

[9]

REPRESENTATION OF THE ZULU KING
AND (OTHER) PARAMOUNT CHIEFS/TRADITIONAL LEADERS
AT CODESA

NJJ OLIVIER

[This memo is in response to a request, dated February 26th, 1992, from the convenor of the sub-committee dealing with this issue.]

A. Par. 2.2.3 of the terms of reference of the sub-committee:
"The practical situation presently found in South-Africa with regard to traditional leadership, as well as the position in other African countries."

1. THE POSITION IN SOUTH AFRICA.

1.1 As is generally known, the imposition of White control over Black communities - in South Africa and elsewhere - led to the loss of independence of these communities and the annexation of their land. It also meant the destruction of the traditional political and administrative structures and the introduction of a system of government more in line with the concepts of the new administration. Generally, attempts were made to use the traditional leaders as agents in administrative structures - largely based on Western models - aimed at exercising proper control over the indigenous populations and thereby inter alia to promote the maintenance of political stability and "Western" values and principles. In course of time the policy of direct administration by the "colonial" officials was replaced by a system of so-called indirect rule.

1.2 In South Africa the first attempts to introduce a system of local government in accordance with the practice existing in the White community was the introduction of the "council" system in the District of Glen Grey in 1894. In course of time this was extended to areas in the Transkei but the major legislative push occurred in 1920 with the passing of the Black Affairs Act which provided, inter alia, for the institution of "local" and "general" councils in the Black areas. This led to the creation of a large number of "councils" in these areas; and to the creation eventually of the United Transkeian Territories General Council (the "Bunga") and the Ciskeian General Council.

1.3 The Black ("Bantu") Authorities Act of 1951 (Act 68 of 1951) made provision for the creation of a series of "authorities": tribal authorities, community authorities, regional authorities, and territorial authorities. This was followed by the Promotion of

Black Self-Government Act of 1959 (Act 46 of 1959), embodying the Government's policy of "separate development" ("apartheid"), whereby the people in the Black tribal areas were to be given increasing powers of self-government, as a counter to the demand for political participation in the so-called "White" area. The Black Administration Act of 1927 provided for the appointment of chiefs and "headmen", and these were then involved in the administrative structures based on the Black Authority system. The Buthelezi Commission reported, for example, that there were 202 tribal authorities in KwaZulu, 7 community authorities and 25 regional authorities. The KwaZulu Territorial Authority developed, in 1972, into the KwaZulu Legislative Assembly in terms of the National States Constitution Act, 1971 (Act 21 of 1971); and in 1977 KwaZulu became a "self-governing territory", with a relatively large degree of legislative autonomy. The same developments took place in the other tribal areas, eventually resulting in the creation of the four independent TBVC states and of six Self-governing Territories (of which KwaZulu is one).

1.4 As far as the TBVC states are concerned, the following is the relevant information:

1.4.1 BOPHUTHATSWANA:

The Constitution of Bophuthatswana, 1978 (Act 1 of 1978 as amended) provides that the "legislative power of Bophuthatswana shall vest in Parliament consisting of the President and the National Assembly." In terms of s. 39, the National Assembly shall consist of the President (ex officio), 12 members designated by the President, 72 elected members and: "twenty-four members designated by the regional authorities in Bophuthatswana....." (two members for each of the regional authorities).

Chapter 6 deals with "CHIEFS, HEADMEN AND REGIONAL BOUNDARIES":

"56.(1) The chiefs in Bophuthatswana shall retain their status.

(2) Chiefs and headmen shall exercise their authority in terms of an Act of Parliament.

57. (1) The designation of chiefs, acting chiefs, headmen, acting headmen and independent headmen shall, subject to the provisions of sub-section (2) vest in the President.

(2) The creation of any new chieftainship, or sub-chieftainship shall not be confirmed by the President except after consideration of a recommendation of the Executive Council.

58. Parliament shall not alter the boundaries of any regional authority area for any purpose, other than the inclusion therein, of land added to Bophuthatswana, except after consultation with every regional authority affected thereby."

In terms of Schedule 3 of the Constitution, Bophuthatswana is divided into 12 Magisterial districts "with corresponding 12 Regional Authorities each with a resident "District" Governorship and or Assistant Governorship who are responsible to the Central Government."

