

Republiek van Suid-Afrika



Republic of South Africa

Ministerie van Staatkundige Ontwikkeling
Ministry of Constitutional Development

Verwysing
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Dear Dr Eloff

During a meeting of the Sub-committee regarding the accommodation of the Zulu King and other traditional leaders on 3 March 1992, specific questions were raised to which I undertook to respond in writing.

I herewith enclose the questions and answers for submission to the Sub-committee, please.

Yours faithfully

G VAN N VILJOEN
MINISTER OF CONSTITUTIONAL DEVELOPMENT

ANSWERS TO SPECIFIC QUESTIONS RAISED DURING A MEETING OF A SUB-COMMITTEE OF THE MANAGEMENT COMMITTEE OF CODESA REGARDING THE ACCOMMODATION OF THE ZULU MONARCH AND TRADITIONAL LEADERS

1 QUESTION

Detail regarding (existing) constitutional arrangements for the accommodation of the Zulu monarch in the legislative and executive structures of KwaZulu is requested. (Mr Jacob Zuma)

ANSWER:

Section 2 of Part II of Schedule II of the KwaZulu Constitution (R70 of 1972) makes provision for the Zulu monarch to be part of the Legislative Assembly, and that he,

... shall retain his traditional powers and functions and shall continue to enjoy the personal status he has hitherto enjoyed and shall, with regard to ceremonial and tribal matters within his tribal area and at ceremonial occasions within the area of the Legislative Assembly, take precedence over the Chief Minister and Ministers, except in respect of matters or occasions directly connected with the business of the legislative assembly.

Regarding the Zulu monarch's participation in the Executive structures of the KwaZulu government, section 20(4) of Part II of Schedule II of the KwaZulu Constitution Act (Proclamation R70) requires the Cabinet to inform the monarch of impending legislation and to discuss it with him. Section 25(c) provides that the monarch shall be informed of the agenda of each Cabinet meeting and that he may request the Cabinet or members thereof to meet with him so that he can convey his opinion to them. He thereby obtains the opportunity to exert a direct, although not statutorily enforceable, influence on the governing of his nation.

2 QUESTION

Regarding the payment of a salary to traditional leaders, the question is whether there is any difference between the position when the Central Government was responsible and the position *after* the devolution of the function to Self-Governing Territories in terms of the National States Constitution Act (21 of 1971). Furthermore, was there at any stage a difference between the salaries of the Zulu monarch and the salaries of other Paramount Chiefs or Chiefs? (Mr Jacob Zuma)

ANSWER:

No distinction was drawn by the South African Government regarding the payment of salaries to paramount chiefs, chiefs and headmen prior to the devolution of the function to Self-Governing Territories. Since the promulgation of the National States Constitution Act, 21 of 1971, Self-Governing Territories have separately determined their own criteria in this regard. Naturally, this differs from the position before the promulgation of the Act.

3 QUESTION

Did the Law Commission recommend that traditional leaders be represented at local and possibly at regional (and therefore by necessary implication *not* at central government) level? (Mr J Slovo)

ANSWER:

On page 723 of Volume 2 of the Law Commission's Report on Constitutional Models (1991), with regard to the question of the representation of traditional leaders at central government level, the Commission states:

The problems attached to this option are legion. It is not known at present how many chiefs would qualify for a seat in such a house or chamber. And what of the other population groups who have no tribal ties - whites, Indians and coloured people? How would they be given representation in the same house or Chamber? In what proportion would such representation be given?

The position of those black voters who are detribalised is also a problem. How and in what proportion, would they be represented? ...

This option creates more problems than it can solve and is not supported.

Regarding representation at the level of constituent states or regions the Commission argues as follows:

The same problems as those discussed above would arise in these cases.

Regarding representation at the municipal level the Commission argues:

It is at this level that the chiefs could probably play the most useful role and also be accommodated with relative ease. In addition to elected members, municipal councils could also accommodate those chiefs who have a seat in their region as ordinary members with full voting rights.

4 QUESTION

During the period in which the Government was (directly) responsible for the subsidy payable to Chiefs and Paramount Chiefs, was there a so-called stipendium based on the amount of tax which was paid or collected in a given tribal area? (Mr J Mahlangu)

ANSWER:

Yes. The stipendium was an amount, based on the number of registered rate-payers within the area of a traditional leader, payable to a traditional leader for services rendered to the government.

5 QUESTION

In the clause in Act 38 of 1927 which authorised the Governor-General to appoint and to expel any traditional leader, was any distinction drawn regarding the Chiefs or Paramount Chiefs who could thus be affected? (Mr J Mahlangu)

ANSWER:

It appears that no distinction was drawn in the original act. This function at present vests in the Self-Governing Territories themselves in terms of section 27 of the Schedule to Act 21 of 1971. The position therein is also that no provision is made for a distinction between the various tribes.

6 QUESTION

Did any legal prescription in existence before the enactment of Act 21 of 1971 provide for different categories of traditional leaders, especially insofar as the Zulu monarch is concerned? (Mr J Mahlangu)

ANSWER:

As far as could be ascertained, no such prescription existed. Under British rule in the 19th century the Native policy in the Cape Colony was based on assimilation and westernisation. The Native policy in Natal, however, was

the more traditional British approach of "indirect rule". Thus while there were separate administrations in the two colonies, the approach in Natal tended to encourage the strengthening of cultural and traditional feelings and the aspirations of the Zulu nation.

7 QUESTION

Does any South African legislation whatsoever exist which provides for the differentiation in status between the Zulu monarch and other traditional leaders? (Mr J Slovo)

ANSWER:

The KwaZulu Constitution proclamation differs in certain respects from that of other self-governing territories. A principal area of difference relates to the position and status of the Zulu monarch, as explained above.

In terms of Proclamation R70 of 1972 the Paramount Chief, as he was then known, was in terms of Section 2(1) of Part II of Schedule II made a member of the Legislative Assembly. In terms of Act 3 of 1987 (KwaZulu) the expression "Paramount Chief" was replaced by the expression "His Majesty the King". (The reason for this being that KwaZulu had only one Paramount Chief, so called by the South African Government, but who was in effect King of the Zulus.)

To the best of our knowledge none of the constitution proclamations of the other Self-Governing Territories contain such provisions.

As far as can be ascertained, however, no legislation exists which has been passed by the South African Legislature wherein a distinction is drawn between the status of the Zulu monarch and that of other traditional leaders.