

**HOUSE OF TRADITIONAL LEADERS OF KWAZULU NATAL
MEETING WITH REPRESENTATIVES OF
THE NATIONAL HOUSE OF TRADITIONAL LEADERS**

REMARKS BY
MANGOSUTHU BUTHELEZI, MP
CHAIRMAN OF THE HOUSE OF TRADITIONAL LEADERS
OF KWAZULU NATAL,
INKOSI OF THE BUTHELEZI CLAN AND
UNDUNANKULU KAZULU

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It gives me great pleasure to welcome representatives of the National Council of Traditional Leaders. This provincial House of Traditional Leaders has played an important role in the development of policies in KwaZulu Natal and has carefully followed the developments which have taken place at national level in respect of legislation affecting traditional leaders. We have been very active in interfacing with several of the Government's departments on issues of local government, land affairs, justice and constitutional development.

Throughout our consultations we have often felt that the positions of traditional leaders are presented in too much of a fragmented form and too seldom do traditional leaders speak with a unified voice. I hope that this meeting will be conducive to fostering the realisation that traditional leadership is confronted with such challenges and that henceforth either together we stand, or apart we are bound to be all equally defeated by those who wish to do away with the institution of traditional leadership and the culture of traditions which we stand for.

We are meeting today just a few weeks after Parliament has finalised the Local Government Municipal Structure Bill which will establish elected municipalities throughout the country. This will be one of the most far-reaching transformations of local government in rural areas since time immemorial and will have a dramatic impact on traditional leadership. On November 24, 1997, traditional leaders met with the Department of Provincial Affairs and Constitutional Development to express the hope that our powers and functions could be accommodated within a truly modern and truly African system of local government which could enable traditional authorities to perform an important role in the ongoing process of transformation.

On that occasion we proposed a two-tier model similar to that which is employed in some of our provinces, including KwaZulu Natal, so as to enable traditional authorities to exist side by side with district councils operating on a regional basis as over-arching structures. Under this scheme traditional authorities could operate as primary local government structures of an elected regional municipality, a so-called "category C" municipality.

Our representatives and people from my own office have spent many nights and days negotiating within the Constitutional Affairs Portfolio Committee of the National Assembly and with the Department of Provincial Affairs and Constitutional Development

in order to guarantee some protection for traditional leadership within the new system of local government. Unbeknown to me, our delegation even went so far as to float a proposal to limit the guarantees which we proposed for traditional leadership to only a ten-year period, suggesting that whatever was considered to protect traditional leadership could be re-examined by Parliament after ten years. We really went all the way in trying to meet the desires of the drafters and supporters of this legislation. In the end, no significant concession was made for traditional leadership.

In terms of the new legislation traditional authorities have not been permitted to continue functioning. In our province, traditional authorities currently perform powers and functions of local government, such as the assignment of land, land use and zoning determinations. The Constitution contains a provision which could have enabled Parliament to allow traditional authorities to continue to function, if it wished to do so. But the Department of Constitutional Development chose to avoid implementing these enabling constitutional provisions. Accordingly, in terms of the new Bill, all powers of local government will be exercised only by elected municipalities operating in terms of national and provincial law, rather than in terms of indigenous and customary law. The Constitution had opened the possibility that traditional authorities could continue to operate in terms of indigenous and customary law, but with this law, indigenous and customary law will no longer find any space in local government.

Furthermore, the new bill no longer provides for *ex-officio* positions with voting rights for traditional leaders in respect of elected municipalities, as is the case in this province. Traditional leaders will only be allowed to sit, listen and sometimes to speak in councils which will have full authority and jurisdiction over their territory and their communities. However, they have no legal power to contribute to the shaping of a decision through their votes. This is not just my opinion, for the Department of Provincial Affairs and Constitutional Development commissioned a legal opinion to a Senior Counsel usually working for them, Advocate Wim Trengrove, SC. The Department's own lawyer stated that in terms of the new Bill, traditional leaders will have no real powers but, at best, only ceremonial functions. According to him "the bill does not make participating traditional leaders members of the municipal council concerned. [...] The traditional leaders ... are not entitled to vote [...]. The only specific rights allowed to them are to attend council meetings and to address the council".

From a draft white paper on traditional leadership once tabled by the Department of Provincial Affairs and Constitutional Development in the relevant MINMEC and then withdrawn, one can deduce that the intention is that of transferring our traditional land to these new municipalities so that it becomes their public property. Within this process all the permissions to occupy that traditional leaders grant to members of our communities will be transformed into full and transferable property rights. This will mean that our people will be able to sell the land that they now occupy, not only to members of their community but to anybody else that they wish to, and that an elected municipal council will have the power to utilize the remainder of the land as part of its public property and as it best sees fit. In our province this outcome is still not certain, because we have adopted the Ingonyama Trust Act.