As regards "local government":

"Tribal Authorities under Dikgosi..... responsible to the Ministry of the President."

"Main Towns under Town Council or Municipalities....."

"Community Authorities some responsible to the Department of the President and others to that of Local Government and Housing."

"The Role, Powers and Functions of Traditional leaders at all levels of Government" are set out in the enabling Acts of Parliament."

(Information supplied by the Bophuthatswana Government to subgroup 4 of Working Group 4.)

1.4.2 CISKEI:

"Regional Government:

"(i)(a) Tribal Authorities

"In terms of Chapter 3 of the Administrative Authorities Act No. 37 of 1984 Section 3, there shall for every tribe or community be a tribal authority or a community authority which shall bear the name and exercise control over the tribal area or community area. Every such authority shall consist of a chairman and as many other councillors as are prescribed and ex officio the chief, chiefs deputy and headmen residing within the area of the authority.

Each tribal authority (of which there are 36) shall:

- (a) generally administer the affairs of the tribe in respect of which it has been established
- (b) assist, support and guide its chairman
- (c) promote the interests of the tribe in all respects and participate actively in schemes or projects for rural devel-

opment and the improvement of the quality of life of the residents of the area.

(d) in consultation with the police authorities, take such steps as may be necessary for the safeguarding of schools and other Government buildings, property and essential services.

(e) consider and make recommendations to the appropriate authority regarding accommodation and other facilities at schools, application and administration of social benefit schemes, allocation of trading and residential site and arable allotments and licensing of businesses.

(f) keep the magistrate informed of matters of concern arising within its area

(g) exercise or perform the powers, authorities and functions assigned to it on land usage and settlement, health and social welfare, conservation, registrations and control of dogs, improvement in livestock husbandry, agricultural marketing, home industries, sports and recreation, public works, markets, births and deaths, employment, road safety and civil defence.

Tribal authorities shall meet not less than once every three months.

The Magistrate shall open a trust account for every tribal authority in his district (region) into which shall be paid all fees and charges arising from customary dues, property owned, fines, appropriation from Ciskei Government, tribal taxes, donations, contraventions of by-laws, etc. Tribal authorities fall under the control and administration of the Department of the Council of State in liaison with the Magistrates of the Districts."

"(i)(b) REGIONAL AUTHORITY

(A) In terms of the Administrative Authorities Act no. 37 of 1984, "the land comprising the tribal and tribal authority areas in a district shall be deemed to be a region and for every region there is hereby established a regional authority. (Chapter 4, section 8). There are seven regional authorities in Ciskei, namely Hewu, Keiskam-mahoek, Mdantsane, Middledrift, Peddie, Victoria East and Zwelitsha.

(B) The regional authority consists of the paramount chief and the chiefs of all the tribes in the region with their deputies as their alternates, the chairman of every tribal authority who is not a paramount chief or chief, one other councillor from each tribal authority in the region elected by a majority vote by the councillors of that tribal authority.

The seat of a regional authority shall be at the office of the magistrate of the district (Chapter 4, section 8).

(C) The powers, functions and duties of regional authorities are defined under Chapter 4, Section 10 of the Administrative Authorities Act No 37 of 1984 as:

(i) to promote the interests of the region and whenever necessary, act in an advisory capacity in any matter affecting the administration of the affairs of the tribes of the region.

(ii) advise the Government in relation to employment, establishment of industries, protection of national monuments and the promotion of tourism, rural development projects, health and social welfare of the people of the region, conservation of farming land and natural resources, establishment of markets and pounds, controlling and licensing of businesses, education, sport and recreation, public roads and transport services and the settlement and administration of the land in the region;

(iii) exercise the powers and perform the functions and duties conferred or imposed upon a regional authority by or under any other law;

(iv) generally exercise such other powers or perform such other functions and duties as, in the opinion of the Minister, fall within the sphere of regional administration and as he may assign to the regional authority;

(D) Regional authorities shall hold meetings not less than once every three months.

(Information supplied by the Ciskei Government to sub-group 4 of Working Group 4.)

1.4.3 TRANSKEI:

"REGIONAL GOVERNMENT:

"There is no regional government in Transkei. However, at the rural level, regional authorities hold sway in respect of Regional Authority areas. Transkei is divided into nine regions.....Each regional authority is headed either by a paramount chief or a senior chief. Regional authority areas exclude all areas which are administered by municipal authorities....."

