areas. Residents of these areas have access to land for use generally in residential, ploughing, stock grazing, hunting and gathering.

The Chief or Sub-Chief, through their various representatives and assistants at village level, plays an advisory role to the Land Boards. Normally the Land Boards consult them to establish if the land applied for is available for allocation and whether the applicant has consulted other land users in the

area about his intended application [14].

The District Administration

Though operating at district level, this is essentially a decentralised unit of Central Government. It was set up to represent Central Government at district level as well as to support all the other Local Authorities in those areas where the latter were lacking in implementation capacity. For instance, the District Administration has supervisory powers over Tribal Administration procedures and the proceedings of a Customary Court can be reviewed at District Administration to check conformity with the law.

F. POTENTIAL AREAS OF CONFLICT

(1) Traditional Leadership and Politics

In Botswana any person holding a post with Tribal Administration and the Chieftaincy may not play an active role in politics. It is understood that a traditional leader who administers customary law should be free from political involvement. If he chooses to run for political office then he is expected to resign and denounce the Chieftaincy.

A potential conflict arises in the situation where a former Chief who has become an active politician, continues to draw on his Chieftaincy popularity to foster his political career. Botswana has had a prominent case in its first President, Sir Seretse Khama, who was also a paramount Chief by descent. In this case however, the President conducted a very pronounced campaign against the Chieftaincy in his effort to indicate his commitment to national governance. The people in his district continued to vote for his party and to make the district a party stronghold inspite of his efforts. Another case was that of Chief Bathoen II of the Bangwaketse who also gave up his

Chieftaincy, ascribed to him by birth, to run for politics.

(2) Advisory role on legislation

Although the House of Chiefs is only an advisory body, there is currently no known case in Botswana where it rejected any bill sent to it for consultation outright. The House is enabled by the constitution, in cases where serious concern is raised on a proposed bill, to pass relevant resolutions in order to inform the National Assembly of their reservation, objectives or suggestions [15].

Recently there has been very strong objection by the House of Chiefs against the passing of the Tribal Land Amendment Bill by Parliament. The National Assembly, however, did not accommodate any of the objections raised by the House of Chiefs.

(3) Land Use Plans

Traditionally the Chief or Sub-Chief having consulted his council of elders, decides where his people should live, plough or graze their stock. With the inception of the Land Boards, this function was placed with the new land authorities. The Land Boards did not attempt to redesignate the uses already declared by Chiefs but proceeded to map and confirm existing uses. In cases where Land Boards have attempted to introduce a land use policy which was not consistent with traditional uses, very strong objections have been lodged successfully by the residents of the affected areas. The Land Boards have had to combine their activities with education programmes on proper land utilisation to help in the introduction of any uses that are not traditional.

(4) Constitutional Rights

Recently people living in tribal communities have raised issue with government and called for a constitutional amendment. Whilst there are no known cases of legalised denial of rights to any tribal group, the mention and labelling of only eight tribal groups as principal in the constitution, has caused adequate social irritation to those tribes living in the communities who are not mentioned in the constitution.

The amendments recently called for, largely by the communities, have been extended to include equal representation of districts in the House of Chiefs and recognition of tribal land rights. On the issue of tribal land rights, the argument has been that though the Tribal Land Act [16], confers equal rights to land for all Batswana, the Act does not have an explicit backing in The Constitution on matters of tribal land. The tribal territory status grants communal control and ownership of the land to the tribes in the territories. The tribal community status grants communal right of use without any specific tribal control or ownership over the land. This conclusion is drawn from the distinct descriptions given in both the Chieftainship Act and The Constitution.

On equal representation, the tribal communities have questioned the subordinate status conferred upon their representatives by The Constitution in a democratic country where all persons are presumed equal.

At the beginning of 1995, the National Assembly resolved to amend the Constitution. This amendment will go a long way towards evening out the inherent inequalities in tribal rights contained in the current laws.

POINTS TO NOTE:

- * Even though the appointment of Chiefs is by the Minister of Local Government, what the Minister does, effectively is to endorse the choice of the tribe. There are no known cases where the Minister has made his own appointment without recommendation from the tribe.

- * Chiefs derive their power from their tribe. The Chieftaincy is an institution which ensures the Chief operates through consultation, advice and support of the elders of the tribe. In those cases where the Chieftaincy has shifted from birth right to nomination on merit, the reason is often that the Chief was exercising more autocracy than the institution would traditionally permit or that his behaviour was too outrageous to condone and there was perhaps no immediate descendant competent to succeed.

- * Tribes are known to be very protective of their Chiefs. The Minister might consider a Chief weak or unsuitable, but if that Chief happens to be popular with his tribe, the Minister is inevitably confined in the extent to which he can take disciplinary action against the Chief. In fact there are those Chiefs who the Minister would have dismissed but has had to consider the wrath of the affected tribes. Traditionally therefore a Chief can only be removed by his own people. The possible political backlash has restrained Ministerial power to appoint and dismiss Chiefs as they might choose.

Pelonomi Venson

INLOGOV-APRIL, 1995.

