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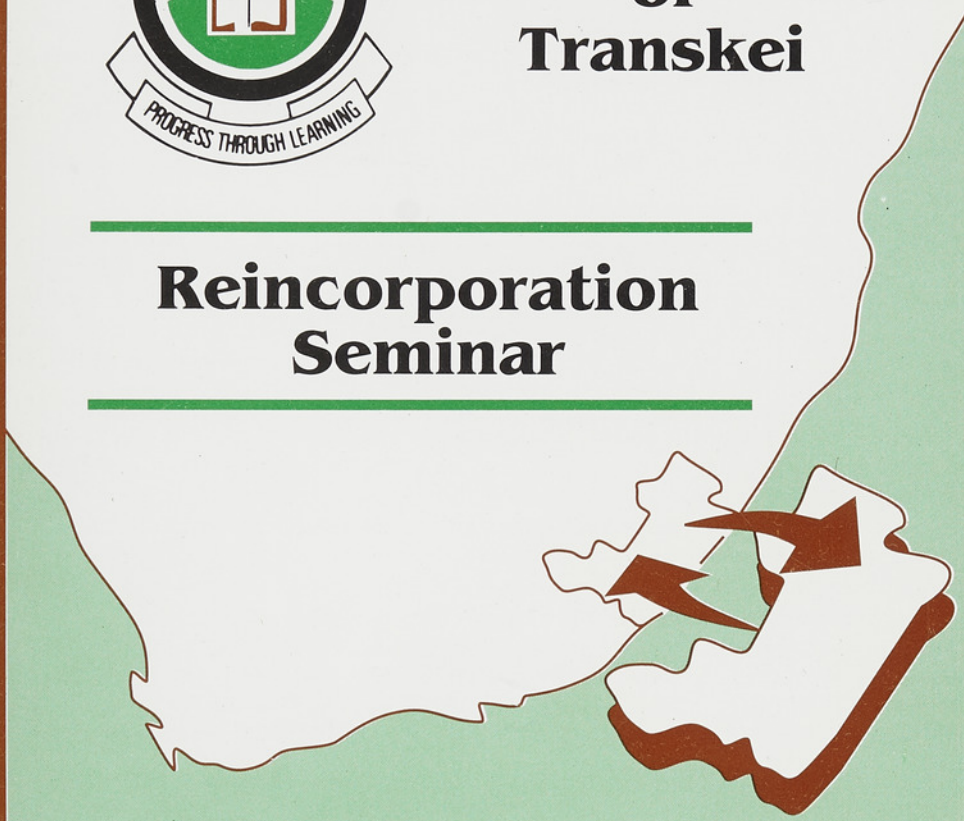
University of Transkei

Reincorporation Seminar



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Papers delivered at a seminar on reincorporation held at Unitra in September 1990.

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PRESENTATION

I am happy to present the Report and Proceedings of the two-day Conference on the proposed Referendum on Transkei's constitutional future.

The initiative for this exercise came from the Military Council which asked the University to set up the conference and precipitate a debate on this important question. The Principal then called upon the Law Faculty to handle the whole project and do everything necessary and possible to make the Conference a success.

By far the best thing that could have happened for this conference was that we managed to get an excellent team of resource persons. These are Professors Wiechers (Unisa), Saunders (Unisa), Viljoen (Pretoria), Devenish (Natal) and Dr W M Tsotsi (Maseru).

I wish to thank this team for their wonderful performance at the conference, including the satisfactory and satisfying manner in which they answered questions fired at them, sometimes fiercely, by the audience. I also wish to express the hope that this group can regard itself as a special task force, a kind of Eminent Persons Groups which can be called upon at any time to handle such assignment as the authorities may from time to time wish to place on their broad shoulders in the process of Transkei's constitutional development.

I also wish to thank those who made contributions on behalf of their organisations. I refer to Rev Majeke for the African National Congress, Mr Z K Mzimba for the New Unity Movement, Mr Nonkonyana for the Congress of Traditional Leaders of South Africa (Contralesa) and Mr Mgidlana for the South African Youth Congress (SAYCO). One of the best statements of the conference (in the sense of being true and being capable of immediate proof) was made by Mr Mzimba of this group. He said that the Bantustan policy was never in fact accepted and applied by many important sectors of South African life e.g. the churches. At the very moment he said this there was present in that audience the Rt Rev S Z Tyandela, Moderator of the Reformed Presbyterian Church in Southern Africa. He had been unanimously elected by the Annual General Assembly of his church to head it for the year 1990, by delegates from Cape Town, Port Elizabeth, Transvaal, Natal, O.F.S. etc. The same can be said of all the other churches and for that reason the way back to "one South Africa, one Nation" should not be difficult at all.

On behalf of the Principal and the University as a whole, I wish to voice our appreciation of the continued realisation of the fact that the University is there, not only for the benefit of the students, but equally for the benefit of the Government and the community at large. Our facilities and expertise are there for the benefit of all in the region, without favour or discrimination based on any consideration whatsoever.

Fortune favours the brave and we congratulate General Bantu Holomisa for this initiative. I now present the Conference Report and Proceedings.

DR D S KOYANA
PROFESSOR AND DEAN
FACULTY OF LAW
UNITRA
DECEMBER 1990

Address by the Honourable Chairman of the Military Council, Major General H.B. Holomisa.

Mr Chairman, distinguished guests, specialists from the legal fraternity and political organisations, Heads of Departments, academics, ladies and gentlemen, I wish to express my sincere thanks to the organisers of the Conference on Referendum so that persons with specialised knowledge on constitutional matters and socio-ecopolitical fields can present their balanced views on what the people of Transkei seek to achieve.

The referendum issue has aroused curious debate among our people who hold divergent views about our existence as a separate political entity from South Africa. What we do in this part of the world offers watchers of the political scene and many actors the opportunity to assess our thinking as a government and people who constitute a region that cannot be ignored in any future socio-political dispensation in South Africa.

The holding of this conference is a culmination of the recognition that we all jointly share the responsibility to shape our common destiny in a peaceful and tolerant manner. We also recognise the complexity of our social milieu, where man-made social institutions, the racial and political divide, militate against the self-realisation of the majority of the country's population.We are therefore committed to picking our way through this conundrum of socio-political complexities as we must go through this voyage if we do not want to perish.

The Referendum Committee convened on the 7th of February this year unanimously agreed that a nation-wide referendum should be held to test the views of the people of Transkei regarding the independence of Transkei in relation to the envisaged political changes in South Africa. Today the political wisdom of such a step is not doubted by anyone as is evidenced by the warm acceptance of this decision by residents.

The draft Decree pertaining to the proposed referendum on the constitutional future of Transkei invited comments from all interested parties, and this conference is a continuation of the process of inviting comments.

You are called upon to scrutinise the draft Decree in its entirety and advise whether a decision based on it would stand the test of time, comply with well-established norms and standards and therefore be universally accepted.

At this juncture I would like to place on record that, should the referendum take place during the tenure of office of the Military Government, no soldier shall be allowed to canvass for or against the referendum.

The whole matter will be left to political organisations and parties to convince the people about the best option because we do not want to be accused in future of having coerced people to vote in a certain way.

The result of the referendum should purely be a demonstration of the strongest possible desire of the people about their destiny so that not a single or a few individuals can pronounce a verdict upon the question of life and blood of the people.

Our people are very fortunate to have this opportunity for, in some areas whose creation

is identical with that of Transkei, there is no likelihood of a referendum due to the existence of Parliament. Members of these Parliaments claim that they were duly elected though it is known that certain political organisations which opposed the sham of apartheid were banned, and could not participate in events.

The referendum will be the first democratic exercise in the history of Transkei in that it will take place in a relaxed atmosphere with all political organisations and political parties free to present their side of the story without the fear of banning orders and detention without trial, as was the case in the 1976 election. The result will give the government of the day the mandate to take the necessary course of action.

I am convinced that after the referendum any government would be in a far better position to state the case of Transkei and represent the true aspirations of the people. Then we can be put on the path of realising our dream of emancipated blacks who are free to express their views on any subject without fear, free to associate and organise with whoever they choose to attain legitimate economic, social, cultural and political objectives, people who will be free to develop to the full. It is only then that our people would be enabled to cast their eyes on the distant horizons with no impediments to access to the green pastures where their fellowmen graze, a country where men and women of all colours and races, of all religious and political persuasions, of all cultures and historical backgrounds can live and work together and build a prosperous and happy future for generations to come.

I would like to humbly request you to concentrate on certain critical areas during your deliberations. The type of document to be used by individual voters as our people are in possession of one, more, or none of these, the Book of Life, the old reference book, travel documents, ID books issued to blacks in the RSA; the age at which people should be allowed to vote, whether 18 or 21 years of age.The question of Transkeian people residing outside the territory's boundaries and the method of communicating with them should be seriously looked into. You should also extensively cover the methods to be employed in monitoring the referendum in order to ensure that voting is fair because there are certain individuals with authority in their areas of jurisdiction who may be tempted to abuse their status and powers and resort to intimidation in order to influence their subjects to vote in a pre-determined manner likely not to threaten their previous political status.

I further draw your attention to scenarios and questions that have been in the draft Decree.

I wish you on behalf of my colleagues and the people of Transkei a very successful conference and fruitful deliberations.

I now declare the conference officially opened.

THANK YOU

Our views on the proposed referendum by the chairman of the Transkei Regional Council of Contralesa, Advocate Chief M. Nonkonyana.

The independence of Transkei is based on attainment of Bantu self-government in accordance with the promotion of the Bantu Self-Government Act of 1959 passed by the South African Government.

It should be noted that this Act was passed by the South African Government without mandate from the traditional leaders and their people. The Act was passed by the South African government to secure its own interests — the promotion of separate development (apartheid). One of the causes of this is deprivation of the traditional leaders and their people of their land. Only 13% was allocated to us.

The traditional leaders and their people were deprived of their economic and political rights. The traditional leaders, particularly because of their influence, were separated from their people as far back as in 1927 when the Bantu Administration Act was passed. In terms of this Act (which was again passed with the Governor General as supreme chief of all Africans) our Kings had to be known as Paramount Chiefs. The Chieftainship was therefore used by the apartheid regime to divide and weaken the strength of the people.

In Transkei after the promotion of the Self Government Act the chiefs were called to assemble at what was then known as the Bunga Building in what was called the United Transkei Territories General Council (UTTGC). It was there that the Democratic Party (DP) and the Transkei National Independence Party (TNIP) led by Paramount Chiefs Victor Poto and K D Matanzima respectively were born.

One needs to look at what took place during those years and sincerely ask oneself whether the structure existed for the benefit of the people or for a few individuals within our communities.

Proclamation R400 was passed to enforce the homelands. Similarly the Transkei Legislative Assembly passed the Public Security Act No 31 of 1977 so that "any person who verbally or in writing or in any other manner propagates any view or doctrine, or disseminates or promotes the dissemination of any view or doctrine which defies, or is repugnant to, or aims at the subversion of the sovereignty of Parliament or the constitutional independence of Transkei, shall be guilty of an offence and liable on conviction to the penalties provided by law for the offence of treason."

The book written by the then Chief Minister and Prime Minister, State President of this part of the world entitled INDEPENDENCE MY WAY clearly bears testimony.

The existence of Transkei as a separate entity outside South Africa has no factual basis. We believe that it is merely one of the structures of apartheid and as such should, like apartheid, be dismantled. We cannot improve these structures, they must go!

The first question to be answered is what are the possible consequences of rejection of reincorporation of Transkei into South Africa?

We believe that in as much as our people were not involved in the passing of Bantu Self Government Act and the Status of Transkei Act it is inconceivable that they will resist reincorporation.

However, should this be the case the leaders (traditional and political) should lead them accordingly. All the oppressed masses of South Africa should jointly embark on a national campaign to force the South African Government to yield to their voice should Pretoria resist such reincorporation.

We believe that reincorporation of Transkei should take place simultaneously with the dismantling of apartheid. We believe therefore that negotiations for the future South Africa should also deal, not only with dismantling apartheid in South Africa, but also with the abolition of its structures including homelands and the so-called independent states ie. T.B.V.C. countries.

The abolition of these apartheid structures will be a sine qua non to the abolition of apartheid in South Africa.

ANC Statement on the Referendum by the Rev. H.S. Majeke

The question of a referendum has got its own dynamics. Whether there should be a referendum, background or the basic reasons for Bantustans and their consequences are all factors which should be considered.

Bantustans are the result of the creation and maintenance of separatism or apartheid by the White South African Government. Bantustans are commonly known as homelands reserved for Black South Africans. As has been mentioned, the SA Government decided, in order to maintain apartheid, to create Bantustans sothat:-

(i) Blacks could be kept in chosen concentrated areas;

(ii) Political domination by Whites be maintained;

(iii) Whites should keep and control all the rich resources of the country;

(iv) The threat imposed by Blacks to the security of White domination be kept in check and destablised;

(v) The absorption of the Black population into the reserved White areas should be avoided;

(vi) A steady continuous cheap labour force for the Whites could be provided from the over-crowded and over-starving Black homelands.

To achieve this the population of Blacks which compromise 70% of the total South African population was concentrated on selected barren strips which make only 13% of the whole land of South Africa. All Bantustans got their share from this 13%. From the onset it was clear that the Bantustans had no potential for survival at all. There are no industrial resources like mines and other industries. The few industries that managed to crop up could not go far because of factors like non-availability of natural resources, lack of viable incentives, harbour and transportation problems, excise duties etc. Add these factors to very poor agricultural potential of the Bantustans and the result is starvation, disease, lack of funds for educating children, corruption and death.

This resulted in the people falling victim to the objectives of the South African Government for the homelands to provide a continuous labour force drawn from a desperate hungry people. Millions of young and old people live with no hope at all and the present Bantustan governments have little or nothing at all they can do to help as they themselves depend on handouts from South Africa, or rather are economically dependent on South Africa.