"LOCAL GOVERNMENT:

"Urban areas in Transkei are administered by municipalities or municipal councils.....Rural areas are divided into various administrative areas. Tribal authorities have been established. These tribal authorities are responsible for the administration of an amalgamated group of administrative areas. All the tribal authorities in a particular regional authority area fall under the jurisdiction of a regional authority. Tribal and regional authorities derive their existence from the provisions of the Transkei Authorities Act, 1965 (Act 4 of 1965). Municipalities discharge the same functions as the other bodies enjoying municipal status in South Africa.

"Regional authorities and tribal authorities discharge functions relative to matters of local concern. Their powers are, however, not as wide as those of municipalities. They are accountable to the central government."

"THE ROLE, POWERS AND FUNCTIONS OF TRADITIONAL LEADERS AT ALL LEVELS OF GOVERNMENT:

"At the executive level chiefs are not appointed ex officio to any position. At the local level chiefs are involved in the general administration of tribal authority and regional authority areas. Chiefs also preside over regional authority courts and chief's courts. With regard to the law-making function chiefs do not play any role. Only those chiefs serving on the Military Council have any influence on the legislative process."

[The nine regions mentioned above are: Eastern Pondoland; Emboland; Fingoland; Gcalekaland; Maluti; Tembuland; Umzimkulu; Western Pondoland; Western Tembuland. In general these different areas are inhabited by distinct tribal entities.]

(Information supplied by the Transkei Government to sub-group 4 of Working Group 4.)

1.4.4 VENDA:

REGIONAL GOVERNMENT.

"In Venda Regional Government is not in existence. Instead we have District Councils which are established in each of the five districts as follows:

Thohoyandou District Council, Dzanani District Council, Vuwani District Council, Mutale District Council and Tshitale District Council."

LOCAL GOVERNMENT

"In Venda the Local Governments are known as Territorial Councils established in each Tribal area. There are 28 Territorial Councils in Venda....." (5 in Thohoyandou District, 3 in Dzanani District, 9 in Vuwani District, 5 in Tshitale District, 6(?) in Mutale District.

"In Venda the role, powers and functions of traditional leaders at all levels of Government is that each Chief (Khosi) is always chairman of his territorial Council and all Chiefs (Mahosi) are ex officio members of the District Council where one of the Chiefs presides as a Chairman of the District Council's meetings."

".....matters emanating from territorial councils are referred to a District Council for a decision."

(Information supplied by the Venda Government to sub-group 4 of Working Group 4.)

1.5 SUMMARY:

From the particulars above it seems clear - leaving the Zulu king aside for the moment - that in South Africa traditional chiefs (including "paramount chiefs") are mostly involved in regional and other territorial structures, such structures being subject to the central governmental authority (the Legislative Assemblies in the self-governing territories and the various legislative institutions in the TBVC states). In many of the central constitutional structures the regional bodies are directly represented. For example, the KwaZulu Legislative Assembly has, amongst others, three chiefs selected from its members by each regional authority and the chief or the chairman, as the case may be, of each tribal or community authority deemed to be a regional authority.

2. THE POSITION IN OTHER AFRICAN COUNTRIES

2.1 The position occupied by traditional leaders in the constitutional structures in African countries outside South Africa seems in general to resemble that in South Africa, with the exceptions indicated below. The Western penetration of Africa, the subsequent overthrow of colonial rule, the emergence of new governing elites and the process of "modernization" have had immense implications also for the powers and functions of traditional leaders.

In the former British colonial administration in sub-Saharan Africa the policy of "indirect rule" - initiated by Lord Lugard and Sir Donald Cameron - made use of the traditional authorities as subordinate agencies of rule and led to their integration in the machinery of government. After the colonies gained their indepen-

dence and as democratic, elected constitutional structures or autocratic/military governments developed or came into being, the importance of traditional chiefs, at least in central government, became less important or non-existent, although they are still widely used in regional and local structures. The more "traditional" or "tribal" the nature of the political institutions in a country, the greater seems to be their influence and involvement. And although in many cases the traditional chieftains have been stripped of their leadership and judicial powers, the "deference to chiefly authority in matters of public concern often remains the practice of large numbers of people."

