TO OUR SOVEREIGN LORD, GEORGE,
BY THE GRACE OF GOD, OF GREAT
BRITAIN, IRELAND, AND OF THE
BRITISH DOMINIONS BEYOND THE SEAS
KING, DEFENDER OF THE FAITH,
EMPEROR OF INDIA.

May it please Your Majesty, We, Tshekedi
Khama, Ruler of the Banañwato Nation, the Tribal
Chiefs and Representatives of the Banañwato
Nation humbly Petition Your Majesty as follows:—

We, your Petitioners, seek the aid of Your Majesty
and pray in terms of Clause 6 of Order in Council of
May 9th 1891 Your Majesty will disallow the Bechuanaland
Protectorate Native Administration Proclamation No. 74
of 1934 and the Bechuanaland Protectorate Native
Tribunals Proclamation No. 75 of 1934 which Proclamations
were promulgated on January 4th, 1935, as being a breach
of the Treaty Agreement made between the late Queen
Victoria’s Ministers and our Fathers when our people and
land came under the protection of the late Queen.

Before we came under the protection of the late
Queen we were an independent people with a system of

government.../
government of our own, and with our own Native laws and customs, which had been handed down to us from our forefathers.

We were not a conquered people and when we came under the protection of her late Majesty Queen Victoria the terms of our relationship to the British Crown were negotiated by her late Majesty's representative, Sir Charles Warren, and our forefathers. We believed, as we continue to believe, that Her Majesty and Her Successors would protect us, as has been done, and would not take our country from us or knowingly deprive us of our rights, our freedom, and our liberty.

The Order in Council under which our Territory was proclaimed a Protectorate, namely, Order in Council of January 27th, 1885, assured to us the retention of our laws and customs, and our separate jurisdiction, and preserved to us the freedom and liberty of controlling our own affairs.

These rights were recognized, retained and assured to us by the subsequent Order in Council dated May 9th, 1891, and by the Proclamation of June 10th, 1891, issued by virtue of that Order in Council.

Now, in the year 1935, after fifty years of Protectorate rule under the British Crown two new Proclamations are issued which take away our separate juris-
diction, as heretofore recognised and continuously exercised by us, and which are, we submit, a breach of the Treaty Agreements entered into between Her late Majesty's Officers and our Fathers, as does appear from the following:-

1885. (a) An Order in Council of January 27th, 1885, set out that the British Crown had acquired jurisdiction in Bechuanaland, but stated in Clause 5 that such jurisdiction should not "abridge, affect or interfere with any power or jurisdiction exercisable otherwise than under this Order, whether by virtue of any Statute or Order in Council ... or of any treaty or otherwise".

This referred to the power and jurisdiction vested in and exercised by our fathers over their own Native People.

The Order then provided that this latter jurisdiction should "continue to exist concurrently with and independently of the powers and jurisdiction exercisable under this Order".

Clause XIII of the Order in Council defined "Treaty" as including any existing or future treaty convention of agreement between Her Majesty and any African or non-African power or any tribe, people, Chief or King, or any regulation appended to any such treaty convention or agreement.

The Order in Council thus recognized the independent power and jurisdiction of the Native Chief and Native People.

1885. (b) The British Crown did not assume Sovereignty over Bechuanaland. On January 23rd, 1885, the High Commissioner wrote to Sir Charles Warren:

"I may point out in this connection (ie claims to land) that as the position of Her Majesty's Government in Bechuanaland does not amount to sovereignty the waste lands not required by the Chief are vested in the Chiefs themselves and not in the Crown".

Blue Book C. 4432 page 15.
1885. (e) On March 24th, 1885, the protection of Her Majesty over Bechuanaaland was proclaimed in the Cape of Good Hope Gazette.

1885. (d) In May 1885 Sir Charles Warren visited Chiefs Kama, Bethofo, and Sebele, and the Chiefs agreed to the terms of the Protection namely that the Chiefs should rule their own people.

1887. (e) In 1887 the Governor of Cape Colony in his capacity as Her Majesty’s High Commissioner wrote to the Administration as follows:

"It must be remembered that the territory is not British Soil. Kama is an independent Chief and he cannot be allowed, whilst retaining his sovereignty, to put on us the trouble and expense of policing his country. A Protectorate entails no such obligations. Kama is quite strong enough to deal himself, with refractory subdued Chiefs and if the Boers enter his country and take part against him he should expel them."

