

## TOWARDS DEMOCRATIC CHIEFTAINCY: PRINCIPLES AND PROCEDURES\*

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There is a new general agreement that South Africa is entering a period of deep and momentous change. South Africans now have the rare privilege of establishing a nation on new moral and political foundations. As we move beyond apartheid we envisage wide participation in all areas of national life. Politically this vision is expressed in the principle of democracy. The critical challenge is to translate this principle into reality. This is, therefore, an opportune time to appraise our institutions in terms of the principles we profess.

This study concerns the institution of chieftaincy. The need to democratize this institution is recognized by organizations such as the African National Congress (ANC). Clause (c) of the Organization's Constitutional Guidelines states:

'The institution of hereditary rulers and chiefs shall be transformed to serve the interests of the people as a whole in conformity with the democratic principles embodied in the constitution.'

What follows is an attempt to build upon this conception of the future position of chiefs. We first describe the nature of the chief's office. Secondly we discuss the tendency to abuse



the office. We then suggest principles and procedures for making chieftaincy democratic.

## I NATURE OF CHIEFTAINCY

We do not seek a comprehensive description of chieftaincy. Our purpose is to emphasize the aspects eroded by government policy, and those that are of concern to a democratic society. These aspects overlap at several points, as will be clear. We present a slightly idealized picture of chieftaincy which has always, of course, been a dynamic phenomenon. But a stable image provides a usefully sharp contrast with the dramatic change precipitated by indirect rule.

Succession to the chief is hereditary according to the rule of primogeniture in the agnatic line.<sup>2</sup> Except among the Balobedu of the Northern Transvaal, women are thus precluded from office.<sup>3</sup> At most women are permitted to act as regents where the heir is a minor.<sup>4</sup>

The main duty of the chief is to cherish his people and to watch over their interests.<sup>5</sup> He must govern well and fairly.<sup>6</sup> More specifically, regular attendance at meetings of his councils and consultation with his councils and relatives is expected.<sup>7</sup> He must supervise his headmen and maintain law and order. He acts as judge in disputes, and is assisted in this function by a council and to some extent by other members of the tribe.<sup>8</sup>

The formal powers of the chief are considerable. As head of the tribe he is the symbol of tribal unity. He is the ruler

and maker and guardian of the law.<sup>9</sup> He leads in war and external relations.<sup>10</sup> As a religious leader he links the people with the ancestors.<sup>11</sup> He allocates land and regulates agricultural, pastoral, hunting, trading and other economic activities.<sup>12</sup> Income derived from the lease of tribal property vests in him, as does that raised through cash levies, taxes and fines imposed by him.<sup>13</sup> There was previously no general duty to account for revenue collected. The chief did not draw a salary but received various forms of tribute.<sup>14</sup> He still inherits a large estate from his predecessor.<sup>15</sup>

These wide powers did not make the chief an autocratic despot. He was constrained by custom, tradition and the need to maintain a following.<sup>16</sup> Effective government depended on co-operation from his councils and people. He was expected to consult his advisers, selected by him to advise on policy.<sup>17</sup> The views of the council of headmen were especially important. Decisions taken in conjunction with this council were assured of general acceptance. Where the council opposed a policy proposed by him, the chief tended to abide by its decision. To do otherwise would court disaster.<sup>18</sup> The chief was expected to consult his relatives, who were among his most influential advisers. Like other advisers, the relatives provided an avenue of redress to persons aggrieved by the chief.<sup>19</sup>

In some Batswana groups, the chief could ultimately be tried and fined by his own court, his senior paternal uncle presiding.<sup>20</sup> A meeting of the tribe could overrule the chief.



Otherwise, a chief who proved completely unsatisfactory was killed secretly at the first opportunity or a civil war aimed at his overthrow could be instigated. Moreover, there was always the danger of secession: people would attach themselves to neighbouring chiefs or to rival relatives, who would leave to form a new tribe.<sup>21</sup>

The operational meaning of chief in modern society is much transformed. But the institution itself evokes many of the characteristics which, sadly, are lacking in present rural administration. The clarity of any discussion about fashioning a democratic chieftaincy is cluttered by associations with these characteristics. The perversion of traditional structures can be attributed to many, interlinking factors, significantly the imposition of colonial rule in Africa, and the development of indirect rule by the colonial administrators. Thus, an appreciation of the dynamics of this change is necessary for the effective reform of chieftaincy.