2.2 In former times there were a number of "kingdoms" in Africa south of the Sahara, headed by kings and royal dynasties.

The Ashanti kingdom was defeated by the British in 1874 and the country annexed to Ghana by order-in-council dated Sept. 26, 1901.

The Kingdom of Buganda, under His Royal Highness the Kabaka ("King") was recognized by the British in 1900; Kabaka Mutesa II was deported to London in 1953 for refusing to cooperate with the British Protectorate Government; on his return in 1955 he was stripped of all his powers (the Buganda Agreement Order-in-Council 1955). He became a constitutional monarch within a ministerial government. In 1963 he was elected President of the country (Uganda) by the National Assembly. The subsequent political developments in Uganda brought an end to the monarchy.

In Burundi the monarchy ceased to exist in 1966.

[Further north there was e.g. the "Emperor" in Ethiopia; the King in Egypt; and in Morocco King Hassan is the reigning monarch.]

Historically in Southern Africa there were three recognized "Kings" and royal Houses: in Lesotho, in Swaziland; and in Zululand.

In Lesotho King Moshoeshoe II was in frequent conflict with the government of Mr. Leboa Jonathan, who stripped him of all his power and deported him. After his return he was only allowed to play a figurehead role.

In Swaziland, on the other hand, the King is both head of state and head of government. He, with the royal family, exercises practically total domination in the political structure.

The position of the Zulu king is discussed below.

B. ZULULAND AND THE ZULU KING

1.1 The Zulu "dynasty" was established by Shaka (who was in fact a military dictator) who expanded the Zulu military power over large parts of Zululand and Natal. The defeat of Dingane, his successor, in 1838, led to the annexation of what was then known as Natal to the British Crown. Dingane was succeeded by Mpande, who in turn was followed by his son, Cetshwayo, in 1872. In 1879 the Zulu "war of independence" broke out (the defeat of the British at Isandhlwana was a major event), as a result of which Cetshwayo, captured on Aug. 28th, was exiled for some years. The end of the war also spelled the end of the Zulu monarchy; Zululand was divided into 13 "kinglets" and a state of rivalry and ferment ensued. After his death in 1884 the situation further deteriorated, and in 1887 Zululand was declared to be British territory and Cetshwayo's son, Dinizulu, was appointed "paramount chief" of the Zulus. In 1889 Dinizulu and his people rose in rebellion against British authority. The rebellion was unsuccessful, and Dinizulu's uncle (who played an important role in the rebellion) and one of the foremost Zulu generals, Tshingwayo (hero of Isandhlwana), were banished to St Helena. In their absence Zululand was finally annexed to Natal in December 1897; a period of virtual civil war in Zululand ensued..

In 1906 the "Bambata rebellion" broke out, mainly as a result of the Poll Tax Act of 1905. Armed resistance collapsed with the capture and imprisonment of many of the leaders and the unconditional surrender of one of the most influential Zulu chiefs, Sigananda Shezi. Dinizulu himself was arrested in December 1907 and brought to trial and convicted on a charge of high treason; he was subsequently banished to the Transvaal.

1.2 The fact is that a "royal dynasty" was established by Tshaka some 170 years ago, and probably would have been in existence today in much of its past glory if Zululand had remained an independent state. The annexation of Zululand, its incorporation in Natal, the inclusion of Zululand in the political and administrative structure imposed by subsequent "White" governments, and the non-recognition of the royal nature and status of the Zulu King, effectively, in a constitutional sense, affected and minimized the royal dominance in the political field. In terms of that political and administrative structure, the Zulu King was simply seen and treated as, and given the status of, an ordinary "paramount chief" on a par with "paramount chiefs" of other African societies in this part of the world. The evidence, of course, is clear: the Kingship and the Royal House was something far more "majestic" than was the case with "paramount chiefs" of other communities (This does not derogate from the status and important role which these hereditary chiefs played in the political, judicial, religious and social-ceremonial life of their communities - as is evident from any study of the many ethnological works dealing with African life and society).

1.3 To equate the powers, functions and status of the former Zulu king with those of a "paramount chief" of other communities would simply not be correct. I need not elaborate on this point: the many publications dealing with this aspect leave no room for argument.

