

STRICTLY CONFIDENTIAL

PARTICIPATION IN CODESA BY THE KING OF THE ZULU AND
TRADITIONAL LEADERS OF OTHER AFRICAN PEOPLES IN SOUTH AFRICA

A submission by:—

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1. In the letter of invitation sent to me by the convenor of the sub-committee charged by the Management Committee of CODESA with the task of investigating, and making recommendations to the Management Committee on the appropriate part in the negotiations process to be taken by (a) the King of the Zulu, as head of the Zulu Nation, and (b) traditional leaders of other African peoples in South Africa, I was specifically referred to the terms of reference of the sub-committee and the principles and guidelines adopted by the Management Committee on the 10th February, 1992.
2. The Fundamental Law or Constitution of any state must be based on a national consensus sufficient to ensure that it (the constitution) commands universal validity and respect. It is for this reason that those who engage in constitution-making endeavour to secure as much meaningful participation as possible in the negotiating process.
3. It is fortunate that the decolonisation process since the end of the Second World War affords us numerous examples of constitution-making on all the continents of the world. I wish to confine myself to examples in Africa and in particular to those countries which are members of the Commonwealth. The Republic of South Africa was formerly a member of the Commonwealth but withdrew from that body in 1961 owing to objections from newly independent members.
4. It could be argued that in South Africa the issue is not one of decolonisation as the country has for many years been juridically independent and recognised as a persona at International Law. But for many reasons of a historical nature the majority of political scientists see South Africa as basically one in which the majority of the population suffers colonial oppression at the hands of a minority. Whether it is described as a system of internal colonialism or a Colonialism of a special type there is no doubt that South Africa exhibits many of the features that are common to all African countries in their constitutional development. For that reason we propose to look at the experience of Ghana, Nigeria, Uganda, Zambia, Swaziland and Lesotho in order to see whether these have any lessons for our situation.

/5. The conclusions. . .

5. The conclusions I have drawn are derived from an examination of the reports of the constitutional conferences of the countries mentioned. (A list of references can be found on the last page of this paper). The first of the constitutional conferences leading to independence was in Ghana in 1956. The conference was held in Ghana and a list of participants shows that the Traditional Rulers were represented and indeed the speeches at the conference began with "Nananom and Gentlemen". The term Nananom refers to Traditional Rulers.

I would like to draw particular attention to the constitutional conference of Nigeria which to my mind was the most representative. The conference list of participants included the Government of Nigeria which at the time was British; the self-governing regions of Nigeria of which there were then three; the political parties of Nigeria and British Cameroons which was still part of Nigeria; the Traditional Rulers who included the most powerful, namely, the Emir of Kano and the Emir of Katsina. This conference was held in London in 1957.

The constitutional conference that preceded independence in Uganda was held in London in 1961. This conference is interesting as a large part of the conference had to deal with the position of the four Kingdoms of Uganda. The four Kingdoms were those of Buganda, Ankole, Bunyoro and Toro. What is of interest is that despite the fact that there were four kingdoms only the biggest, that of Buganda, had a full delegation and legal advisers at the conference.

The constitutional conference of Zambia was held in 1964. the pattern was the usual with representatives of the British Government, Northern Rhodesia Government (as it then was) and the political parties. During the conference a conference took place between the governments of Northern Rhodesia and Britain and the Litunga of Barotseland Sir Mwanawina Lewanika III.

The Basutoland Independence Conference was held in London in June 1966. The Traditional Ruler Moshoeshoe II was present in person. In addition the Chieftainship of Basutoland (as it then was) was represented by Chief Leshoboro Seeiso.

In the case of the constitutional conference of Swaziland which was held in 1968 only the Government of self-governing Swaziland and the British Government were present. No political parties were present.

6. I submit that the **principle of participation** by traditional Kings, Rulers and Chiefs is amply demonstrated by examination of precedents elsewhere.

It may be asked why traditional Kings, Rulers and Chiefs should participate at all inasmuch as political parties may be assumed to represent the population in one way or another. The fact is

/that the Kings. . .

that the Kings, Rulers and Chiefs were the rulers of the country when colonialism began. In varying ways they resisted the onslaught. CODESA just like all the constitutional conferences referred to above represents the continuity and discontinuity of the colonial process. The adoption of an agreed new constitution on the basis of a national consensus will close the colonial chapter and open a new one. There are other practical reasons for participation by traditional rulers which I will refer to later.

7. If the principle of participation is established the only issue that arises is the form that such participation should take. It is here that differences will be found in the examples we have examined. In the case of Ghana and Nigeria the Rulers almost all attended in person unaccompanied by delegations. In the case of Uganda the Kingdom of Buganda was separately represented by a full delegation accompanied by legal advisers. The Zambian conference saw talks held separately from the conference itself by the Government of Northern Rhodesia; the British Government and the Litunga of Barotseland.

The Ruler of Basutoland (as it then was) attended the constitutional conference in the name of Basutoland, in addition to the government of self-governing Basutoland and the political parties. As previously noted Chief Leshoboro Seeiso attended on behalf of the other Chiefs besides the King.

8. The reports of the constitutional conferences also show that apart from the governments, political parties and traditional rulers no other sector of society ever attended such talks. The suggestion that traditional Kings, Rulers and Chiefs represent merely an interest group is untenable. They have been part of every meaningful constitutional talks. It should also be noted that the Traditional Kings and Rulers either attended in person or through a delegation of the kingdom.

It should be noted that the traditional Rulers were never represented by an unofficial voluntary association of Rulers or Chiefs such as Contralesa purports to be.

9. The ancestors of the present-day Kings, Rulers and Chiefs were the people who ruled the country at the dawn of the colonial experience. It is their land which was lost. They have an intense interest in their constitutional position under a new dispensation which promises to right the wrongs of the past. Furthermore there are many in the country who are not adequately represented by political parties especially in rural areas. Some of the Kings, Rulers and Chiefs are in charge of large traditional administrations and have legal jurisdiction for solving disputes according to African Customary law. Such disputes are by far the majority of disputes settled in our country although many would not think so. Issues relating to land, forests, lakes, parks and rivers form part of the jurisdiction of traditional rulers.

/in this connection. . .

In this connection the Buganda Agreement of 1961 and the Barotseland Agreement of 1964 are comprehensive examples of the kind of subjects that traditional Kings and Rulers are concerned about in any new dispensation. In case it is thought that traditional Rulers were in any sense an obstacle to democratisation it should be emphasized that this is usually a stereotype which is not borne out by the actual facts.

10. The issue is one for political consideration and decision. It is not a judicial decision to be taken on the basis of the rules of natural justice. It is a political matter.

In my view the sub-committee cannot avoid the participation of the King of the Zulu with a full delegation at CODESA. It may well be that the delay in arriving at a conclusion has already given rise to a crisis of confidence in some regions in the whole CODESA process with incalculable consequences for the future of the proposed new Constitution. In my opinion the matter can no longer be delayed.

March 19, 1992

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5. Report of Basutoland Constitutional Conference:
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6. Report of Constitutional Conference of Swaziland:
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