As can be discerned from the above, 90% of the Black population of the Bantustans is a victim of convenience of the oppressive structures. Because of a high rate of illiteracy they are not aware of their resourceful skills and as such are unable to help themselves. This results in dependency as the people fail to author their own experience and needs.

There is a lack of skilled/trained leadership in most Bantustans. Basic organisational skills that would enhance the mobilisation and organising of people, thus providing opportu-

nities for people to discuss, plan and act together in persuance of goals based on their communal and political needs, are non-existent.

All these make people (mostly men) helpless victims of the migrant labour system. Husbands leave hungry and helpless families behind to work in the mines where they get wages which are hardly enough to cater for the needs of a single man. Although slave labour and child labour are forbidden on paper it is not surprising to find that so many people have fallen prey to this ruthless type of labour. Many farmers in and on the borders of the Bantustans reap from this cheap labour of the defenceless starving victims. So many farm labourers work from sunrise to sunset on the farms with hardly any remuneration except a plate of food each day. A whole family of man, wife and children would surrender themselves to the farmers where their labours would be used free of charges and the children not even allowed to go to school. Various organisations have come up with projects to help these desperate Bantustan people but since the situation has remained unchallenged for a very long period, such help is minimal. Church organisations are also doing their best but since church membership comprises about 90% very poor people nothing of note could happen to alleviate the situation.

Of course, some Bantustans like Bophuthatswana have mines and many more resources. Although, on paper, such resources belong to them, in fact it is the White minority Government which benefits from them. The Black people of the Bantustans have no technical know how to manage these resources. The implements used are owned by Whites. Therefore, the fact remains that economically, the Bantustan system was meant to be a failure and to keep Blacks poor while the Whites became richer.

Bantustans were created against this background. A few factors made it easy for the White Government to be able to implement Bantustans:

(i) because the areas selected for the Bantustans were inhabited by very poor starving and unemployed people who were eager to accept any alternative that came their way;

(ii) repression was at its severest and when so many people died either in detention or by police bullets so that any form of "government" which promised a sort of freedom seemed more attractive;

(iii) tribal chiefs, who had seen their authority rendered useless, were offered a lucrative chance to enjoy a seat in "parliament";

(iv) people were promised the privileges enjoyed by whites e.g. ownership of shops, bottlestores, farms etc.;

(v) the White South African Government could harness influential leaders of the people as collaborators who easily accepted Bantustanism on the people's behalf; and

(vi) more importantly, all organisations in a position to enlighten people about the dangers of Bantustanism were banned and anyone who objected or canvassed people to object to Bantustanism was ruthlessly ill-treated or even killed mysteriously.

After the so-called "acceptance" of Bantustanism, the true colours of the dragon came to light. Conditions became worse. Only the few collaborators became richer while the poor became poorer. While the Bantustans became poorer the PWV area became richer ie. the Whites as they live in the PWV. The Bantustans became, as had been originally planned, the source of cheap labour for the rich Whites in the PWV areas. To further facilitate this,

investments were transferred to the PWV areas while the natural resources in the Bantustans like land, water, timber and electricity lie wasted.

All the above clearly shows that Bantustanism only served the White Governments' needs and objectives to the detriment of the oppressed masses.

Moreover it is clear that Blacks were either cheated in the system or forced into it and were never democratically consulted so that they could exercise their democratic rights (although one may rightly argue that Blacks never had and had never enjoyed any democratic right under the white government).

The burning question, therefore, is what does the ANC say concerning the issue of a referendum, especially in Transkei? As the ANC has fought against the acceptance of Bantustanism, the changes in some of the Bantustans have been perceived by ANC as steps towards victory both to liberate the oppressed masses in S.A. and the double-oppressed masses in the Bantustans. Therefore the question of a referendum for the return or non-return of Transkei into the fold of a UNITARY SA cannot be thought of in isolation from its historical context which is the context of struggle between the oppressed masses of our people and the apologists of apartheid, led by the White minority regime in Pretoria. It is a struggle in which the thrust of the ideological offensive of the Mass Democratic Movement has been victorious, both here in SA and on the international front. It is the victory of the masses of our people in that struggle that has rendered the ideology of apartheid impotent and led to its rejection by millions of our people.

It is therefore in our ability to read the dynamics of the struggle against the racist system of apartheid that we will discover the true meaning of the movement away from Bantustanism. This has been expressed in anti-Bantustan revolts which preceded the military coup of Ciskei, the repeated revolts in Bophuthatswana and the jubilation of the masses of Transkei after the downfall of the Matanzimas and Stella Sigcau's rule. The asking of the question whether the Transkei should relinquish homeland independence and be part of a UNITARY SA would have been treasonable in official circles barely four years ago. But now the unrelenting struggle of the oppressed masses has ushered in a new dynamic in the historical context in which the question of the future of the so-called homelands is being asked.

We live in a new era, that fact has to be recognised. It is an era of transition, an era in which the dominant section of the racist regime has come to realise that the policy of apartheid, as officially practised cannot be maintained any longer. It is in the course of this analysis that the leadership of the ANC discerns that there is currently a process in which the homeland governments are now being pushed into a kind of a middle ground from which they can be rallied around by anybody. The ANC seeks to rally them against the perpetuation of the Bantustan policy to the realisation of the ideal of a UNITARY non-racial, non-sexist and democratic South Africa. From that standpoint, therefore, the incorporation of the Transkei into a UNITARY SA is part of the overall strategy of our movement.

It is therefore imperative that there must be a referendum to canvass the people's views on whether they still want to remain apartheid objects or to be part of the advancing masses to freedom. The ANC as a democratic organisation believes that for any action to be taken there must be a vertical consultation ie. a mandate from the people and a report from the leadership to the people. People need to be consulted and not to be taken for granted. Secondly, we still have to contend with mushrooming structures such as the TRANSKEI TRADITIONAL LEADERS' ASSOCIATION and the PATRIOTIC DEMOCRATIC FRONT who

claim and support a Bantustan policy. Such organs cannot be wished away. Like Inkatha they will remain a thorn in the flesh unless they are exposed that they have no following in the referendum. If there is no referendum they will always claim that they have a constituency which was never given a chance to voice its support of Bantustanism.

People and organisations should be allowed free access to the people to canvass support about the ideas of the future of the homelands. Even those who support the maintenance of Bantustans should not be interfered with. Any form of harassment should be discouraged. The Government should not let its opinion be known and should remain neutral. No organisation or group should be allowed more facilities than others in canvassing its ideas. Chiefs should be warned not to intimidate their subjects into accepting their own (chiefs) ideas although chiefs should be allowed to cast their votes as individuals not as representatives of their people.

As to which of the four alternatives laid down by the Transkei Government, the ANC would opt for reincorporation in the post-apartheid SA. Although we are engaged in negotiations the war is not yet over. In war, as we advance and the enemy retreats, we gain more land in the enemy territory. We do not surrender the land to the enemy pending the outcome of negotiations.

The Bantustans which have aligned themselves with the struggle against apartheid are a ground gained and enable us to negotiate from a powerful position. De Klerk himself wants the Bantustans on his side to strengthen his weak position. Any incorporation at this stage would do more harm to the oppressed than to the oppressor. This does not mean the ANC blesses the Bantustans, but the Bantustans have been successfully turned against the oppressor. The decision that Transkei should be incorporated in the post-apartheid SA will actually mean that people of this area are part of the fighting masses of SA and should not be excluded in the changing process of SA.

Lastly, it is clear that the question of a FEDERAL Government is out for a people who are fighting for UNITARY Government. Given the above background to the creation of Bantustans one cannot reconcile a future Government created out of fighting against oppression and a Government created to enhance separatism. The former is for unity and equality and the latter is for separatism and oppression therefore the two cannot be federated.

SOUTH AFRICA NEEDS A UNITARY, NON-RACIAL, NON-SEXIST AND DEMOCRATIC GOVERNMENT.

ALUTA CONTINUA!!!

The Ideological and Legislative framework of the Bantustan System by Dr. W.M. Tsotsi, Maseru.

Central to the whole concept of apartheid was the creation of Bantustans (now euphemistically called "black homelands,") for the entrenchment of white supremacy in South Africa. This was made clear in the policy statements of all the Prime Ministers of the Afrikaner Nationalist Government from Dr Malan to P W Botha. Some expressed their aims more blatantly than others. For instance Strydom advocated "baaskap" in the so-called "European Areas". He said: "There is only one way that the white man can maintain his leadership of the Non-European in this country and that is by domination ... The only way the European can maintain supremacy is by domination."

In order to achieve white domination it was necessary first of all to determine who was white and who was black; hence the Population Registration Act of 1950; and then to divide the country up in such a way that most of it was reserved for whites, by enacting the Group Areas Act in 1950. Small enclaves called "reserves" forming 13% of the surface area of South Africa were left for occupation by Africans. These are the areas called Bantustans or Homelands and they include Transkei.

Strydom's statement of the objectives of apartheid, though correct, was too brazen to be acceptable to the blacks and to the international community. It was left to Dr Verwoerd to apply the necessary cosmetics to it. He came up with the flattering idea of "self-government" for the Africans, summarised by Muriel Horrel as follows: "Each ethnic community to be regarded as a national unit, and to be identified with its own land, where it would have full opportunity for political and other forms of development, even to the point of eventual self-rule. Whites to retain domination in the rest of the country. Africans in towns to be regarded as inter-changeable migrants. The numbers of Africans in white areas to be decreased progressively. The maximum degree of residential, educational and social separation to be maintained there". This novel concept of tribal nationalism is, of course, the antithesis of the concept of a unitary non-racial democratic South African nation.

In order to make baaskap palatable to the blacks, the South African Government decided to propagate it through the black schools. Almost the first thing that the Nationalist government did when it was returned to power was to appoint a "Commission on Native Education", the so-called Eiselen Commission, whose terms of reference included:

"The formulation of the principles and aims of education for Natives as an independent race, in which their past and present, their inherent racial qualities, their distinctive characteristics and aptitude, and their needs under ever-changing social conditions are taken into consideration."

It was not the first time that politicians gunned for the system and content of education when they wanted to transform the social order. Hitler, for instance, threw overboard the rich legacy of education in Germany and instead introduced barbaric ideas based on superstition and race fanaticism. In the name of race superiority education was debased and scientific theory prostituted.

The Government accepted the recommendation of the Eiselen Commission and passed the Bantu Education Act of 1953 to enforce them. Education for Africans was fashioned and

used for the purpose of indoctrinating the blacks into accepting the supremacy of whites. In his notorious policy statement on African education in 1954 Dr. Verwoerd told the South African Parliament that African education should stand with both feet in the reserves and should be based on the tribal organisation. He added that there was no place for the African in the white community "above the level of certain forms of labour", and he condemned the existing system of education as having misled the African "by showing him the green pastures of European society in which he was not allowed to graze". It had produced intellectuals who were estranged from their own people and who despised their traditional leaders, the chiefs.

It must be made abundantly clear to us that when Dr Verwoerd made this statement he was not just being crazy or attempting to score a political point; he was giving expression to fundamental beliefs. As Hutt says, apartheid symbolises in the Afrikaner his belief in the absolute superiority of the white man and his God-given right to dominate the black man to ensure the political and economic supremacy of the master-race. In his exercise of this right the Afrikaner is not inhibited by any religious or ethical qualms. Indeed, he receives the full backing of his church.

The Government's policies in this regard are justified by the doctrine of Christian Nationalism whose adherents are made to believe that in maintaining the permanent subordination of the black man they are fulfilling the will of God. They regard the black man as the descendant of Ham of biblical history, destined to suffer the curse of his progenitor to his dying day. The idea of equality between black and white is sacrilegious according to Afrikaner religion. Consequently economic and political policies of government which put the material and spiritual interests of the whites above those of the blacks are sanctioned by the highest moral law, and it is the duty of the state to espouse and advance these interests without being inhibited by democratic considerations like equality of human rights and equal opportunities for all men.

The point I wish to make here is not that Afrikaner attitudes towards the Blacks are today not changing and that they will never change. The important thing to bear in mind is that the "homeland system" of Government which we are today examining was the constitutional embodiment of these ideas which are the very antithesis of equality between Black and White. The fate of the homeland structures in the period of the decline of apartheid has to be viewed in the light of the ideas which spawned them.

At the time that it passed the Bantu Education Act in 1953, the Government had already enacted the Bantu Authorities Act 1951, being the legislative machinery for the creation of the tribal structures which it required for the implementation of its policies. The application of the Bantu Authorities Act became a focal point of conflict between the Government authorities and the people concerned. The history of this conflict is long, and I dont propose to go into it here. For the most part the people in the Transkei opposed the introduction of the Bantu Authorities on the grounds that they were divisive and not in consonance with their customary tribal structures. For instance in Tembuland, at a meeting of the headmen and people of Umtata district held at the Great Place, Bumbane, on the 24 August 1957, it was unanimously decided to reject the Bantu Authorities Act. On the 13th September 1957 a letter was written to the Secretary for Native Affairs by members of a deputation elected at the meeting conveying to him the decisions of the people. These decisions were confirmed at a meeting of all the Tembus held at Bumbane the next day. A deputation sent to Pretoria to present the resolutions of the Tembus was dismissed without a hearing. In March 1958 the Government sent a one-man Commission of Enquiry headed by Mr J B Young, then Under-Secretary in the Department of

Bantu Affairs, to Umtata to investigate the grievances of the Tembus. An unpublished document, which I helped to draw up, entitled "Memorandum of the Difficulties and Tensions Arising from the Implementation of the Bantu Authorities Act In Tembuland", setting out the objections of the Tembus to the Bantu Authorities Act, was submitted to the Young Commission of Enquiry.

Permit me to quote a passage or two from the memorandum to indicate some of the objections raised against the implementation of the Bantu Authorities Act. The memorandum states: "The implementation of the Bantu Authorities Act in Tembuland has fallen far below expectations and has strengthened the hand of those who have always opposed it as a fraud, a divide-and-rule measure for the purpose of exploitation. So far from strengthening the position of the Paramount Chief of the Tembus and preserving the unity of the Tembu nation, the Bantu Authorities Act in operation has proved to be a source of weakness and disunity. It was primarily for this reason that at several representative meetings of the Tembu nation, the Bantu Authorities Act (not only its implementation) has been roundly condemned and rejected. This has placed the Paramount Chief, who had at all times been ready and willing to co-operate with the Government, in an embarrassing and invidious position and has made him an easy target of those careerists who see in his discomfiture prospects for their own promotion."