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WORKSHOP

TRADITIONAL LEADERS AND THE NEW SOUTH AFRICAN CONSTITUTION

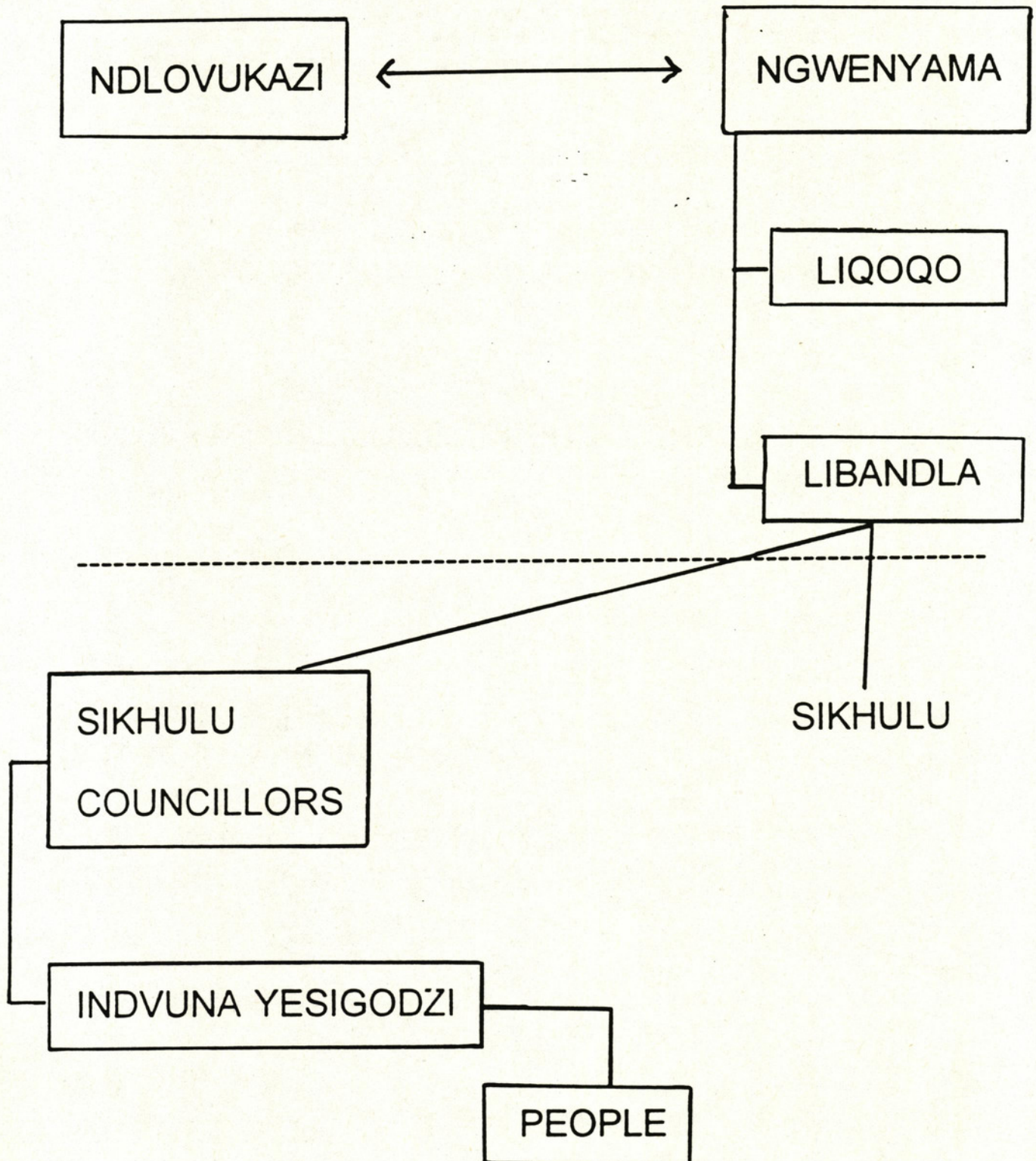
EXPERIENCE FROM THE KINGDOM OF SWAZILAND

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PROF FPvR WHELPTON**

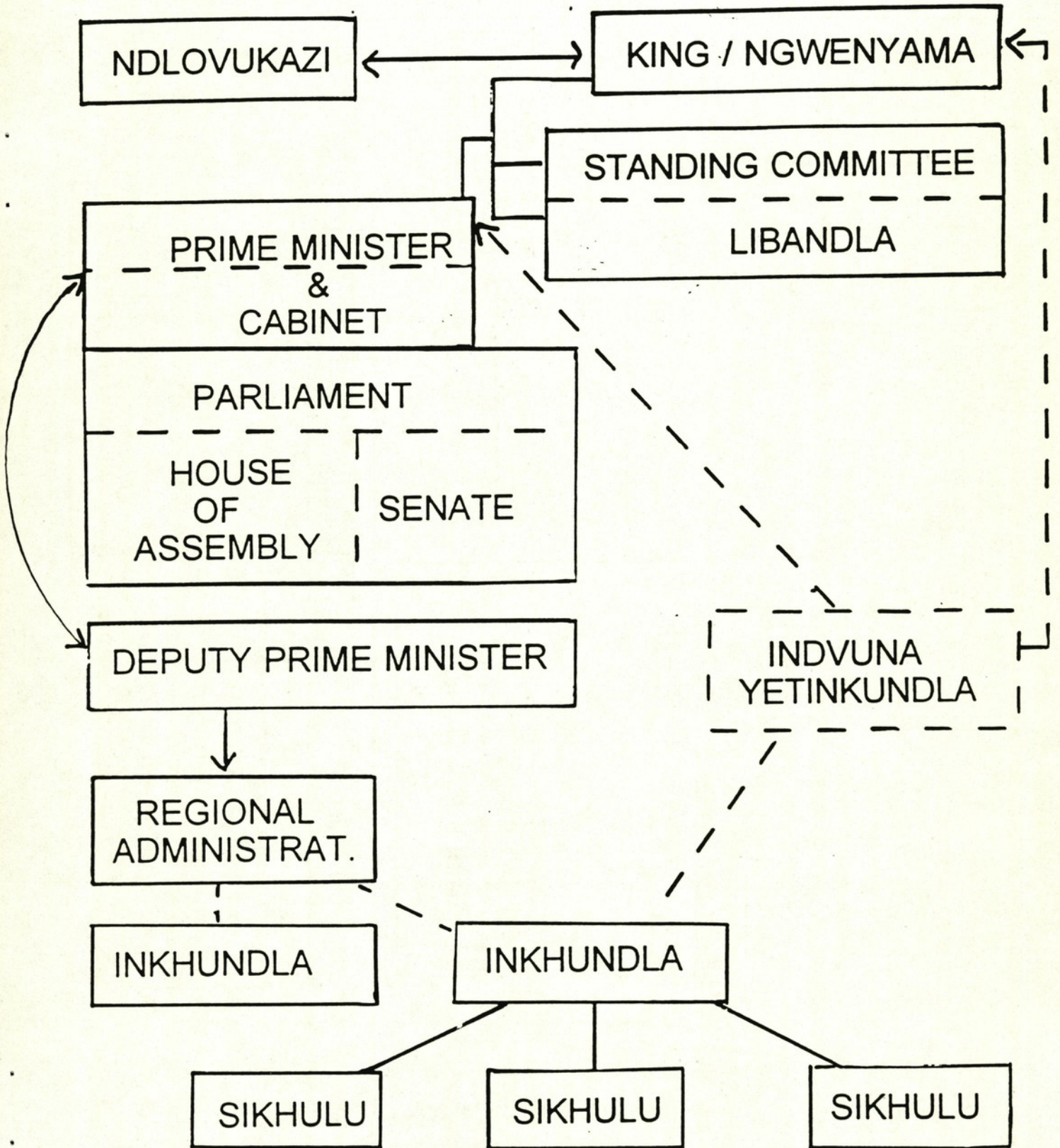
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UNIVERSITY OF SOUTH AFRICA**

