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# REPORT ON THE SEMINAR ON THE FUTURE OF CHIEFS IN SOUTH AFRICA.

The above seminar was held on the 24th October, 1990 at the SA Constitution Studies Centre, London.

Present were: Paseka Ncholo (Phd Law student. UCL)
Linda Makhathini (M Phil Law student. UCL)
Palesa (Phd Law Student. UCL)
Mbali Mncadi (SACSC Research Assistant)

Mbali presented a paper entitled: "Can The Institution Of Chiefs In South Africa Be Democratised?". The contributions of the participants are as follows :

1. Title:

It was felt that the title of the paper should have been formulated in such a way so as to provoke thought as opposed to pre - empting arguments for and against the institution of chiefs.

2. The Contents.

**Language:**
The point was made that the sense of what the presenter means to portray depends a lot on the kind of language employed. So that there are the watch - words of which we have to consciously be aware of, in our presentations. In this particular presentation the word "tribe " was specifically highlighted by the participants in terms of its usage in history - be this in the colonialist terms or in the sense that the Apartheid regime adopted it. Amendments are to be made in consideration of this.

**Chiefs and the administration of justice:**
Participants felt that the recommendation on reserving customary courts as the domain of chiefs would:
a) have the effect of marginalising customary law so that it is not incorporated is not seen as part of the national law ; and
b) also imply that the status of customary law within the general province of South African law is one of inferiority; and
c) it would mean that for those urban citizen's whose lives are regulated by customary practises would not have at their access, courts with competence to handle any disputes and or arbitrate in their matters.

These being valid arguments it was decided that the paper would be accordingly amended so as to reflect the necessity to create one unitary legal system. There should be no differentiation in

court structure in terms of the law that is being applied. Magisterial courts would have to be transformed so that magestrates and judges can preside in matters arising from issues in both the Received law and the Customary law.

Sitting at matters arising out Customary law should be assessors, whose role is to advise as that regime's experts. These need not necessarily be chiefs, whom it is felt may not be necessarily acquainted with the customary law (here participants referred to the lifestyle test). Therefore a set of rules may have to be established as to who qualifies as an expert and what body appoints them as assessors.

**Chiefs as representatives in the legislature:**
There was consensus on the point that the institution of chiefs, by definition, is not a democratic one. This is on the basis of their office being hereditary and therefore one where people do not exercise their choice.

Participants went further to point out that albeit it would be the duty of a future democratic government to take into account the interests of those communities which prefer to be administered by chiefs; there would be problems if this is dealt with in the manner suggested in the paper.

The main criticism was that the suggestion does not take into account demographic growth. A situation was foreseen where due to the steady urbanisation and transformation of several peri-urban/rural areas to towns, cities, the metropolis - boundaries are phased out. There would be an encroachment of the urban representatives constituency onto the chief's constituency. This thereby would create a dilemna for future generations in terms of identifying the area representative.

It was also felt that this could not guarantee the avoidance of dual representation, because it may well be that to avoid the dilemna residents would find themselves represented by both the chief and the urban representative.

With this in mind therefore, Paseka suggested that we may have to consider ***a system of the registration of interest.***
This is a system as found in this country. In terms of this, the electorate is required to indicate where they intend to register their vote from. A cut-off date is identified (by which time they are required to have registered.) The rule is that they should also have an interest or connection they have in the area. This should be indicated in the registation form. This could be that they were born there, have a business there, are resident there, would like the chief of that area to represent them etc. The constitution may in its schedule indicate the percentage proportion that is required for the overall populace of a given area to register within that area

so as to qualify the area-representative for the upper house in parliament.

This way, therefore, whatever representative of the area who qualifies on the basis of having an identified constituency as per the wishes of the electorate would be placed in parliament. It was felt that this would ensure that the chief is really a representative of National interest. So that the vetting system (in the event that it is specifically required) would has to the greater extent been aided.

It was also felt that in case of demographic growth, if the chief is not identified by the electorate then he has no mandate to act on their behalf at parliamentary level. The question of merging boundaries would therefore not be the determining factor in the Upper House qualification.