In further criticism of the Bantu Authorities system the memorandum goes on to say the inclusion of police duties and enforcement of unpopular Government measures among the duties of tribal authorities was not calculated to enhance the prestige of the chiefs among their followers. It would have been better tact to have provided for full consultation with the Bantu Authorities before such measures are passed than to limit the authorities to their enforcement whether they liked it or not and to make them obvious tools. The Tembu chiefs and people are essentially proud and find it difficult to stomach such insults. They tolerate rather than accept the position of object slaves". The memorandum ends this section with the following significant statement referring to the predicament of the Paramount Chief and his subordinate chiefs: "In a situation where the choice has been narrowed down to either with the people against the Government measures, or with the Government against the people's aspirations, the tasks of leadership for anyone who serves the Government as well as the people are so difficult as to become insuperable".

The Bantu Authorities system was accepted by the Bunga in 1956 and imposed on the people of the Transkei and elsewhere against their will. At the time of its imposition, tribalism as a traditional institution, was virtually dead. This fact was attested to by the Eiselen Commission which reported as follows: "Political control by Europeans has had important effects upon the chieftainship. In certain areas the old heriditary chieftainship has been abolished and nominated headman appointed. Chiefs are today appointed by the Government and have been given minor legal and administrative functions. They have lost their political, economic and military power. They are no longer a source of wealth who can be approached by ambitious young men desiring cattle. Coupled with the change in status of the chief there has been a gradual transformation of Bantu Law. Throughout the Union the greater part of Bantu criminal law has been replaced by European criminal law. The remainder of the law is in most areas administered as a body of unwritten customary law which is tending to change to meet evolving conditions."

The Tomlinson Committee appointed by the ruling National Party in 1949 expressed the view that tribalism and the role of the chiefs were incompatible with modern economic development. In the modern industrial era the factory, not the tribe, is the social unit. Social

organisation is determined not by patriarchal relationships of chief versus commoner, father versus son, but by economic relationship of employer versus wǒrker.

Giving evidence before the Fagan Commission (1946-48) Professor Burrows stated, "though the traditional structure of its inadequacy when brought into close contact with the developing exchange economy with its implicit wage system, its breakdown is being protracted by the system of segregation and migrant labour. The social disadvantages of sudden disruption have been avoided at the cost of delaying specialisation. As a result there is today no self-supporting peasant economy, no permanent agricultural labour force and no stable urban population".

The Bantu Authorities system is foreign to traditional tribal structures. The most important functions of the Bantu Authorities are the preservation of law and order and the recruitment of labour. The facade that they are embryonic governments is false. They serve as a system of labour bureaux to regulate the migratory flow of cheap Black labour from the Bantustans to the farms and industrial concerns of the whites. The Bantu Authorities system gives the chief bureaucratic powers of control over the population and compels loyalty and respect for him on the part of those under his jurisdiction by means of penal statutes. On the other hand the same statutes compel the chief to carry out orders given to him "through the Bantu Affairs Commissioner or any other Officer of the Government" on pain of summary dismissal.

The division of the people of South Africa into "ethnic groups" and "nations" applies to blacks only and is based mainly on language differences. Yet linguistic differences among the Africans are much smaller than those among the whites, Afrikaans and English for instance. It is mainly because of the supposedly wide linguistic disparities of the various ethnic groups that nine African language groups were selected as potentially independent nations. In fact there are not nine African linguistic groups in South Africa but four; Nguni and Sotho being the major ones. The division of the blacks into nine (now 10) "emergent nations" is simply a pseudo-scientific way of camouflaging the principle of divide-and-rule which is being applied to generate inter-tribal strife and so secure white supremacy. The internecine warfare that we are witnessing in Natal and Johannesburg at the present time is possible because of the tribal nationalism generated by the existence of the Bantustans. It is inevitable that ambitious and unscrupulous leaders will use them as a political base, and that subversive forces will employ them to achieve their nefarious objectives.

The official justification for the Government homeland policy is that the "homelands" are the traditional tribal territories of each of the so-called black nations. For instance the Std. 7 history book used in white schools contains the following passage:- "By the end of the nineteenth century the forebears of all those blacks at present settled within the country had been brought under the political authority and guardianship of the whites. The nuclei of the various ethnic groups retained their traditional tribal areas. Today these are known as the black homelands". This is a falsification of South African history which it is necessary to correct. It is not true that the homelands correspond to the areas historically occupied by each so-called "black nation". So also the other related "myth that in the 17th century South Africa was an unpopulated land belonging to no one, and that both blacks and whites are immigrants with an equal claim to this land. The truth is that centuries before Jan van Riebeeck the country was inhabited by the indigenous people consisting of the Abathwa or San and the Khoi-Khoi (pejoratively called the Bushmen and the Hottentots respectively by the white invaders), the Nguni (mainly the Zulus and the Xhosas) and the Basotho.

The so-called "black homelands" or Bantustans are the "reserves" into which the Africans were crowded as a result of European conquest and land dispossession. They form 13% of the land surface of the Republic of South Africa and are expected that, Verwoerd, with his tongue in his cheek, represented as havens for the black man where he could enjoy the human rights which are denied to him in the "White Areas". But even the most myopic person can see that, so far from being areas of independence and self-government, these Bantustans constitute the complete reduction of their inhabitants to conditions of wage slavery. Verwoerd knew very well that in order to escape from such conditions the Africans would be forced to submit to the super-exploitation of their labour in the industrial areas where, having "voluntarily" left their own areas of liberty, they could claim no civic rights, not even the payment of a living wage, for their labour. Verwoerd knew very well that more than two-thirds of the total black population must perforce remain permanently in the so-called white Group Areas, where they are absolutely essential to the running of the economy, but on a slave basis.

The official policy of the South African Government is to convert all African workers, including those in industry and in commerce, into migrant labour dependent for their employment on regimentation by a white bureaucracy basing itself on tribally controlled escape structures in the homelands. As Froneman, the then Deputy Chairman of the Bantu Affairs Commission, said: "We are trying to introduce the migratory labour pattern as far as possible in every sphere. That is in fact the entire basis of our policy as far as the white economy is concerned, namely a system of migratory labour. It has been estimated that one out of every two black workers in White South Africa is a temporary migrant. This excludes workers living in the reserves and townships adjacent or close to white industrial areas who commute daily across the border.

By turning the vast majority of the workers into landless peasants and paying them starvation wages the South African ruling class is striving to prevent urbanisation and consequent proletarianisation of the black workers, and to ensure a ceaseless supply of cheap labour while at the same time minimising the risk of strikes and industrial unrest. Rural poverty, over-population, landlessness and unemployment constitute the economic basis of the migrant labour system.

We hear much talk these days that apartheid has collapsed; even that it is dead. Bantustans are pillars of apartheid. If the edifice of apartheid falls then its pillars must be razed to the ground as well. This is necessarily so because apartheid and its organisational structures represent a policy which is diametrically opposed to equality between black and white. In a speech delivered in 1964 Dr Verwoerd formulated the concept thus: "One either follows the course of separation, when one must accept the logical consequences right up to the final point of having separate states, or else one believes in the course of assimilating the various races in one state, and then one must also accept the eventual consequences, viz. domination by the majority ie. Black domination ... There is no middle course except during a transitional period.

It is not possible to build a solid house of freedom and equality on the shaky foundation of apartheid and self-rule. Transkei independence must be dismantled. The people of the Transkei were never consulted before self-rule was imposed on them. The history of this imposition makes interesting, if tragic, reading:

In December 1962 a special session of the Transkeian Territorial Authority was held at Umtata to debate a "bill to confer self-government on the Bantu residents in or deriving from the Transkei and to provide for matters incidental thereto.

" Unfortunately the "Bantu" residents themselves were deliberately denied the opportunity to decide whether or not they wanted "self-government". Chief K D Matanzima moved that the Bill be considered section by section. Thereupon the late Paramount Chief S Dalindyebo moved as an amendment "that before the Bill is taken section by section, the members should be given an opportunity of expressing the views of the people." The Amendment was lost and Chief K D Matanzima moved the adoption of the title of the Bill.

Chief T Ndamase moved a further amendment to the effect that the proceedings be adjourned to give time to the European and African organisations in the Transkei to discuss Transkei self-government. That Amendment was also defeated and Chief K D Matanzima proceeded to move the adoption of the preamble to the Bill. A further amendment was proposed by Chief L Ndamase that the Bill be adopted "if the people of the Transkei give their unmistakable assent at a convention of the people of the Transkei as allowed for in the Bantu Authorities Act." This Amendment was also lost and Chief K D Matanzima moved the adoption of Section 2 of the Bill.

And so it went on, with Chief K D Matanzima moving the adoption of the provisions of the Bill all the time and some of the members vainly trying to persuade the special session of the Transkei Territorial Authority to submit the Bill to prior public discussion. Little wonder that some of the less educated peopled called the "independence" of the Transkei Matanzima's "underpants".

An interesting debate arose on the question of the composition of the Legislative Assembly. The Bill provided for 64 chiefs EX-OFFICIO and 45 selected members. Chief Majeke moved an amendment designed to do away altogether with EX OFFICIO members alternatively to provide for 64 elected members and 45 chiefs. He was seconded by Chief D D P Ndamase who made an impassioned plea that chiefs, as administrators like magistrates, should not be allowed to become members of the Assembly which makes laws because it is undemocratic.

" We must abide by the principles of Western civilization", he said, adding "Somebody has said that chiefs are traditional leaders. I have never come across traditional leaders in books. I have come across mental (intellectual) leaders, people who are elected by the people to represent them; people who understand them, and even among the chiefs there will be such people. I take it that a leader is not a leader because of birth. He builds himself up and proves that he is a leader. A leader who is not a chief is easily removed by other leaders, but how can a leader who is a chief be removed, since he holds that position by virtue of his birth and cannot be removed? A person who is elected to this assembly should, in my opinion, first resign as an administrator because he cannot do his work properly otherwise..... We want leaders, Mr Chairman, leaders who have the confidence of the people who have been elected by the people, and can do the work of the people ...."

The wise words of Chief D D P Ndamase fell on deaf ears. The chairman called on Chief K D Matanzima to reply to the proposed amendment. In his reply Chief K D Matanzima said: "Mr Chairman I want to remind the Councillor that the traditions of the Bantu of the Eastern Cape are not the same as the traditions of the British people. The set up among the Bantu is that the chief is the lawmaking body acting in consultation with his people. I challenge each and every councillor to dispute that fact. According to the mover's proposal the chiefs must be kept out of the Legislative Assembly and the other people must make the laws for their people. I must remind the council that we have a danger coming from the north, that is the Communists. That

atmosphere has already got into our own area...."

Chief K D Matanzima's remarks effectively silenced opposition and put an end to all attempts to introduce Western democratic principles into the discussion. This was inevitable since of all the 111 Councillors present, 99 were chiefs presumably employed and paid by the South African Government.

It is commendable that the people of Transkei are now being given an opportunity through the forthcoming referendum to decide whether or not they are in favour of "the continued retention by the Republic of Transkei of its independence and present sovereign status. In my opinion this is the only question that it is fair and proper to put to the voters at present. It is a test of their personal feelings in the light of their personal experience of life before and after "independence". To substitute any of their other questions suggested in the schedule to the special gazette would tend to cloud the issue and confuse the uneducated majority of the voters. It cannot be assumed that they are aware of any political changes taking place in South Africa or that they have any views on the modalities and methodology of doing away with the "independence" encumbrance that was foisted on them. This is especially so because answers to these questions presuppose adherence to a political programme, and as we know, political activity has been banned in the Transkei until recently.

Whether or not the citizens of Transkei vote for the liquidation of their "independence", it will still be necessary for political parties to propagate their political programme concerning the role that the people of Transkei should play in the political struggles now going on in South Africa. I hope they can do so without risking a criminal charge of treason. It is not premature for them even at this stage to look ahead and publicise their views regarding future political developments in Transkei in its relationship with South Africa. Many enlightened and politically aware citizens will no doubt be guided by such views in deciding how to vote in the referendum. The question raised is what would happen if the majority of the voters in the referendum decided against the retention of Transkei "independence".

Without doubt the matter would be referred to the South African Government for its information and reaction. It is important to bear in mind that there is no guarantee that the South African government will accept such a decision. The probability is that it will not. If it did, it might agree to the dissolution of the top administrative echelons but not the tribal apparatus of the Transkei Government. The principles underlying the original grand design of the Bantustan system is too valuable to the puremacists to be lightly discarded. It is basic to the group rights concept which President De Klerk has declared to be non-negotiable.

In opposing the decision to dismantle Transkei "independence" the South African Government would not lack allies within the Transkei community. They consist of the chiefs, and all the petty bourgeois elements who profit from the "independence" artifice. They include a growing class of public servants, professionals, petty traders and market-producing peasants, all of whom in one way or another, depend for their remuneration and support on the already impoverished population.

"Independence" gives the public servants opportunities for direct appropriation and misappropriation of national revenue, as well as for bribery and corruption. High salaries for officials and loans on easy terms for a few thousand petty traders create opportunities for accumulation of higher consumption that has hitherto been impossible among the Blacks in South Africa. Very good reasons will have to be advanced to persuade the more honest of the above elements to vote against the retention of Transkei "independence' or to support the

decision of the majority to this end."