1889. (f) On December 16th, 1889, the Administrator wrote to Chief Kama:

"The (B. S. A.) Company will not interfere in any way with your rights and powers in the Government of your country and people."

1890. (g) On June 30th, 1890, an Order in Council was issued repealing the Order in Council of 1885 referred to above, but in Clause IV re-enacting the provisions of Clause V of the Order of 1885 namely the continuance of the existence of concurrent jurisdictions, that of the British Crown, and that of the Native People to rule themselves.

Clause VIII of the Order also contained the definition of the term "Treaty" as above.

1890. (h) On August 4th, 1890, the Foreign Jurisdiction Act was passed giving Her Majesty authority.../
authority to exercise "any jurisdiction
"which Her Majesty now has or may at any
"time hereafter have within a foreign
"country in the same and as ample a manner
"as if Her Majesty had acquired that juris-
"diction by the cession or conquest of
"territory".

1891. (1) On May 9th, 1891, an Order in Council was
issued reciting that whereas Bechuanaland
had come under the protection of Her
Majesty and whereas Her Majesty had juris-
diction in the territory, therefore by
virtue of the Foreign Jurisdiction Act of
1890 it was ordered that the High
Commissioner might on Her Majesty's behalf
exercise all powers and jurisdiction which
Her Majesty had or might have within the
limits of "this Order".

Clause 4 gave the High Commissioner the
power to legislate by Proclamation, but
said that :-

"The High Commissioner in issuing
such Proclamations shall respect
any Native laws or customs by
which civil relations of any
Native Chiefs, tribes or popula-
tions under Her Majesty's protect-
on are now regulated, except so
far as the same may be incompatible
with the due exercise of Her Majesty's
"power and Jurisdiction".

Clause 6 provided that:-

"Her Majesty may disallow any such
Proclamation wholly or in part,
and may signify such disallowance
through the Secretary of State,
and upon such disallowance being
publicly notified by the High
Commissioner in the Gazette the
provisions so disallowed shall,
from and after the date to be men-
tioned in such notification, cease
to have any effect, but without
"prejudice to anything therefore
lawfully done thereunder".

Clause 8 provided as follows that any
jurisdiction exercisable otherwise than
under this Order should remain in force:-

"Subject to any Proclamation made
under this Order any jurisdiction
exercisable otherwise than under
"this Order, whether by virtue of
"any Statute, or Order in Council, "or of any Treaty or otherwise, "and whether exercisable by Her "Majesty, or by any person on Her "behalf, or by any Colonial or "other Court, or under any "Commission, or under any Charter "granted by Her Majesty, shall re- "main in full force".

It will be noted that under this Order in Council of 1891 the Chiefs retained their jurisdiction and that any Proclamation published should respect Native laws and customs regulating the tribes, and that a Proclamation was subject always to dis-allowance by Her Majesty.

1891. (j) On June 10th, 1891, the High Commissioner published a Proclamation, under the powers conferred upon him by the Order in Council of May 9th, 1891, providing for the appointment of certain Officers and Magistrates, but that the jurisdiction of such Officers and Magistrates was with one exception not to extend to matters concern- ing Natives only.

Section 8 of the Proclamation enacted:

"The jurisdiction of the Courts "helden by Resident Commissioners, "Assistant Commissioners, or "Magistrates, under this Proclama- "tion shall not extend to any "matter in which Natives only are "concerned, unless in the opinion "of such Court the exercise of such "jurisdiction is necessary in the "interests of peace, or for the pre- "vention or punishment of acts of "violence to person or property".

This Section thus duly recognized the existing jurisdiction of the Chiefs over their people.

1895. (k) In 1895 the recognition of this separate jurisdiction was confirmed in an agreement between Mr. Chamberlain and Chiefs Kama, Sebele, and Bathooff. A letter written by the direction of Mr. Chamberlain on November 7th, 1895, said:--

"Each of the Chiefs Kama, Sebele, "and Bathooff shall have a country

within.../
"within which they shall live, as
"hitherto under the protection of
"the Queen. The Queen will
"appoint an officer to reside with
"them. This officer will get his
"orders from the Queen through the
"Secretary of State and the High
"Commissioner. The Chiefs will
"rule their own people much as at
"present. The Queen's officer
"will decide all cases in which
"white men, or black men who do
"not belong to the tribe of one of
"the three Chiefs are concerned,
"or in which the punishment is
"death. He will also have a right
"to hear an appeal in any very
"serious case, even if the punish-
"ment is short of death".