## II MANIPULATION OF CHIEFS

The most important factor in maintaining traditional accountability to the community was the chief's dependence upon its continued loyalty and support. The imposition of colonial rule disrupted the situation. Now a chief had access to a new form of power. He could act in the safe knowledge that if he co-operated with the colonial authorities, they would back up his demands. Thus, if traditional mechanisms began to operate, the



chief could rely upon external agents to enforce his unpopular decisions.<sup>22</sup>

More specific forms of corruption included the introduction of a monetary economy. Payment of the chief gave him a new form of power, and introduced capital motive into his hegemonic framework. Temptation was placed before the chief. He began to understand that by administering in an autocratic manner he could consolidate his own interests. Slowly, the prior system of chief as trusted centre of the community was corrupted. The chief could now operate above the community, and traditional checks and balances were often no longer effective. Many chiefs, elevating themselves above traditional law and custom, became willing to circumvent established procedures and to act on the instructions of the colonial authorities. These chiefs became servants of the colonial administration, shifting the focus of their accountability and their basis of authority. In some areas the traditional rules of accession to the chief also broke down.<sup>23</sup> Because the colonial administrators found some chiefs more willing to do their bidding than others, they supported those chiefs in imposing and maintaining their rule. This contributed further to destabilizing and undermining the checking procedures inherent in traditional customary rule.

The effects of colonial rule upon indigenous government are well researched and documented.<sup>24</sup> The implications of such political manipulation are numerous and incontrovertible. Much can be learned from detailed studies of particular regional

developments in Africa. Any attempt to restructure the chieftaincy along democratic lines must take careful account of these studies and the interests of the constituency being addressed.

In the post-colonial period, the trend to control indigenous government becomes particularly sinister. Having established hegemonic local control, the chieftaincy was ripe for manipulation in terms of the grand apartheid plan. Chiefs were disempowered and dependant upon government support.<sup>25</sup> On its rise to power, the National Party government wasted no time in legislating rural structures in accordance with apartheid and bantustan policy. In order to illustrate the legal, political and administrative process which took place, we shall examine in more detail the development of these structures in the Transkei during the twentieth century.<sup>26</sup>

During the first half of the twentieth century the chieftaincy remained fairly resilient to bureaucratic government intervention. The magistracy served as a conduit for imposing administrative control. The chain of command ran from the chief magistrate, through the district magistrates to state-appointed headmen. The headmen became responsible for implementing the policies of the South African authorities. The first formal consolidation of this transfer of power took place under the Black Administration Act of 1927.<sup>27</sup> Proclamations issued under the Act in 1928 conferred on the Governor-General powers either to appoint or to recognize a chief. These provisions defined



the scope of chiefs' authority, depending on whether the chief was 'appointed' or 'recognized'. These defined powers were somewhat limited,<sup>28</sup> and the chief's position in relation to the state bureaucratic structure was unclear, a matter complicated by the existence of the Bunga or district council system. The Bunga consisted of elected and appointed members, who ostensibly were to administer local affairs, although it possessed little in the way of real authority.

In the latter half of the twentieth century a more systematic and divisive approach unfolded. The 1951 Black Authorities Act 68 of 1951 extensively restructured, formalized and entrenched the system of indirect rule. A three-tier system of authority placed chiefs and chief-appointed councillors at the lowest level, with regional authorities at the intermediary level, and territorial authorities at the apex.

In 1956, after initial resistance to co-optation, the Transkei Territorial Authority replaced the Bunga. The absorption of chiefs into the state bureaucratic structure accelerated dramatically and occurred in an increasingly explicit manner.<sup>29</sup> The new official framework also excluded the authority of the chief's council, the last remaining fragment of democratic representation.

