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CONTRALESA

The Dawn of Freedom

Congress of Traditional Leaders of South Africa



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The Role of Traditional Leaders in Local and Regional Government in a Democratic South Africa

Paper Delivered by Advocate S.P. Holomisa
at a Re-incorporation Task Force Meeting
of the African National Congress in
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INTRODUCTION

The fact that the institution of chieftainship or traditional leadership has a role to play in the running of the affairs of the people of South Africa, in general, and the traditional/rural communities, in particular, is generally acknowledged by all significant players in the unfolding scenario towards the creation of a free and democratic South Africa. What is lacking, however, is a blue-print that sets out the manner in which traditional leadership will function in a changed South Africa.

While accepting the above-stated fact political organisations, particularly those that were invited and took part in the Preparatory Meeting held in Johannesburg on 29 & 30 November 1991, somehow find it unnecessary for traditional leaders to participate in the negotiation process in their own right. This is so in spite

of the fact that traditional leaders have shown their commitment to striving for a just dispensation for all by forming an organisation called the Congress of Traditional Leaders of South Africa. It goes without saying that the unity of traditional leaders across the homelands boundaries and language differences would go a long way towards forging unity amongst the African communities. The current wave of violence would also surely abate.

There is thus an urgent need for all political parties and organisations to put a stop to the practice of trying to woo traditional leaders into their folds with the primary aim of prosecuting their own political programmes. Such practices led to the disintegration of our communities and the balkanisation of the country ~~of the country~~ into the detestable bantustans. The bonding attribute of traditional leadership can be exploited for the benefit of the country by the encouragement of support for Contralesa and its independent status.

TRADITIONAL LEADERS IN LOCAL GOVERNMENT

A look at the various proposals for a constitution for an apartheid-free democratic South Africa indicates that a significant number of political organisations favour a three-tier type of government, made up of the central government, regional and local administrations. Such a dispensation would help ensure that the people, at all levels, are in a position to dictate the manner in which their lives are to be run.

The introduction of colonial and apartheid governments into the country resulted in traditional leaders being stripped of their sovereignty over their people and areas of jurisdiction and were reduced into local and later homeland administrators and legislators. Like the rest of black South Africans they were denied a say in central government.

Homeland administration in conjunction with the central government regulated the functioning of traditional leadership through Tribal Authorities. These were premised on the fact that a chief always ruled in-council in that his councillors were at his side whenever he had to attend to the affairs of his people. The councillors were from the ranks of the headmen, sub-headmen and prominent members of the community who were acknowledged for their skills in dealing with the multifarious load of problems coming to the Great Place. In some areas some of these councillors, save for the headmen, were elected by the adult members of the community and almost invariably they were all men.

Nowadays, and with the imminence of a democratic order, the people of this country are demanding their inalienable right to be ruled in accordance with their wishes. This means that rule according to traditional leadership will have to undergo transformation so as to accommodate these aspirations. Residents Associations are in the process of putting in place a form of democratic local government in rural areas.

The introduction of Residents Associations in many parts of the country was characterized by violent actions against tribal authorities and reciprocal resistance by traditional leaders and their supporters to the extent that there developed inevitable divisions in rural communities.

Contralesa, as an organisation committed to the democratisation of our society, has nothing against Residents Associations, in principle, so long as its proponents take cognisance of the fact that circumstances in urban areas are different to those in rural areas. In the latter there are traditional authorities in the form of sub-headmen, headmen, chiefs, paramount chiefs or kings and their councillors, to whom a significant number of people are accustomed.

Hereditary traditional leaders will remain in place for as long as a great number of our people see the need for the existence of the institution of chieftainship. Democratizing the institution does not entail the election of chiefs - it means that the officials

or councillors constituting the tribal authority will have to be elected by adult members of the community. At present many tribal authorities are not as effective as the needs of the people they serve demand. This can be attributed to several factors such as the fact that the councillors are usually people who are not so literate, and also the fact that access to the corridors of power is limited to the offices of the district magistrates and/or commissioners. The communities' applications tend to pile up in these offices due to the lack of commitment of some magistrates/commissioners or because the relevant departments do not appreciate the seriousness of such applications.