Thus Mr. Chamberlain in 1895, as Secretary
of State, confirmed the separate and
independent power and jurisdiction of the
Chiefs and Native people in the Territory.

1896. (1) A later Proclamation - No. 2 of 1896 - gave
the Assistant Commissioners and Resident
Magistrates jurisdiction in all civil and
criminal cases over and against all persons
residing within their respective areas but
this was not to be taken as affecting or
interfering with the jurisdiction contained
in Section 8 of Proclamation of 10th June,
1891.

Section 3 of Proclamation No. 2 of 1896
states:--

"....but nothing in this Pro-
clamation contained shall be
	taken to affect or interfere
	with the provisions of Sec-
tions 8, 9 and 10 of Proclam-
ation of June 10th, 1891, as

to cases in which Natives are

"concerned...........

Thus the Proclamation of 1896 confirmed the
separate jurisdiction of the Chiefs over
their own people, by leaving Section 8
unimpaired.

1935. (m) The Chiefs and their successors have con-
tinued to exercise this separate and
independent jurisdiction until 1935, and

have.../
have looked upon Section 8 of Proclamation of 10th June, 1891, together with the Treaty Agreements and Orders in Council as the Charter of their independent powers and jurisdiction. Section 8 has stood unimpaired for 50 years, but now without assigning any reason therefore, the Native Tribunals Proclamation of 1934 promulgated on January 4th, 1935, repeals Section 8 in toto.

We humbly submit that to repeal the said Section 8 would constitute not only a breach of faith but a breach of the Treaty Agreements entered into between the British Government and our Fathers; for this reason, among others, we humbly pray that Your Majesty will disallow the Native Tribunals Proclamation of 1934.

When these new Proclamations were issued in 1935, the late High Commissioner, Sir Herbert Stanley, issued a statement in the Gazette simultaneously with the promulgation of the Proclamations, in which he said:

"The two Proclamations have been framed with the intention of preserving the hereditary Chieftainship, preserving the exercise of tribal authority by the Chiefs, preserving native law and custom, and preserving the administration of justice by the native courts or Ngotlas, through making it possible for them to function satisfactorily under changed and changing conditions. The intention is to build up, not to destroy, native institutions, to develop and strengthen all that is good in them, and at the same time to enable the High Commissioner and the officers serving under him to discharge, in a matter duly defined so as to be understood by all, their duty of supervision helpfulness and guidance. It is not the intention that the King's Government should interfere unnecessarily with the Chiefs and tribes, but it is the intention that, if and when the necessity should arise, there should be no doubt or dispute as to the right of the Government to take such action as might be requisite..."
"requisite for the promotion of the welfare "and progress of the people, or for the "prevention of any maladministration, "oppression, or injustice.

"If the two Proclamations are rightly under-"stood, they will be welcomed by the Chiefs "and people, as a charter of their liberties, "an opportunity to maintain their institu-"tions and customs by using and developing "them in such a way as to let them become a "help, rather than a hindrance, to further "progress.

"With this purpose in view the two Proclam-"ations establish on a sound basis the "principle of the administration of tribal "affairs by and through the Chiefs, they pro-"vide for the necessary assistance in the "practical development of that principle, and "they have the way for the eventual assign-"ment of such further functions and duties "as the natives may show themselves fit to "undertake".

but an examination of these Proclamations convinces us that the late High Commissioner was mistaken and that instead of the Proclamations being a "Charter of our Liberties" or "preserving Native law and custom", they cut at the very root of our liberties and institutions. We submit that if the late High Commissioner had appointed a Commission, as we requested, to enquire into, or had obtained the report of an impartial investigator as to our laws, customs and system of administration he would have been in a position to appreciate our laws, customs and system of Government and would not have allowed these Proclamations to issue.

The Proclamations have filled us with dismay in making even an attempt to apply them to our system of native administration.