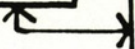
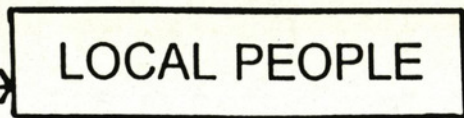
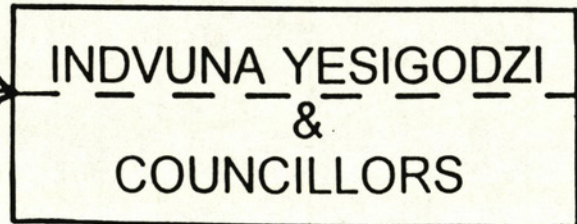
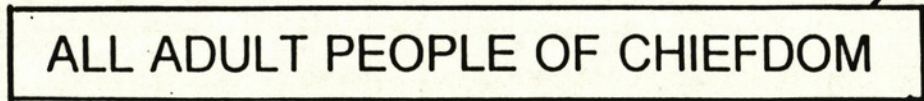
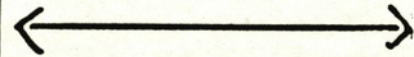
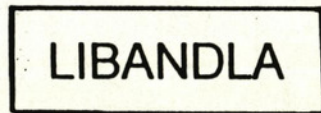
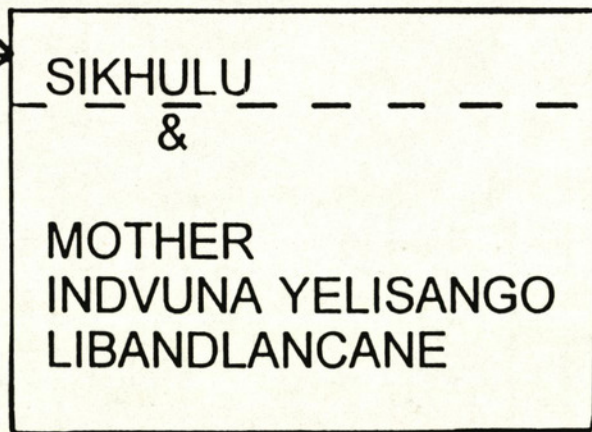
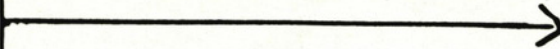
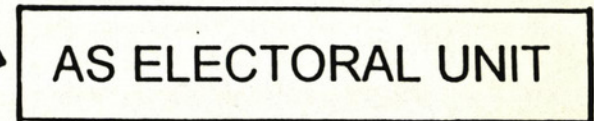
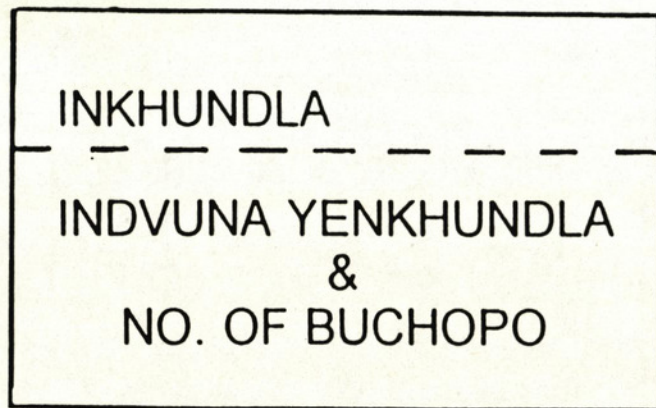
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PRECOLONIAL SWAZI POLITICAL STRUCTURE

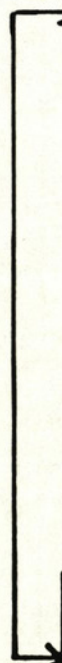


KINGDOM OF SWAZILAND





62



SIKHULU

- ASSISTED BY MOTHER/SUBSTITUTE - MARRIAGE

INDVUNA YELISANGO - APPOINT & INHERIT

COUNCILLORS (*LIBANDLANCANE*) - LIFE LONG
APPOINTMENT, NOT INHERITABLE

MEETING OF *LIBANDLAKHULU*

- TERRITORY DIVIDED INTO A NUMBER OF WARDS (*TIGODZI*), EACH UNDER AUTHORITY OF AN *INDVUNA YESIGODZI-IN-COUNCIL*. POSITION OF *INDVUNA* IS HEREDITARY, WHILE POSITION OF COUNCILLORS IS NOT.