The chieftaincy itself, removed from any official accountability to the commoners, became an increasingly abused institution, often subject to corruption and authoritarianism. While chiefs received state payment they could implement

unpopular control measures such as government-propagated 'betterment' schemes, and they made unreasonable and illegal demands upon their subjects. Bribery and malpractice flourished. Surprisingly, in view of fairly substantial rural resistance, the legitimacy of the chieftaincy as an institution survived these developments.<sup>30</sup>

The official attitude towards Transkeian 'independence' preserved the chieftaincy as central to governing structures. The Transkei Constitution Act, passed in 1963, provided for a legislative assembly of chiefs, both elected and appointed. More generally, chiefs have been instrumental in the creation of independent homelands, and the attendant denial of political rights to Africans in the 1970s. In the Transkei, progressive chiefs initially organized and gained strategic support; but this alliance (which became known as the Democratic Party) was weakened and gradually co-opted through harassment, intimidation and direct financial inducement by the South African authorities.<sup>31</sup>

Haines and Tapscott provide a more detailed account of specific abuses of the chief's office.<sup>32</sup> A principal area was the chief's exercise of his power to allocate land. The threat of banishment (which prohibits the subject concerned from acquiring land elsewhere) as well as the danger of re-allocation on the pretext of improper use, were potent weapons of control, and often subject to misuse. Furthermore, it became the practice for many chiefs to require that applications for land be



accompanied by additional payment. Further abuses of power occurred in the chief's exercise of his judicial function: through the tribal authority courts, chiefs could manipulate process, judgment and sentence, creating substantial scope for corrupt and illegitimate practice. Another mechanism of control concerned the chief or headman's power to grant or refuse claims for state pensions. General factors which reinforced and entrenched these irregularities included the bureaucratic structures themselves, more specifically the tribal authorities' exclusive access to the central state. The prevalence of migrancy further weakened the community's ability to organize and resist high-handed authoritarian practices, and increased vulnerability in relation to the potential threat of being victimized.

It is clear then, that through a comprehensive programme of action, official intervention has changed the traditional functioning of the chief, and a system has been institutionalized whereby many chiefs have become mere tools of central government. Simultaneously, power has been removed from the populace, and the functioning of rural government has been completely undermined. It is important to emphasize that, while abuse is highly prevalent, the desire to restructure and legitimise the chieftaincy has asserted itself on the political agenda.<sup>33</sup>

### III PRINCIPLES AND PROCEDURES

Considering the sensitive history of chieftaincy, we emphasize that our proposals cannot be implemented fruitfully until a democratic state is achieved.

The ANC favours reform in conformity with democratic principles. Thus an understanding of democracy is important for definition of the implications of change. An inspiring conception of democracy is formulated in various ANC documents.<sup>34</sup> We shall distill the principles that seem pertinent to this study.

#### (1) *Constitutional principles*

The ANC proposes representative government<sup>35</sup> based on equal participation<sup>36</sup> and a universal adult suffrage.<sup>37</sup> Human rights would be protected on the basis of equality.<sup>38</sup> There would be a ban on discrimination on grounds of race, colour, sex<sup>39</sup> and any other ground irrelevant to capacity or merit.<sup>40</sup> Public and private equality between men and women would achieve affirmative recognition.<sup>41</sup>

Support for reform of the chieftaincy has come from a significant source, the Congress of Traditional Leaders of South Africa (Contralesa). Contralesa was formed in 1987, after chiefs opposed incorporation of Moutse into KwaNdebele and the independence then planned for the homeland.<sup>42</sup> Contralesa has since become a national organization. Its membership embraces all traditional leaders irrespective of sex on the paternal



side'.<sup>43</sup> The preamble to their constitution presents a clear philosophy. It declares that the 'aspirations of our people can only be met in a state based on the will of the people in a ... non-racial, non-sexist, free and democratic South Africa'. It asserts the equality of citizenship rights and the right of all people to participate in government. The central aims of the organization include opposition to tribalism, ethnicity and the homeland system, and to represent faithfully the communities governed by chiefs. The most important goal is to:

'reinstate, protect and promote the institution of chieftainship, its traditional status and bonding function within the community.'<sup>44</sup>

This is a key shift from the previous situation where, abused by central government and abusive to the people, some chiefs had become alienated from their following. The objective is to remove any cause for chiefs to be viewed with suspicion and hostility. Henceforth chiefs are to proceed in line with aspirations for a democratic society. From an historical standpoint, this is essential to the protection and promotion of chieftaincy.