To us the Proclamations appear as revolutionary as it would to the people of England, if a Native Chief
with Native advisers were sent to London with instructions to abolish the Privy Council, the Cabinet System, the House of Commons, The London County Council, all County District and Parish Councils, the High Court of Justice, the County Courts and Magistrates' Courts, and substitute therefor a strange and unfamiliar Kgotla System, preserving the English law, but making the Native Chief the final Court of Appeal as to such law, yet in the same breath assuring the people of England that the intention was not to destroy the English system of administration and law but to preserve and strengthen it.

The system of Native Administration and the Native Judicial System although it may be an intricate system to the white man, is as complete a system and as familiar to the Natives as the English system is to the people of England. Moreover it works efficiently and equitably and is in its way more democratic than the English system itself. White people who understood the working of the Native System of Administration have said:

Sullivan's "Native Policy of Sir Theophilus Shepstone".

"The successive links in the chain are from individual to kraal head, from kraal head to headman, from headman to Chief and from Chief to Supreme Chief. The principle of communal responsibility was recognized by the Bantu generally, and is fundamental to their administration of law and justice, and to the economic organization of the tribes. Thus by a chain of responsibility the Chiefs knew what the tribe was thinking."


"At present the Chiefs (in the territor-
It is essential, before referring to the provisions of the Proclamations, to state what our system of administration is, and the following sets forth somewhat crudely the framework of the existing Native administration and judicial systems. The sketch plan attached is necessary to explain what follows.

**Structure.**

The Basafwato country is inhabited by more than twenty different tribes or sections of tribes, all of which owe allegiance to one person, the Paramount Chief of the Basafwato Nation.

The territory consists, as shown in the plan, of:

(a) the capital Serowe which is divided into four administrative divisions, each of which is presided over by a Divisional Representative. The Paramount Chief's Egoliia is situated in the centre of the capital.

(b) the outlying districts of which there are eleven shown in the plan, eight of these are presided over by a Representative of the Paramount Chief. This post of District Representative is hereditary once it is filled, unless the Representative resigns or there is some good ground for this removal.

In some of the districts such as Bokalaka, Bobirwa, Tswapo etc. it will be found that the members therein although of the same tribe have no tribal Chief, while in other districts such as Lesoso (Shoshong) Mmadara, Botletli etc. the people living therein belong to different tribes and naturally have no tribal Chief common to all, in their districts. This is due to historical accident which it is unnecessary to pursue at the moment.

There.../
There are smaller units in the outlying districts which are not shown in the plan. These units are given the same consideration for administration purposes as wards in Serowe, and which will be explained hereafter.

The principal tribe, the Bafwato, is concentrated in the district of Serowe wherein they have several wards. (The word "ward" is a most suitable English term for what we call "motse", which literally means "village"). The town of Serowe has in it also villages of sections of the tribes. These sections are remnants of these tribes living in the outlying districts such as the Bokalaka, Bokhurutshe etc. Such remnants have completely broken away from their tribes in the outlying districts, and are now, though living on friendly relationship with their parent tribes, absolutely independent of them.

The many wards in Serowe belong to two sections of the tribe. Some wards belong to "Dikgosana" (Royalists) section, while the other wards belong to "Batlhanka" (Commoners) section. The "Dikgosana" are the descendants of the old Chiefs, while the "Batlhanka" are the ordinary members of the tribe.

The villages too in the outlying districts described above have all got their wards comprising such villages.

Each ward is presided over by a "hereditary" head known as an elder. He is in a sense a patriarch, and the ward exercises the same care in formally recognising him as the nation does in formally recognising the paramount Chief. The Paramount Chief himself may settle disputes as to succession, but he has no power to appoint an elder.

All the wards in Serowe and in other districts described above are again each and all composed of smaller units known as lineage groups.

In the outlying districts, e.g., the Bokalaka, there are a number of Chiefs, e.g., Nkefe, Sebina etc., with their followers, and each of these Chiefs has his own area of settlement, as shown in the plan, and in that area he has lineage group settlements comprising his village or villages all owing allegiance to him and under his official responsibility.

**SYSTEM OF ADMINISTRATION.**

Having given an outline of the territorial organization...
organization of the nation, we proceed to outline the system of administration.

The whole system of administration starts from the lineage group. In the centre of each group settlement is a half enclosed space known as the Kgotla in which the group conducts and carries on its administration and judicial duties. Each lineage group is presided over by its senior member by right of birth. It is the duty of the senior to settle disputes arising from his family group, and if he is unable to effect settlement the matter is taken to the elder of his ward.