I have mentioned the probable attitude of the government of the Republic of South Africa and its hangers-on in the Transkei to a negative vote on the question of Transkei "independence". I now turn to the supporters of its liquidation, and pose the question what next? What is your programme? I imagine that their answer would be, whether or not the voters of Transkei decide to abrogate Transkei "independence" in the forthcoming referendum, the population of the Transkei has to be politicised as to the reasons why Transkei should be reincorporated into South Africa. From all angles Transkei is an integral part of South Africa; it should never have been granted self-rule in the first place. That incidentally, applies to all the Bantustans. If Transkei were reincorporated into the Republic of South Africa, it would then be subject to such constitutional and other structures as the Government of South Africa would devise. Would that not be falling out of the frying pan into the fire?

No. I do not think so. We are talking of a South Africa that is rapidly changing, hopefully, for the good. These changes are not just happening on their own. They are the result of the struggles of the people of South Africa for equality and freedom. The people of the Transkei have a right and a duty to participate in those struggles. They are part and parcel of the people of South Africa. They have a part to play in the momentous events that will usher in the new South Africa. It is not in their best interest to sit back and remain spectators to happenings next to and around them which will inevitably and fundamentally affect their lives and the lives of their children. The struggle must not be stratified; it must be unified because it is indivisible.

It is not my intention in this paper to go into the question of political programmes for those who would like to see Transkei reunited with South Africa and participating in the present struggles of the oppressed and exploited for freedom. I leave that to the political parties represented here to unfold. But I would like to say that serious and urgent efforts must be made to extricate the rural population of the Transkei, and indeed, of the rest of South Africa, from the quagmire of landlessness, overpopulation, unemployment and poverty in which it is forced to wallow. This is no easy problem and tinkering with it will provide no solution. We must take advantage of the prevailing climate of eagerness for social change to press for fundamental reforms, which, in my opinion, must include the following:

1. The repeal of the Native Land Acts accompanied by a radical redistribution of agricultural land in such a manner as to make it possible for black farmers to acquire suitably secured economic units which they can cultivate on a full-time basis and on which they can depend solely for their livelihood.

2. Abandonment of the primitive system of land tenure and adoption of large scale mechanised farming techniques with generous subsidies for deserving black farmers.

3. Opening of the Transkei to local and international investment capital and industrialisation with suitable safeguards against alienation of black-owned farming land.

4. Abolition of the migrant labour system and making provision for the workers and their families to reside permanently

5. Dismantling of tribally based constitutional and administrative structures of exclusive racial, tribal or ethnic group areas in the occupation of land.

6. Elimination of education for servitude and substitution of education for freedom in a

unitary system of education, and purging the syllabi of all historical falsehoods which reflect badly on the black man.

I do not wish to be quoted as saying that the reforms suggested above are the open sesame for the emancipation of the black rural population of Transkei and the rest of South Africa. But I do believe that, if the reforms are made the masses of Transkei can look forward to a considerable amelioration of their present position. They might even realise in retrospect that their negative vote at the forthcoming referendum was a positive step in the right direction.

Reincorporation of the TBVC countries - Constitutional implications by Professor M. Wiechers, UNISA.

The 20th century has, from a constitutional point of view, seen the culmination of the so-called "phenomena etatique", which means that all civilisations in the world today have organised themselves into states. With a few very rare exceptions, there are almost no independent, non-self-governing territories left in the world. With the advent of Namibian independence on 21 March 1990, Africa witnessed its last erstwhile colony gaining its independence. It may safely be said that the colonial era has drawn to a close, although some colonialist and especially neo-colonialist practices still prevail.

Statehood has become a much cherished subject of modern international law. The international community places a high premium on matters such as territorial integrity, independence and self-determination which are still hallmarks of statehood. It is no wonder that the first principle enunciated in the Declaration of Principles of International Law concerning friendly relations and co-operating among states in accordance with the Charter of the United Nations, states unequivocally that "states shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state".

Whereas it is generally accepted that state sovereignity, in the classical sense of the word, has lost much of its absolute meaning in international relations between states, and the world organisations such as the United Nations have curbed excessive demands for absolute state freedom, it remains none the less true that statehood itself is jealously guarded and protected by the international community. In fact, it is through their membership of international organisations that states, even small, and very vulnerable ones, can maintain their status. Since annexation has been outlawed by general international law and since any violation of state territory will immediately create a furore in the mass of world organisations, it has become pratically impossible to annihilate existing statehood. The fate that befell Abyssinia in 1936 when it was overrun by Italian troops, the tragic loss of statehood which occurred when Austria and Czechoslovakia became victims of the Anchulss, and the disappearance of the Baltic states in 1940 are all things of the past.

THE POSITION OF THE TBVC COUNTRIES

Seen in the present context of world protection of statehood and the upsurge of national identities in Eastern Europe and Russia where people are clamouring for state independence, it is rather strange and almost anomalous that there should be talks of re-incorporating the TBVC countries. It may even be asked whether this is not a trend against the course of history.

In order to understand this apparent anomaly, it is necessary to cast an objective and dispassionate look at the position of the TBVC countries. Although there is no denying the fact that these countries do possess the formal characteristics of statehood in so far as they have their defined territories, a specified populace and separate governments and also that there are considerable historical reasons for them to exist as independent states, it is equally true that their independent existence is a direct result of the South African policies of separate development. These states came about and were indeed created as part of an overall, broad policy to decolonise the people of South Africa and to ensure white supremacy in the core part of the Republic. As was the case in 1931-32 with the creation of the state of Manchukuo by

Japan, the establishment of independent ethnic states in South Africa met with world-wide condemnation. International recognition, whether by other states or through admission to membership of the United Nations, was ruled out from the beginning and any hope that remained in this respect, dwindled over the years. Recognition, although an international law action with extensive legal significance, is basically inspired by political considerations. It may be argued by some that the non-recognition of the TBVC countries by the international community is factually and morally unsound. One truth of the matter is that such recognition is considered by all states, except South Africa and the TBVC countries themselves, to be politically inexpedient and fundamentally obnoxious. Future recognition must therefore be ruled out.

Over the past years, other events have occurred which destroyed the ideological bases for TBVC independence. One of the most important developments in this regard was the 1986 South African Act providing for the restoration of citizenship to those persons who lost their citizenship as a result of TBVC independence. By acknowledging the undeniable fact that Black citizens cannot be "booked off" through the device of homeland citizenship, the South African government itself undermined the grand designs of the original policies of separate development and came to accept the realities of eventual multi-racial government.

Events of the past year have accentuated the precarious nature of the present status of the TBVC countries. Whereas previously the eventual return of these countries to the fold of the South African constitutional order was merely a matter of conjecture, it has now evolved into a realistic possibility. In this respect, Transkei has taken the initiative by proposing a referendum on the issue of reincorporation.

THE FACTUAL AND LEGAL CONTEXT OF REINCORPORATION

Independence did not bring international recognition for the TBVC countries. It did, however, bring a whole structure of institutionalised multilateral co-operation between them and the Republic of South Africa. Since the dates of independence and during the years of ensuing multilateral co-operation, many conventions were concluded between the Republic of South Africa and the independent countries. Agricultural, industrial and other forms of economic development took place within these countries and sizable bureaucracies were built up. All these developments created a factual and legal presence of the TBVC states in Southern Africa which cannot be ignored.

Constitutionally, the TBVC states operated completely independently of the Republic of South Africa. Laws were passed and governmental affairs conducted according to their own Constitutions. While their courts acted within the broad South African legal system, they applied the laws of their respective legislatures without reference to South African laws and enactments (except, of course, in so far as these laws and enactments were incorporated).

It is not now the time or occasion to asses the overall success or failure of the TBVC countries. What has to be said, it that these countries' ties did create extensive networks of governmental institutions, bureaucracies, laws, judgments, multilateral co-operation and other instruments of statehood which will have to be taken into account at the event of future reincorporation.

What is essential for the understanding of the present position and also, for a future plan of reincorporation, is that the Republic of South Africa from the outset dealt with the TBVC countries in strict compliance with dictates of international law. As far as the Republic of South

Africa is concerned, all these countries are independent, sovereign states which are duly recognised. As a matter of fact, South Africa has always been at pains not to create the impression that these countries possess a status less than that of a fully independent, sovereign state. In its dealings with these states, South Africa always undertook to comply with international law norms relevant to the relationships between friendly nations. It is therefore absolutely safe to predict that the Republic of South Africa will not resort to methods of incorporation which run counter to international law and that means the acquisition of territory, such as annexation and conquest, which have been branded as illegal by modern international law, will not be used. The only mechanism for reincorporation which, in terms of international law, is left to the Republic of South Africa and the TBVC countries is mutual consent by the respective governments and the conclusion of a formal bilateral agreement. Under present international law, states have the right to decide freely on their political and constitutional destinies, but such a decision must not violate the principle of self-determination. It would seem that the principle of self-determination is met when the people of the state wanting to accede to another state, are consulted. If the Republic of South Africa insists on compliance with international law principles - which it will probably do - it will undoubtedly ask for a popular vote and support by the peoples of the TBVC countries before negotiations for eventual reincorporation are entered into.

Both Bophuthatswana and Ciskei, at the time of their independence, foresaw that future events might lead to further forms of constitutional and international co-operation. In the Preamble to the Constitution of Bophuthatswana it is expressly stated that "we (the representatives of the people of Bophuthatswana) shall always seek our future destiny in closer constitutional and political unity with other people and governments", and ARTICLE 1(1) of the Ciskei Constitution declares that "Ciskei shall be a sovereign democratic, independent republic in a confederation of Southern African states". Neither of these provisions seems to be conclusive. In the case of Bophuthatswana, the ideal expressed in the preamble does not have a fixed constitutional content and in the case of Ciskei, it is doubtful whether the provision has any binding force. (The repeal of the Constitution by a military regime in that country also leaves doubt whether the provision still stands). The conclusion to be drawn as far as all four TBVC countries are concerned, is that in view of the right of self-determination, the people of all those countries will have to be consulted before formal reincorporation is undertaken by their respective governments.

Once it is accepted that a bilateral agreement between the Republic of South Africa and the respective governments of the TBVC countries, supported by the peoples of these countries, is the only viable international law mechanism for reincorporation, it becomes necessary to look at the constitutional law systems of the Republic of South Africa and the TBVC countries in order to find out what the legal requirements are for such a bilateral agreement.

As far as the Republic of South Africa is concerned, a bilateral agreement in the form of a treaty providing for the reincorporation of an erstwhile TBVC country, must, in terms of the 1983 Constitution, be concluded by the State President. For its validity, such a treaty of reincorporation does not need to be ratified by Parliament. A reincorporation treaty between the Republic of South Africa and a former independent TBVC country will profoundly affect existing South African laws. This is especially true as far as the implementation of such a treaty is concerned, more specifically as regards the constitutional accommodation of the former independent country within the constitutional sphere and jurisdiction of the Republic of South Africa. In order to give to the reincorporation treaty internal (domestic) force within the Republic

of South Africa, it will be necessary to pass parliamentary legislation. Under the 1983 constitution such legislation will have to be classified as general affairs, which in turn, will necessitate consensus by a majority of all three houses or a recommendation by the President's Council if agreement cannot be reached by all three houses of Parliament. (It may happen, of course, that at the time of the passing of the reincorporation treaty, the composition and functions of the present Republic of South Africa Parliament might have changed; in such an event, the treaty will have to conform to the new procedures and amended functions of the reformed parliament.)

The constitutional systems of the TBVC countries give no express indication how eventual reincorporation into the Republic of South Africa could be effected. This is only logical since it is not an event which was foreseen at the time of their independence. State constitutions, unlike those of voluntary organisations, do not contain provisions for their eventual demise. It would seem that, constitutionally, all that is needed for a TBVC country to become reincorporated into the Republic of South Africa, is a bilateral agreement in the form of a treaty between that country and the Republic of South Africa, agreed upon by the South African State President and the head of the state of that particular country. In the case of those countries with recognised military governments, the head of the military government will no doubt conclude such a reincorporation treaty.

In summary, a reincorporation of the TBVC countries into the Republic of South Africa will have to proceed in the following way:

(a) consultations with the people of the TBVC countries whether in the form of a referendum or other means of popular vote, to establish their wishes and to give effect to their right of self-determination.

(b) negotiations between the Republic of South Africa government and the TBVC governments concerning the conditions of reincorporation and the conclusion of a formal treaty between the South African State President and the heads of the state of the TBVC countries.

(c) the passing and adoption of legislation by the South African parliament to implement the treaty of reincorporation.

THE CONSTITUTIONAL DESTINY OF THE TBVC COUNTRIES WITHIN A FUTURE SOUTH AFRICA:

The formal reincorporation of the TBVC countries in a future Republic of South Africa by means of bilateral treaties does not, from an international/constitutional law point of view, present many obstacles. (In this respect, one has to agree with Professor Gretchen Carpenter, SA FOUNDATION REVIEW, July 1990, p4, when she says: "The reincorporation of the TBVC countries may create fewer problems then their unrecognised independence did."

What will be infinitely more difficult is to determine the constitutional destiny and place of those countries within the future Republic of South Africa. Were it so that the Republic of South Africa possessed a stable, fully legitimised constitutional order, matters would have been considerably easier. (For instance, when East Germany and West Germany decided to become reunited, the latter had an established constitutional order and it was relatively easy for the two states to determine the destiny and place of East Germany within the ambit of the existing German Federal Republic).

The truth of the matter, however, is that the Republic of South Africa's own constitutional future is in the grip of extreme uncertainty and speculation. To compound the situation, the present system of government in the Republic of South Africa suffers from a severe lack of legitimacy. Reincorporation of a TBVC country under present circumstances by the South African government and implemented by the South African Parliament might be at this stage be very premature and even hazardous. What if a TBVC country is presently reincorporated into the Republic of South Africa as a province (or a part-province), or an autonomous region or a member state of a South African federation, and eventual constitutional development in the Republic of South Africa occurs in such a way that an entirely different order emerges under which the former TBVC country is forced into a situation which was never considered or foreseen at the time of its reincorporation?