- INKHUNDLA** : A NUMBER OF *TIKHULU*, REPRESENTED BY ONE REPRESENTATIVE OF EACH CONSTITUENT *SIKHULU*.
- : REPRESENTATIVES FORM A COUNCIL, KNOWN AS *INKHUNDLA*; EACH REPRESENTATIVE IS REFERRED TO AS *BUCHOPO* (LITT: BRAIN POWER).
- : EACH *INKHUNDLA* ALSO FORMS AN ELECTORAL UNIT; ALL CITIZENS ARE LINKED TO AN *INKHUNDLA* WHERE THEY CAST THEIR VOTES.
- : THERE ARE 55 *TINKHUNDLA* AT PRESENT.
- : EACH *INKHUNDLA* ELECTS ONE REPRESENTATIVE TO THE HOUSE OF ASSEMBLY.
- : EACH CITIZEN ENTITLED TO VOTE CAN NOMINATE CANDIDATES.
- : ON ELECTION DAY A REPRESENTATIVE FOR EACH *INKHUNDLA* IS ELECTED BY WAY OF A SECRET BALLOT SYSTEM FROM AMONG THE NOMINATED PERSONS
- FORMERLY, THE KING HAD APPOINTED AN *INDVUNA YETINKUNDLA* TO CO-ORDINATE THE AFFAIRS OF THE VARIOUS *TINKHUNDLA*, BY EITHER REFERRING MATTERS TO THE PRIME MINISTER FOR CONSIDERATION BY PARLIAMENT OR TAKING MATTERS OF A POLITICAL NATURE DIRECTLY TO THE KING'S OR THE QUEEN'S PLACE. THE OFFICE OF *INDVUNA YETINKHUNDLA* HAS BEEN TERMINATED AND MOST OF HIS FUNCTIONS ARE PRESENTLY TAKEN OVER BY THE DEPUTY PRIME MINISTER.

CABINET

- PRIME MINISTER APPOINTED BY KING-IN-COUNCIL FROM THE MEMBERS OF PARLIAMENT; PRIME MINISTER SHOULD PREFERABLY BE ONE OF THE ELECTED MEMBERS OF PARLIAMENT.
- PRIME MINISTER NOMINATE HIS MINISTERS FOR APPROVAL BY THE KING-IN-COUNCIL.

PARLIAMENT

- TWO CHAMBERS: HOUSE OF ASSEMBLY AND SENATE.

HOUSE OF ASSEMBLY

- COMPOSED OF 55 ELECTED MEMBERS, ONE FROM EACH *INKHUNDLA*, AND 10 MEMBERS APPOINTED BY THE KING-IN-COUNCIL.
- TOTAL NUMBER: 65 MEMBERS.

SENATE

- COMPOSED OF 10 MEMBERS ELECTED BY HOUSE OF ASSEMBLY AND 10 APPOINTED BY THE KING-IN-COUNCIL.
- TOTAL NUMBER: 20 MEMBERS.

DEPUTY PRIME MINISTER

- APPOINTED BY PRIME MINISTER IN CO-OPERATION WITH THE KING-IN-COUNCIL.
- HE IS LINKED TO THE OFFICE OF THE PRIME MINISTER.
- HE IS THE HEAD OF THE FOUR REGIONAL ADMINISTRATORS. EACH ADMINISTRATOR IS APPOINTED AND IS ATTACHED TO ONE OF THE ROYAL HOMESTEADS, NAMELY SHISELWENI, LUBOMBO, MANZINI AND HHOHHO.
- COORDINATES PROVISION OF SERVICES AND DEVELOPMENT PROJECTS IN THE VARIOUS REGIONS.

DUAL MONARCHY

- CENTRALISED POLITICAL AUTHORITY IS VESTED IN THE KING AND THE KING'S MOTHER AS QUEEN.
- THEIR RULE CANNOT BE DESCRIBED AS EITHER DESPOTIC OR AUTOCRATIC.
- THEY OCCUPY PIVOTAL POSITIONS IN AN EXTENSIVE HIERARCHY OF POLITICAL FUNCTIONARIES AND LOCAL RULERS.
- THE PRESENT POLITICAL FRAMEWORK IS AN ATTEMPT TO RECONCILE TRADITIONAL VALUES WITH MODERN CHALLENGES AND DEVELOPMENT.

KING

- THE KING IS HEAD OF STATE AND NGWENYAMA.
- THE TITLE OF NGWENYAMA REFERS IN PARTICULAR TO HIS POSITION AS TRADITIONAL LEADER; THE TITLE OF KING REFERS TO HIS POSITION AS HEAD OF STATE.
- HIS POSITION IS HEREDITARY WITHIN THE ROYAL LINEAGE OF THE NKOSI DLAMINI CLAN.
- THE NGWENYAMA PRESIDES OVER THE HIGHEST COURT DEALING WITH TRADITIONAL MATTERS.
- ROYAL RITUALS ARE STILL PERFORMED ON AN ANNUAL BASIS TO STRENGTHEN AND RENEW THE NGWENYAMA.
- NGWENYAMA IS ASSISTED IN HIS REIGNING BY THE *LIBANDLA*: MEETINGS ARE OPEN TO ALL CITIZENS. TO MEET MODERN DEMANDS AN ELECTED COMMITTEE, KNOWN AS **THE STANDING COMMITTEE**, WAS FORMED TO MEET ON A DAILY BASIS TO ADVISE THE KING.
- AS HEAD OF STATE THE KING IS ASSISTED BY THE CABINET.

QUEEN MOTHER

- THE QUEEN MOTHER IS KNOWN AS NDLOVUKAZI.
- NDLOVUKAZI PRESIDES OVER SECOND HIGHEST COURT DEALING WITH TRADITIONAL MATTERS.
- SHE GUARDS THE SACRED OBJECTS OF THE NATION.
- HER POSITION IS NOT HEREDITARY; SHE IS ELECTED BY THE ROYAL FAMILY COUNCIL (*LUSENDVO*).

TRADITIONAL LEADERS : WHO

- SWAZI TRADITIONAL LEADERS INCLUDE HEREDITARY, APPOINTED AND ELECTED LEADERS.

WE THINK THAT IT IS INCORRECT TO LIMIT THE CATEGORY OF TRADITIONAL LEADERS TO HEREDITARY CHIEFS AND KINGS. TRADITIONAL LEADERS SHOULD INCLUDE ALL TRADITIONAL GOVERNMENTAL OFFICES, SUCH AS COUNCILLORS.