When a case is reported to the elder, he informs the male members of his group who come to the Kgotla where the trial of the case is always conducted.

If there is an administrative duty (such as the setting up of the Kgotla enclosure) to be done, in that particular ward, this elder calls up the male members of his group to perform such duty.

Should a dispute be between members of two different wards, the custom is for the members of the complaining party to go to the ward of the defending party, and there the matter is gone into.

The procedure followed in the trial of a case is something like this:

The parties to the case and their witnesses are called upon to speak, and after they have given their evidence and argued their case—the time occupied by such speech being regulated by the elder in his discretion—the members of the group present, and any other members of the nation who may happen to be present at the trial, are called upon to speak on the merits of the case, each speaker speaking for or against the defendant as his knowledge and feelings direct him. It is only after this investigation has been ended that the elder sums up the facts and the arguments, and announces the result.

Before proceeding to explain the procedure followed in appeals from this lineage court upwards to the Paramount Chief's Court or "Kgotla", it is necessary first to explain the system evolved and developed during the course of history, by the Sanwato Nation.

The Paramount Chief's Kgotla is the final
Court of Appeal, and while it may have been practicable in olden days (when the nation was only a small one) for this Kgotla to try all such cases brought up for appeal, today it would be impracticable if not impossible for the Chief's Kgotla to find time to try all the appeals. It would also today be impossible for the Paramount Chief to administer or control the nation personally if there was no workable system which the people themselves approve and understand.

The capital village (which today is Serowe) was divided into four divisions now known as Basarane, Ditinthomolilide, Maelose and Maelose-a-Fswana (refer to plan). Each of these divisions was allotted a number of wards, and men who had distinguished themselves in war (this history takes us many years back) were placed by the Paramount Chief at the head of each of these four divisions, and such man's ward was thereafter called by the name of his division. The present heads of these four divisions are descendants of the originally appointed heads, i.e., the office is hereditary. The allotment of wards to a division was not restricted to any particular section of the nation; each division was allotted "Bikgosana" (Royalists) wards, and "Batlanka" (Commoners) wards. So that there was an assortment of sections of the nation in every ward.

Now should a party to a case heard in a lineage group in the Town of Serowe desire to appeal against the judgment given by the lineage group elder, such appeal is first heard by the ward court presided over by the ward elder, a further appeal is notified to the divisional head who in turn informs the responsible members of his division's wards of this appeal. These people and other male members of their division and any other male member of the nation desiring to attend the case, sit together for the hearing of such appeal, and the same procedure is followed, as explained in the trial of cases in the lineage group, before the divisional head sums up the facts and arguments, and announces the result. It is important to emphasise the fact that the trial held before the divisional head is a complete retrial.

There is a point here which is worthy of note. The Paramount Chief of the nation is attached to no lineage group or division - he is merely the Central Power; his relatives, e.g., uncles and cousins etc. are distributed amongst each of the four national divisions, but in an appeal heard by the Divisional Court, they...
they (the Chief's relatives) do not preside, but the divisional head who is hereditary presides: the Chief's uncles etc. can only preside at these sittings by a special request from a divisional head, but generally their duty is to attend to the duties which come daily to the Paramount Chief's Kgotla together with the heads and elders of the other divisions as well as any male members of the nation who are not engaged in the appeals at their own divisions. I draw particular attention to this point: it has been suggested by those possessing only a meagre knowledge of Native Administration system that it is only the royal headmen who have all the say in the administration of a tribe, while the common people are given very little consideration. Now I wish to inform those concerned that all the divisional heads do not belong to the royal class. This therefore means that there is complete equality before the law and government of the Native people.

Should the divisional head find that a matter brought up for appeal before his Kgotla is of some political or some other importance needing the direct attention of the Paramount Chief's Kgotla, or should one of the parties to the case still desire a further appeal to the Paramount Chief's Kgotla, the matter is then brought to the Paramount Chief's Kgotla either by the divisional head of the people of the appealing party. Such case is then heard for the fourth time, and the same procedure for hearing the cases, i.e., re-trial, is adopted by the Paramount Chief's Kgotla before the Chief sums up the facts and arguments and announces the result.