**Chiefs and human rights:**
The bill of rights may provide for the protection of individual rights. Particularly the question of the sexist traditions that dominate the appointment of chiefs should be looked into. So far in South Africa it is only certain Sotho/Sepedi-speaking ethnicities that consider chieftainesses. This of course suggests discrimination on the basis of gender which should beoutlawed by the Bill of Rights. A sensitive manner would have to be found though to handle this issue as it also involves an interferrence with the firm traditional beliefs of some people.

Further, Palesa felt that specific legislation should be enacted which would address itself to the powers of chiefs. It was felt that in this way the abuse of these unstated powers by chiefs so far has led to the corruption of the institution and its alienation from a sizable number of South Africans.

In general terms this legislation should spell out the extent of administration by chiefs. It should also specifically prohibit the spoils system that has impoverished people living under chieftain domains. The question of compulsory and free labour for the chieftaincy should also be outlawed.

**Parliamentary committee on traditions:**
It was felt that whatever committee that advisesparliament on customary matters need not be composed of solely chiefs as experts in customary law for reasons already stated. Parliament certainly reserves the right to appoint any people as it deems fit. This however, should be appointments determined by percentage-proportion-representation of the parties represented in the Lower house.

COMPILED BY:

M. Mncadi

With Responses To Questions Raised On Pages 7 to 9.



FROM INDIVIDUAL TO GROUP ?
IMPLICATIONS OF NICOLA LACEY's PAPER IN THE LIGHT OF THINKING OF A NEW SOUTH AFRICAN CONSTITUTION.

Ms. Lacey's paper collates the effects of laws relating to gender and racist discrimination. In this regard she refers to both the Race Relations Act and the Sex Discrimination Act. She examines and evaluates the remedies and effective enforcement thereof available in anti-discrimination legislation to persons so injured. This she does by first looking at the feminist critique of anti-discrimination legislation and relating same to the realm of racism.

Generally stated Ms lacey's conclusions are that:

.....ON THE FOUNDATIONS OF ANTI-DISCRIMINATORY LEGISLATION

FIRSTLY, the very definition and interpretation of anti-discrimination legislation lends the frustration of the intention of the individual litigant who has suffered from discrimination. This is due to several factors, all of which are connected to the misdirected assumptions that are made by courts in interpreting this form of legislation. These are;

a) That such legislation is founded on the doctrine of equal opportunity.This is the assumption that there are equal choices open to individuals to participate in any of society's activities.These are seen available to both the disadvantaged group (which the said legislation purports to protect) and its more fortunate counterpart.

b) That the occurrence of discrimination is abnormal. Whereas , she contends (and correctly so)the reverse is true. Discrimination is a product of society's development and an existing integral part of its normative values. However the courts' view of abnormality, will justify rulings that will only have a bearing on individual litigants. This leads to the supposition that lawsuits arising from discrimination have to be carried out by individual litigants

c) That the standard to be employed by courts to test "normal" behaviuor is based on the model of the white male. Thus the standard by which courts are compelled by law to translate the needs of the individual litigant is based on the model of the needs of the average white male. This does not necessarily relate to the intended needs of the plaintiff in question.

d) That actions not specified as discrimination in terms of the legislation are legitimate even though they do in fact amount to discrimination.

....ON CRITICISMS

SECONDLY, Ms. Lacey thereafter states the criticisms of critical legal theory and feminism in terms of the above assumptions.She states further that the same would apply to racism as it does to racism.She suggests that this is the reason why the nature of anti-discrimination legislation resultantly has little effect as being a deterrent factor in stamping out discrimination, or for that matter in providing solutions for,those who have suffered injury arising from discrimination.
Criticisms by the critical legal theorists and feminists on anti-discriminatory legislation are to wit:

a. Present legislation cannot be sufficiently redeemed due to the fact of the under-representation of the disadvantaged groups in the law-making structures themselves.
b. It thus shall continue to be a white male domain and shall continue to reflect those values.
c.The doctrine of equal opportunity does not reflect the reality of the present position of the majority of members of these groups being disadvantaged.
d. There exists the category of deeds possibly unanticipated by the legislature which have a discriminatory effect even though they may not be categorised as such.

.....ON RIGHTS ACCRUING TO A GROUP.

