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BOODSKAP / MESSAGE / : ATTACHED PLEASE FIND THE CHIEF  
MINISTER OF QWAQWA AND LEADER OF  
DIKWANKWETLA PARTY DR. TK MOPELI'S  
INPUT, RELATING TO THE ROLE OF  
TRADITIONAL LEADERS.



## THE ROLE OF TRADITIONAL LEADERS

## DEFINITION

In South Africa traditional leaders have under colonial regimes come to be called chiefs. The term is, however, better understood by reference to the relevant words in African languages. In Setswana, for instance, the appellation is Kgosi (pl diKgosi) which means the highest executive, judicial and legislative authority in the morafe, or the head of the lineage recognized as senior by all members of the morafe. Morafe (pl. merafe) means the people ruled by a Kgosi. Some speakers and authors intimate that the English version of Kgosi is King. One particular author refers to chiefs as monarchs. We feel that this is a too literal application of European terminology to African institutions. Authors like Gluckmann have pointed out that African concepts cannot be expressed in European terminology without more ado. A King is, after all, the ruler of a nation, whereas a tribe is not really a nation.

The Zulu King falls into a different category. He has for a long time been regarded as a King and the Zulu people are generally regarded as a nation. One must, however, be careful not to elevate the Zulu kingship to unrealistic heights. Other tribal groups have what are termed paramount chiefs. There are, for example, four in Transkei. They may rightfully claim to be on a par with the King or paramount chief of the Zulu.

In the final analysis we feel that for constitutional purposes chiefs need not be named kings, nor regarded as such. It may in fact cause confusion, because kingship has constitutional significance. Chiefs are in their own right, as indicated above, the highest executive, judicial and legislative authorities of the people ruled by them. They need not be accommodated in a constitution as if they were kings in the European sense of the word. Paramount chiefs and the King of the Zulu do constitutionally enjoy a higher status which is typically African and need not be equated to a European monarch.



To complete the picture it must be mentioned that the State President is in terms of section 1 of the Black Administration Act 38 of 1927 paramount chief of all blacks in the country. This would exclude blacks in the TBVC states and probably also all citizens of those countries, even those resident or domiciled in the RSA.

The supreme chieftaincy of the State President is a colonial relic with no real content any more. It is not clear why it has not been done away with after granting self-government and independence to national units and after establishing full-blown black local authorities in urban areas. One can only surmise that the national party government still regards it as part of the existing constitutional dispensation which can only be changed by negotiation.

In our view the institution should forthwith be abolished - the sooner the better. It serves no political or administrative functions. It might indeed create the impression that the national party government is clinging to the archaic concept that blacks are best administered by a governor with extraordinary quasi-traditional powers.

#### RECOGNITION/APPOINTMENT

A chief is born, not made. This means that a chief is a chief by succession - generally the first-born son of the reigning chief's main wife. But, and there's the rub, since colonial times up to the present chiefs have been appointed or recognized. This has resulted in numerous commoners becoming officially chiefs. This went hand in hand with the creation and adjustment of tribes. The State President and in the self-governing territories the Cabinets, may define the



boundaries of the area of any tribe or of a location and may from time to time alter or divide a tribe into two or more parts or amalgamate tribes or parts of tribes into one tribe or constitute a new tribe. All these nuances of making and breaking tribes and appointing or dismissing chiefs have in fact been put into practice over many years. The result is that there are many official tribes and chiefs that have no traditional status. This gives rise to cultural conflicts on the one hand and political and boundary disputes on the other.

It has moreover been convincingly shown that tribes are and never have been the clearly discrete groups that they are made out to be. People are from nature volatile and the proverb, birds of a feather flock together, is only partly true in regard to tribes. It has been shown that defined tribes living within confined boundaries are largely colonial definitions and demarcations. As a result of industrialisation and the national party policy of separation further ethnic fusions took place. The boundaries of the self-governing territories and independent states were drawn and people were willy-nilly physically re-located or by addition or excision of land included in or excluded from a territory without due regard to tribal affiliations.

All this has given rise to dissatisfaction, legal disputes and even bloody conflicts, sometimes euphemistically termed faction fights.

This situation cannot be ignored in negotiations about the role of traditional leaders.

However, we feel that this should be viewed from a pragmatic, positivistic angle. The present position should be taken for granted, because it is plainly impossible to unscramble the hotchpotch. The task is too immense and will give rise to further problems. In the circumstances it is suggested that the official record of chiefs and tribes be accepted as it is.



It is, however, strongly recommended that administrative machinery, say a system of district officers, be created to keep a check on the situation at grassroots level. If tribal disputes are allowed to flare up unattended they can have devastating consequences at regional and national level. Civil (tribal) wars should be avoided at all costs.

### FUNCTIONS OF CHIEFS

#### (a) Administration

A chief is the father of his people. He stands in the same relation to his people as does the head of a family home to the occupants of the home. He is responsible for his people, who in turn owe him loyalty and obedience. He is the senior representative of the tribe. He is also the religious leader, sometimes said to be the chief priest. He is commander-in-chief of the army and last, but not least, chief judge.

This is a traditional and somewhat idealistic sketch of a chief's functions. The role of chiefs has changed drastically over years for two reasons. Firstly, the role of central government institutions has grown stronger and stronger as years went by. For one thing, central governments dispose of police forces, armies, judicial officers - you name it - that largely make chiefs redundant, whether we like it or not.