There is also another custom in regard to the cases heard at the divisional head's Kgotla. Should the divisional head feel that he has an interest in such an appeal brought before him, he requests a head of another division to assist him with the members of his division in the trial of such a case. Further if the complaining parties feel that the divisional head cannot for certain reasons sit as an impartial judge, they ask him to inform the Paramount Chief's Kgotla of their apprehension, and to request that some other people from other divisions be detailed by the Paramount Chief's Kgotla to attend the hearing of such case. This report is never refused unless the Paramount Chief's Kgotla feels it is merely a vexatious demand.
It has already been stated above that the Bamangwato country has over twenty different tribes all owing allegiance to the Paramount Chief. Each of these tribes as it joined hands with the ruling tribe of the Bamangwato was registered in one of the four divisions in the capital village - note that a tribe may be situated in the outside district like the Bakalaka and the Bethwhitupe, but for administration purposes it has to fall under one of the four divisions in Serowe. Therefore each of all the villages in the outlying districts (or remnants of such villages settled in the capital village) fall under one or other of the four national divisions in Serowe. In this way the tribes which have allied themselves to the Bamangwato tribe have been absorbed in the body-politic of the Bamangwato nation. Similarly any individual foreigner who wishes to settle in the Bamangwato country, on being permitted to do so, is placed in one of the lineage group settlements and he is from henceforth known as a member of that group.

In the villages of those tribes who have allied themselves to the Bamangwato nation as described above, the system of administration is similar to that explained in regard to the town of Serowe, i.e., a case is first heard in a lineage group and an appeal from such a group has first to go to the Ward elder and from the ward elder's Kgotala to the tribal Chief's Kgotala.

This system worked well because the ruling tribe never found it necessary to interfere with the internal affairs of a subordinate tribe, who were conducting their own affairs under their own Chiefs and according to their own customs. The disputes in these subordinate tribes only coming to the ruling tribe in the form of appeals. The procedure in such appeals will be explained hereafter.

As time went on it was found that it was necessary to facilitate the process of appeals because of the enormous distances from the outlying districts to Serowe especially because of the lack of travelling facilities. The Chief Kgama thereupon devised a new system of appointing his representatives to take charge of some of the outlying districts. The position of these representatives in relation to the native community under their charge is very similar to that of the Paramount Chief. In their districts, take as an instance the Lescoo (Shoeshong) District,
the Belamars, Baphalen and Bakas are all different tribes each of which has a tribal chief who is hereditary, and each of whom has a number of lineage groups who conduct their administration in the manner explained above. The appeals in such lineage groups lead up to the tribal chief and eventually to the Paramount Chief's Representative's egotla. When a case comes up for appeal from the Chief's Representative's egotla, such a Representative or his deputy accompanies the parties to Serowe, and on reaching Serowe such Representative or his deputy takes his former place among his people while the parties to the case go to their divisions in Serowe. The divisional head, upon hearing the object of their visit, summons up his egotla for the purpose of sifting the facts of the case for his information before the case is taken up at the Paramount Chief's egotla. The divisional elder does not summon up his egotla for a trial, but to learn the facts, and he will give his findings of the facts to the parties concerned at his egotla.

In some cases as a result of such sifting of the facts, a settlement will be arrived at without an appeal to the Paramount Chief's egotla. If a settlement is arrived at, the parties then take a judgment (by consent) in the Paramount Chief's egotla, i.e., they make their settlement a judgment of the Paramount Chief's egotla.

If no settlement is reached a day is set down for the hearing of the appeal in the Paramount Chief's egotla, the divisional head accompanies the parties to this egotla where they meet the Chief's Representative or his deputy. After the parties argue the case in the usual manner and having led on to the judgment and the grounds of appeal the appeal, the divisional head then gives his findings of the facts as arrived at at his egotla. The Chief's Representative or his deputy then gives the grounds upon which he had given his judgment. After this the matter is open for discussion to the members of the nation present, and then the Chief sums up the facts and the arguments and announces the result.

It is important to note that when an appeal comes from the outlying district, there is always available in Serowe itself, a body of people belonging to the same clan, who are therefore familiar with every phase of the particular tribal custom in question, and being disinterested and impartial; they...
serve the same purpose, as I understand, as a special jury does, in the City of London.
This is of the greatest assistance to the Paramount Chief's Kgotla.