*(Q) Hereditary Succession*

Yet Contralesa would maintain the 'traditional status' of chieftaincy. 'Traditional status' could be read to mean a number of different things, but we take it to refer to the status of chieftaincy under African law and custom. One feature of

this is the rule of hereditary succession. The democratic principles canvassed above suggest removal of the blanket exclusion of 'commoners' from the office of chief. Despite this we would suggest that heredity be retained as the sole determinant of accession. This view is shaped by the need to interfere minimally with tradition. The mystical and religious qualities of the institution reinforce our position. These qualities clothe the institution with a special legitimacy and authority that secures obedience. chiefs from outside the royal family are unlikely to command enough respect to be effective.<sup>45</sup> For instance, the removal of judicial authority from chiefs in Zimbabwe was short-lived. One reason was that the people believed the ancestors had told the government to restore power to the chiefs and this was considered vital to maintaining approval of the ancestral spirits.<sup>46</sup>

(b) *Primogeniture*

Another feature of traditional chieftaincy is succession by primogeniture. This violates the democratic principle that people should have a choice in the identity or policy of their ruler. This principle is basic to democratic notions of accountability. Fidelity to principle demands that an election be used to select the chief. To maintain tradition we would place membership of the royal family as a prerequisite for candidature. In practice the eldest may tend to receive the highest support; but qualifications for office must be broadened.



(C) *Patriarchy*

A further traditional feature of chieftaincy is its patriarchal basis. The resulting gender discrimination is odious and undemocratic, and even Contralesa does not bar women from membership.

Contralesa appears to endorse the principle of agnatic succession but would encourage the mother of a minor chief to act as regent. This is not equivalent to women acceding to the chieftaincy in their own right. The result is a tension between tradition and change, one to be approached with caution. It is important that the issues we cover are considered and debated by the people as a whole. On this immediate issue, the fear has surfaced that discussion would reveal majority opposition to female chiefs. Were the fears to prove real, a constitution premised on gender equality might exempt chieftaincy from that standard. There are two ways in which this could be done: the first would be a specific exemption; the second would be a general exemption of particular cultures from some constitutional norms. The judiciary might then read this to release chieftaincy from the principle of non-discrimination on the grounds of sex. Our preference would be to leave it open to women to become chiefs. Again we would be loath to tamper too much with tradition, but experience under indirect rule has shown that chieftaincy is flexible and capable of change.

A constitution based on human dignity will at times clash with tradition. But our highest principles should not be readily compromised. Rather, we should pursue them consistently, if not with equal vigour in every area. At the very least, democracy must stand for the fullest emancipation of all our people. Women should be entitled to assert the constitutional rights that all South Africans deserve.

(d) *Selection of the chief and Period of Office*

The question arises: who would elect the chief? We do not anticipate election by the whole tribe, because that would weaken the mystique of the institution. A limited electorate of district heads seems more appropriate.

Women would qualify to be head of a district. We regard inclusion of women as less contentious here than in the chieftaincy, because it has become increasingly common for women to act as headmen. We would in any case incorporate by reference the argument developed about chieftaincy.

The heads themselves would be elected by the inhabitants of their districts. This means that the views of the entire polity would have some influence on the selection of the chief, albeit indirectly. We recommend a five-year period of office to provide enough time for the incumbent to acclimatize and to govern. Limits on eligibility for re-election would probably not be necessary. In this way, accountability and tradition would mesh, as it is likely that the same person would return



many times to office. Potential for abuse does not seem as high here as in the case of national executive office.

(e) *Powers of the chief*

The chief's powers would have to be specified. A chief-in-Council rule might be created. This would render the chief a figurehead with little substantive power, entrusting real power to the elected councillors. This allows a less rigorous application of democratic theory in the selection of chiefs, which has been tried with apparent success in East Africa.<sup>47</sup> The English phase of our constitutional history shows this device to be capable of reallocating power with minimum disruption.<sup>48</sup> It shows that the practice of consulting councillors tends to precede the reapportionment of power,<sup>49</sup> and already such a practice exists in traditional government.