TRADITIONAL LEADERS : ROLE

- IN THE SWAZI CASE TRADITIONAL LEADERS FUNCTION ON CENTRAL AND LOCAL LEVEL.
- POLITICAL DEVELOPMENTS, AND THE PARLIAMENTARY SYSTEM IN PARTICULAR, HAVE RESULTED IN DIMINISHING THE INFLUENCE OF THE *TIKHULU* (CHIEFS).
- THERE IS A GENERAL FEELING THAT CHIEFS SHOULD BE INCORPORATED INTO THE PARLIAMENTARY SYSTEM. THE IDEA IS THAT THEY SHOULD HAVE MORE THAN MERE ADVISORY POWERS.

TRADITIONAL LEADERS AND SWAZI LAW

- THE *NGWENYAMA* AND *NDLOVUKAZI* HAVE JURISDICTION IN MATTERS OF CUSTOMARY LAW, AND FORM THE HIGHEST AND SECOND HIGHEST COURTS OF CUSTOMARY LAW.
- ON LOCAL LEVEL THE VARIOUS *TIKHULU* HAVE JURISDICTION TO ADJUDICATE MATTERS OF CUSTOMARY LAW.
- *TINDVUNA YETIGODZI* ACT AS THE LOWEST FORMAL ADJUDICATORY DISPUTE FORUMS IN CUSTOMARY MATTERS.
- IT SEEMS TO US THAT TRADITIONAL LEADERS CAN FULFIL AN IMPORTANT JUDICIARY ROLE IN SETTLING DISPUTES BASED ON CUSTOMARY LAW MATTERS.

TRADITIONAL RULE IN UGANDA: PROBLEMS

AND PROSPECTS

A S W A M A L A

TRADITIONAL RULE IN UGANDA: PROBLEMS AND PROSPECTS

1. INTRODUCTION

Among the factors and issues which have influenced Uganda's political history, constitutional development and even instability the major one remains the place and status of traditional rule and authority. As such it has undergone significant revolutionary changes ever since independence in 1962. The principal role players continue to be hard core traditionalists on the one hand and the modernizing nationalists on the other. Both these two groups or schools of thought have pursued their ideologies with uncompromising tenacity.

It is worth noting at the outset that while traditional rule was fairly strong among five major tribes in Uganda, the Baganda are the ones who have dominated the scene. Though they were the first ones to embrace Western culture and values, they have been the ones who stuck to their past most inflexibly in this regard. It might be said with little doubt that other tribes merely followed in Buganda's footsteps.

The purpose of this paper is to examine the fate and fortunes to which traditional rule has been subjected. The discussions will highlight the contribution of traditionalism towards constitutional developments. The paper will be divided into several sections. Section two traces the historical background of traditional authority from the pre-colonial era up to the present. Section three examines the structure and functions of traditional rule, while section four looks at the role of traditional leaders in Uganda's local government system. Section five analyses the factors which have helped to weaken traditionalism in the country. We conclude by asking what chances there are for traditional rule to survive its re-establishment.

2. HISTORICAL BACKGROUND

Uganda as a nation state was carved out of several ethnic tribes with three or four major groupings, i.e. the Bantu speaking groups, the Nilotic, the Nilo Hamitic and the Sudanic peoples. While there are 20 to 25 major tribal groupings, there are in Uganda some 36 different ethnic groups including the major ones.

Of these tribes only five had/have the monarchical institutions and therefore represent a strong and articulate element of traditional rule and authority in Uganda. These five are the kingdoms of Ankole, Buganda, Bunyoro, Toro and, the Principality of Busoga. They all come from the Bantu speaking group. The rest of Uganda's tribes do/did not have kings.

The kingdom areas had developed an intricate and well organised administrative system long before the advent of the white man to Africa. The most sophisticated and best organised administrative structure was however in Buganda, which had

developed a strong and highly centralised government by the mid 19th century¹.

In 1900 before the effective and complete colonisation of the entire Uganda, Buganda entered into a pact with Britain known as the Buganda Agreement of 1900. Through this pact Buganda sought protection from the British against outside attack particularly Bunyoro, regarded as the traditional archival of Buganda. This agreement was to be an important land mark in the future relations between Buganda and the rest of Uganda and would create a few headaches with regard to the country's constitutional developments.

The agreement effectively made Buganda a protectorate of Britain, but also gave certain concessions to the Baganda. It treated Buganda as a state within a state by giving it certain rights and safeguards which other tribes and kingdoms were not to enjoy. Among its important clauses it:

- a) recognised the Kabaka (king) as ruler of Buganda
- b) recognised Lukiiko(as) Buganda's legislative body
- c) recognised Buganda's council of ministers (as) a form of modern cabinet
- d) granted Buganda the right to try certain cases
- e) gave Buganda right to levy taxes.

In 1902 the kingdoms of Bunyoro, Ankole and Toro also had somewhat similar pacts concluded with the British. They were however 'denied' some of the privileges and rights given to Buganda. For example the right to levy taxes or the right to try certain cases were not to be enjoyed by the other kingdom areas. It is useful to add that while Buganda regarded the document as an important agreement between her and the British and they looked at it as a Magna Carta, the British would, when it suited (or did not suit) them, shelve it aside².

Towards independence and during the constitutional debates and conferences, Buganda became uneasy about a new dispensation which would emerge and how it would safeguard not only the kingdom's position in the new Uganda but also the Kabaka's status. The Baganda wanted to ensure that their Kabaka enjoyed a pre-eminent position in the country. The king (Kabaka) was a ruler in Buganda and he 'would be second to none on Buganda soil'. The Baganda wanted that position protected or guaranteed, among others. Buganda soil happens to house the national government institutions like Parliament, State House and all the government ministries. When this guarantee was not forthcoming from the British, Buganda demanded their own separate autonomy and wanted nothing to do with a new dispensation which would treat them as equal partners with other tribes in a new Uganda. Buganda threatened a unilateral declaration of independence in 1961 if its demands were not met³. Buganda boycotted the constitutional talks that were taking place, banned political parties in the kingdom and also boycotted a series of national and regional elections (e.g. 1958 and 1961), although in 1961 a few radical Baganda did participate only to be ostracized as 'traitors'.