In cases where the matter is a dispute between two tribes such as the Bakaa and the Baphalef of the Leseso (Shoshong) District, such case is heard by the Chief's Representative, and should an appeal to the Paramount Chief's Kgotla be sought, each of these tribes, when getting to Serowe, takes its place in its own division, e.g., the Bakaa going to the Basimane division and the Baphalef to the Maalcse division. In such a case where it is necessary for the divisional Kgotla to learn of the facts, the complainant's party's divisional Kgotla goes to the defendant's party's divisional Kgotla and there the matter is investigated by the divisional Kgotlas sitting together. From there the matter is then brought to the Paramount Chief's Kgotla, and the same procedure followed.

The administration of the nation is effectively and efficiently carried on throughout the nation by means of the many national Kgotlas as set out above.

If there is a matter which the Paramount Chief desires to bring to the notice of the nation, he summons a national meeting to be held in his Kgotla and there the matter is discussed.

Should such a matter be of a minor affair the Chief instructs his Representatives, and in the smaller districts where there are no Representatives, his tribal Chiefs, to hold meetings in their areas to bring to the notice of the people the affair at issue, while the Chief holds the meeting for Serowe people in Serowe.

But should a matter be an important one, the Paramount Chief summons a national meeting to be held in Serowe when the Chiefs and elders in the outlying districts and those wishing to attend have to come to Serowe for such a meeting.

It sometimes happens that the Paramount Chief has occasion to ask the views of the nation upon a matter confidential to the nation. On such occasions the Paramount Chief calls the Chiefs, the divisional heads, the elders, the members of "the ruling house", i.e., the...
sons and near relatives (paternal uncles) of the ruling Paramount Chief, to a private meeting "Phuthego ea Lesaka". Each of the divisional heads and each of the elders, in turn brings along with him one or two members of the nation each of whom has won public esteem as a politician or possessing knowledge of the particular matter under discussion.

Bearing in mind the existing Constitution as outlined above, we humbly draw Your Majesty's attention to two of the many features of these Proclamations:

(a) **TRIBUNAL COUNCIL.**

Section 5 of the Native Administration Proclamation says that "the Chief and tribe having assembled in Kgotla, the Chief shall proceed to designate persons who under the Native custom are entitled to advise him as councillors, and may with the approval of the tribe in Kgotla designate other persons also to be councillors ........... It shall be the duty of the Chief ................. to consult these councillors who, with the Chief shall be styled the tribal council."

But the people who under "Native custom" are entitled to advise the Chief are:

(1) The divisional Representatives in Serowe.

(2) The members of "the ruling house".

(3) The tribal Chiefs in Serowe.

(4) The eight district Representatives in the outlying districts.

(5) All the tribal Chiefs in the outlying districts.

(6) All the lineage group elders wherever found.

(7) In addition to the above such other members of the tribe who have, by their outstanding ability and wisdom, proved themselves councillors, as Professor Brookes puts it:

"rising to his position gradually and informally as his opinion in the public gatherings increased in weight. As he grew to acquire popular influence, his.../"
"his words grew to be accepted more and more as embodying the opinions of the tribe. It might be age, debate, penetration in unravelling the intricate subtleties of native law suits, or other attributes which made the councillor a representative and a public man."

If the Paramount Chief were to summon Ditlhogo (literally leaders) of the tribe, which is the nearest approach to a council, it would be composed of all these six classes plus those in seven but if the same Ditlhogo were summoned a month later it would not necessarily follow that the same persons would come, and yet such advisers would be the recognised advisers according to Native custom.

According to Native custom these are the Chief's councillors and no Chief can either in law or practice disregard them. For him to do so would constitute such a grave departure from working along with the feelings of the nation, that he would soon jeopardise his position as Chief, and run the risk of being deposed by his own people, as we understand was the case of Sebale's grandfather, Motswasele, who was assassinated by his people. But it is clear that the Proclamations do not refer to all these people and incidentally any application of the provisions of the Proclamations to the present system would result in the breaking up of tribal control, i.e., to appoint a new set of councillors would be revolutionary.

What are we to do? If we do not appoint we break the law. If we do appoint we sound the doom of tribal control and yet we are told "the intention of the Proclamations is to build up and not destroy Native institutions..."
(b) TRIBUNALS.