(f) *Level of Government*

The issue of where to place tribal administration in the different levels of government should be part of the broader constitutional deliberations now taking place in South Africa. In principle tribal government would seem to be best suited to the local government hierarchy because the nature and size of the chief's constituency is limited. In determining the powers of local government the powers of local government could be used as a flexible guide. A related question is whether to institute tribal government where the locality straddles the rural-urban divide. We note that people seem broadly to want some kind of

traditional authority structure, even in urban settings. The dichotomy between urban and rural areas is more theoretical than real, even though government policy has assumed that it is valid. Given the prevalence of migrancy, and the reciprocal impacts between traditional culture and the urban environment, it would be unwise to predicate proposals for change too firmly upon the 'urban/rural' distinction. Of course, local dynamics of government will differ, and for this reason the suggestions offered here are flexible enough to cater for differences of implementation.

**(g)** *Availability of Skills*

The chief and council may well lack administrative and other skills. One solution is for government officials to assist in their area of special expertise, but this would be a drain on government financial resources and personnel. Another solution is a corps of administrative officials standing behind the council and gradually transferring skills. The danger is that this would diminish the power of tribal government with no reciprocal transfer of skills and that the officials would manipulate tribal government if they were employed by central government. What is more, the creation of separate mini-civil services for each tribal area would be too expensive. This is a fertile area for research, for nothing less than the integrity of the entire system of tribal administration is at stake.



(b) *Limits on the Power of the chief*

Special controls on the chief's powers will be necessary, the forms of control naturally depending on the powers conferred. Financially the chief could, at the end of office, be required to account for his or her administration of official funds.<sup>50</sup> An adequate and reasonable salary would hopefully encourage rectitude. It might be possible for the chief's salary to be paid by the state. As we well know, this has unhappy implications for the accountability of chiefs to their people, and it exposes them to government manipulation. In an economy facing enormous demands, chiefs and other institutions may have to generate independent funding, although it is doubtful whether independent funding would at present raise enough to pay the chief properly and see to other needs. We therefore propose a combination of self- and government financing. The chief's salary might be calculated on a fixed proportion of locally raised revenue.

(c) *Administrative Principles*

The ideal of clean and good government is one to which chief and Council should be held. The duty to act fairly is a large and rich source of administrative norms.<sup>51</sup> Reasonableness, symptomatic and substantive, is one of these norms; so is the prohibition on action taken for improper motives, ulterior purposes or in bad faith. That the maker of a decision should apply his or her mind to the matter at hand is an obvious requirement. On the other hand, proscribing consideration of

irrelevant factors is not so obvious because traditional criteria of relevance are hard to validate in a specialized legal system.<sup>92</sup> For similar cultural reasons we do not suggest a rule that governmental acts be clear and intelligible because a specific requirement of clarity seems foreign to traditional African law and administration.

Consultation is a practice familiar to traditional law and could be easily accommodated in a code of administrative norms applicable to chiefs. It has been argued that the doctrine of legitimate expectation could be applied regarding the appointment and confirmation of chiefs under present laws.<sup>93</sup> It could even be extended to a subject's expectations of the chief. This is no great technical innovation, for an expectation is legitimate if grounded in fairness and reasonableness.<sup>94</sup> A rule against bias could be applied, but in a more moderate form, because the personal and official roles of decision-makers are often fused in African law.<sup>95</sup> The duty to give reasons, calling for disclosure of the basis for liability, would not be onerous.

### (3) *Procedures*

We recommend a regulatory statute prescribing broad standards of control over chieftaincies. To supervise implementation the enactment should create an agency located outside central government departments to minimize government interference. The agency would be structured to acquire special knowledge and sensitivity about tribal government. Most of its supervisory



powers would concern procedure only. The exercise of these powers would be subject to procedural review. An administrative or constitutional court would be well-placed to develop a sensitive and consistent jurisprudence.

Complaints should in the first instance go to the chief and council. The chief could discipline an errant councillor or ask him or her to resign in the case of a major complaint. An appeal to the supervisory agency would lie if realistic local remedies had been exhausted.<sup>56</sup> The agency could then judge the lawfulness of the disputed action. Ultimately a recalcitrant councillor may not be re-elected. Complaints against the chief may, in the first instance, be lodged with his or her relatives; but the formal step would be an approach to the council. As before, exhaustion of realistic local remedies would be mandatory. In the absence of such remedies, an individual or councillor could bring the matter to the agency without first pursuing any available local remedies. Again, the agency could adjudicate the lawfulness of disputed action. Whether at first instance or exercising appeal jurisdiction, the agency could in serious matters depose the chief if it found a substantial cause. In this respect the agency's supervisory powers would be substantive. The meaning of 'substantial cause' would be defined by practice.