1.4 The Royal residence, representing the King's political, military, judicial and religious power and pre-eminence, was an impressive collection of huts and other constructions, with a very large population. For example, the Ondini Royal Residence, built immediately after Cetshwayo's coronation (and burned down by the British Forces on 4 July 1879) "consisted of approximately 1700 beehive huts in circular formation and one rectangular building, surrounded by a pallisade." (It was declared a National Monument under KwaZulu Government Notice No. 42 of 1983.)

1.5 Although, therefore, the Zulu monarchy has been sidelined as a result of historical events and governmental action - and even to some extent because of conflicts with the leaders involved in the more modernized political system - his status as the Zulu king has persisted, not only constitutionally (as is indicated below) but more especially in the minds of the people. His presence at any function bears evidence of this; no other person would be greeted with the royal "bayete!", for example, or be treated with the respect and adulation as befalls him..

2.1 Even in the present constitutional set-up in KwaZulu he occupies a special position. Attention could in this regard be drawn to the following:

2.2 In an attempt to overcome the problem that, in terms of existing legislation, recognition is only given to the institution of "paramount chief" the KwaZulu Legislative Assembly constitution defines "Paramount Chief" as follows:

"Paramount Chief" means the Paramount Chief of the tribes comprising the Zulu nation appointed as such by the State President....."

2.3 And the KwaZulu Chiefs' and Headmen's Act, 1974 (Act 8 of 1974) as amended provides:

"The Chief of the Usutu tribe is the paramount Chief of the Zulus, also known as the King of the Zulus or the Ingonyama."

2.4 In the KwaZulu General Law Amendment Act, 1987 (Act 3 of 1987) ("to provide for a change of the official titles of holders of certain offices referred to in all laws applicable in KwaZulu") the following is laid down:

"A reference to the words, "Paramount Chief", "chief", or "deputy chief" in English and "Hoofkaptein", "Kaptein" or "adjunk kaptein" in Afrikaans, or words having similar connotations, in any document of law which relates to any matter in respect of which the KwaZulu Legislative Assembly is empowered to make laws, shall be construed as a reference to "His Majesty the King", or "Inkosi Yamabandla Onke", or "In-gonyama", or "Inkosi Yohlanga". or "Isilo" in respect of the Zulu monarch and "Inkosi" or "Amakhosi" in respect of appointed or traditional rulers, excluding the monarch."

2.5 The King, through his personal representative, is legally a member of the KwaZulu Legislative Assembly. Section 2 (1) (a) (as substituted by Act 10 of 1989) of the KwaZulu Constitution Proclamation, 1972 determines:

"The Legislative Assembly shall consist of the Paramount Chief of the Zulus personifying the unity of the Zulu nation, aloof from party politics and sectionalism, and members who shall be:

(a) The personal representative of the King of the Zulus who shall be a member of his family and who shall be appointed by His Majesty the King in consultation with the Cabinet for a period of five years: Provided that the person so appointed shall remain in office at the pleasure of the King; Provided further that during such office, such person shall not be a member of the Cabinet."

2.6 In the oath taken by members of the Legislative Assembly (the King or his personal representative is exonerated from the taking thereof) he swears that he shall

"...honour and respect the State President of the Republic of South Africa and the Paramount Chief....."

2.7 Consultation with the King about legislation to be introduced is obligatory:

"The Chief Minister and each Minister shall prior to the commencement of each session of the Legislative assembly furnish the Paramount Chief with full details and, if available, copies of all legislation he proposes to introduce at that session of the Legislative assembly and, should the Paramount Chief so desire, discuss the provisions of such proposed legislation."

2.8 In Part VI of the Constitution Proclamation the powers, functions and status of the Paramount Chief are described in the following terms:

"25. The Paramount Chief -

"(a) by virtue of the fact that he personifies the unity of the Zulu nation, shall hold himself aloof from party politics and sectionalism and shall not by any person what-

soever be involved in politics or sectionalism and any person who so involves or attempts so to involve the Paramount Chief in politics or sectionalism shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one thousand rand or to imprisonment not exceeding two years or to both such fine and imprisonment.

"(b) 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 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.

"(c) shall be furnished with a copy of the agenda of each meeting of the Cabinet and may request the Cabinet to meet him for the purpose of discussing matters falling within the purview of the Legislative assembly and of explaining his views in regards to such matters and may also, through the Chief Minister, request any individual Minister to discuss with him any matter falling within the purview of such Councillors' department."