In addition, the Demarcation Board which draws the boundary lines of these new municipalities has not been mandated to respect the existing boundaries of traditional communities, but has only to consider them as one amongst many factors of its

decision-making. This means that when it finds a good reason to do so, the Demarcation Board may divide traditional communities into several municipalities or aggregate together pieces of land belonging to different traditional communities and leaders. Our representatives did their best to negotiate a provision prohibiting the alteration of boundary lines of existing traditional communities without the consent of the relevant traditional authorities, but were not successful.

I do not need to tell traditional leaders what they already know. This new system undermines the foundation on which our traditional communities and leadership are founded. The notion that the whole community owns the whole of the land would no longer be applicable and the powers of traditional leadership to administer the land will eventually fade away. Our traditional method of decision-making based on the constant strive towards consensus will be replaced by majority rule. Our notion of direct democracy in which decisions are taken with the necessary participation of all those who are affected by them, will be replaced by elected representation where decisions are taken only by political representatives rather than the people concerned. I had hoped that our traditional model of societal organization could evolve and grow to meet present and future challenges, rather than being modernized out of existence. This route was tried by President Mugabe in Zimbabwe and he told me more than once that he failed to modernise traditional leadership out of existence. He and his government had to restore powers to traditional leadership.

Traditional leaders know that in the past five years I have done everything I could to prevent this outcome, whilst constantly warning traditional leaders of what was likely to happen. I have opposed legislation in Cabinet and in Parliament, and on two occasions I led delegations of traditional leaders to meet with President Mandela. I have chaired many meetings of the House of Traditional Leaders of KwaZulu Natal and did so when we conveyed to the Minister of Provincial Affairs and Constitutional Development and his officials our request and our aspirations. I even participated in the consultation process on November 24, 1997. I have spoken in defence of traditional leadership on innumerable occasions in almost all my public addresses. I have written about it in domestic and international publications. I have sent many delegations to negotiate with those who have been intent on bringing about the demise of the traditional model of societal organisation. Twice my representatives challenged before the Constitutional Court the failure of the present Constitution to protect traditional leaders. My heart is now heavy with disappointment, not only because of this negative outcome but also because throughout this process I often found myself to be a voice crying in the wilderness without the necessary support from other traditional leaders. I have tried to remind traditional leaders in South Africa about Lord Winston Churchill's famous words on appeasement without them hearing me. I refer here to what Lord Churchill said on the appeasement policies of his predecessor in dealing with Hitler. He said: "Some people try to please the crocodile in the hope that it will eat them last." Some traditional leaders toadied to the powers-that-be in the hope that by doing so they were ensuring their positions. It has not helped them.

I am duty bound to continue my fight to enable traditional leadership to perform a positive role in the ongoing growth and transformation of our society. For as long as there is still breath in my chest, I shall continue to fight to enable South Africa to benefit from the contribution that traditional leaders can make towards its development and for the progress of our people. In fact it does not make sense for us to talk about an

African renaissance whilst we are at the same time trying to destroy indigenous institutions such as traditional leadership.

Many politicians, government officials and even some ambitious traditional leaders, have spoken to traditional leaders. Traditional leaders have heard many promises and many, many words. Those who know me, know well that it is not my habit to make wild promises. Often I tend more to look at problems, so that together we can find a way to solve them through our collegial wisdom. When I have spoken to traditional leaders in the past I have pointed out the difficulties and uncertainties of the future. I am sure that even if we are now at the end of the road of the many games of deception and manipulation which have been played with traditional leadership since the opening of constitutional negotiations at CODESA in January, 1992, more words will be spent to reassure traditional leaders that their role is protected. We are indeed at the end of the road, and I hope that traditional leaders will not once again fall for empty words and promises. Now that the elections are imminent we are going to see many deceptive embellishments that will be directed at traditional leaders by politicians, merely to bluff them. Those of you who fall for these embellishments will be promised the moon, and will - as has happened before - fall for it.

We need now to resort to our collegial wisdom to find a way forward. We need to set aside differences to reach country-wide unity of intent and purpose. Together, we can fulfil the responsibility that we have towards our communities and our forefathers. It is important that we do not under-estimate the threat before us and that we do not over-estimate what we can achieve in the future. Our negotiating position is now much weaker than it was four years ago. We should not allow anyone to make our position even weaker by dividing us. I remain convinced that our collegial wisdom cannot be defeated and that the strength of our nations is the true strength of South Africa. We owe it to South Africa to pursue our unity of intent and purpose for the sake of our children's children. I hope that through this meeting we will be able to bring another brick towards the construction of the great edifice of our unity.

Next year we will be working under the auspices of a government which will be strong with a new electoral mandate. After the next elections a difficult process of transition is bound to begin. We must ensure that traditional leaders remain protagonists of this process and do not become sidelined. It is also essential that traditional leaders find ways and means to provide their contribution towards the solution of the country's problems.

I thank the National House of Traditional Leaders for sending this powerful delegation to visit the KwaZulu, -Natal House of Traditional Leaders in order to share your wisdom with us. I have given you the perspective of this House on the position of traditional leadership in the context of the new South Africa which is unfolding.

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