Buganda was only persuaded to rejoin the constitutional proceedings after it had been granted a federal status within a unitary Uganda. Other kingdom areas realising what

a raw deal they were getting also demanded similar and equal treatment. The British government agreed to grant them a semi-federal status. Thus Uganda was to have a constitution whereby the five kingdom areas enjoyed federal or semi-federal status and relationship with the central government while the other non-kingdom areas were governed on a unitary basis. It should be reiterated that the primary aim of all of these constitutional moves was to protect and ensure the traditional rule, authority and position of the kings in the new Uganda.

The political parties in the country as well as the British colonialists were engaged in one major exercise, to persuade Buganda remain an integral part of Uganda. One of the major pre-condition was to safeguard traditional authority. The party led by Milton Obote, the Uganda' Peoples congress (UPC) struck a political alliance with Buganda which had formed a traditional, Buganda tribe based political party known a Kabaka Yekka (King Alone)(KY). The only manifesto and ideology of KY was to protect and fight for the Kabaka and Buganda's traditional authority. It is the alliance of the two UPC and KY which led Uganda to independence in 1962. Thus Uganda was a federal-unitary and monarchy nation state at independence. It had the five kings whose tribes enjoyed a federal relationship with the central government while the other districts enjoyed a unitary relationship with the national and central government. Uganda was also to remain a monarchy with the Queen of Britain as Head of State.

In 1964 the Uganda constitution was amended to the effect that the country ceased to be a monarchy with the Queen as head of state. It became a sovereign republic. Paradoxically the National Assembly elected the Kabaka (king) of Buganda and the Kyabazinga (traditional ruler) of Busoga principality as President and Vice President of Uganda. Surprisingly the two accepted these positions.

In 1965-66 the 'marriage of convenience' between the UPC and KY the two parties in government hit the rocks. Obote's government no longer enjoyed favour with Buganda's traditional seat of government. After a series of a wars of words between Buganda and the central government, Mutesa the Kabaka was removed from the presidency of the country. In May 1966 Buganda Lukiiko passed one of the most impolitic resolutions which was to give a death blow to the monarchy and traditional rule. The Lukiiko asked the central government to withdraw itself from Buganda soil⁴. This resolution led to a series of events culminating into the 'Battle of Mengo' of June 1966 and the fleeing of the Kabaka into exile in London. Obote unilaterally abrogated the 1962 constitution, replaced with an interim one which was not debated or studied even by Parliament⁵. This 1966 constitution retained the monarchy and traditional rule. It was aimed at one man as an individual perhaps Mutesa the Kabaka of Buganda. Other kings and traditional rule structures including those in Buganda remained untouched. The central government ministers are on record as having promised that:

'Buganda government would be restored and a new Kabaka would elected by the people (Lukiiko) from members of the royal family⁶.

In 1967 followed another constitution which was republican in character and totally

abolished the monarchy and all powers of traditional rule.

In 1986 when Museveni assumed the presidency of Uganda, some hard core traditionalists of Buganda expected/wanted a quick return to the good old days of federalism as well as the monarchy. It might be added that Museveni enlisted a lot of Baganda support in his five year guerrilla war against the Obote's government after the infamous 1980 elections. Much as he was not inclined to the return of the old days, Museveni gave in to the pressure from the conservative traditionalists in Buganda and agreed to the restoration of the monarchy. The Kabaka of Buganda was crowned and installed in July 1993. The Kyabazinga of Busoga had been installed a few months earlier. The Omukama (king) of Toro was re-instated early 1993. The King (Omukama) of Bunyoro was crowned in June 1994. Ankole as at now is the only (former) kingdom which has not re-invented its monarchy due to disagreements among the people. The government has made it clear though that this time around it will not accept a political monarchical institution. What they want is a constitutional purely ceremonial monarch.

3. FORM AND STRUCTURE OF TRADITIONAL RULE/AUTHORITY

Traditional rule and authority can be looked at from two angles. There is the politically oriented traditional authority and the purely cultural traditional leadership.

3.1 Cultural Traditional Leaders

As elsewhere in Africa, people in Uganda are born into and belong to clans. The clan chiefs were a category of traditional rulers who controlled or ensured the preservation of customary and cultural values of the people. The non-kingdom areas also had clans and clan chiefs just as the kingdom areas. Land which was mostly communally owned was controlled by the clan chiefs before colonialism took root in Uganda. Besides ensuring that, each and every clan members had a plot of land, and protecting the eventual values of the land, clan structures had little or nothing to do with political and administrative life of the people especially in the kingdom areas. Clan leadership was hereditary, as is now.

3.2 Political Traditional Rule

In the kingdom areas like Buganda and others, the country was divided into zones known as counties (saza), sub-counties (gombolola), and parishes (muluka) etc. Each of these was ruled by a chief. These were responsible for peace, security and other forms of administrative functions. In Buganda particularly around the beginning of the 19th century, the county (saza) as well as sub-county gombolola) chiefs were the king's appointees and had ceased to be hereditary. This was to ensure a highly centralised form bureaucracy which would be loyal to the king⁷.

Above the county chiefs was the Lukiiko, the local parliament or legislative assembly to which the county chiefs were ex officio members. Above the Lukiiko was the

king's advisers - known as a Council of Ministers. These were headed/led by a Katikkiro or Prime Minister. At the helm of all this was the king or Kabaka. The king ruled through this retinue of chiefs who were his representatives in the rural areas.

This structure was only affected in 1967 with the abolition of the monarchy in Uganda. With the demise of the kingship, went the Likiiko, and the council of advisers, as well as the Katikkiro. The position of traditional rule from county (saza) chiefs right down to the head man level remained unchanged. The major change was that these chiefs now became appointees of the government particularly the minister of Local government or Regional Administration. This has remained the structure up to today.

It is useful to add that when colonialism took root in Uganda, the British imposed the Buganda structure i.e. from county chiefs down below to the headman to those no-kingdom areas which had nothing above the clan structure. The British even seconded or recruited some Baganda chiefs to introduce the administrative structures practised in the kingdom areas.