Ideally, therefore, the existing constitutional order in the Republic of South Africa should first be transformed before the TBVC countries decide on their reincorporation. The trouble with such a wait-and-see attitude on the part of the TBVC countries would be that the tide of constitutional reform and transformation in the Republic of South Africa might sweep over them leaving them with an option which was never negotiated with them. They might even be confronted with a situation which is totally unacceptable to them. Another danger inherent in the non-participation of TBVC countries in the broad South African debate and forum for constitutional transformation, is that changes in the Republic of South Africa might severely affect the interests of these countries without them being given the opportunity to defend such interests.

Strategically, if the TBVC countries should decide to be reincorporated into the Republic of South Africa, it seems that these countries should adopt two simultaneous approaches, namely an institutional and a political/bargaining approach.

The institutional approach means that the Republic of South Africa and the TBVC countries, through bilateral and multilateral agreement, pave the way for eventual reincorporation without for the time being, abandoning the present independent status of these countries. Agreements should be reached for the re-transfer of those functions to the Republic of South Africa which could in a future Republic of South Africa be better exercised by a central government. Also, governmental functions such as foreign affairs, finances and economic development should be transferred to more centralised institutions while socio-economic functions such as housing, education and welfare should be extended beyond existing TBVC borders and undertaken jointly with the Republic of South Africa government. In short, the institutional approach implies that during the time when the Republic of South Africa is in the process of transforming its own constitutional order, the TBVC countries should enter into an active and very energetic confederation with the Republic of South Africa with strong centralised tendencies, especially as regards those functions which in a future South Africa will belong to a central government (be it a federal or a decentralised unitary government).

The political/bargaining approach of the TBVC countries set on eventual reincorporation, implies that these countries participate in and actively contribute to the negotiation process in the Republic of South Africa. Once the TBVC countries have decided on reincorporation, they will have a direct interest in the future constitutional dispensation of the Republic of South Africa and must be allowed the right of full participation. By being partners to the negotiation process in the Republic of South Africa, the TBVC governments can, together with their other negotiation partners, consider all the possibilities for future accommodation of their countries in a new South Africa. In this respect, a couple of possibilities present themselves:

1. the former TBVC countries could become totally integrated and lose all vestiges of their erstwhile independence, which in practice, will mean that they will be dispersed in local urban and rural governments just like all the other parts of the Republic of South Africa;

2. the former TBVC countries could become provinces, sub-provinces or regions in a united South Africa with limited deconcentrated governmental functions which, in practical terms, would mean that they become administrative units of the central government or;

3. the former TBVC countries, either on their own or with other adjacent regions, could become semi-autonomous provinces in a united but strongly decentralised South Africa with their own legislatures and executives under the overall supremacy of the central government;

4. the former TBVC countries, either on their own or combined with other adjacent regions, could become autonomous states in a South African federation.

It is impossible to predict what the outcome of the negotiations on a future South Africa will be. For that reason it is impossible at this stage to say what the final destiny and place of the TBVC countries, once reincorporated, will be. What is of the utmost importance, however, is that negotiations about the place of these countries should be undertaken together with them. Furthermore, a future dispensation should be negotiated which does not serve the political ideology of one or two political parties but should be to the advantage of all South Africans.

It would be preposterous to suggest that the TBVC countries, once they have decided to become reincorporated into the Republic of South Africa, must accept whatever fate befalls them. As active participants in the negotiation process, it would be constitutionally sound and legally correct to allow them the opportunity to go back to their people and assess the support for a particular solution. In this respect, the observation by the Transkei government in its memorandum to the proposed Referendum Decree, 21 June 1990, p5, is correct: "It may be that the whole exercise of determining the attitudes of Transkeians to future developments will resolve itself into a two-phase exercise and that in the future a second referendum may be held to determine the basis of Transkei's participation in the proposed constitutional framework which emerges as a result of the talks which are scheduled to take place." Although it is generally accepted and realised that there is an extreme urgency in finding a new constitutional order for the whole of South Africa, it would be unwise to by-pass the wishes and sentiments of the people of the TBVC countries about the exact nature of their constitutional and political destiny in such a new order.

CONCLUSION

Two concluding observations need to be made.

1. The fact that a TBVC country and its people has decided that it wants to be re-incorporated into the Republic of South, does not mean that the government in that country immediately becomes a caretaker government. It could happen that negotiations for a new South Africa flounder or become protracted for the government of a TBVC country which has decided to be reincorporated into the Republic of South Africa.

2. This paper deals only with the possibilities for reincorporation of the TBVC states into the Republic of South Africa. Should one of these countries decide to maintain its status quo

and remain independent, an entirely new scenario will have to be devised. Continued independence for a TBVC country in the context of a new South Africa could be a rather thorny issue and the question may be asked whether such a state would have any real chance of survival without the support of the present South African government and in the face of continued rejection by African and world governments.

Legal aspects of a Referendum by Professor H.P. Viljoen, University of Pretoria.

1. HISTORY OF REFERENDA

We owe many of our ideas about democracy, parliament and balloting to the ancient Greek philosophers. Although it seems to me that everyone writing about democracy has tried to give his own definition of the concept, I will settle for the Concise Oxford Dictionary's namely:

"Government by all the people, direct or representative; form of society ignoring heriditary class distinctions and tolerating minority views."

The word democracy has its origin in the Greek word "demok ratia" and that word is derived from "demos" meaning the people. Government by the will of the people, also referred to as popular sovereignty, is a concept of constitutional philosophy which has suffered many vicissitudes through the ages. Time does not allow me to give even a cursory overview of the history of mankind striving to govern itself through popular sovereignty. What can be stated, however, is that greater public participation in governmental affairs can invariably be linked to increases in the level of literacy of the population, so that one can say that democracy and literacy are causally related. I shall come back to this point at a later stage in my paper.

The will of the people usually finds its expression in parliament where the people govern themselves indirectly through elected representatives. Other, more direct means of expressing this will have been devised through the centuries , like the referendum and plebiscite. As far back as the early years of the Roman Republic the assembly of plebians or free commoners could pass a resolution, called a "plebiscitum", which with certain important limitations, had the force of law. A writer like Lawrence Farley PLEBISCITES AND SOVEREIGNTY - THE CRISIS OF POLITICAL LEGITIMACY records as the first international plebiscite the one organized by the burghers of the city of Geneva in 1420 wherein they rejected a plan by the Duke of Savoy to annex their city to the County of Geneva. Another writer, Austin Ranney (THE REFERENDUM DEVICE) regards as the first modern referendum the one in 1788 wherein the citizens of Massachusetts had to consider the ratification of a proposed state constitution. Farley informs us that after 1848 the pace of democratic reform quickened, parliaments spoke with greater authority, the secret ballot was introduced and the plebiscite became a regular feature of European diplomacy to settle international disputes regarding sovereignty.

After World War I and the demise of the Austro-Hungarian and Ottoman Turkish empires, the map of Central and Eastern Europe was transformed. In many of the disputed areas the ethnic composition of the population was mixed and thus plebiscites were conducted in areas such as Schleswig, Allenstein and Marienwerder, the Klagenfurt Basin, Upper Silesia and others, in order to determine their fate. As an instrument of conflict resolution the plebiscite proved its value.

With the defeat of Germany, Italy and Japan in the Second World War, their former colonies were placed under the supervision of the United Nations Trusteeship Council with the ultimate purpose of leading them to independence. Consequently, the Trusteeship Council supervised many referenda and plebiscites in the Trust Territories. One such example is the plebiscites held in the Trust Territory of the British Cameroons between 1959 and 1961. In

these plebiscites, the inhabitants chose to become part of the Republic of Cameroons while the inhabitants of the northern districts chose to form part of Nigeria. Farley emphasizes the role of the plebiscite as a tool to resolve disputes over sovereignty.

Concluding the historical overview of referenda, I would like to quote from Patrick Boyer (LAWMAKING BY THE PEOPLE):

"Historically the Referendum is the offspring by unbroken descent of the primitive mass meeting of self-governing citizens. Both in Switzerland and the United States, the only countries where it flourishes today, the whole body of citizens were from the earliest times (in the Swiss cantons from the thirteenth century, and in the American colonies from their foundation) accustomed to exercise all the functions of government for themselves in open assembly.

"This direct control over the affairs of State were never entirely surrendered, and when the assemblies of all the citizens became impracticable and more and more powers had to be delegated to representative councils, the Referendum came into being gradually and naturally, not as an accession of popular power, but as a mere retention by the sovereign people of certain important powers in their own hands." (Page 6)

2. CLASSIFICATION OF REFERENDA

Up to now the words referendum and plebiscite have been used without distinguishing between the two. The authorities whom I consulted do not all concur in their classification of this form of direct popular participation in governmental affairs. A Dutch authority Bijvoet (DIRECT VOLKSWETGEVING, REFERENDUM EN VOLKSINISIATIEFRECHT) put forward the following classification:

(a) the "OBLIGATOIR" or IMPERATIVE REFERENDUM: the government is compelled, usually through a provision in the constitution, to submit a question of constitutional amendment to the vote of the people. The outcome of such vote is binding upon the government;

(b) the FACULTATIVE REFERENDUM: this type of referendum depends on the initiative of the people. According to the constitution, if a certain number of the voters requests so, the government is obliged to put a matter of national importance to the popular vote. The outcome of such a vote is binding upon the government;

(c) the CONSULTATIVE REFERENDUM: in this case the initiative originates with the government which "consults" the people on a matter of public importance, but is not constitutionally bound by what the voters decide.

Another authority, Nevil Johnson (in Ranney (ed) THE REFERENDUM DEVICE has a more elaborate classification with some illustrative examples:

(a) the CONTROLLING REFERENDUM, which corresponds with the imperative referendum above. According to Johnson this operates as a kind of a people's veto on constitutional amendments or revisions proposed by government. Examples of countries where this device is used are: Ireland, Switzerland, and various states of the United States of America;

(b) the FACULTATIVE REFERENDUM or what he calls the initiated permissive referendum. This is the same as the facultative referendum mentioned above where a referendum must take place if a specified number of voters so request. This type of referendum

can be regarded as a means of stimulating popular participation as well as a restraint on government in ordinary legislation. An example of a country where this type of referendum is used is Switzerland where the constitution provides that such a referendum on ordinary laws has to occur at the behest of at least 30 000 voters. He also quotes recent examples of such kind of referenda in the German state of North Rhine Westphalia and in Italy. Like the controlling referendum, the outcome of this type of referendum is binding on the government.

(c) the PLEBISCITARY REFERENDUM which he sees as a device to legitimize the actions of a government or political leadership. According to him this type of referendum is often used by a government anxious to establish a claim of popular support or democratic legitimacy. He sees an element of this type of referendum in article 11 of the constitution of the Fifth French Republic. A further example is the referendum in 1975 in the United Kingdom on the European Community issue which was seen by many as a vote of confidence or no confidence in the government. This type of referendum can also be misused by authoritarian governments to drum up popular support in their favour. In extreme cases people vote in favour of the government's proposal because they fear to do otherwise. It is uncertain to what extent a government is bound by the result of this kind of referendum;

(d) the CONSULTATIVE REFERENDUM, which is called for by the government to advise it on matters of national importance, but neither the legislative nor the executive branch of government need pay any attention to the outcome. An example given by Johnson is that of Sweden in 1955 where a referendum of the question of driving on the right hand side of the road received a negative vote. However, within a decade the Swedish parliament (the Riksdag), contrary to popular verdict, passed a law making it compulsory to drive on the right.

In South African literature on this subject, there seems to be general consensus on the classification of referenda into those whose outcomes are binding on the government and those whose outcomes are not. The terminology used for those two classes, is referendum for the first mentioned and plebiscite for the last mentioned.

3. REFERENDUM REPRESENTATION AND PARLIAMENTARY SOVEREIGNTY

From examples quoted by authorities, one can conclude that the referendum as a method of democratic participation in governmental affairs is gaining ground. Butler (in Ranney (ed) THE REFERENDUM DEVICE) mentioned 20 referenda in France in modern times, 14 in Denmark,39 in Australia and 305 in Switzerland. Various factors could be mentioned as contributing to this phenomenon, one of which is probably disillusionment with the representative role played by members of political parties in parliament. Although I am not suggesting that elections for representation in parliament are not regarded to be the best methods of democratic participation in government any more, there appears to be increasing scepticism about the role of political parties in the conduct of governmental affairs. This has to do with party discipline and party interest which are not always reconcilable with public interest. Direct popular voting on important constitutional issues and even on moral issues of serious public consequences, may be a handy mechanism of rectory faith in the democratic principle which is sometimes so sadly lacking in countries which are supposed to be the bastions of democracy.

Having said this, one has to face the most serious argument against the concept of referendum, namely the challenge it poses to representative government. If one adheres to the

democratic principle that the will of the people is expressed through the ballot in a parliamentary election, one has to accept that the chosen representatives speak and decide on behalf of the people. A referendum to seek the will of the people on a particular law or important moral issue, seems to be superfluous and even contradictory in a state governed by democratic institutions. The argument against a referendum becomes even more convincing in a Western type of government where the sovereignty of parliament is one of the central tenets. When Parliament has spoken, no other lawmaker (and I am sure if Dicey had thought of a referendum, he would have added: not even the people themselves!) can change this. An argument I have encountered in favour of a referendum on bills already passed by parliament in a Westminster system, namely that the people could be regarded as a third chamber, seems to me too artificial to be convincing.

Another argument against the extension of direct participation in governmental affairs through a referendum, is the real danger of eroding the principle of responsibility borne by elected office holders. As Nevil Johnson put it, the person voting in a referendum bears no responsibility for the decision and what follows, he cannot be held accountable, while the elected holder of an office has duties, can be required to justify a decision, and can be dismissed from office. In other words, a referendum is a device which could be misused by elected office holders to hide behind people.

I hasten to add that it should not be deducted from what has been said above that I am against the idea of a referendum. Important constitutional changes should, in my view, not be made without consulting the people, especially in the case of possible change of sovereignty of the state as is about to happen in the Republic of Transkei. A similar problem faces the Republic of South Africa. President F W De Klerk is being accused by the official opposition that he has no mandate from the (White) electorate to negotiate with the ANC on the future of the country. Whether this is correct or not, it adds force to the argument that any important change to the present constitutional position of the Republic of South Africa would have to be submitted to the people of the country (and not only the White ones!).