Secondly, chiefs themselves - at least a substantial number of them - have not come up to expectations. Some of them - fortunately probably a minority, but still a substantial number - are reported by observers to over-indulge in liquor, to be uneducated, to be prone to accepting bribes, to oppose development and to be generally lethargic.



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The evidence from various quarters that this is so cannot be ignored, because it may be true or at least partly true. And it has created the perception that chiefs do not make the grade.

It also appears from a study of literature that chiefs, irrespective of personal weaknesses, have not been good administrators. It is partly due to the fact that they are rulers not administrators, but also the fact that they have never been given an adequate infrastructure. Now it is not a matter of merely providing an infrastructure. It is plainly unnecessary and somewhat clumsy to do so in the face of the fact that modern administration is in any event centralised even in regional government. Granting chief administrative functions and powers that are already exercised by central, regional and district government authorities is artificial in the extreme.

It has been suggested that tribal authorities are or should be local authorities. This will, in our view, not work either. Tribal authorities are not geared to perform local government functions and chiefs, again, are rulers - not mayors nor town clerks. To expect them to establish and run townships will, for instance, probably merely end in embarrassment.

Administration of land deserves special mention. We feel that chiefs generally do not have the knowledge and expertise required for administering land in present-day circumstances. In Lesotho and Botswana the control of land has already been taken away from chiefs. They are merely members of land boards. It would be rather incongruous to allow them to retain sole authority over land, while their power basis has in other respects dwindled. It has been said of chiefs in Lesotho that "their footing has long been eroded by the cumulative effect of social, economic and political change".



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We are not suggesting that European models of land tenure should be introduced lock, stock and barrel. The indigenous models should rather be adapted to meet the changing needs.

(b) Development

Development administrators should give chiefs a meaningful role in development projects. Development projects in Africa have often been failures because tribal considerations were overlooked. Chiefs in whose areas development agencies operate should be fully represented on such agencies. They should be afforded an opportunity to make real contributions towards development and the provision of services in their own areas.

(c) Political

This is the most crucial issue. One may begin by saying that in Africa chiefs have generally not been given prominent, formal roles in national political institutions. In some constitutions, particularly those written in French, chiefs are not even referred to. On the contrary, English language constitutes, in a number of cases, such as that of Malawi, mention the institution of chieftaincy. Informally they virtually constitute second tiers of government and are consulted. Two or three African countries have houses of chiefs. For the rest chiefs have to fight elections or are nominated members of legislative assemblies. In South Africa a different position prevails in the self-governing territories and in the TBVC states.

Some comments on the latter are required. The experiment to give chiefs such direct and substantial role in the legislative assemblies is regarded by most commentators as a failure for several reasons:



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- (i) Having so many nominated traditional leaders went against the grain of all concepts of democracy.
- (ii) Many chiefs were plainly incompetent as members of legislative assemblies.
- (iii) Traditionally chiefs do not enter into the political fray. It is so to speak *infra dig* for them to participate in petty party political issues.
- (iv) It created distorted overlaps of representation. Some areas were represented by elected members cum chiefs, some by only one of either and some had a mixture of several chiefs and elected members.
- (v) Chiefs all the same never contributed significantly to the process of making laws. They were mere spectators.

In the circumstances the South African experiment should preferably not be repeated.

That leaves only three options:

- (i) Limited representation by a few nominated chiefs or a number of chiefs elected by an electoral college. This is quite feasible. Nomination of a limited number of members is a fairly general feature of modern constitutions.
- (ii) A house of chiefs which could fulfil an advisory function, such as in Botswana. The constitution and functions could be worked out on a pragmatic basis, using the Botswana arrangement merely as a point of departure. It is perhaps not feasible to create a national House of Chiefs, but we suggest that such houses could be readily established on a regional basis, for those areas where there are tribes and chiefs.



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(iii) A senate or second house consisting of chiefs. This is not favoured, because such a house consisting of chiefs only would be lopsided. Chiefs constitute only one interest group. A second house should represent other important interest groups as well. Chiefs in fact, as a result of their rural orientation, will not be the most important interest group.

#### Party political considerations

Lastly, we wish to point out that chiefs will undoubtedly have political clout in the sense that they could influence voters. Politicians can therefore not ignore them at constituency level. Even in so far as they are not accommodated in a formal political setup, they should be reconciled with the political process at grassroots level. Political parties will be well advised to maintain good relations with them. Somehow, informally, they should be made to feel that they are part of the political process, except in areas where candidates depend upon urban based voters only. Politicians, we feel, cannot ignore the presence of chiefs in their constituencies.

#### (d) Judicial

We feel that this is an area in which chiefs could not only retain their present functions, but could even be granted increased jurisdiction.

We feel constrained to sound two warning notes:

(i) Several observers have pointed out that control over chiefs' courts are inadequate. It is suggested that a control commissioner, such as in Botswana, be appointed to monitor the activities of chiefs' courts and to exercise discipline over them, of course within the bounds of judicial expediency.



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(ii) Domestic and international human rights norms must be borne in mind. For instance, corporal punishment normally imposed by chiefs may be regarded as inhumane in terms of human rights norms. Human rights norms furthermore require that all persons should be subject to the ordinary courts of the land. Chiefs should therefore as heretofore have concurrent jurisdiction with the ordinary courts - not exclusive jurisdiction.