THIRDLY, Ms Lacey recommends that in view of the above it would appear that the best solution for this would be by replacing individual with group as the unit of litigant in court actions arising out of discrimination. In fact the suggestion goes further to include the notion of group rights being recognised in anti-discrimination legislation itself. This she feels would be an appropriate response of the law to the scepticism of women and people of colour. A scepticism created by the inability of the law to attend to the problems of discrimination effectively.

The types of group rights, she has categorised as:

a) Cultural: These are rights which accrue to persons of a certain language, ethnic, racial, and religious grouping.In the UK the existence of this rights has already been made available to individual persons by reason of their membership to a certain grouping.

b) Remedial: These are rights which focus on socio-economic advantage (or the lack of it), and the subject of her analysis in this paper.

*The Advantages of this Approach* she states as:

1. Procedural: There would be a wider relevance of the decision taken by a court in respect of an action brought under the heading of a group right. Obviously the implications of such a decision would affect all individuals falling under the definition of the group.

2. Political: There are here two benefits to be reaped from this.Viz:-i) A building of solidarity among members of the group. This also means that it encourages future participation of group members in realising their rights.

ii) Politicisation of the legal process. It would now be that the Judiciary would itself be reflective of a cockered state policy towards discrimination.

*The Disadvantages of this* are stated as :

1/ An overburdening of the judicial process, in that this would add a whole new group of rights to an otherwise unmodified structure of individual enforcement.

2/ This does not have promising prospects of changing the substantial effects of group rights, considering that the structures of individual rights would remain intact.

3/ There exists criticism from the Unger school of thought (dubbed by some as the *Superliberalism* school), that the whole concept of group rights is oppressive and dangerous. His assertion is based on the idea that people have a choice in the options that they need to follow. The fixation of boundaries particularly in the avenue of entrenched rights is a denial of individual choice.

4/ Groups are not monolithic entities, with summarily uniform interests. In the situation of overlapping groups (here i think she is referring to groups composed of individuals who are also members of other that groups that may have different and maybe even conflicting interests ) one may well foresee problems of them being in competition with each other and thus leading to group fragmentation.

*The Dangers of Group Rights.*

Without agreeing with Roberto Mangabeira Unger she cautions against the usage of the concept of group rights especially in

instances where the notion has been used for the reverse effect of oppression eg. South Africa.

## CONCLUSION

1.

*The question of the usage of a political forum as opposed to courts.*

A practical suggestion is made that discretion should be used so as to decide the appropriate forum for cases of discrimination.

Constitutional courts she states are the best form of court that would be equipped to hear cases of this nature. This would mean the proper training of judges, selection and tenure.

In the present circumstances in Britain however, it could be that a more practicable forum is a governmental institution. She suggests that the existing courts could make a finding that a group right has been violated, and then he matter over to a governmental institution for enforcement.

2.

*Towards the fulfilment of the dream of egalitarian pluralism.*

She suggests that the principles she has stated above could equally apply to *any* disadvantaged group. This may include classes, et al.

3.

*Law as an avenue of struggle.*

She admonishes against left-wing scepticism which seeks to abandon the legal process as avenue of struggle on the basis of the "irreducible nature of oppression" to be found in it.

IMPLICATIONS FOR THE DEMOCRATIC PROCESS-TOWARDS A NEW SOUTH AFRICAN CONSTITUTION.

The reason I wrote out the synopsis of Ms. lacey's comments was because there are several of her views that I agree with and which could not have been expressed better.

Yes, the question of groups in South Africa is one that needs be handled with extreme caution especially in the light of past injustices,accredited to a numerical minority race that enjoyed a political, social and economical majority status.

*The Place of the Bill of Rights as a guarantor of Group interests.*

The following points may be worth considering-

a) The democratic South African constitution should include a bill of rights which prohibits discrimination against groups be these ethnic, cultural, religious, or simply interest-lobby groups (be they in whatever form).

The general effect of this should be that given the entrenched nature of rights expressed in a Bill of Rights, these would be rights available to South African subjects which cannot be altered.

b) This, however, should be strictly subject to the proviso that such groups shall not in turn propagate racism, ethnicity, regional exclusivity, sectarianism that discriminates against other groups etc.

One may also consider that definitions of groups,discrimination could be expressed in an attached schedule of the entire constitution, so as to assist future court-interpretations.

