

**MEETING OF TRADITIONAL LEADERS**

**ADDRESS BY  
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**22 March 2013**

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There are two issues I wish to finalise in this meeting. The first is our intention to challenge the full body of legislation on traditional leadership, through the courts. I have not yet had a response from President Zuma to my letter of 30 June 2012 requesting that we meet. To my mind, this signifies disinterest from the Presidency and invites the conclusion that we must forge ahead without a meeting with the President.

Indeed, on the 21<sup>st</sup> of February this year, in replying to the State of the Nation Debate in Parliament, the President indicated that he is not prepared to respond to my correspondence, for that is not his style. He told me that I should ask for a meeting if there is something I wish to discuss with him. Yet I have asked for a meeting, and he ignores my request. I thus feel that we cannot leave this matter in limbo any longer. The time has now come for us to approach the courts, and it is vital that we do so before the 2014 national elections.

The second issue I wish to finalise in this meeting is our response to the legal advice we received on the draft founding document of the proposed "Indigenous Leaders Transformation Forum", which was tabled before us in July last year. You will recall that in our meeting of 6 September 2012, I tabled copies of a draft Constitution for the Forum prepared by my former ministerial advisor, Dr MGR Oriani-Ambrosini MP, and we considered his comments.

I highlighted then that mention of the restoration of the powers and functions of traditional leadership cannot be omitted from the founding document, for this is central to what we are trying to achieve. It also sets us apart from organisations like Contralesa. The Government's adamant refusal to commit to legislation a description of the powers and functions of traditional leaders has been the central focus of our struggle for almost two decades.

I am distributing in this meeting a copy of my online newsletter from last week, in which I responded to the President's address at the opening of the National House of Traditional Leaders. It is clear from the history explained therein that the clash between traditional leadership and local governance was knowingly created by the ANC-led Government, and that commitments to resolve this clash and restore the role, powers and functions of traditional leaders have never been honoured.

With the imposition of the Local Government: Municipal Structures Act (Act 117 of 1998), provision was made for a limited number of traditional leaders to



participate in municipal council meetings. Section 81 of that Act bestows upon the provincial MEC for Local Government the discretion to prescribe a role for traditional leaders in the affairs of a municipality, and empowers the MEC to determine the participation of traditional leaders in municipal councils.

Amakhosi rejected that provision of the Act and refused to accept Government telling us which of us may participate in governance and what that participation will look like. That has been our standpoint all these years. I think it is important that we read section 81 of the Local Government: Municipal Structures Act to remind us of the details. Section 81 reads as follows –

***Participation in municipal councils***

**81.** (1) *Traditional authorities that traditionally observe a system of customary law in the area of a municipality, may participate through their leaders, identified in terms of subsection (2), in the proceedings of the council of that municipality, and those traditional leaders must be allowed to attend and participate in any meeting of the council.*

(2) (a) *The MEC for local government in a province, in accordance with Schedule 6 and by notice in the Provincial Gazette, must identify the traditional leaders who in terms of subsection (1) may participate in the proceedings of a municipal council.*

(b) *The number of traditional leaders that may participate in the proceedings of a municipal council may not exceed 20 per cent of the total number of councillors in that council, but if the council has fewer than 10 councillors, only one traditional leader may so participate.*

(c) *If the number of traditional leaders identified in a municipality's area of jurisdiction exceeds 20 per cent of the total number of councillors, the MEC for local government in the province may determine a system for the rotation of those traditional leaders.*

(3) *Before a municipal council takes a decision on any matter directly affecting the area of a traditional authority, the council must give the leader of that authority the opportunity to express a view on that matter.*

(4) ***The MEC for local government in a province***, after consulting the provincial House of Traditional Leaders, may by notice in the Provincial Gazette —

(a) *regulate the participation of traditional leaders in the proceedings of a municipal council; and*

***(b) prescribe a role for traditional leaders in the affairs of a municipality.***

(5) (a) *When participating in the proceedings of a municipal council a traditional leader is subject to the appropriate provisions of the Code of Conduct set out in Schedule 5.*

(b) (i) *a traditional leader who participates in the proceedings of a municipal council is entitled to the payment of out of pocket expenses in respect of such participation;*



- (ii) A municipal council must determine the criteria for, and calculation of, the out of pocket expenses referred to in sub-paragraph (i);
- (iii) out of pocket expenses referred to in sub-paragraph (i) must be paid from the budget of the municipality in question.