2.9 Whenever the King wishes to enter the Legislative Chamber he "shall be escorted by the Chief Minister and other Ministers after all the members have taken their seats."

2.10 See also the KwaZulu Members of the Legislative Assembly and Office Bearers Pension Scheme Act, 1988 (Act 15 of 1988) as amended.

3. CONCLUSIONS:

The short review above leads to the following definitive conclusions:

1. The Zulu King, historically and traditionally, occupied a very special and unique position in Zulu society.
2. Despite the fact that the Zulu power was broken and that the ensuing political and administrative structure in no way took cognisance, or gave adequate recognition to, this position of the King in Zulu society, his status, the veneration in which he is held and the loyalty of the people to him, as symbol of the power and unity of the Zulu people, remained and remains unabated.
3. The present constitutional structure in KwaZulu in many ways reflect this unique position he occupies in Zulu society.

4. To compare his position to that of a "paramount chief" in most other African communities in South Africa amounts to a denial of the factual situation, both historically and contemporarily.

C. ARGUMENTS USED AGAINST THE INVOLVEMENT OF THE ZULU KING IN CODESA.

The following are some of the arguments used in favour of denying the King representation at Codesa:

1.1 With regard to participants, in terms of Standing Rule 1(1), "Participants in the Convention shall be the political parties, the South African Government, organizations and administrations listed in the Annexure hereto."

However, in Standing Rule 1(2) provision is made for the possible admissions of "additional participants". No criteria are laid down in the Standing Rules as to such admissions; it is generally known (or rumoured) that a large number of bodies have applied for admission and that the Management Committee has responded negatively to some of the applications. I do not know whether hard and fast principles have been laid down regarding such applications, and, if so, what they are.

1.2 In terms of the application of Standing Rule 1(2) to the issue of the possible inclusion of the Zulu King, I would venture to suggest that inasmuch as the Zulu King represents a powerful political force amongst the Zulu people (or at least the majority) Codesa could ill afford to exclude him. It is true that he does not represent a political "party" or "organization", but he does represent, perhaps to a greater extent than most of these other "parties" or "organizations" do, a large number of people in KwaZulu. In this respect, it is to be noted that the Governments of the Republic and the various TBVC states are officially represented: but that the Self-Governing Territories are represented only in the form of political parties operating within those Territories. In other words, there are already represented in Codesa other bodies or institutions than political parties or organizations. One may perhaps deduce that the reason for this exclusion of the governments of the Self-governing Territories is the assumption that in the "new South Africa" it is unlikely that these Self-governing Territories will continue to exist in their present form, whereas it is more likely that the various political parties and organizations will continue to exist within the party-political structure of the future. Even if this argument is conceded, the simple fact remains that whatever may happen constitutionally to the Self-governing Territories and to KwaZulu specifically, the power and influence of the Zulu King will continue to be an extremely important factor and influence amongst the Zulu.

1.3 If decisions taken by Codesa were to be opposed by the Zulu King, or were not to have his active support and commitment, it seems doubtful whether a large percentage of the Zulu people would support such decisions. And even if one were to argue that it would be sufficient if Inkatha were to support the decisions, it would seem to me to be unlikely that there would be majority support in Inkatha itself if it were to become known that the King is unhappy with the decisions taken.

1.4 In this regard the question could legitimately be raised whether the admission of the King's representation would not open the door to pressures from a large number of other organizations for admission to Codesa. In general one would be inclined to say that if any organization has the capacity, or is powerful enough, to render nugatory any decisions taken by Codesa with which they may disagree, it would be advisable to have them represented at Codesa (this, it seems to me, is the primary consideration why steps have been taken to get the CP and the PAC involved in Codesa.) In other words, purely in terms of his potential political "clout", serious consideration should be given to allowing the King to be represented at Codesa.