*The place of the law-making process.*

To give double-barrelled protection one may even consider specific Acts of legislation that specifically prohibit discrimination and go further to define in as accurate a form as possible what exactly constitutes discriminatory behaviour. The participation of all and sundry at a constitutional assembly representing the various political groups or parties of South Africa in proportion to popular vote is also important for these definitions.

It would mean that the fears expressed by Ms. Lacey as well in terms of the inability of the disadvantaged RACIAL groupings to change the White dominated norm in the law, need not occur in the case of South Africa. For there, at the constituent assembly ( and at subsequent occasions of the exercise of the general political right available to all South African individuals), should be a numerically majority representation of the previously disadvantaged groups.

This is sheer arithmetic, if -ALL people are allowed to vote;
-and the voting system is such that (as at a constituent assembly) whichever political grouping they each cast a vote for is proportional to the population represented at the Constituent assembly, they their

needs are most likely to be reflected in subsequent legislation.

*South African Pluralism.*

The whole debate on groups in Suoth Africa is a very topical issue, presently.

Groups have been defined in terms of race,
culture,
religion,
ethnicity,
ideology,
specific lobby-interest grouping.

The former-mentioned four are perhaps the source of the greater part of the groups debate, and can be adequately provided for in terms of the constitutional arrangements. Not much is said, however about the latter two yet their stature is such in the present South African society that they are the dominant points of reference by which individuals have come to be defined.

In the past decade there has been in South Africa, an increasing polarisation into two dominant areas of political activity. Two basic streams of ideology, these are:

1. The inclusive increasingly non-racial, non-sexist democracy-persuaded grouping (popularly known as the MDM) on the one end; and

2. The exclusive various groupings that believe in political activity carried out within their own ethnic, racial, etc to the exclusion of relations with others.

So far the representation at a formal political level is confined to the latter grouping. However, there have since emerged possibilities for the representation at a formal and possibly intra-Parliamentary level with the momentous events symbolised in the 2nd February,1990 speech.

Political groups are a vital aspect of representation and expression of group rights in South Africa. Their existence and protection should be guaranteed and be provided for in the constitution on the basis of the aforesaid principles.

Similar principles should apply to lobby groups in the interests of the freedom of association.

THE QUESTION OF CLASS-ACTIONS BROUGHT BY MINORITIES:-FEASIBLE AND DESIRABLE?

**Feasible**?

In South Africa, there is presently in existence various categories of political minorities.Those groups who have no access to full rights and are in that way discriminated against. These are namely women, workers, other races other than whites.

Infact there so many aspects of South African life who have never enjoyed 'normality' in the ideal sense that it could well be argued that the other groups would also require protection. These groups being religious bodies, sports and cultural bodies, professional associations, trading associations and other commercial bodies, the list is endless. The main dominating feature in the intra-relations of these is that they have been fragmented by racism. So that even if tomorrow a bill of rights were to come into being within this general race-domineered norms of life, the freedom of association would definitely in reality mean very little where people are limited in their association by the ideas of associating primarily on the basis of their race.

Workers are one pertinent example of this.The whole issue of racist division of labour (the Job Reservation Act), wage differentiation has fragmented the labour force in such a way as to create unhealthy competition amongst workers. Unhealthy, because it is based not on skill as such and productivity, but it is a struggle between primarily workers other than White and White workers. Because of the wage differentiation, white workers are very insecure as they know that from the employer's point of view it is more profitable to hire the services of other races other than white than it would be to employ Whites who would have to be paid more.

That being the case, a class action under the circumstances is inconceivable. Nor would a Bill of Rights in this atmosphere effectively change these relations. What is required is much more - A total negation of racism, beginning with a restructuring of rules pertaining to the nature of State. If the highest body of laws that define this is itself non-racist then a beginning will have been made. This means that the Constitution itself should state that anyone can stand for and elect anyone of their choice into the legislature( which is the creator of all other laws that govern relations between persons). In the background of this, then, the first step towards the intergration of groups has been made.

**Desirable**?

It has been stated by Professor Sachs in his book- "The Future Constitutional Positon Of White South Africans", that what the South African struggle for democracy is about is trying to secure ***the right to be the same and the right to be different.***

In terms of this principle, group rights should be accorded protection and recognition in so far as they do not alienate and differentiate between individuals of different cultural or ethnic groupings. They should an equation of access to political, social and economic rights of individuals belonging to different cultural groupings. The way to do this is by including a Bill of rights as an entrenched instrument of the basic law of the land.