Again Section 7 of the Native Tribunals Proclamation says:

"In each tribal area there shall be one or more tribunals which shall be known as Senior Tribal Tribunals, the members of which shall be nominated by the Chief from amongst the members of the Tribal Council constituted under Section five of the Bechuanaland Protectorate Native Administration Proclamation, 1934. Every such Tribunal shall be presided over by the Chief or his deputy duly authorised to act as such, or in any part of the tribal area where the Chief has appointed a representative by such representative if and when the Chief is not present in person.

The Tribunal presided over by the Chief shall be styled the Chief's Tribunal.

(2) Junior Native Tribunals shall be constituted wherever in the opinion of the Chief or of the Resident Magistrate after consultation with the Chief such tribunals are necessary and for this purpose the Senior Tribal Tribunal of the area concerned shall appoint a headman to preside over each such Junior Native Tribunal and such Headman shall be responsible for nominating persons to act with him on such tribunal for the trial of cases.

If this Proclamation is applied it abolishes completely:

(1) Trial by "Kgotla" as we know it.

(2) The whole of the system of trial by lineage Kgotlas.

(3) Appeal according to Native custom, i.e., appeals from lineage Kgotlas to ward Kgotla, from ward Kgotla to divisional Kgotla, from divisional Kgotla to the Paramount Chief's Kgotla; and in the case of subordinate tribes, it abolishes trials in lineage Kgotlas, and appeals to the Tribal Chief's Kgotla and on the Paramount Chief's Kgotla.
The Proclamation also introduces the Resident Magistrate as a Court of Appeal in Native Law, and provides that any member of the tribe can choose, if he wishes, to go to the Magistrate's Court instead of the National Kgotla.

These provisions are revolutionary, and their effect can only be appreciated by those fully acquainted with our legal system and our laws and customs. They are also a departure from the separate jurisdiction assured to us by the Treaty Agreements with the British Government.

Moreover they are unworkable in as much as no written code of Native Law and Custom exists to guide the Resident Magistrate, who today has no knowledge of Native Law and Custom and is unqualified to interpret such Law and Custom.

Legislation, such as these Proclamations contain, or similar legislation may exist in the Union of South Africa, and among conquered people who have forfeited their laws and customs. But we are a free people, and according to the statement made by the late High Commissioner, before he relinquished his services as High Commissioner, our Native Laws, Native Customs, and Native Administration were to be preserved to us.

The original Treaty Agreement entered into between Her late Majesty's Officers and our Fathers was conducted through the Colonial Office. A few years ago,
without our knowledge, and without our being consulted, the Administration was handed over to the Dominions Office. We cannot understand why this was done, when other Protectorates remain under the Colonial Office. From that time onwards our troubles have increased, until at the present time there is considerable uneasiness and unrest among the people, because of the hardships which they have been called upon to undergo in recent years, and of which Your Majesty can have no knowledge.

For the sake of the peace, happiness and well-being of our people, we humbly and urgently request Your Majesty that the Administration of our country be handed back again to the Colonial Office whose local officials are known to be specially trained and qualified in Native Law, Custom, and Administration.

We feel that Proclamations such as those which have now been published would never have been framed or promulgated had we been under Your Majesty's Colonial Office.

Our many protests against the provisions of these Proclamations, made whilst the Proclamations were still in their draft stage, have proved in vain, so that our only course is to approach Your Majesty, and ask Your Majesty to come to our aid.

WHEREFORE by reason of the foregoing we most humbly and earnestly pray and beseech Your Majesty, in terms
of Clause 6 of Order in Council of May 9th, 1891, to
disallow Proclamations numbers 74 and 75 of 1934.

Or alternatively that Your Majesty be graciously
pleased to suspend the operation of both the aforesaid
Proclamations until a Royal Commission has investigated
and reported upon Native Law, Native Custom, and Native
Administration in the Bechuanaland Protectorate.

AND Your Petitioners, as in duty bound, will ever loy-
ally and humbly pray.

In witness whereof we have herein affixed our signatures
this    day of May in the year of our Lord
One Thousand Nine Hundred and Thirty Five.

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Chief and Regent of the
Bamangwato Nation.

Signed as Divisional
Representatives in
Serowe:

Signed for and on
behalf of the
Tribal Chiefs in
Serowe:

Signed.../
Signed for and on behalf of the Members of the Ruling House:

Signed for and on behalf of the District Representatives:

Signed for and on behalf of the Tribal Chiefs in the Outlying Districts:

Signed for and on behalf of other Members of the Tribe: