

TRANSCRIPTION OF PRESENTATION BY DR G VAN N VILJOEN AT A MEETING OF THE SUB-COMMITTEE ON THE ZULU KING AND TRADITIONAL LEADERS ON 3 MARCH 1992 AT WTC

1. INTRODUCTION

Thank you very much, mr chairman, gentlemen, for doing me the honour to invite me to state our views to this very important sub-committee dealing with an extremely difficult question and I hope that what I say will not lead to more confusion, but will rather help you to sort the matter out and to achieve progress towards some kind of solution.

2. GOVERNMENT'S VIEW ON THE KING OF THE ZULUS

2.1 If you would allow me I would first like to make some remarks which would reflect the view of the SA Government with regard to the King of the Zulus. You will recall that when this matter was debated in the Management Committee, I did mention that the question of the King of the Zulus to the Government is not really an insurmountable problem, because we feel that he has a unique and a very special position. I would just briefly like to emphasise the main points why we consider that the King of the Zulus has a unique and a special position and what the circumstances are which put him in a position rather different from all other traditional leaders, including what I think the first sub-committee-called Senior Traditional Leaders.

2.2 In the first place, mr chairman, obviously the *size of the Zulu people* is very considerable and since there are no other senior traditional leaders of the same status and on the same level as the King of the Zulus, it means that he as King of the Zulus has the largest single group of adherents or of subjects, whichever way you would like to call it. In this respect he is completely different from any of the other traditional leaders, including senior traditional leaders. So the question of size and the question of his having the largest single group of adherents puts him in a special position.

- 2.3 Secondly, mr chairman, his adherents are not confined to a particular part or region of the country, but are also numbers-wise spread fairly generally over most of the country, so that in terms of *geographic distribution of his adherents* and his followers one could say that he effectively holds an national rather than just a local or a regional position.
- 2.4 Thirdly, sir, I think the Inkatha Freedom Party emphasised in its presentations - and we associate ourselves with that point - that there is a *historical continuity* of very considerable importance in the position of the King of the Zulus and the Royal House of the Zulu people. The recorded history and the traditional or oral history of the Royal Family stretches over a very long period, it is well known and it is also characterised by a proud record of resistance against what one could call colonialism or imperialism and in more recent years, of apartheid. In other words, it is historical continuity with a certain measure of distinction and of achievement and of pride, because of the independent record of resistance against oppression that this House has achieved for itself.
- 2.5 In the case of other senior traditional leaders, they seem to share leadership over parts of a nation rather than over a nation as a whole while here we have the only traditional leader who is as a single person the head, not only over a large nation, but over a nation as a whole. He doesn't share it with other traditional leaders, in other words, there is no need in this case for a special meeting or a special arrangement to be made as was suggested in the proposal of the first sub-committee in order to determine who shall represent this particular people or this particular nation.
- 2.6 He - the King of the Zulus - is clearly the only and the single head of the whole nation and there is no other person of comparable status besides him. This is important, because in some of the other cases of peoples or ethnic groups there are several other senior leaders, or even no leaders that are known as senior leaders, or there are only traditional leaders with their area of authority confined to a specific local, or at the most regional area. The case therefore with the King of the Zulus is that he is not confined to a local or a regional status, but I think in truth it could be said that he has a *national status*.

- 2.7 And having said all this, mr chairman, also the *legal reality* which was presented by the IFP to the Management Committee on more than one occasion, the legal reality with regards to the constitutional documents regarding the KwaZulu Government, clearly gives the Monarch a position of distinction, not as a party political figure, but as what one could call a form of *constitutional monarch* who is recognised, who has a recognised position vis-à-vis the government and vis-à-vis the Legislative Assembly of KwaZulu.
- 2.8 So these points, mr chairman, I thought I would like to make, to underline, and to motivate the viewpoint that I take and which is also the viewpoint of the South African Government, that in the case of the King of the Zulu he holds such a unique and special position, different from all the other traditional leaders that we believe that an arrangement to accommodate him in CODESA would be justified.

3. GOVERNMENT'S VIEW ON TRADITIONAL LEADERS IN GENERAL

Mr chairman, as far as the traditional leaders in general are concerned - what I have to say I think is nothing new, but is a sort of a digest or a compendium of arguments that have been put forward in the course of the debate and which appear to be relevant in my view and in the view of my fellow representatives on the Management Committee.

- 3.1 First, sir, if we were to make some arrangement for admitting on whatever basis traditional leaders to CODESA, it would reopen the whole debate about CODESA being confined to political organisations or political parties or movements and administrations. In the Terms of Reference also it is clearly emphasised, as well as in the where-ases, that CODESA is composed of political organisations, parties and administrations and virtually any arrangement that is conceivable toward admitting traditional leaders as participants at CODESA, would have a very *far-reaching effect* on this whole basis of the *composition of CODESA* and would in a sense produce a fundamentally changed CODESA if they were to be admitted.

- 3.2 Secondly, the proposal that was made and which would add ten or eleven extra delegations would therefore have a considerable effect on the *size, on the managability, on the practicability of CODESA* as an organisation and on each of its sub-committees which already are large committees, and we shall find it difficult to conduct ongoing dialogue or an ongoing argumentation as distinct from a more formally structured debate. I therefore think that the Management Committee rightly mandated this sub-committee to pay particular attention to the character and the composition of CODESA, as it is likely to be changed as a result of any proposals that it would make. I think this has to be considered very carefully and has to be sorted out and I would recall that particularly Mr Colin Eglin made the very valuable and comprehensive analysis of what the effects of the admission of traditional leaders would be on the character and composition of CODESA.
- 3.3 I would also - and I hope this wouldn't sound a facetious argument - like to point out that if ethnic or cultural groups as such were to be accommodated, there could of course outside the black community, if I may use this racial term, be *other ethnic or cultural groups* and communities which could *also claim to be representative*, such as for instance within the white community there are different ethnic and cultural groups, even national groups, and it would appear that something similar, more on religious and linguistic lines, can be distinguished in the case of the Indian people. So, the admission of traditional leaders in the light of their strong social and cultural basis - of course they are not exclusively social and cultural, they also have certain political or governmental or administrative capacities, but nevertheless, it is true that the cultural and the ethnic aspects are strong and could lead to Afrikaners and English, Jews and Portuguese and Greeks, all forming relatively large cultural groups in South Africa, also claiming a form of representation.
- 3.4 Then, sir, I think one must also in considering the point of the character and composition of CODESA as affected by any changes, view such changes against the background of our goal to achieve as much as possible democracy. And I think the point has been made by several representatives that the balance between the *representativity* and on the other hand what one could call the *hereditary principle based on birth and descent*, might very widely affect the composition and the democratic character of CODESA.

- 3.5 It was also pointed out that a largescale introduction of traditional leaders would affect the composition of CODESA in terms of its being representative of both the *urban and rural components of South Africa*. But, mr chairman, another point which I think hasn't been sufficiently underlined is that in practice it would appear that elsewhere traditional leaders play a role mainly on the *local government level* or at the most on a *regional government level*. In the report of the Law Commission on different constitutional models, they also argue that traditional leaders should be accommodated in the new South African constitution, but on a local government level and at the most, perhaps, it could be considered, they argue, also on a regional government level. Now, in view of the fact that, clearly, traditional leaders have a strong local government and perhaps regional government effect, it is therefore quite likely that other local government organisations - and there are a number of experienced national or regional organisations binding together or acting as a common forum for the local governments within the context of the present consitutional sturctures - such existing local government organisations could also claim that they should then be represented in CODESA and I think that they would have a very strong case to make in the light of the predominantly local governmental character of traditional leaders.
- 3.6 And maybe, mr chairman, this is a line that one could possibly explore in order to find a solution for the problem you have to face, namely that *traditional leaders should be brought into the deliberations of CODESA when it deals with local government specifically and perhaps also when it deals with regional government more specifically*. I think it could be well considered to recommend that the constitutional-making body would then at that stage set up sub-groups in which interest groups such as traditional leaders and co-ordinating local government forums can become involved.
- 3.7 I would also like to underline sir, that I think that an important point was made in the Management Committee discussions that the sub-committee should give more visable, more tangible attention to *alternative forms of involvement* and that the way of involvement presently provided by the standing rules - of participators in CODESA being identified and then having twelve delegates each in the plenary sessions and being represented in all the sub-committees - need not be the most appropriate way for dealing with the traditional leaders. Therefore the consideration of

alternative forms of involvement which would accommodate particularly their interests, I think deserves very careful consideration. The concept that traditional leaders should particularly be afforded an opportunity for making their contribution in forums dealing with local government and forums dealing with regional government, I think is relevant in this context.

- 3.8 Mr chairman, it has also struck me that if one tries to find a solution for this problem of traditional leaders as was clearly explained by the members of the first sub-committee, then you are immediately up against the variety, the diversity, all the *differences in the status of traditional leaders*, differing from area to area and also differing in respect of the degree to which they really represent a large population or a large area. And it is therefore obviously very difficult to *deal with all traditional leaders on a diversified basis*, and I think the approach which the sub-committee initially took, namely to try and find a sort of umbrella solution, a sort of a general principle to deal with traditional leaders has a lot of merit.
- 3.9 But whatever solution one finds we must consider it is necessary to accommodate the traditional leaders at the central CODESA-level. I think this is not advisable, I think it is better to do it at the level of *special working groups dealing with local government matters or dealing with regional government levels*. Whatever way one looks at this, I think one would also have to be very careful that any change to the composition of CODESA does not lead to *unwarrantable duplication or overlapping of representation*. And I say this because, according to the information available, there seems to be just short of 800 different traditional authorities in South Africa and in the TBVC-states, which makes a large number and amongst themselves there is of course a tremendous diversity. It is also a problem that there is no single representative body generally recognised to represent all, or even most, of the traditional authorities, Contralesa is one body, but even in the Transkei, Contralesa seems to be opposed by the Transkei Traditional Leaders' Association (TTLA). And I tried to gain some impression of the general representativity of these bodies, but it would appear that at least 50% of traditional leaders could claim that they are not represented through the existing umbrella bodies. And this is probably also the reason why the first sub-committee thought it necessary that there should be a special meeting held or a special

structure put up which could select representatives for traditional leaders on a regional basis.

- 3.10 Finally, mr chairman, I would like to emphasise the fact that, although it differs from case to case in both the Self-governing Territories and in the governments - insofar as they exist constitutionally - of the TBVC-states, traditional leaders are strongly represented both in regional governments, cabinets, and also in regional legislative assemblies. And it is clear that in some cases they are there in their own right as traditional leaders, because of the principle of heredity, but in other cases they have been elected, competed in elections and they have been elected by the people on a democratic basis. And therefore, mr chairman, it may also perhaps be a matter to consider - this is just an idea that I put forward - that since *traditional leaders are represented in regional governments, that maybe representation for regional governments may be a channel through which also the traditional leader-element in that region could be accommodated.* The claim, the argument, that there is a difference in treating the TBVC-states on the one hand as governments and the Self-governing Territories on the other hand not as governments but only as political parties, could then perhaps also be addressed in this regard.

4. SUGGESTIONS TO THE SUB-COMMITTEE : DR G VAN N VILJOEN

- 4.1 So perhaps two suggestions then, to be more concrete, which I would like to put forward:
- The one that the participation of the traditional leaders be channelled through **special working groups** or other sub-group organisations dealing with specifically **local government** on the one hand and **regional government** on the other hand.
 - And then secondly, the possibility of considering that traditional leaders could be accommodated through **structures of governments being introduced into CODESA** in the case of the Self-governing Territories. In the case of the TBVC-states, they are already introduced as governments, and therefore traditional leaders could perhaps also through that channel, be accommodated.

4.2 But, mr chairman, I think the main gist of what I have to say is that one sees very serious problems in accommodating the traditional leaders as additional participants, which would imply ten to eleven additional delegations to be accommodated in CODESA. This would have a very far-reaching effect on CODESA and would in a sense affect also the agreement of the present participants to CODESA with regard to the functioning of CODESA. It would become a different CODESA from that CODESA with regard to which participants have committed themselves in the Declaration of Intent. So perhaps with this last part I have not done more than emphasise the difficulty of your assignment and suggest two possible ways that you may use to find a way out towards a solution.

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