When it comes to other groups such as women, workers, and other groups other than racial/language groups Professor Sachs suggests that a charter for each be drawn and appendaged to the constitution such as to have the binding force of law and to mandate whatever government may come into power to execute the demands of the charter in question. This becomes a guide to the affirmative actions demands as addressed to the government by whatever group.

One can add that this vision of dealing with the South African discrimination-free society is certainly desirable for the following reasons :

1. It should have the effect of reversing the past accordance of citizens rights which should of universal application to racial/language groups. These would be properly placed in the hands of individual citizens.

2. However the aforementioned is not done at the cost of the rights of individuals as members of other groups which should rightly be accorded their protection to exist and not be discriminated against as a group.

It must therefore follow that certain mechanisms have to be brought to bear to further enforce group rights and be available to the group in the event of violation. In this sense, then, the hearing of a group action in a constitutional court on the basis that it is being discriminated against in contravention to the provisons of the charter, is certainly desirable.

Care must be taken however that we do not lose sight of what it is that we are trying to protect.

If by "groups" we are referring to political parties and associations, women and their organisations, workers and industrial unions, religious bodies and denominations, and all other category of person that should not be discriminated against. One may well envisagethe AWB bringing an action to court if they feel as a political party to have suffered at the hands of others and having been discriminated against. It would well be within their right as South African group.

However, in the interests of a greater South African unity across races, in the execution of the right to be the same irrespective of our race/language differences, there can be no group actions based on the need of the Afrikaner language group to secure a land for itself. Questions of the access to natural resources is a national matter, and as such the state can only guarantee these rights as universal rights to which each and every individual should have access.

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COMPILED BY:

M. Mncadi

THE FUTURE COBNSTITUTIONAL POSITION OF TRADITIONAL LEADERS

Our objective must be to develop a dignified and respected role for traditional leaders which enables them to take their place in and make their contribution towards building a new democratic South Africa. In positive terms, it means enabling traditional leaders to recapture the prestige undermined by colonialism, segregation and apartheid , and to use their position to help the development of a united, non-racial, non-sexist democratic country. In negative terms, it signifies preventing the institution of chieftainship from being manipulated so as to keep the people divided and advance the personal ambitions of power-obsessed individuals.

There is no inherent or inevitable tension between traditionalism and democracy. Both can in their different ways serve the same national interest, namely, the development of good government in the interests of all South Africans. The key to achieving this is to ensure that each functions in its appropriate sphere without intruding on the other. Verwoerd tried to tribalise democracy. It did not work. Similarly, it would be inappropriate to attempt to democratise the chieftainship.

Democracy and traditional leadership operate according to different principles. Democracy is based on the principle of electoral choice and majority decision. The hereditary principle is based upon the rules of birth and lineage. Democracy involves periodical accountability. Traditional rule is interrupted only by death or abdication. Attempts to force the two concepts into a single system end up by being damaging to both. Thus, some Presidents have sought to establish the institution of President for Life, and even to establish a dynasty by nominating their heirs as successors.

Conversely, it would not make sense to require traditional leaders to subject themselves to periodical elections. Their bonds with their communities are based on rules of traditional law. Their symbolical position for the community, their religious and ceremonial functions, their relationship with the land and with the spirit of the ancestors, is deeply bound up with the customs and ethos of the particular community. In earlier times, functioning together with their councils, they exercised a considerable degree of what today would be considered state power. They commanded military forces, exchanged diplomatic envoys with other tradional leaders, and stood at the summit of the judiciary.

Traditional leaders can behave in a democratic way and many have distinguished themselves by their contribution towards the fight for democracy in South Africa. Yet the institution of chieftainship can never in itself be democratic, nor should it in contemporary conditions be seen as competitive with or antagonistic to democracy. It simply has a different sphere. We should not seek to traditionalise democratic institutions, nor should we set out to democratise traditional ones. The objective is not to democratise traditional institutions but to constitutionalise them.