To ensure the necessary efficiency of the chief's council more literate personalities should be encouraged to involve themselves in these councils. Such duly elected councillors should also be allocated with specific tasks in line with the relevant government departments. Such a dispensation would ensure that there will be a councillor responsible for educational matters, another for health matters, another for agriculture and farming etc. This will thus obviate the need for the matters of the community to be channelled through the offices of the magistrates or commissioners, but directly to where meaningful decisions are taken.

As stated above some of the councillors who constitute tribal authorities are headmen. In some areas these leaders are elected while in others their position is hereditary. In areas where headmen assume their positions by virtue of being the hereditary successors to previous incumbents the question of democratising the tribal authorities by way of electing the councillors might face resistance if it would extend to such hereditary headmen. In this regard therefore each given area should be afforded the option of deciding for itself whether these leaders should be subjected to election or not. Sight must not be lost, however, of the fact that cohesiveness of any communities largely depends on the

extent of the acceptability of the legitimacy of the leaders and in most cases hereditary traditional leaders do pass this test.

Whether the final decision is to transform the tribal authorities as we know them or to establish residents associations the head of such a structure will remain the chief of the area.

Another vital function of traditional leaders is the adjudication over minor civil or criminal cases. The role of traditional leaders is most pronounced in the trial of civil cases for it is in such cases that the customs and traditions of the community are interpreted and disseminated. At the end of the case almost invariably either of the litigants comes out satisfied because the trial is not only conducted in accordance with custom but is also heard in open court with everybody allowed to examine and/or cross-examine the witnesses in a rather informal but orderly fashion. Very rarely do you find an unsuccessful litigant taking the matter on appeal to either the magistrate's court or the court of the king or paramount chief.

This brings us to the role of paramount chiefs or kings. The king also rules in-Council along the lines similar to those of the chief, save that here the councillors come from the ranks of the chiefs and a few elected or appointed ordinary members. Even in a democratic South Africa the chiefs should remain part of the king's council. However, a sizeable number of ordinary councillors should be elected from the various chiefs' areas of jurisdiction so as to ensure that the people's views and interests are fully represented.

Basically the king is the overseer of the community. His is to ensure that the activities of his chiefs are properly co-ordinated and that none of the chiefs are oppressive over their people. His palace is the ultimate repository of the communities' customs and traditions, hence it is the highest court of appeal.

With the developments that come with modern education and technology the traditional leaders run the risk of being overshadowed or overtaken by events because most of them, due to various factors, are not so literate. To enable them to appreciate the changing requirements of their people traditional leaders should be specially trained and educated in modern ways of administration and government.

In the Transkei the kings have been given powers equal to those of the magistrates to try criminal cases. This dispensation is criticised mainly for the reason that legal representation is not permitted, and also for the reason that these kings do not have the requisite legal training that their counterparts - magistrates - have, with the result that a significant number of appeals emanating from these courts result in their decisions being overturned. Denial of legal representation is an erosion into the fundamental principles of natural justice in modern days, more particularly where the liberty of a human being is at stake. Accordingly, commendable as it is the gesture shown by the return of kings' traditional powers in this area, there is an urgent need to see to it that the pursuit of justice in the traditional ways does not end up in denial of the same justice. The above-mentioned special training and education would help harmonize the modern and the traditional.

On the political front a traditional leader, as the upper guardian of the people, should be seen at all times to be handling the affairs of his community in an unbiased and fatherly fashion. He must not be seen to be favouring one political grouping at the expense of the others. To ensure his impartiality he should align himself with none of the political organisations operating in his area. In areas where you find chiefs aligning themselves with particular political organisations, they tend to view those members of their communities aligning themselves with rival organisations as being disloyal and enemies. In such a case the chief finds himself the cause of divisions within his own community when he is supposed to be the seal of cohesion.

THE ROLE OF TRADITIONAL LEADERS IN REGIONAL GOVERNMENT

Depending ^{on} of the structure that will be put in place in regard to regional government, in so far as its activities are bound to affect the people subject to traditional leadership rule, traditional leaders have to be part of the decision-making process.