4 TRADITIONAL LEADERS AND LOCAL GOVERNMENT

Local government in most Britain's former colonies was built around the districts which divided the tribal areas to allow for closer administrative machinery. This was the case in Uganda as well. The major addition was that through their philosophy of 'indirect rule' the British developed a local government/administration structure based on the traditional chieftaincy institutions. The colonial district Commissioners were to rule/administer the rural areas through or with the help of the chiefs. District Councils were established as channels or structures of local Government.

4.1 Kingdom Areas, Traditional Authority and Local Government

In the kingdom areas the colonial administrators generally channelled their instructions through the traditional hierarchical structures which should make sure that the chiefs received the instructions to carry out at the lower levels. This process remained largely undisturbed after independence. The county chiefs or their representatives were expected to serve on the District Councils. It should be added that kingdom areas e.g. Toro, these councils were appointed on the advice of the king.

After the abolition of the monarchy in 1967 and with the demise of the traditional administrative structures like Prime Minister (Katikkiro) and Legislative Assembly (Lukiiko), the institutions of county chiefs and those below were retained. They were to serve as agents of local government administration and development. They continued to serve on the district councils as before. In 1966 after the "Battle of Mengo", the President issued a statement to the effect that he had no intention of punishing the masses or cutting down on the services they required. He also stated:

"What we are trying to do is punish the top to serve the masses. The rebellion at the top is the one which has the problem not the masses"⁹.

Thus much as Obote and his Administration had no love lost between them and the monarchy or traditional authority, he found the chieftaincy structure useful enough to continue.

Traditional Authority and Land Administration

In pre-colonial Uganda, land was communally owned. No one individual had any 'private' ownership of land. In Buganda and other kingdom areas there were four major classes of land holdings¹⁰.

- 1) Clan land (obutaka). This land was looked upon as ancestral land. Every member of the clan had a claim to or a right for use of land under the general supervision of the clan chief. An individual allocated a piece of land may not sell any piece of that land.
- 2) Chief land (obutongole). This was land allocated to a chief by the king as long as an individual remained a chief. Such land was associated with the office and would be relinquished at the end of one's terms of office.
- 3) Individual hereditary land. An individual, a chief or peasant could have a permanent claim/hold over a piece of land stemming from long undisputed occupation. Such a claim had to/would be based on original grant by the king with clear royal recognition.
- 4) Peasant occupation rights. This would be the case where an individual peasant acquired a piece of land under or with the blessing of a chief and would occupy it permanently. It could be inheritable on death of the original allocatee. The owner would however be required to pay tribute to the chief from time to time.

In spite of these four categories of land holdings all land was 'owned' by the king who held it in trust for his people¹¹. Even the clan land which was held in perpetuity, it was not individual but clan owned. The aim was to ensure that no citizen was without a home at any time. Thus the chiefs, clan or political, had the duty to ensure that this was followed and would therefore arbitrate over land disputes.

With the 1900 Buganda Agreement (all) much of this changed. The British who negotiated the pact with Buganda allocated large chunks of land to many prominent chiefs as permanent personal land holdings¹². At the signing of the 1900 pact the king was only 4 years old. It is three chiefs who were serving as Regents who conducted the negotiations. With the 1900 came the private land ownership system. The land was then mainly divided into three major classes; land belonging to the king, land (private) belonging to the notable chiefs, and crown land¹³.

4.2 Traditional Rule and Local Government in Non-Kingdom Areas

As we saw above, prior to the advent of colonial rule, the major visible tribal rule

structure in the non-kingdom areas was the clan¹⁴. The British intent on their indirect rule philosophy and having fallen in love with Buganda's administrative structure imposed on all the tribes in Uganda, from the headman to the county chief.

Thus this new cadre of chiefs became a visible arm of local government throughout the country. The county chiefs were to serve on district councils. It sometimes happened that clan chiefs got appointed to positions of sub-county chiefs¹⁵. They were the ones who helped to run government administration at the local level.

After the abolition of the monarchy in 1967, District Planning and Development Committees were created over and above the District Councils. Their aim was to plan, introduce and help implement development programmes. These were similar to Botswana District Development Committees or Councils. The chiefs did not serve on these bodies, which were reserved for technocrats.

With the advent of the Museveni Administration in 1986, the District Councils just like District Commissioners gave way to a new structure known as Resistance Councils (RCs)¹⁶. They are supposed to perform practically the same functions as the District Councils they replaced. The major/only additional task is that they are to play a political role by conducting political socialisation of the masses.

5. TRADITIONAL RULERS' CONSTITUTIONAL ROLE

One wishes in this section to look at the constitutional powers given to traditional leaders/authority. We shall also look at the role they played if at all in the legislature and constitutional making process.

5.1 Role in Parliament/Constituent Assembly

Uganda's first Legislative Body was first established in 1921. It was then a preserve of whites and Asians only. In the mid 1940s blacks or Africans were appointed to the Legislative Council. These were the Prime Ministers (and defacto traditional rule representatives) of Ankole, Buganda, Bunyoro and Toro. What was then known as the Eastern province was to be represented by the Secretary Generals of the District Councils¹⁷. Thus to a large extent the non-kingdom areas did not have the privilege of participating in the law making process. The kings did not physically participate in parliamentary affairs. Each kingdom did have as we have seen (up till 1967) its own legislative making body, through which it would make laws affecting its people. It would then send its resolutions to the central government through the relevant minister.

The 1962 independence constitution re-emphasized this right to the kingdom areas or federal states. Article 75 gave these legislatures the powers to legislate on the office of the ruler (king) of the state of kingdom, his powers, duties and obligations, public holidays festivals of the state as well as traditional and customary matters¹⁸. This ended with the 1967 abolition of the monarchy and traditional rule.

Earlier during the constitutional drafting process, the traditional rulers kings and their

lieutenants participated in the London constitutional Conferences. It is because they were tough negotiators that a federal system of government was enshrined in the 1962 constitution.