Just as religious bodies can enjoy vast popular respect and be important agencies for promoting harmony and development without compromising their autonomy within their field, so can the traditional leaders play a major role in public life without negating their special relationship with their communities. Similarly, just as we support the idea of not having an established religion, so, in a country like South Africa where we have a plurality of traditional leaders would we be against having any particular family invested with official functions.

There is no contradiction in the idea of tradionalism modernising itself. As their name indicates, traditional leaders are expected not only to be traditional but to lead. Leadership means going forward, not back. It presupposes taking the best of the past into the future, not pushing the present into the past. Shaka and Mosheshwe were two examples of traditional leaders who were great modernists in their time. Both were pioneers of change who adapted to the great tasks of their age, transforming the function and role of kingship in the process.

The great task of the present era is to build a country in which all can live in equality and dignity, in which the great resources of the land are opened up to everybody and in which all people are free to speak their minds, profess their faith and express their culture. Traditional leaders have a major contribution to make in all these respects.

Traditionalism can accommodate to and contribute towards unity, non-racialism and non-sexism.

Dr. Verwoerd sought to mobilise ethnicity as a substitute for acknowledging democratic rights. He attempted to keep the majority of the people divided along tribal and ethnic lines. He tried to give individual traditional leaders a stake in apartheid by offering them fruits of office as subalterns of the apartheid state. By his efforts to elevate the traditional leaders above the people, and by setting one

against the other, he almost destroyed the institution he was purporting to promote.

Patriotic traditional leaders provided the answer. They saw that the best interests of their particular communities were served not by separating themselves off from the rest of society but by combining forces with all other sections of the population. Many individual chiefs and chieftainesses paid with their positions and even with their lives and liberty because of their refusal to go along with the devices of Pretoria.

In more recent times Contralesa has shown the way by enabling traditional leaders in different communities to hold hands and use their positions and prestige to re-inforce national unity.

In the same spirit, they have campaigned actively for the principles of generalised non-racial democracy, refusing to be shunted off from the mainstream of South African life. Once the principle of equal rights and non-racism is firmly established, the diverse character of South African society can be accommodated and even welcomed without difficulty. It is only when cultural differences are used as a pretext for domination and division that they become harmful.

Conventional constitutional notions tend to base themselves on the existence only of the state, political parties and indivifuals. More recently emphasis has been put on a fourth element, namely organisations of civil society. Such organisations are getting increasing constitutional recognition not as part of the state, nor as transmission belts for political parties, nor as mere aggregates of individuals. They are regarded as collective bodies contributing towards the richness and texture of social life and enjoying the right to autonomous spheres of action provided their activities do not suppress or interfere with the rights of others.

To a large extent, their functions are self-determined, that is, their right to exist and to operate is not dependent on recognition by the state, but, rather, the state acknowledges and is constitutionally bound to accept their existence. Well-known examples include religious bodies, trade unions and sporting and cultural associations. Many have argued that they should enjoy a right to be consulted in relation to actions which affect their interests.

One can envisage the institution of traditional leaders taking an honoured and active place in South African

society. Their strength and vitality would come from the intrinsic support which they would enjoy, not from their position in the state.

# DRAFT RESOLUTION

# ROLE OF TRADITIONAL LEADERS AT ALL LEVELS OF GOVERNMENT

## THE NEGOTIATING COUNCIL HEREBY RESOLVES AS FOLLOWS:-

1. **General**

All matters pertaining to indigenous / customary law shall be regulated by statute.

2. **At Local level**

1.1 Traditional authorities shall continue to exist and exercise their functions in terms of indigenous law, as prescribe and regulated by enabling legislation.

1.2 There shall be an elected local government which shall take political responsibility for the provision of services in its area of jurisdiction.

1.3 The (hereditary) traditional leaders within the area of jurisdiction of a local authority shall be ex-officio members of the local government.

1.4 The chairperson of any local government shall be elected from amongst all the members of the local government, including its ex-officio members.

2. **At Regional Level**

2.1 There shall be a House of Traditional Leaders in provinces with existing traditional authorities, composed of traditional leaders and elected by an elected Electoral College of that Province which shall meet when necessary, for the pruposes set out in the paragraphs hereafter.