The tradition of chiefs being legislators and administrators should not be done away with. Laws that are made in conjunction with the people who are to administer them enjoy more legitimacy than those made by others. However, so as not to offend the dictates of the principles of democracy at all times it must be ensured that chiefs, as ex officio holders of their positions, do not dominate in terms of numbers the elected representatives of the people.

The homeland administrations as they stand cannot be allowed to transform themselves into regional governments. They have been created on the premise of racial separation and accordingly the role that traditional leaders can play in regional governments should be fashioned in such a way that it does not encourage tribal and/or racial suspicion and arrogance. Even if at the local level the chief's primary goal is to promote the interests of his people, at regional level the interests of the people residing in the given region show be paramount.

CONCLUSION

My mandate does not extend to the question of the role of Traditional leaders at national level in a democratic South Africa. I shall, however, use my prerogative as president of Contransa to set out our tentative views on this aspect.

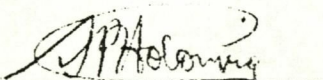
When the land was wrestled out of the control of the original

occupants of this country it was under the administration of traditional leaders. Committed as we are to a nonracial and democratic order, we should not lose sight of the fact that the majority of the people of this country are Africans who still believe very strongly in the efficacy of the institution of chieftainship. This is why the National Party nearly successfully hood-winked our people into accepting the homeland system. Any laws and decisions that are made without some involvement of traditional leaders might encounter serious snags when they have to be implemented if the chiefs and/or their people feel they are not to their benefit.

A special dispensation for participation by chiefs at the level of the national legislative process should be devised. This can be in the form of special seats being reserved for a certain number of chiefs, alternatively a House of Chiefs should be established so that laws that directly affect traditional communities are referred to chiefs for their attention. Such a special dispensation would also help ensure that chiefs are not tempted to join the political fray by entering into party politics. With a House of their own or for purposes of the special seats chiefs can, on national level and without regard to specific grouping but on merit, elect from amongst themselves chiefs who would represent their interests and those of their followers.

These points cannot be better placed on the agenda in the negotiation process by anyone other than the chiefs themselves through their own organisation, the Congress of Traditional Leaders of South Africa. It is definitely not acceptable that their views be channelled only through the invited political parties or organisations whose own programmes do not necessarily coincide with the aspirations of traditional leaders and their people.

Thank you.



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AFRICAN NATIONAL CONGRESS

(DEPARTMENT OF CONSTITUTIONAL AND LEGAL AFFAIRS)

WORKSHOP ON REINCORPORATION OF BANTUSTANS

A G E N D A

1. Opening Address by Chairperson of Constitutional Committee - purpose and objectives of workshop.
2. IDENTIFICATION OF ISSUES, Including:
 - 2.1 HISTORICAL FACTORS.
 - 2.2 Geographical and physical features and factors, population structure.
 - 2.3 Economic, social and political realities.
 - 2.4 Governments and administrations, civil service etc.
 - 2.5 Political and social struggles and organisations.
 - 2.6 Specific factors relating to each geographical area.
 - 2.7 Local government and services.
3. BASIS OF REINCORPORATION *territorial.*
 - 3.1 Legal implications.
 - 3.2 Political and economic implications factors.
 - 3.3 Implications with regard to administration, civil service, judiciary, local government, etc.
4. PROPOSED SOLUTIONS
 - 4.1 Examination of different proposed solutions.
 - 4.2 Federal option.
 - 4.3 Unitary option.
 - 4.4. Identification of objectives of struggle eg democracy, popular participation in decision-making, elimination of poverty, economic participation and development.

5. ALLOCATION OF TASKS

5.1 Task groups.

5.2 Personnel.

5.3 Rationalisation of work.

5.4 Conference and seminars.

5.6 Occasional papers, research papers.

5.7 Administration.

5.8 Accountability

6. TIME SCALES AND TARGETS

7. THE WAY FORWARD

8. DATE AND VENUE OF NEXT MEETING

9. GENERAL