With the governing of state becoming more complex and a growing feeling of remoteness by people from the institutions governing them, the protagonists of the referendum idea have a forceful argument in the direct control that a referendum offers over these institutions. Examples of the complexities of modern government are contained in the many problems arising in this sub-continent of Africa in the environmental, socio-economic and other fields. These matters are not always debated during election campaigns, they might have arisen since the last election, or for whatever reason, one can say that the government has no mandate from the people to decide the matter one way or the other. In this instance a referendum would be the correct democratic device for public participation in these important matters.

Finally, despite misgivings about the effect of referenda on the principle of parliamentary representation and the sovereignty of parliament, it seems as if the notion of the referendum is gaining popularity with governments so that even the original Westminster government, namely that of the United Kingdom, has employed it twice in recent years to decide issues of membership of the European Community and devolution of power to Scotland and Wales.

4. TERMINOLOGY

This brings me to the terminology used by governments when making use of this device. Mention has just been made of the two referenda (as they were called) in the United Kingdom. Constitutional experts agree that the results of these referenda were not binding on the

government although it must be stated that the government agreed to abide by the decision in the devolution referendum if a 40% yes vote could be obtained.

In South African constitutional history there are also examples of what are called referenda. In 1909 a referendum was held in Natal to approve of entry into union with the other three British colonies to form the Union of South Africa. In 1960 a referendum was held to decide whether the Union should transform itself into a republic. Again in 1983 a referendum was held to approve of the Constitution Act 110 of 1983. Constitutional lawyers are in agreement that in not one of these cases the government concerned was legally bound to abide by the outcome of these referenda. Writers like Verloren van Themaat-Wiechers, Carpenter and Basson & Viljoen are all of the view that these referenda should rather be termed plebiscites. Verloren van Themaat-Wiechers state that the Swiss-type referendum is unknown to the Westminster system of government with its principle of sovereignty of Parliament. Because of this principle, government could not be bound by the result of this popular vote and therefore it is more in the nature of a plebiscite.

If one accepts this to be the correct constitutional position, it seems to me that what the government of the Republic of Transkei calls the proposed referendum on the constitutional future of Transkei, is in constitutional law terms in the nature of a plebiscite. I could find no provision in the Republic of Transkei Constitution Act, 1976, requiring of the government to submit any proposed constitutional changes to the vote by the people in what has been categorized above as an imperative or controlling referendum.

Neither is there provision in the constitution for a facultative referendum. The only possibility, therefore, according to the above classification, is that we are dealing here with a consultative referendum. This can also be deducted from the wording used in the explanatory memorandum published by the Department of Interior on 21 June 1990 eg.:

"...the Government is desirous of sounding the views of Transkeians on this question. It wishes during the course of future negotiations to be able to speak with conviction and with the knowledge that it has the people behind it on this crucial question."

and further on, regarding the acceptance of independence in 1976:

"... a momentous step which lacked the stamp of public approval because the public at large were not consulted concerning it."

It is thus clear from the above wording that the intention of the government with the proposed referendum is to consult the inhabitants of the Transkei for their views of the continued independence and status of the country. In constitutional law terms the government will not be bound by the outcome of the referendum. If the majority of the people vote for the retention by Transkei of its present sovereign status, but the government attends the negotiations on the constitutional future of South Africa and becomes convinced of the advantages, materially and otherwise, of re-uniting with South Africa, it would be free to do so. The Transkeian parliament is sovereign in the sense that it can make or unmake any law. As the supreme legislative body in the Transkei it could legally repeal the Republic of Transkei Constitution Act, 1976 as provided for in section 75 of the Act itself and pass any Act providing for the reincorporation into South Africa.

My view, therefore, is that the proposed referendum in the Transkei is in constitutional law terms a plebiscite. But as Shakespeare said: "What is in a name?". If the average citizen

of the Transkei understands with the word "referendum" that the government is seeking his or her view on the future of their country, that is fine, provided that it is made clear to the people that they are merely consulted and that the opinion of the majority would not necessarily be given effect to. The people would have to be informed that the parliament of the Transkei is still the supreme law maker, whatever the result of the referendum, and that their representatives in parliament would have the final say on the constitutional future of the country.

5. RISKS INVOLVED IN A REFERENDUM

Talk is rife in South African politics of hidden agenda. I do not claim to have any intimate knowledge of Transkeian politics and I do not know what result the Transkeian government hopes to achieve with this referendum. The government should be aware of the risks involved in such a referendum. If, for instance, the majority of the people vote for reincorporation into South Africa, the government would have to decide whether it would go along with this view. If it does, it would amount to a kiss of death because parliament and government would have to be dissolved and office holders would have to accept lesser status in what might become a province in a unitary South African state.

If the government does not give effect to the wish of the majority for reincorporation, it could jeopardize its claim to legitimately representing the people of Transkei. I suppose this is the risk encountered by all governments utilizing the device of plebiscite, especially for consulting the people on such momentous matters as the present one. I would therefore suggest to the Transkeian and South African governments that any future constitution of their countries, be they separate or united, contain provision for a referendum of the imperative or controlling kind when important constitutional amendments are envisaged. In such cases the government and parliament would be bound by the outcome of the referendum. Other, "non-constitutional" matters like environmental issues, the implementation of a national health scheme, deciding on what side of the road one should travel, and so on, should be submitted to the people by way of a plebiscite. The government would not be required by constitutional law to give effect to the result of such plebiscite.

6. PROCEDURES PERTAINING TO A REFERENDUM

As in the case of parliamentary elections, it is of the utmost importance that the whole referendum be conducted in a free and fair manner. This is necessary even in the case of the consultative referendum or plebiscite for, although government and parliament are not bound by the result, a referendum wherein people have been intimidated or prevented from voting in secret or whatever, does not reflect the will of the people but is a charade and also a waste of taxpayers' money.

To secure this ideal of a free and fair referendum, detailed procedures of internationally accepted standards should be applied. I have read the Referendum Regulations published on 21 June 1990 and they seem to be in accordance with internationally accepted norms. That in itself is not the only guarantee for a fair referendum. The police would have to play their role in protecting the public against intimidation and other illegal acts. Ideally, an outside, independent international organization should be asked to supervise the referendum and certify afterwards that it was free and fair. This would ensure that the referendum acquires legitimacy in the eyes of the world and indeed in the eyes of the voters of the Transkei. A recent example of an outside international body playing a role in an election in our region, was the case of the United Nations supervising the elections in Namibia during November 1989.

The last point that I would like to raise is the framing of the question to be put to the voters. I stated at the beginning of my paper that democracy and literacy are causally related. The referendum question should be worded in such a way that the people would understand exactly what the issue is all about. The adult literacy rate is a vital factor in this regard. According to some recent statistics Transkei has an adult literacy rate of 62%. This compares well with Namibia where the rate is 68% and with other African countries. (Source: 1987 AFRICA INSIGHT vol 17 no.4). This rate is probably high enough to ensure that a substantial number of voters would be adequately informed and be able to grasp the issue. Interestingly enough, provision, is made in regulation 11 of the Referendum Regulations for voting by illiterate voters.

Quo Vadis Transkei (Which way are you going Transkei) by Professor George Devenish - University of Natal.

1. INTRODUCTION

Transkei stands at the cross roads of history. It must decide whether to continue along the problematic road of sovereign independence it embarked on in 1976 or to seek reincorporation into a new post-apartheid South Africa. Transkei's destiny is inextricably bound up with its powerful neighbour and it cannot be isolated from the constitutional and political saga unfolding in South Africa. In order to endeavour to answer the question posed it is necessary to consider the historical and political events that have resulted in Transkei's present constitutional status. Its political legitimacy and economic viability in the light of the changes that have taken place in South Africa and Transkei must be carefully evaluated.

2. HISTORICAL BACKGROUND

The genesis of colonial administration of African people in South Africa occurred in 1835 when the territory known as the Province of Queen Adeliade was annexed by the British Crown. This was followed by a treaty in terms of which approximately 72000 blacks came under colonial rule thereby becoming British subjects but retaining their own rules and customs under the control of the Cape government. As different territories beyond the Kei River were annexed the various annexation Acts bestowed on the Governor of the Cape Colony an untrammeled power of edictal legislation in respect of these areas. By virtue of the Transkei Native Territories Act this unrestricted power of edictal legislation was ratified and consolidated. Therefore the Transkeian territories became part of the Cape Colony by means of colonial annexation.

With the formation of the Union of South Africa in 1910, the Transkei, which had been annexed and incorporated into the Cape in the 19th century, became part of the Union of South Africa. Thus its fate was different from the former high commission territories of Bechuananaland, Swaziland and Basutuland, which never became part of South Africa and thus were to be de-colonized by Great Britain at a much later date. Imperial de-colonization was perfectly legitimate and the three former high commission territories have been accepted into the community of nations as independent states and have been accepted as members of the United Nations and the Organization of African Unity.

3. THE IMPLEMENTATION OF THE POLICY OF SEPARATE DEVELOPMENT

Transkei was to undergo a controversial process of internal de-colonization as a result of the opprobrious policy of apartheid of the South African government, which flowed from the victory at the polls of the National Party in May 1948. Its policy in regard to rural Africans was one of Bantu self-government or indirect rule through the chiefs, which it put into effect using the Bantu Authorities Act of 1951. According to Dr Verwoerd this Act was intended to re-establish the "natural native democracy" in African rural areas. The system of Bantu authorities involved the replacement of western democratic principles in local government for Africans found in the local and district councils established in the 19th century in terms of the Glen Grey Act by "tribal" or oligarchic principles. African people were deeply divided by the merits of the new system proposed by Dr Verwoerd. Some traditional leaders and their followers welcomed the change as they hoped it would re-invigorate tribalism, which was in the

process of disintegrating as a result of urbanization and industrialization.

Understandably westernized Africans living in the urban areas were intensely critical since they perceived it as a pernicious system of divide and rule.

The philosophy of apartheid was based on the assumed irreconcilable cultural differences between whites and Africans. Democracy was seen as the exclusive product of western civilization and the tribal system of government was the corresponding indigenous development for Africans. Initially in 1952 the Bunga took the decision not to accept the Bantu Authorities Act. However, in 1955 a turning point was reached and a great triumph for the new system occurred when the Bunga changed its mind and unanimously accepted the system of Bantu authorities. From then onwards Transkei was to pioneer the whole process of internal de-colonization in South Africa via the policy of separate development. Transkei was thereby to become the foremost example of grand apartheid.

The next significant step in the process of the internal de-colonization of black people in South Africa was the Promotion of Bantu Self-Government Act of 1959. In terms of this legislation the African people of South Africa were categorized into different ethnic units. The legislation in question was a further manifestation of a policy of divide and rule. Dr Verwoerd indicated when piloting this legislation through the South African Parliament, that the different ethnic units or Bantustans could evolve and ultimately become independent states. Transkei, which had adopted a system of democratic local government in the 19th century was to further pioneer this policy and in 1963 Transkei was granted a self-governing apartheid-style constitution despite the fact that the majority of voters in the first Transkei general election voted in favour of Chief Victor Poto and the policies of multi-racialism that he stood for.

However, Chief Matanzima was able to adroitly mobilize the indigenous leadership of the Transkei to support him and ultimately his policy of co-operating within the framework of the policy of separate development was to be supported by the electorate.

Consummation of this policy was reached in 1976 when Transkei obtained sovereign independence by virtue of the Status of Transkei Act. The outside world viewed this whole process as part of the discredited policy of apartheid. The United Nations refused to accord recognition to the Transkei and only the South African government and future independent Bantustan states were to recognise the independence of Transkei. The relationship between the Transkei and South Africa was henceforth to be regulated by international law treaties. No longer was the relationship one of the constitutional nature, but it was one regulated by international law. This was, however to provoke a negative response from the international community. The other nominally independent states Bophuthatswana, Venda and Ciskei were to experience a similar response. Prof Carpenter explains the position as follows:

"The constitutional independence of the four territories ... was never recognised outside South Africa. The creation of nominally independent satellite states was seen by the international community ... as nothing more than a political ploy by the governing party to achieve the ideal of apartheid and to entrench white control over the country via "homeland leaders" regarded as puppets co-opted by the government rather than true leaders of the communities concerned".

4. POST INDEPENDENCE HISTORY

Transkei's post independence political and constitutional history has been characterized

by widespread corruption, political inefficiency and unconstitutional changes of government. One of the intractable problems that post-independent Transkei politicians were to face was the fact that Transkei was unable to obtain sufficient finance from abroad to bring about development in the country with very limited natural resources because it did not enjoy international recognition. Lack of political legitimacy made it impossible for Transkei to acquire even a semblance of economic viability. In 1987 when I contributed to the book edited by Mr Alan Rycroft entitled RACE AND THE LAW IN SOUTH AFRICA, I ended a chapter on the process of internal de-colonization in South Africa with the following era:

"In a paradoxical and tragic way ethnic fragmentation may indeed be only a stage in the circuitous process of the greater South Africa in a post-apartheid era."

This is likely to be the fate of all the nominally independent homelands, even Bophuthatswana is likely to be reincorporated ultimately into a post-apartheid South Africa. Political legitimacy and economic viability are likely to dictate this course of action.

Before the question of the mechanisms of reincorporation is considered it is necessary to outline the constitutional and international law position of Transkei. According to the constitutional law of the two states, Transkei is a sovereign independent state. Unilateral legislative action of the one does not affect the other. Thus if South Africa were to repeal the Status of Transkei Act this would not affect the status of Transkei according to Transkei Law. In the same way that the unilateral repeal of the Statute of Westminster by the British Government would not, according to South Africa law, render South African sovereign independence null and void. Conversely were Transkei to revoke its own independence this would not according to South Africa law make Transkei a part of South Africa again.

According to international law Transkei is part of South Africa and does not enjoy international recognition and no action taken either jointly or unilaterally by either state can change the position. Only recognition on the part of other states either individually or collectively, ie. through the United Nations or a regional organization such as the Organization of African Unity could change the status of Transkei International Law.

Prof Carpenter suggests that reincorporation could take place by two mechanisms: unilateral action on the part of South Africa or bilateral incorporation via a treaty between South Africa and Transkei. The latter would obviously be infinitely better than unilateral reincorporation by a post-apartheid South African government. The former would only be likely to arise if a revolutionary change brought to power in South Africa a radical black government that refused to entertain any dealings with an independent Transkei.

5. NEW INITIATIVE IN SOUTH AFRICA

On the 2nd February 1990, Mr F W De Klerk, the South Africa State President, made a speech of fundamental importance in the South Africa Parliament, which is likely to profoundly affect the destinies of all Southern African states including Transkei. In the speech he indicated that the ANC, the PAC and the Communist Party were to be legalized and that the government was to enter into a process of negotiation with the leaders of all political groups in South Africa. South Africa has, therefore, entered a new chapter in its history. Belatedly the National Party had reached the conclusion that political reconciliation in South Africa required negotiations with the leaders of the liberation movements and the total abolition of its policy of apartheid. The prognosis for political reconciliation in South Africa remains problematic, but it is not impossible and it depends on the quality of political leadership found in both the white and black

communities.

Transkei's experience with independence is accepted by most political commentators as having been manifestly unsatisfactory. The choice before Transkei is therefore to continue with an abortive and discredited experiment or to seek reincorporation into a new South Africa based on a post-apartheid constitution and to fulfill its role and destiny in a greater South Africa.

Obviously much will depend upon the nature of the new post-apartheid constitution and political settlement reached between the South African government and the leaders of the black people of South Africa. South Africa is, however, still in the embryonic stage of debating the fundamental political and economic issues in this regard: namely whether the new state is going to be a unitary state or a federation, the nature of the post-apartheid economy, the configuration of the electoral system and content and status of the bill of rights to be contained in the constitution.

6. SOME CONSTITUTIONAL AND ECONOMIC OPTIONS FOR SOUTH AFRICA AND THEIR RELEVANCE FOR TRANSKEI

The 1983 constitution of the Republic of South Africa has been described as a race federation because the divisions in the South African Parliament are along racial lines. Race as the basis on which to construct a constitution is discredited and illegitimate throughout the world and even in South Africa today. The South African government has at long last admitted that its experiment with the policy of apartheid was disastrous. Geographical federation is a perfectly respectable form of government. It is practiced in the greatest democracy in the world namely, the United States of America. It also finds expression in one of the most populous states in the world namely, India. Unfortunately there are many people in South Africa who equate the concept and the practice of federation with apartheid. This is a totally erroneous equation. Federation mitigates against a concentration and abuse of power and can effectively be used to distribute wealth.

However, because of the prejudice surrounding the term federation it is more expedient to decide whether in the new post-apartheid South Africa a certain measure of de-centralization is necessary and the extent to which the constitution should give expression to it and thus to avoid the express use of the term federation.

A considerable measure of de-centralized government will be essential for South Africa because of geographical, cultural and economic diversity. A geographical enlarged Transkei will have the infrastructure and the experience to form a viable de-centralized unit within the new South African state. In the process of negotiation, what will be important is not debating whether South Africa should have a unitary or federal system, but rather determining the extent and nature of de-centralization for prosperity and stability in South Africa.

Another vital issue of great importance to Transkei that is being discussed with great fervour in the press in South Africa is the nature of the economic system that should prevail in a post-apartheid South Africa. There are those who feel that because of the great injustice of apartheid and the resulting vast imbalance of wealth between poor blacks and wealthy whites a policy of nationalisation, land distribution and a planned socialist economy is essential to bring social justice to South Africa. There are others who believe that a pure market system facilitates maximum productivity and that this will bring about the desired socio-economic changes in South Africa. If South Africa is to have a negotiated political settlement and legitimate constitution there will have to be an innovative compromise on the part of all the

parties and political movements in regard to the new constitution and in regard to the economy. This compromise will have to involve INTER ALIA an ambitious and effective plan to redress inordinate black poverty and related socio-economic issues that exist in South Africa. Sacrifices will have to be made in reaching this compromise and the process will most certainly not be painless. Transkei does not have the human and material resources to address the problem and endemic poverty within its borders. South Africa as a whole does have these resources. What South Africa requires is an innovative social market economy. Dr R Gruber explains what this entails:

"The social market economy, in short requires active participation by the state, but not in an entrepreneurial, let alone imperative, capacity. It should be supportive of the market, and ensure at all times that competition is maintained through equality of opportunity, freedom of access and fair play. It should also ensure that the responsibilities towards society which wealth bestow upon those who have acquired it, are fully honoured. Last but not least, it must care for those who cannot compete for reasons of age, infirmity or disablement, and must assist those who are victims of circumstances, such as mass unemployment or natural disaster, to stand once again on their own feet."

Such an economic paradigm can operate within a liberal democratic framework. A planned socialist economy requires a totalitarian political system to operate within and is incompatible with liberal democratic principles and values. What will be required is not a planned economy, but a partnership between the private sector and the state to ensure "growth and ... acceptable levels of economic equality are achieved."

Nationalization without any compensation and an immediate revolutionary re-distribution of wealth in South Africa would have a devastating effect on the economy of South Africa and on overseas investor confidence which is important for future foreign investment and economic development in South Africa. Meaningful reform requires economic growth, which cannot take place without significant overseas investment. The white community has the expertise which is an invaluable resource and which is essential for the economic development of South Africa and all its people. It is therefore essential that the white community should enjoy a sense of security, despite the fact that it will have to relinquish all its privileges. Its members will have civil and political rights like all the other citizens of South Africa flowing from a justifiable Bill of Rights. There is virtually a consensus of opinion that the new post-apartheid constitution for South Africa will have to incorporate a Bill of Rights and that the courts will fulfill a fundamentally important role in the process of judicial review. In the new post-apartheid South Africa the constitution will have to fulfill the role not only of reconciling interests between whites and blacks but it will also have to fulfill the role of reconciling conflicting interests between different black groups in South Africa. Indeed the problems of post-apartheid South Africa are most likely to involve INTER ALIA black-black problems and not essentially black-white problems. In endeavouring to resolve these problems all the leaders of the most important political parties and movements in South Africa have a contribution to make. The people and leaders of Transkei have a constitutional experience in regard to de-centralized government going back into the 19th century and they therefore have an important contribution to make in the new South Africa, in which Transkei as an enlarged decentralization unit would form an integral part.

The policy of internal de-colonization (grand apartheid) and the independence of the Transkei has proved to be a CUL DE SAC. It is essential that the leaders and the people of Transkei get involved in drafting of new constitution and a political settlement for South Africa. Obviously it is essential to determine whether this is desired by the people of the Transkei and

this will have to be determined democratically by means of a referendum. In this regard Prof Carpenter has opined that "a convention has already developed that a referendum must be held before radical constitutional change is contemplated."

At the present there is an air of pessimism in South Africa because of the tragic violence that has occurred in Natal and particularly, of late, on the Witwatersrand. Despite this there is reason for cautious optimism. For the fist time in our history South Africa has a white political leader in Mr De Klerk who has faced up to the fundamental reality of the South African political situation that there are a majority of black people in South Africa and the whites are a minority and that ultimately South Africa will have to be governed essentially by black people. This does not mean, however, that whites do not have a role to play. Indeed their role is a seminal one. Mr De Klerk has indicated that he is a man of moral and political courage and that he is prepared to face the realities of the South African body politic. In Mr Mandela South Africa has a man of leadership, vision and charisma. Despite the fact that he has been imprisoned for nearly 30 years he is a protagonist of reconciliation and a leader who puts his viewpoint, however controversial, across without bitterness. Transkeians should take into account the quality of leadership that prevails in South Africa at present and compare it with the political leadership that prevailed in Transkei after independence. Leadership is a critical factor in the success or failure of any political programme.

Only a path of genuine compromise and RECONCILIATION can give South Africa peace and prosperity. It is therefore necessary to reject extreme policies whether these are advanced by whites or blacks. APARTHEID AND COMMUNISM HAVE PROVED TO BE UNWORKABLE AND MORALLY BANKRUPT POLICIES. Both are oligarchical in nature, thus for example in communist practice "a small minority within a minority is the ruling elite". Constitutional and political models based on these ideologies or partly based on them are doomed to failure. A new political and economic paradigm must be found. This paradigm should be constructed using a synthesis of the characteristics of successful political and economic systems.

This does not mean that socialism has no relevance for the current political constitutional debate that is occurring in South Africa. Marxism provides us with a powerful tool of critique which can be used with devastating correctness to indicate the weaknesses of liberal democratic and capitalist systems of government. However, Marxist systems of government have collapsed in Central and Eastern Europe and are in the process of collapsing in the Soviet Union.

It is necessary to look at the successful economic and political paradigms in Western Europe such as Federal Republic of Germany, which is one of social democracy. It is also necessary to examine the experience of the welfare state in Great Britain and the Scandinavian countries. The successful experiment of consociational democracy in Switzerland and Belgium is also relevant for South Africa. It is also necessary to consider the positive aspects of the American Constitution and in particular the Nigerian Federation of 1979 should be considered. Also of great importance is the post-independence history and experience of Zimbabwe, which must be carefully scrutinized. The success that Zimbabwe has achieved in regard to education, health services and agriculture needs to be examined. Also the problems emerging from the use of Marxist rhetoric resulting in the lack of foreign confidence and investment and the controversy relating to the establishment of a one-party state in Zimbabwe are relevant for our future political development in South Africa and should be carefully considered. It is also of vital importance that success of multi-ethnic government flowing from

electoral pooling in Malaysia be carefully evaluated.

7. THE NATURE OF THE CONSTITUTIONAL AND POLITICAL COMPROMISE THAT COULD BE REACHED AND HOW TRANSKEI COULD BE INVOLVED

The ultimate compromise that will be reached in South Africa will be very different from the "opening bids" made at the negotiation table by the respective parties since negotiations between implacably opposed enemies normally start with both sides stating extreme positions.

From those public stances then begin the long processes of compromise, bargaining, give and take assuming that both sides start with a real will to negotiate, that is how mutually acceptable deals are arrived at.

The compromise that could be reached in South Africa that would provide a just and stable constitution and a political settlement ensuring prosperity for South Africa, including Transkei as an enlarged decentralized unit, should include INTER ALIA:

(a) A government involving strong central government which should be coupled with a meaningful measure of decentralization of political power to the various viable economic and geographical units of South Africa. This could occur both within a unitary state or a federation. If a federation is adopted it would have to be a symmetrical one which according to Tarlton is one in which the regional units would, as far as it feasible, have to be microcosms of the whole state in regard to geography, the economy and cultural and political diversity.

(b) The geographical and economic units should not be based on the borders of the Bantustans so that if Transkei is to form a decentralized unit in the new post-apartheid South Africa, then it should INTER ALIA include the metropolitan areas of the Eastern Cape including the harbours of East London and Port Elizabeth so that it could constitute a viable economic unit which would be an important centre for the expression of Xhosa cultural sentiment, but not to the exclusion of other groups. Such a unit would have far greater economic viability. The same principles should apply to the Zulu people found in Natal. These decentralized units would not be Bantustans, they would be geographical and economic regions of a unified South Africa. In each there would be cultural and linguistic diversity. A concentration of Zulu people and their cultural activities in Natal should in no way adversely affect the cultural expression of other cultural groups such as Indians or English or Afrikaans-speaking persons.

(c) Certain consociatal characteristics which ensure government by consensus should have to be incorporated into the constitution.

This applies to regional and local government. Thus an adapted version of the Indaba proposals for an enlarged Transkei as an integral unit is worth considering and debating. The constitution should not be a pure consocialism but certain characteristics of consocialism could be incorporated such as for instance a grand coalition of executive government and a sharing of executive power between the different political parties in South Africa . In this regard Professor L Schlemmer is of the opinion that one party domination in South Africa was unlikely because the ANC could battle to draw more than 50% support at the polls and opposition parties unlikely to obtain less than one third.

Provision should be made for proportionality and segmental autonomy ie. voluntary cultural association in the new state. The former require that representation in the civil service must at all levels aim ultimately to reflect the population ratios in South Africa. The question of

mutual veto poses serious problems since it could immobilize government and if used at all it should be used as little as possible and used with circumspection.

(d) The constitution should contain a Bill of Rights, which should include certain basic socio-economic rights such as a national health scheme, school feeding for all children and equal education. Indeed provision can be made for an expanding Bill of Rights as far as socio-economic rights are concerned. By this is meant that more socio-economic rights can be entrenched as the economic position of South Africa improves. In this regard the Law Commission has done sterling work with its monumental project on "Group and Human Rights".

(e) In addition to the constitution, there will have to be a plan of economic rehabilitation for impoverished black communities that would have to be put into effect over a fixed period of time and to which all the political parties involved in drafting the constitution will also be a party. This should form part of the political settlement.

(f) A plan of land distribution over a period of time would have to take place within the framework of the constitution. The state would have to purchase and if necessary expropriate land and make it available to black farmers, who would have to be trained to farm productively. Furthermore the gross iniquities of the past relating to forced removals will have to be corrected. This is a very sensitive issue that will have to be faced and resolved with imagination, innovation and sensitivity.

(g) An equitable tax system that would effect a transfer of wealth over a period of time taxing accumulated wealth in a way that would not damage productivity. Redistribution of wealth which is essential for peace and stability will have to take place through taxation and not through nationalization. What will be required is an economic programme based on the concept of a "People's budget". This is not as its name might imply a neo-Marxist concept but a liberal one, first used in Great Britain by the Liberal Party government in 1909 to raise revenue for social service. It taxed the vast accumulated wealth of the wealthy landlords.

(h) An electoral system involving a synthesis of both proportional and regional representation, ensuring both stability and democratic government. The Malaysian electoral system involving vote pooling has been a great success in the governing of a deeply divided multi-ethnic community. In this regard Horowitz comments that:

"In Malaysia ... there is a multi-ethnic coalition running a single state which impels Malays and Chinese politicians, in heterogeneous constituencies, to rely in part on votes delivered by politicians belonging to the other ethnic group. Those votes would not be forthcoming unless leaders could portray the candidate as moderate on issues of concern to the group that is to deliver its votes across ethnic lines.

Consequently, compromises at the top of the coalition are supported by electoral incentives at the bottom. Also according to Horowitz, vote pooling creates statesmanship with rewards.

(i) A bicameral legislature in order to balance the conflicting interests between democratic majority rule and the protection of cultural and language minority interests. In this regard, it is important to bear in mind that untrammelled majoritarianism is a vehicle for the tyranny of the majority because:

"though the will of the majority is in all cases to prevail, that will to be rightful must be

reasonable: that the minority possess their equal rights, which actual law must protect, and to violate would be oppression."

A bicameral legislature would provide a special form of representation for the decentralized units like Transkei in the upper chamber or Senate.

8. CULTURAL DIVERSITY

Constitutional protection for cultural and language minorities should be distinguished from undemocratic minority privileges. Constitutional mechanisms to ensure minority protection do not necessarily negate the substance and ethos of western democracy. Indeed as Fein points out:

'there is no reason either in international law, constitutional philosophy, or experience that would justify a dogmatic attachment to a South African constitution that would operate from a pure majoritarian power base. Such unyielding demand would suggest the ugly goal of majoritarian tyranny over minorities.'

Also it must be borne in mind that when white minority domination comes to an end, cultural and ethnic differences will not dissapear , indeed, they may become even more apparent.

Furthermore they will compete in the political area and it will be essential to have effective mechanisms of political resolution and diffusion of conflict. South Africa requires a system of democratic majority rule. This is, however, not unchecked majoritarianism or black majority rule as opposed to white minority rule, but rather a system of majority rule that can involve all groups Afrikaans, Zulus, Xhosas, Indians in the majority. A ganging up of blacks in the majority and whites or Indians exclusively in the permanent minority position would be disastrous for South Africa. Alex de Tocqueville cautioned against tyranny of the majority when he observed:

"if ever freedom is lost in America, that will be due to the omnipotence of the minorities driving majorities to desperation and forcing them to appeal to physical force."

A new constitutional and economic model for South Africa should involve the preservation of local and regional autonomy coupled with a strong central government, that should endeavour to govern by a process of consensus government, by including representatives of all the major political parties in executive government at all levels. This means in effect a best-man government. Their policies will have to be guided by a POLITICAL SETTLEMENT which should provide INTER ALIA for a social democratic economy that is aimed at the economic rehabilitation of impoverished communities made possible by a vibrant economy and the protection of cultural diversity. This political settlement will have to involve INTER ALIA an agreement between:

(i) the leaders of the Afrikaners who would require INTER ALIA the preservation of their language and culture and mother instruction;

(ii) the leaders of the black majority who want socio-economic and political justice and peace for their people and a resolution of ethnic conflict. The resolution of ethnic conflict is of great importance of both Xhosa and Zulu people and their leaders. Transkei has an important contribution to make in this regard.

Other black linguistic and cultural groupings, such as the Zulus also have an important role to play. In the new South Africa there will have to be a judicious balance, cultural diversity and national unity. There will have to be an over-riding sense of national patriotism coupled with a respect for and toleration of cultural diversity.

The leaders of each of the above groups have an indispensable role to play in the formulation of a new and just society. For this, innovative compromise is required from each. This political settlement would have to involve a programme for education, housing, health and employment. Political stability and wise government in South Africa could encourage meaningful economic investment, which in turn will create employment and prosperity. As economic rehabilitation is essential for reform, the lifting of sanctions, which was considered essential to force the National Party to abandon apartheid and commence negotiations with legitimate black leaders is imperative now. Extremists on the left and right of the political spectrum should not be allowed to wreck the prospect for a workable and just new political and economic order. What South Africa requires is a compassionate society, that will flow from a genuine welfare state based on democratic principles.

All people of colour have suffered enormous injustices because of the policy of apartheid, devised and ruthlessly applied by Afrikaner nationalists. They have also suffered as a result of pernicious and avaricious capitalistic exploitation by the essentially English-speaking business community. They are now expected to display an attitude of Christian forgiveness to people who have harmed them so greatly. This is asking a great deal. As a people they have demonstrated that they have the great quality of forgiveness which is so urgently required in our society and body politic. Their leaders like Albert Luthuli and Nelson Mandela, Transkei's most illustrious son, have also demonstrated in their lives the quality of forgiveness. Without it there cannot be peace and stability in South Africa. What is also urgently required of whites, both Afrikaners and English speakers, is an attitude of humility for past wrongs committed against people of colour and a willingness to admit serious moral and political mistakes in regard to blacks and a determination to contribute to the economic and political reconstruction of South Africa. The moral, religious, and psychological issues cannot be ignored. The process of economic and political reconstruction must take into account the hatred and bitterness engendered in blacks by the policy of apartheid and capitalistic exploitation. Whites also have legitimate fears that South Africa will be engulfed in a Lebanon-like blood bath. The Christian Church has a fundamental role to play in the process of reconciliation in South Africa because there have to be fundamental changes in the attitudes of people both black and white in South Africa. Apartheid was at one time theologically defended by influential leaders in the Dutch Reformed Church. Liberation theology and its qualified condonation of violence, was a reaction to the theology and practice of apartheid. South Africa requires a cogent theology of reconciliation to heal the wounds inflicted by the policy of apartheid and to address white fears. Without it, it is unlikely that the compromise that is necessary to bring about a legitimate constitution and a negotiated settlement, acceptable to a sufficient number of both whites and blacks and their leaders, will be reached. The crisis of the present time presents the Christian Church with the greatest challenge in its history in South Africa.

9. CONCLUSION

Transkei's prognosis as an independent state was always fraught with political and economic problems. Its prognosis as an independent state in a post-apartheid Southern Africa will be infinitely more problematic. Political legitimacy and economic viability require that it be

integrated into a new post-apartheid state, which the people of Transkei and their leaders should help to create. The ghost of Dr Verwoerd, architect of apartheid, must be exorcised. It is virtually impossible for an "independent" Transkei to acquire political legitimacy in a post-apartheid era and economic viability is inextricably linked to political viability. A new and dynamic Transkei must arise as part of a just and non-racial South Africa. There is no other alternative. Peace and prosperity can be secured for South Africa. This will, however, require a mammoth effort, vision and great determination. All South Africa's people and their leaders, including those of Transkei, have a role to play in this regard.

Transkeians by their labour, have contributed in no small way to make South Africa the industrial gaint of the African continent and one of the greatest mining countries of the world. They have a right to share in its prosperity. Peace, economic and social justice for all South Africa's people will not be achieved overnight, but substantial progress could be achieved within the next decade if the leaders of South Africa demonstrate statesmanship and a spirit of reconciliation. The wave of violence which has spread like wild fire through South Africa threatens the peace process and a superhuman effort must be made to contain and eliminate it. In this regard the people and leaders of Transkei also have an important role to play. It is essential that the people of Transkei be involved in the great political and constitutional saga emerging in South Africa and in the efforts required to secure peace. The shackle of apartheid must be thrown off once and for all. The leaders and people of Transkei must negotiate a return to South Africa. This will involve a great act of political faith in a new and just South Africa that is already inexorably emerging amidst trauma, travail, expectation and hope.

SAYCO's view on the referendum by Mr. T. Mgidlana, SAYCO, Umtata.

We wish to say that it is not true that the people of SA and of Transkei in particular were consulted about the granting of independence to Transkei and all other Bantustans. The white minority regime introduced the homeland policy Land Act of 1913 and 1936 which allocated 13% of land to the Blacks and 87% to the Whites without consultation with the Black people. The Bantustans are a product of this long process of evolution of apartheid as was pointed out by Dr Tsotsi.

We support a referendum in Transkei on whether or not Transkei should be reincorporated into South Africa. We wish to say that the process of the referendum will have to be democratised so that we do not repeat the mistakes of the past. This means that strict instructions will have to be issued to all tribal authorities, magistrates, police, etc. to allow free political activity and canvassing for whatever view to take place. Intimidation by whoever or whichever organisation will have to be dealt with by the law.

We wish to say that this referendum should not be divorced from the present political struggle waged by the oppressed and exploited people of this country against the Pretoria regime. The national liberation struggle, whose strategic objective is the transfer of power to the majority of South Africans for a free, non-racial and democratic unitary South Africa, must continue. In such a unitary South Africa, our people will have to decide on how power should be decentralised. We are saying that provinces will have to be maintained but not defined as per the present Bantutstan boundaries.

We further wish to say that it would be advisable, as has been pointed out by the resource persons yesterday, for Transkei to be reincorporated into a post-apartheid South Africa. But the people of Transkei should be part of the present process of change unfolding in South Africa. This implies that the outcome of the referendum, if positive, should be taken as a declaration of intent on the part of the people of Transkei that they see and identify themselves as and with the people of SA who should take part in the shaping of a future SA.

They should decide on what role they will play in the present negotiation process unfolding in SA. They should have a right to say they want to be represented by Major General Holomisa or the leaders of their political organisations at the negotiation table. The people of this region belong to political organisations, be it the ANC, PAC, TNIP, DPP or whatever and therefore should be free to say they want their leaders to represent them at the negotiation table.

We wish to say that if we want to establish a non-racial South African nation, which will have equal opportunities to wealth, land, etc. the dismantling of Bantustans will be a victory.

We are saying the civil service that has been created in the Bantustans will play an important role in a future SA. We believe that there will be a need for people to implement the various policies adopted by the central government up to local level. The civil servants will be central in a future SA because of their qualifications and experience.

The business community has a stake in a unitary SA which it is denied by the existence

of the Bantustans. They will be free to trade whatever they wish and capital will be provided to them to start self-sufficient and viable units and businesses.

Referendum of Transkei Independence by Mr. Z.K. Mzimba, New Unity Movement.

Mr Chairman, ladies and gentlemen, we thank the Dean of the Faculty of Law as a whole for offering the New Unity Movement (NUM) the opportunity to present its ideas on the referendum on Transkei Independence.

This referendum has been planned and all that remains is to fix the event. We start by asking whether it is necessary to sound out the people of Transkei on reincorporation with South Africa. Maybe from the legalistic view point a referendum is a sine qua non. Admittedly there exists in Transkei trappings of independence like government structures, and rights and others. Those affected need to know what will happen to their jobs, their businesses if reincorporation with South Africa occurs.

However, in the liberation movement we have never viewed the "homelands" as separate entities from South Africa. The liberation struggle has been waged over the years for full democratic rights for all the inhabitants of South Africa without discrimination on whatever grounds. For us in the Unity Movement the referendum on Transkei Independence being mooted poses no political problem. We regard the struggle for democracy and human rights in South Africa as one and indivisable. The "homelands" policy of the South African "herrenvolk" was a stratagem to fob off the leadership of the liberation movement.

But it did not work because it was made of see-through material. The "herrenvolk" tried to break up the political unity being forged by political organisations of the oppressed by reviving tribalism and using chieftainship as a tool to smother the liberation struggle. This failed dismally as the chiefs, instead of being seen as leaders of the people towards democracy, became more and more their jailers (policemen chiefs as they were called) and government puppets corrupt and corrupting. The removal of the chiefs from positions of authority by the military in some of the "homelands" merely confirmed the failure of the "homelands" policy in South Africa.

So a shift had to be made to contain the liberation struggle and preserve capitalist interests in the country. The liberation interests are passing through that phase. Just as the "homelands" policy did produce positive results like the abolition of colour bar legislation and a small, burgeoning petit-bourgeosie, so today promises of a new South Africa are being bandied about locally and internationally. The proposed new South Africa is a well calculated policy to preserve the existing order of things without colour and "racial" prejudices in the law. We in the liberation movements must be on our guard to ensure that this struggle for democracy and human rights is not subverted.

Towards this end the Unity Movement is dedicated:

(a) To build a single, undivided, independent, non-racial and democratic South Africa — one nation;

(b) To build the unity of workers and the rural poor under the leadership of the working class in the struggle for national liberation and for freedom from economic exploitation;

(c) To dismantle the "homeland" system (migrant labour) and apartheid in all its forms;

(d) To establish a single democratic parliament by means of an unqualified franchise;

(e) To end foreign domination with political and economic equality.

In pursuit of these goals the NUM has the policy of non-collaboration with the machinery of oppression, that is we as oppressed people cannot willingly co-operate with the "herrenvolk" and their plans for our oppression (managment committees, regional services councils, urban councils, tricameral parliaments, homeland governments) we cannot serve on segregated, inferior, racist bodies. We use the boycott weapon to destroy these structures.

In place of segregated, apartheid institutions we have adopted the 10 point programme formulated by the All African Convention and Non-European Unity Movement in 1943. This is a programme of minimum demands for a fully democratic South Africa. The 10 demands form a package and if any one of them is not met the others will be degraded. These demands are not negotiable. If these demands are met, we shall have full citizenship rights, freedom from poverty, oppression and exploitation. This is the continuing fight to change the political and economic system in South Africa and the basis of this struggle is the land question.

When we apply this acid test to the Transkei situation we find glaring inadequacies and differences in terms of the programme of the Unity Movement. These cannot be solved without the solution of the problem of democracy and human rights in South Africa. We should not delude ourselves that "herrenvolkism" and its political and economic structures are about to collapse or that they will voluntary dissolve their system.

Where then is the relevance of the Transkei independence referendum in this situation? Is the Transkei able to lay down terms for reincorporation into South Africa? If Transkei were to return to South Africa before apatheid is dismantled how would that advance the liberation struggle? This is all speculation. Suppose the military government returned power to civilian rule what would that mean? What is not speculation is that the fight against apartheid continues and the future of the Transkei should be resolved in the course of the struggle and not by a referendum.


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