5.2 Role in the Administration of Justice

Traditional rulers were also administrators of justice in Africa. They had to try law suits. the chiefs and the king were to arbitrate between the contending parties. The chiefs were allowed to deal with cases of land arbitration (e.g peasant land owners) as well as minor theft cases. At each sub-county and county premise there were prison cells and tribal prison and police officers. With particular reference to Buganda and the kingdom areas they had their own judiciary system. Buganda had its own corps of magistrates and an independent court system. In 1966 after the abolition of the monarchical institution it became necessary to amend or abrogate the Buganda Courts Ordinance. Later on the magistrates and judicial officers serving in Buganda had to be interviewed by the Uganda Judicial Commission so as to judge if they could be incorporated into the national system¹⁹.

6. PROSPECTS AND PROBLEMS TO TRADITIONAL AUTHORITY

We wish in this section to briefly analyses the challenges and problems which have militated against traditional rule in the country. Similarly recollecting as we seen above, that the monarchical institution has been re-instituted, we want to examine the chances of its success this time around.

6.1 Why Traditional Rule Collapsed?

Our discussion herein will centre around the factors which led to the demise of traditional rule. One of the factors which contributed to the poor performance of traditional rule lay in the political ascendancy and hegemony enjoyed by Buganda. The Baganda right from the colonial era or pre-effective colonisation, were given a privileged position whereby the kingdom was treated as a state within a state. We recall examples of Buganda having its own land tunure system, its own judicial system and so on. This coupled with Buganda's somewhat self conceited attitude wherein they thought themselves as a 'nation apart' invited suspicion and enmity from the other tribes particularly the non-kingdom areas. The British on the eve of their departure did not make matters any better. When Ankole, Busoga, Bunyoro and Toro saw the privileged position Buganda was to enjoy in independent Uganda, they demanded similar treatment. They were only given semi-federal status. Buganda refused or was unable to identify with the rest of Uganda, particularly when they threatened secession in 1961.

The second factor closely related to the one above is Buganda's naive, impolitic and useless but very dangerous demands. A few examples may elucidate this point. Buganda threatened a unilateral declaration of independence in 1961 when it could not be seen how her privileged status would be protected. By so doing Buganda angered not only the British but more so the nationalist parties including the Democratic Party (DP) led by a Muganda. Buganda again forbade the Baganda to vote in the 1958,

1961 national elections. She was only persuaded to rejoin the main stream by being given the right to indirectly elect representatives to Parliament. Perhaps the worst mistake was the infamous resolution of May 1966 wherein it was demanded that Obote removes his government from Buganda soil. This was a final blow to Obote who had little interest, background appreciation, and love for the institution.

Thirdly Mutesa's (the kabaka of Buganda) personality and behaviour on the political scene contributed immensely to the collapse of traditional rule. In the 1950's when the British were toying with the idea of an East African Federation, Mutesa did not only reject the idea of the Federation, but would not commit Buganda as a future province of Uganda²⁰.

It is also argued by some historians Ugandans that Mutesa was more of a dividing than a unifying factor even among his own people of Buganda²¹. A such his popularity, rather than the institution, was in question. Through him Mengo's (Buganda's royal capital) hatred of followers of the Roman Catholic denomination was unparalleled. In steady of uniting his people he seemed to favour one religious denomination.

Perhaps the worst mistake that Mutesa used to kill the institution was when he accepted the invitation to serve as President of Uganda under a republican constitution. It is impossible to imagine how he would have combined two roles; one as a king in conservative Buganda and a president of a republican Uganda. He was bound to (and he did) comprise one of the two. By accepting the presidency Mutesa threw himself into Obote's hands²².

Yet a fourth factor was the lack of unity among Uganda's traditional leaders. Traditional rulers - even the five kings failed to unite and form one strong pressure group. Thus because they were divided it was easy to get rid of them and the institution they stood for. Perhaps if they had formed a united body like Botswana, to form a House of Chiefs, the fate of the institution would have been different.

Lastly all this notwithstanding it is important for us to realise that Uganda's new leaders had no soft spot for traditional rule or the monarchy. Obote stated late 1966 that he had no time for:

"feudalists and those who advocate class consciousness, special positions and tribal differences"²³.

To him the monarchy was a channel of accentuating tribal differences as well as special privileged positions. Obote also had supporters and sympathizers. For example, Nyerere, his personal friend had this to say:

"...one of the really serious tasks facing political parties in Africa is the removal of outmoded and useless institutions..."²⁴

The paradox in all this was the link which was put to the monarchy, traditional rule and federalism especially asymmetrical federalism as it was enshrined in the 1962

constitution. To add salt to injury all these structures were tribally oriented. How they would help in nation building since they were tribal in character is difficult to imagine. What is equally important is why the correlation people saw/see between federalism and the monarchy or traditional authority. Thus for leaders/people who wanted to build a classless Uganda saw federalism and traditional rule as one and the same thing. They still do so now²⁵.

6.2 Prospects for the Future

This discussion is raised here due to the fact that in 1993 Museveni agreed to the re-establishment of the monarchical institution in the country. In view of the weaknesses we have seen above what chances are there for the institution to succeed this time?

One of the factors which may help to stabilise the institution is the fact that it is hoped that the traditionalists have learnt the lessons of the past. With particular reference to Buganda the current king has not shown any interest in playing a political role. A few influential educated Baganda have also recommended a constitutional and ceremonial traditional ruler. Hence Uganda is not likely despite the restoration of the monarchy, to see the return of a kabaka who would involve himself in national politics.

Another major favourable characteristic the new kabaka has is that he is very conciliatory and is a major unifying factor. He chose for his purely ceremonial Prime Minister a Roman Catholic, at first much to the surprise of the old Mengo clique. Thus his unifying factor is likely to make him much more popular in Buganda if not outside as well.

CONCLUSION

Traditional rule has seen its ups and downs. It is now re-instated through the monarchy. We are however unlikely to see the return to the days when traditional rulers played political games. The kings in Uganda now do not yet have the power to appoint chiefs e.g county chiefs. As long as they remain a- political, and constitutional rulers more involved in culture, custom and perhaps development, they may stay.

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