Schedule 6 of the Act provides for the identification of traditional leaders for the purposes of section 81. Schedule 6 reads as follows –

**Manner of identification**

1. (1) If it comes to the notice of the MEC for local government in a province that one or more traditional authorities traditionally observe a system of customary law in the area of a municipality, the MEC –
  - (a) must inform the provincial House of Traditional Leaders of the maximum number of traditional leaders that may be identified in terms of section 81 to participate in the proceedings of the council of that municipality;
  - (b) must request that House of Traditional Leaders to recommend which leaders of that traditional authority or of those traditional authorities can be identified for the purposes of section 81;
  - (c) on receipt of the recommendation, or if no recommendation is received within 30 days after the request in terms of paragraph (b) has been made, may identify the leaders of that authority or authorities; and
  - (d) if any leaders have been identified in terms of paragraph (c), must submit the names of those leaders to the municipal manager of that council.
- (2) In a province in which no provincial House of Traditional Leaders has been established, the MEC must consult the traditional authority concerned before identifying any leader for the purposes of section 81.

**Guidelines for identification**

2. The traditional leader to be identified must—
  - (a) hold the supreme office of authority among all the leaders of the traditional authority referred to in item 1; and
  - (b) be ordinarily resident within the area of the municipality concerned.

It is evident why we have rejected this legislation since it was enacted. Yet I have reason to believe that amakhosi are losing sight of our battle. On Friday the 8<sup>th</sup> of March, I attended a meeting of the Zululand Local House of Traditional Leaders and was surprised to discover that names had been chosen to attend council meetings of local and district municipalities. These names were chosen in terms of section 81 of the Local Government: Municipal Structures Act.

I marveled at how easily some of our amakhosi, especially young amakhosi, have been bamboozled and bribed by the ANC to toe the line, even to the extent



that they would now accept the status of traditional leaders when our powers and functions have still not been defined through legislation. We have been asking for this to happen for almost twenty years, and it has not happened. Are we now simply going to accept our fate? To my mind, doing so would make us utterly complicit in the annihilation of traditional leadership.

I was frustrated to hear one Inkosi say that this is the law and amakhosi must comply with the law. Why now? We always knew it was the law, and we rejected it. We haven't had some sudden realization that we have to comply, even when the Government's clear intention is to extinguish our powers and functions through what is captured in legislation, and what is purposely not captured in legislation.

Government is clearly not prepared to spell out the powers and functions of Traditional Leadership the way it has spelled out the powers and functions of municipal councils. Indeed, Chapter 5 of the Traditional Leadership and Governance Framework Act contains the only description of the "ROLES AND FUNCTIONS OF TRADITIONAL LEADERSHIP". It reads as follows –

***Functions of traditional leaders***

19. *A traditional leader performs the functions provided for in terms of customary law and customs of the traditional community concerned, and in applicable legislation.*

***Guiding principles for allocation of roles and functions***

20. (1) National government or a provincial government, as the case may be, may, through legislative or other measures, provide a role for traditional councils or traditional leaders in respect of-
- (a) arts and culture;
  - (b) land administration;
  - (c) agriculture;
  - (d) health;
  - (e) welfare;
  - (f) the administration of justice;
  - (g) safety and security;
  - (h) the registration of births, deaths and customary marriages;
  - (i) economic development;
  - (j) environment;
  - (k) tourism;
  - (l) disaster management;
  - (m) the management of natural resources; and
  - (n) the dissemination of information relating to government policies and programmes.
- (2) Whenever an organ of state within the national government or a provincial government **considers allocating** a role for traditional councils or traditional leaders in terms of subsection (1), that organ of state must –
- (a) seek the concurrence of –