(4) *Judicial Review*

The court could test the decisions of the agency. But, apart from matters raising issues under the national constitution, judicial intervention would be procedural only. This rule is particularly important in deposition proceedings because re-examination of complaints would create uncertainty and instability in the tribal area, especially if the litigation were extended in time.

We are not persuaded that the Paramount chief should be granted powers of deposition, in part because such disputes would be too close for him to be completely impartial, and in part because the prospects of the Paramount chief developing consistent standards are not good. The absence of such standards would dilute the value of judicial supervision. As with councillors, an intransigent chief might not secure re-election, which provides a further removal mechanism.<sup>97</sup>

IV CONCLUDING REMARKS

Our proposals constitute an agenda for change. Because of the past perversion of chieftaincy, attempts at reform must fully recognize the particular history of affected communities. Such sensitivity can be developed through inclusive and extensive debate. This is essential because it is unlikely that this country can be ruled effectively without traditional structures.



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- 1 *Constitutional Guidelines for a Democratic South Africa* (1988).
  - 2 M Hunter *Reaction to Conquest: Effects of Contact with Europeans on the Pondo of South Africa* (1969); B Sansom in W D Hammond-Tooke (ed) *The Bantu-speaking Peoples of Southern Africa* 2ed (1974) 257; I Schapera *A Handbook of Tswana Law and Custom* 2ed (1955) 51.
  - 3 T Zuma 'The role of the chiefs in the struggle for liberation' (on file with authors) 73.
  - 4 Among AmaXesibe of Mount Ayliff in Transkei, these persons are called Acting Chiefs and Acting Headmen. By all accounts the people are happy with women rulers.
  - 5 Hunter (n2) 392; Schapera (n2) 68; J M Mohapeloa *Africans and their Chiefs: Should Africans be ruled by their chiefs or by elected leaders?* (1945) 4.
  - 6 Hunter *ibid*; Schapera *ibid*.

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- 7 Schapera ibid 72; Hunter ibid 395.
- 8 Schapera ibid 81; I Hamnet *Chieftainship and Legitimacy: An Anthropological Study of Executive Law in Lesotho* (1975) 90.
- 9 Schapera ibid 62.
- 10 Schapera ibid 69; Sansom (n2) 260; Mohapeloa (n4) 4.
- 11 Schapera ibid 62; Sansom ibid; Hunter (n7) 389-90; A Ladley 'Just Spirits? In search of tradition in the Customary Law Courts of Zimbabwe' (1990) unpublished paper, Victoria University of Wellington, New Zealand 3-4.
- 12 Schapera ibid 69; Hunter ibid 393.
- 13 Schapera ibid 66; Hunter ibid 385.
- 14 Hunter ibid 386-7.
- 15 Hunter ibid 385.
- 16 Schapera (n13) 85; Hunter ibid 393.
- 17 Schapera ibid 84; Hunter ibid 394.
- 18 Schapera ibid 78.
- 19 Ibid 84.
- 20 Ibid.
- 21 Hunter (n17) 393.
- 22 *Koma Chieftainship in Crisis* Botswana National Front Pamphlet (1976) 8-9.
- 23 There are many examples of government deposition of hereditary chiefs. See D Welsh *The Roots of Segregation* (1971) 112.



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- 24 Welsh *ibid*; H F Morris & J S Read *Indirect Rule and the Search for Justice* (1972); L B B J Machobane *The political dilemma of Chieftaincy in colonial Lesotho with reference to the Administration and Courts Reforms of 1938* (1986) Occasional Paper No 1, Institute of Southern African Studies, National University of Lesotho; A I Richards (ed) *East African Chiefs: a study of political developments in some Uganda and Tanganyika tribes* (1960).
- 25 Zuma (n3) 65-6.
- 26 We draw strongly here on R J Haines et al *The silence of poverty: networks of control in rural Transkei* (1984) Carnegie Conference Paper No 48, and R J Haines & C P Tapscott in R J Haines & C Cross (eds) *Towards Freehold? Options for Land and Development in South Africa's Black Rural Areas* (1988) 166.
- 27 Act 38 of 1927; see Zuma (n25) 67, regarding the powers created by the Act and their implementation.
- 28 R Gordon 'The white man's burden: ersatz customary law and internal pacification in South Africa' (1989) 2 *Journal of Historical Sociology* 51-2.
- 29 Haines et al (n26) note on p6 of their work that between 1955 and 1958, 30 chiefs were deposed for various 'official reasons', as state sanction developed into a qualifying criterion for the assumption of chieftaincy.
- 30 Haines & Tapscott (n26) 167.