2.1 In the discussion of this issue the question has been raised: If the Zulu King were to be allowed representation, what about all the other "Paramount Chiefs" in South Africa? Under par. 1.4 of the terms of reference of the sub-committee who is considering this issue the question of the representation of the Zulu King is coupled with the possible representation of "other traditional leaders". I have no objection in principle to the inclusion of "other traditional leaders", although I would prefer that this issue should be judged in terms of the criterion I have stated above, viz. whether such a traditional leader (or leaders) would be able to exercise sufficient power to render decisions taken by Codesa ineffective or at least make their implementation very difficult. There may indeed be such a traditional leader or leaders: but I am not aware of any at this stage. I trust that the brief exposition which I have given in this memo is sufficient to indicate that the position of the Zulu King is indeed special and unique and is not to be compared with the position of other Paramount Chiefs; the fact that he has been referred to in this way in the relevant South African legislation and administration is simply because in the conceptual framework of thinking in those quarters a "Paramount" or "Supreme" chief was at the top of the hierarchy. This is evident also from the fact that the State President (formerly Governor-General) was proclaimed to be the "Supreme Chief" of all Blacks in South Africa in terms of the Black Administration Act of 1927.

2.2 If, however, it is felt that the Paramount Chiefs of South Africa should be represented, a possible basis for such representation could be: one representative from Contralesa and one from other paramount chiefs who are not members of that body.

3.1 The argument has also been raised that it is illogical to provide for the King's representation at Codesa in view of the fact that the King as such was not represented in the Buthelezi Commission and did not participate in the KwaZulu/Natal Indaba.

3.2 The Buthelezi Commission was a Commission of Enquiry consisting of people who were regarded as having the necessary professional expertise, appointed by the Chief Minister. There would have been no sense, to my mind, to have given the King representation on the Commission. I do not know whether the Chief Minister consulted with the King on the appointment of the Commission; I presume he did.

3.3 On the issue of the non-representation of the King in the KwaZulu/Natal Indaba: this is a more relevant question, and with hindsight it could perhaps be maintained that the Zulu King should have been represented. However, there is no comparison between the negotiations that took place at the KwaZulu/Natal Indaba and those taking place at Codesa. The Declaration of Intent contains the following agreement:

"We, the representatives of political parties, political organizations and administrations, further solemnly commit ourselves to be bound by the agreements of CODESA and in good faith to take all such steps as are within our power and authority to realise their implementation."

Also the South African Government committed itself:

"We, the South African Government, declare ourselves to be bound by agreements we reach together with other participants in CODESA in accordance with the standing rules and hereby commit ourselves to the implementation thereof within our capacity, powers and authority."

3.4 The participants in the KwaZulu/Natal Indaba had no constitutional capacity or leverage to implement any decisions arrived at; that was the prerogative of the South African Government. As it happened, the South African Government rejected the recommendations of the Indaba. Quite obviously, the deliberations, negotiations and decisions of CODESA are totally different and more far-reaching than those of the Indaba.

4. Another argument which has been used is that the Codes of Zulu law (the KwaZulu Code of Zulu Law, 1985, and the Natal Code of Zulu Law, 1987, makes no reference to the King and does not provide for any particular position for him. This argument is a non sequitur, since the Codes are Codes of Civil Law and have nothing to do with the constitutional position, functions or powers of the King or any other Chiefs in KwaZulu-Natal.

F. GENERAL OBSERVATION:

If it should be decided that the Zulu king should be allowed representation at CODESA, the obvious procedure - so it appears to me - would be to deliberate with, presumably, the Chief Minister as to what form that representation should take, on what Working Groups and Sub-groups such representatives should/would serve, and how to regulate the procedure and arrangements if the Zulu King himself were to attend CODESA (which I presume would only be on the occasion of plenary meetings like CODESA II).

E. LITERATURE:

A vast amount of literature has been published on Zulu society, its history, social and political structure etc. and on the Zulu King. The following are only a few of these (only authors and titles given; further particulars could be supplied):

- Bryant: Olden Times in Zululand
 Dixie: A Defence of Zululand and its King
 Farrer: Zululand and the Zulus
 Gibson: The History of the Zulus
 Morris: The Washing of the Spears
 Krige: Social Systems of the Zulus
 Roberts: The Zulu Kings
 Roberts: The Story of the Zulus
 Selby: Shaka's Heirs
 Webb & Wright: A Zulu King Speaks
 Webb & Wright (eds): The James Stuart Archive (4 volumes)
- Report of the Buthelezi Commission
 Report of the KwaZulu/Natal Indaba.
- Blaustein & Flanz (eds): Constitutions of the Countries of the World

March 1992

NJJO