- (i) the Minister if it is an organ of state in the national sphere of government; or
- (ii) the Member of the Executive Council responsible for traditional affairs in the province concerned if it is an organ of state of that province;
- (b) consult with –
  - (i) the relevant structures of traditional leadership; and
  - (ii) the South African Local Government Association;
- (c) ensure that the allocation of a role or function is consistent with the Constitution and applicable legislation;
- (d) take the customary law and customs of the respective traditional communities into account;
- (e) strive to ensure that the allocation of a role or function is accompanied by resources and that appropriate measures for accounting for such resources are put in place;
- (f) ensure, to the extent that it is possible, that the allocation of roles or functions is implemented uniformly in areas where the institution of traditional leadership exists; and
- (g) promote the ideals of co-operative governance, integrated development planning, sustainable development and service delivery through the allocation of roles and functions.
- (3) Where an organ of state has allocated a role or function to traditional councils or traditional leaders as envisaged by subsection (1), the organ of state must monitor the implementation of the function and ensure that –
  - (a) the implementation of the function is consistent with the Constitution; and
  - (b) the function is being performed.
- (4) Where a traditional council does not perform an allocated functions envisaged in subsection (3), any resources given to a traditional council to perform that function may be withdrawn.

According to this, colleagues, Government may consider allocating us a role, but has no obligation to do so. And if it does choose to allocate a role for us, it can do so only under the strictest conditions. We, on the other hand, are made to toe the line.

I just cannot understand why we are now suddenly willing to accept participation in municipal councils in terms of section 81, when we rejected this legislation all along, for very good reason. At the meeting of the Zululand Local House, the Chairman tried to make light of this bizarre development, laughingly saying that my name was not put up for the lists. The name of my Deputy, Inkosi Mtshali, was however put on the list to participate in the council meetings of Ulundi Local Municipality. He was angered by this and asked who put his name on the list, when he serves at the behest of his leader.

I have no illusions about any of this. I am fully aware that it is part of the ANC's nefarious plan to drive a wedge between me and other traditional leaders,



pushing me out so that I no longer have any role at any level of leadership within the institution of Ubukhosi.

And the sole reason for this is that I have been the most vocal and unyielding champion of traditional leadership, opposing every single step the ANC has taken to wipe traditional leadership off the map. They have sought to destroy a once powerful social structure by reducing its leadership to enfeebled ceremonial figures. In the words of ANC provincial leader, Mr Senzo Mchunu, "The ANC has been built from blood, from tears, from destruction and one-partyism". Their single-minded pursuit is domination.

Let me therefore go back to the first matter I want this meeting to finalise; our intention to challenge all the legislation on traditional leadership through the courts. We cannot wait any longer, because a new generation of traditional leaders is open to bribery, trickery and lies, and they may not continue to carry the torch of our long struggle against annihilation. The time has come for the courts to declare what we have been saying all along; that the institution of traditional leadership has been reduced to a hollow shell.

The Constitution of South Africa declares that traditional leadership is recognized. Yet in what form or shape are we recognized? And with what powers?

In his address to the National House of Traditional Leaders a fortnight ago, President Zuma brazenly spoke about the National House performing its work for this financial year, when his Government has allocated not a single cent to the budget of the National House of Traditional Leadership, or the Provincial Houses, or the Local or District Houses or even Traditional Councils.

I find it bizarre that the Auditor General now wants to start auditing Traditional Councils, and has decided to start with the Buthelezi Traditional Council. There is no budget for which I can account. What am I expected to account for?

We keep acting as though everything is normal in the way Government deals with traditional leadership. But it is far from normal and far from acceptable. I don't think we can risk waiting for another national election to pass to take this whole matter to the courts. Let the courts speak where we have been ignored.

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