

MINUTES OF PROCEEDINGS AT CHIEF'S KGOTLA:
SEROWE: 8.11.35.

PRESENT:

Acting Chief Tshekedi Khama and Tribe.
Capt. Nettelton R.M.
The Rev. J. H. L. Burns
E. C. Parr, Esq.,
J. W. Joyce, Esq.,
W. R. McIntosh, Esq.,

The Rev. Burns offers a prayer.

CHIEF TSHEKEDI:

This meeting has been convened by me and not by the Magistrate. I have however asked him to be present so that he can hear what I say. I could speak to him at his office but I have thought it better for me to speak before you all. The white people whom you see here I have asked to attend as we live together in this country. The subject I am going to deal with today is the laws which have been made by the Government. I have been away for some days on the doctor's advice although personally I thought I was able to walk about. During my absence the affairs went ahead and did not wait for my return, but I shall start from where I left off.

The last meeting which I had with you in the Kgotla was the one in which we sent a petition to the King asking that these laws should be suspended. While I was at Kanye I received a letter from the Resident Commissioner which reads as follows (Annexure A).

After receiving this letter I got another message while I was still ill. The message was that representatives should be sent to..../

to Pretoria to listen to the High Commissioner's instructions. These people delivered their message to you on their return during my absence. I continued to be away for some time after their arrival and after the meeting which was held in the Kgotla for the purpose of delivering the High Commissioner's instructions. Just before my return I received a letter in connection with the Proclamations under discussion; there was a second letter written to me after my return to my duties, this letter amplified the message contained in the first. I read the second letter (Annexure B).

AS you know I am one who speaks at great length, and as this is a very important meeting I would ask you to listen to what I am going to say. The letters that have been read over to you are not a commencement of what I wish to say today, but I read them out only to start where I left off before I went away on sick-leave. While I was ill I heard that the Magistrate spoke to you, and I also heard what you said because the Magistrate gave me a written report of the proceedings. I also gathered information from those who were left in charge of the affairs of the tribe.

I am very much surprised at the way in which our Government has taken up the question of these laws. I do not wish to go into the merits of the provisions of the laws. What is being expected of us today is that the laws should be put into force. That is why I say I shall not go into the merits of the law, but I will recapitulate the stages by which the Proclamations were brought into force.

I remember that this law was brought to

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our notice in 1932. All the tribes of the Protectorate were called to meet at Mafeking, we were also sent for. It was not a meeting convened for the Chiefs but the tribes attended. At this meeting which took place on the 18th November 1932, the Resident Commissioner explained the laws, not to the Chiefs of the Bechuanaland Protectorate but to the Native Advisory Council. I have now held the position of a chief for ten years, and usually before any matter is referred to the Bamarwato I am first informed about it by the Magistrate. But in regard to these laws there is not a single Chief in the Bechuanaland Protectorate that the Government called and consulted with about these laws, nor has a meeting of Chiefs been held for this purpose so that the Chiefs could thereafter inform their tribes. These laws were started in a general meeting of the tribes. At this meeting the Resident Commissioner said: "These Proclamations will be explained and discussed in each Kgotla by the Resident Magistrates with the Chief and tribe".

After we returned we were waiting an opportunity for the gathering of the tribe as a whole to tell them what we had heard. In all the important questions like this it is my custom to gather the whole tribe and discuss the matter with them, but before I called such meeting I heard the laws had been printed and had been circulated amongst ~~the~~ my tribes. