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**DEVOLUTION OF POWERS, ETHNICITY AND MULTICULTURALISM
IN THE SOUTH AFRICAN EXPERIENCE**

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I wish to thank the organisers of this important conference for enabling me to provide my contribution to its deliberations. My contribution will consist only of a few general remarks on a theme which is very complex and in respect of which I believe that my country, South Africa, can provide useful lessons and opportunities for comparative studies. My perspective will be an unusual one in that I represent the national organisation of traditional leaders of my country, the National House of Traditional Leaders. Our organisation is established by the national law and has institutional ties with similar organisations which are established in terms of provincial laws in most of the nine provinces of which South Africa comprises. In each province there is a provincial House of Traditional Leaders. The National House of Traditional Leaders coordinates the activities of traditional leaders nationwide and expresses the views of the provincial Houses within the national field of debate.

Traditional leaders are the heads of a complex system of societal organisation which consists of its own laws, traditions, social dynamics and interaction, and a comprehensive way of life. We refer to all this as traditional communities, but internationally people also refer to them as tribes or clans. Because of the regressive connotation usually associated with it, we tend to dismiss the words "tribe" and "chief", preferring the expression traditional community and traditional leader.

One of the important constituting elements of a traditional community is the shared ownership of our land which is held by the community as communal property and is administered in terms of our own indigenous law by the traditional leader. Each traditional leader does not operate in isolation, but within an organised structure of government known as a traditional authority, comprised of a council and a system of delegated and own powers through each of the building blocks of a traditional community. This is to say that certain decisions affecting the whole of the community are taken at the level of the traditional authority, while others are taken at a lower level, including that of the headman and his council, or that of the single enlarged family.

Traditional communities are usually underdeveloped and most of their members live without access to services such as electricity, running water, sewerage, housing and paved roads. Their setting is strictly rural and they operate not on a basis of a cash or monetary economy, but through agricultural activities, crops, livestock and an internal exchange of goods and services. The land on which they reside is often poor quality as, during colonialism and apartheid, the best land was seized and developed by white people. Now that apartheid has fallen, the divide relegating traditional communities to their lower quality land is the line of development rather than the racial colour line. The challenge now facing traditional authorities and their leadership is that of developing traditional communities in such a way that they may preserve their features of societal organisation.

Within our country's debate it is often said that, in order to receive development, traditional communities must give up all their organisational features, including powers and functions of

traditional leadership. Many people believe that all such features are intrinsically regressive and that development can only be brought about by substituting communal property with individual ownership, indigenous and customary law with English and Dutch common law, and traditional leadership with local government on the basis of a system of municipalities which are exactly the same throughout the country, both for small and large cities as well as for rural and urban areas.

Conversely, traditional leaders believe that traditional communities may receive the development which they so desperately need without having to abolish the essence of what they are and their entire way of life. We believe that traditional leadership and the organisational features of a traditional community are capable of evolving and changing to adjust to the challenges and needs of the future, and we have made many proposals in that regard. However, for the past seven years traditional leaders have been locked into a seemingly fruitless process of negotiations with the central government which is intent on transforming traditional leaders and their communities out of existence.

Recently, municipalities have been established throughout the territory and their powers and functions have replaced in law those exercised by traditional authorities. Elected councillors and mayors have replaced traditional leaders in respect of a broad range of powers and functions, at least in respect of that with which the law is concerned. However, the gap between legality and reality is very large and keeps widening. Municipalities are institutionally incapable of applying indigenous and customary law, which they cannot even acknowledge, as they are bound to recognise and operate only in terms of national and Roman Dutch common law. Therefore, for the first time in our history, seven years after liberation from apartheid which followed colonialism, the majority of the black people of our country are now forced to be governed by a law which is completely foreign to them and in terms of principles and practices different from those which we, as Africans, have followed since time immemorial.

This creates fundamental problems in respect of our present day understanding of multiculturalism. Some people believe that the final emancipation of our people, especially those in rural areas, will require them to do away with our ancestral traditions, way of life and form of governance. As the argument goes, it is said that now that we have entered the age of democracy and freedom, we must transform our way of life accordingly and embrace the type of civilisation, governance and way of life which usually goes with standard Western democracy.

The challenge that the issue of traditional leadership poses to this type of thinking is that of questioning whether the possibility exists of having a genuine African path towards progress and civilisation. We bear the challenge of proving that we can bring about a genuine renaissance in terms of development, progress and modernity, without losing our African characteristics. We stand to prove that, just as an Eastern path towards development and civilisation has been found, so shall an African path be identified, now that the whole of our continent has to take charge of its own destiny and is collegially confronted with the pressing challenge of its development under the pressures of globalisation.

Our approach towards the preservation of our culture, traditions and way of life does not seek to be vernacular or backward looking or merely introspective. We are opening to the world and embracing that which globalisation can offer us. We embrace the adventure and challenge of the future. However, we feel it is incumbent on us to find ways and means of joining a globalised world with our own identity and traditions. Therefore, we are struggling with a balancing act of having to change our ways while preserving our soul, having to live, act and think differently while remaining the same. We believe that, because of our nature, African people are uniquely

suited to bring about this type of change. We are multifaceted and often operate on different levels of existence.

I myself am a traditional leader and merge in my own experience the rituals, demeanour and traditions of our ancient culture with the functions I need to exercise within the institution which I have the honour of chairing, and many other aspects of Western civilisation. South Africa itself is a crucible in which several civilisations are bound to merge or to be otherwise mutually affected. Like no other country in Africa, we have a mixture of indigenous populations which now include white people of European descent, coloured people of Malaysian descent and a very large community of Indian descent, all of which are equally South African.

This dimension of multiculturalism is interwoven with the problems which South Africa is experiencing in respect of the function of its form of state. In my opinion, many of these issues would have been more adequately solved or addressed had we had the courage of adopting a more federal form of state. The issue of traditional leadership clearly shows how devolution of powers may assist in dealing with several aspects of multiculturalism. In my Province, the province of KwaZulu Natal, traditional leadership is particularly strong and rooted within our communities. Indeed, in KwaZulu Natal we have a kingdom with a recognised King, who performs all his royal functions in terms of indigenous and customary law, even though such functions are not recognised by the national law.

The existence of the Zulu Kingdom is perhaps one of the most significant aspects of the wide gap between legality and reality to which I referred earlier. All our traditional leaders are part and parcel of the structure of the Zulu Kingdom and they are regarded as its backbone. The Kingdom is indeed the pervasive cohesive force of the entire system of power, governance, laws and social dynamics of traditional communities and traditional leadership. The tendency at the national level is that of pushing this entire phenomenon away from the exercise of powers and functions of government and other legal activities, to relegate it into cultural and traditional matters. However, were the entire matter of traditional leadership, local government and urban development to be the genuine competence of the province rather than the central government, they could be dealt with to the greater satisfaction of all concerned by our own provincial government. The national government, engaged as it is in trying to impose a uniform standard which pleases the majority of the people of South Africa, has been incapable and unwilling to create a standard which will be more suitable and pleasing to the people of KwaZulu Natal.

It is indeed most peculiar that in a country such as ours, which has established provinces, the organisation of local government is not a provincial but rather a national matter. Our province does not have the constitutional power to design and choose its own local government model. In 1996 we adopted a Constitution for our province which the central government opposed, preventing it from ever becoming of force and effect. This Constitution was unanimously adopted by our legislature, and therefore had 100% support from our people. It contained a system of local government in which traditional authorities were provided for alongside municipalities so that they could both make their contribution towards an overall scheme of development. It was a two tier system of local government in which a regional municipality would exercise the overarching functions of regional planning, coordination and redistribution of the tax base, while the actual delivery functions would be exercised by substructures which could either be municipalities or traditional authorities.

In this fashion, the Western and the traditional African elements could be harmonised and work together towards the development of the most needy segments of our population. Unfortunately, the central government crushed this notion and set itself on a course to eliminate any local

government function exercised by traditional authorities. Throughout Africa, this approach has proven to be devastatingly ineffective, for the undermining of traditional leadership has resulted in the breakdown of social mores, law and order and other forms of social upheaval, which have dramatically delayed social development and the delivery of public services. Throughout Africa, it has been proven that the superimposition of the Western system of local government over African structures simply does not work and that the rejection of foreign institutional elements within our cultural context is much stronger at the local level than it is at the provincial or national one.

Unfortunately, South Africa has adopted many features of a federal system only in form and without contents. It has often been remarked that we have adopted most of the costs, cumbersome procedures and duplications of a federal system, without any of its real benefits. In fact, our provinces have effectively become mere administrative implementers of decisions, policies and legislation adopted at a national level on a uniform basis. Very little or no legislation has been adopted by provinces and most of what has been adopted does not express policy differentiation. All the subject matters which in terms of the Constitution were supposed to be provincial competences have in fact been exhaustively covered by uniform national legislation and policies, which, even though often providing a role for provinces, prevent each province from developing its own solutions and ideas.

Provinces would have the constitutional powers of adopted conflicting legislation and policies, but thus far they have not done so. They have the consolation of being represented in the lower chamber of the national legislature and therefore can say that national policies and legislation are adopted also with their participation. However, setting aside that their inputs can, in the final analysis, be overruled, the fact remains that whatever is produced nationally can only be uniform and therefore cannot accommodate diversity or enable each province to deal with and experiment with specific issues of multiculturalism within its boundaries.

The South African experience shows that constitutional provisions are not by themselves sufficient to create federalism or devolution of powers. South African provinces have been given constitutional powers, but have been tied into such an intricate system of intergovernmental relations and political ties that they have effectively been prevented and surely deterred from exercising any of such powers. This has engendered a number of ongoing conflicts and tensions which, in my opinion, would have been easily solved if provinces had been enabled and assisted in developing their own policies and legislation on such matters.

In South Africa, we are undoubtedly challenged by a dramatic lack of human resources and administrative capacity, especially at the provincial level. However, the concentration of decision making at national level does not redress this problem but indeed compounds it. In my opinion, in the face of this problem one should have had the courage to force provinces to increase their administrative capacity and to promote the growth and development of their human resources by encouraging them to stand on their own feet and walk. Perhaps, at the initial stage, the central government should have given them institutional crutches, assisting them with the development of legislation, possibly substituting them as soon as possible with a walking stick, in the hope that provinces could finally walk and run their own policy course. However, it seems that the policies adopted by the central government have instead permanently confined provinces to a wheelchair and made them institutional paraplegics.

I look at this with great concern and hope that in the future there will be possibilities for changes within the political system which may bring about a government more willing to implement our Constitution, especially in the direction of promoting greater devolution of powers, federalism

and multiculturalism. At this point, the solution of our problems can only depend on making our people more aware of their intricacies so that they can choose a government capable of solving them, rather than exercising their power to vote merely as an expression of allegiance flowing from a seemingly everlasting but more and more unproductive euphoria of liberation.