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- 31 Ibid 168-9; Zuma (n27) 66 relates how resistance by 'patriotic chiefs' in many parts of the country led to deposition and replacement with imposed chiefs. Some chiefs were also deported and exiled.
- 32 Haines & Tapscott (n30) 169-73.
- 33 See Zuma (n31) 71, regarding chiefs campaigning for change, within Contralesa structures; see, too, *The Weekly Mail* 26 April - 2 May 1991.
- 34 *Constitutional Guidelines* (n1) (*Guidelines*) supra; Declaration of the OAU Ad Hoc Committee on Southern Africa on the Question of South Africa - Harare, Zimbabwe - 21 August 1989 (*Harare Declaration*); ANC Constitutional Committee *A Bill of Rights for a New South Africa* (Bill of Rights) (1990). The discussion document *Constitutional Principles and Structures for a Democratic South Africa* (1991) was published late in the gestation of this article. It was therefore not possible to include it in our discussion. As can be expected, the new document is consistent with others we discuss.
- 35 Clause (d) *Guidelines* *ibid*; *Harare Declaration* *ibid*.
- 36 *Harare Declaration* *ibid*.
- 37 Article 3(3) *Bill of Rights* (n34).
- 38 Clause (h) *Guidelines* (n35).
- 39 Article 1(2) *Bill of Rights* (n37).



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- 40 The language of M S McDougal, H D Lasswell & Lung-chu Chen  
*Human Rights and World Public Order: the Basic Policies of  
an International Law of Human Dignity* (1980) 381.
- 41 Articles 3(4) and 7(1) and (2) *Bill of Rights* (n41).
- 42 Zuma (n33) 68.
- 43 Article 5(1) and (2) *Constitution of the Congress of  
Traditional Leaders of South Africa*.
- 44 Ibid art 4(1).
- 45 Mohapeloa (n5) 25-6; Hamnet (n8) 89-90; T Quinlan 'The  
perpetuation of myths: a case study on tribe and chieftain-  
ship in South Africa', (1986) unpublished paper *Centre for  
African Studies, University of Cape Town*; Ladley (n11) 11-  
12.
- 46 Ladley *ibid*.
- 47 Liebenow in Richards (n24) 253 and 255.
- 48 T P Taswell-Langmead *English Constitutional History* 11ed (by  
T F T Plucknett) (1960) 625-32; Maitland *English  
Constitutional History* (1931) 394-420.
- 49 B Carpenter *Introduction to South African Constitutional Law*  
(1987) 43.
- 50 See, for example, the American case of *Soule v United States*  
100 US 8.
- 51 We draw here on L Baxter *Administrative Law* (1984) 475ff.
- 52 M Gluckman *The Judicial Process among the Barotse of  
Northern Rhodesia* (1955) 95.

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- 53 D Unterhalter in C Murray & C O'Regan (eds) *No Place to Rest: Forced Removals and the Law in South Africa* (1990) 222.
- 54 As can be implied from *Administrator, Transvaal and Others v Traub and Others* 1989 (4) SA 731 (A) at 755-61.
- 55 M Gluckman *The Ideas in Barotse Jurisprudence* 2 imp (1965) 9.
- 56 Remedies are realistic when they are not illusory in the sense that there is a real prospect of fair and just consideration of a complaint: see Baxter (n51) 720.
- 57 Nothing in what we say would preclude complaints against the whole council or against the chief and the council.



Zoo tribalistic

File

Traditional  
Leaders

The idea is not to reform but to transform.

We want a need democratic structures (elected) at <sup>all</sup> levels and in all parts. But there could be scope for a special role for chiefs within or alongside. They could have honorary or ceremonial positions, exercise tradition functions, <sup>possibly where land is communally owned</sup> or be mediators in disputes. They could advise local govt or be like ~~chiefs~~ <sup>chiefs</sup> monarchs. If they want real power they should run for office.