2.2 The basic role of the House shall be advisory in relation to tradition and custom.

2.3 All legislation pertaining to traditional leadership; traditional authorities; indigenous law and custom, including any other matter having a bearing thereon, shall in a particular province, be referred to the House in that Province for its consideration and comment. In its comment the House shall also indicate whether it supports such legislation or not. Such comment shall not be withheld for a period longer than 30 days.

2.4 The comments of the House, if any, shall be submitted to the Provincial legislature for it to consider whether to proceed with such legislation or not.

2.5 Should the House in its comment express opposition to the legislation, such legislation if passed by the Provincial legislature shall be delayed for thirty days before final approval by the Provincial Legislature.

2.6 Appropriate procedures shall be framed by the Provincial legislature to facilitate the above provisions.

## 3. At National Level

3.1 There shall be a House of Traditional Leaders, composed of traditional leaders and elected by an electoral college composed of the various Houses of Traditional Leaders at Provincial level, which shall meet when necessary, for the purposes set out in the paragraphs hereafter.

3.2 The basic role of the House shall be advisory in relation to tradition and custom.

3.3 Legislation and constitutional amendments pertaining to traditional leadership, traditional authorities, indigenous law and custom, shall be referred to the House for its consideration and comment. In its comment the House shall also indicate whether it supports such legislation or not. Such comment shall not be withheld for a period longer than 30 days.

3.4 Passage of legislation through the National Assembly and Senate shall not be delayed whilst proposed legislation is referred to the House as set out above. To ensure that undue delay is avoided, proposed legislation shall be referred to the House simultaneously with its submission to the Senate.

3.5 The comments of the House, if any, shall be submitted to the National Assembly for it to consider whether to proceed with such legislation or not.

3.6 Should the House in its comment express opposition to the legislation, such legislation if passed by the National Assembly shall be delayed for thirty days before final approval by the National Assembly.

3.7 Appropriate procedures shall be framed by the National Assembly to facilitate the above provisions.

**Proposed Formulation on the Role of Traditional Leaders**

A suitable role ~~shall~~ should be found for traditional leaders, particularly at the level of local government, in keeping with the principles of having a united, non-racial, non-sexist, democratic South Africa.

Motivation

The objective must be to find a dignified and meaningful place for traditional leaders within the context of the basic principles of the new constitution. It would be disastrous for the institution of traditional leaders if it were seen - as happened in the days of Dr Verwoerd - as being a bulwark against democracy. It would be equally negative if the institution were manipulated for purposes of division or to advance the political ambitions of individuals. The stature of traditional leaders was undermined in the colonial and apartheid periods by the way in which successive governments sought to convert them into instruments of domination and division. The true bonds between traditional leaders and their communities can only be restored by "de-politicising" them. Traditional leaders have an important role to play in encouraging unity (as CONTRALESA has done) and in maintaining a sense of non-exclusive and non-aggressive solidarity and cultural affirmation. They have important religious and ceremonial functions to perform. At the local level they can be important links in the chain of administration between regional and local authorities and the people.

In concrete constitutional terms, this would mean that the traditional leaders would have a role similar to that of constitutional monarchs in parliamentary democracies. They would have considerable status and prestige (with the possibility of special revenue to enable them to fulfil their functions with dignity). As a body they would also constitute an important organ of civil society with the right to represent their members, defend their interests and make appropriate representations, in the same way as other important social institutions such as religious organisations and trade unions. We accordingly envisage bodies such as CONTRALESA building on their achievements and playing an important and influential role in future public life.

We do not envisage any institutionalised position for traditional leaders at the level of national or regional government. They might have ceremonial roles to play consistent with their status, but they will not be part and parcel of either the legislature or the executive. At the local level and particularly in rural areas where traditional leaders at present have important administrative functions, ways and means should be found for integrating them into the system of local government and administration. The fundamental principles of democracy and accountability must apply through the length and breadth of the land. There is no reason however why traditional leaders should not play an important role in presiding over the activities of elected bodies. In the tradition of the Kgotla they will accept the opinion of the locally elected councils, all the time encouraging consensus where possible in the interests of the community as a whole.

Special attention will have to be paid to the role of traditional leaders in relation to allocation of land and in respect of the application of traditional law. Both these areas will have to be looked at in their globality and cannot be decided simply in relation to the general status and functions of traditional leaders. The question of the role of traditional leaders in promoting or resisting the development of gender rights will also require special attention.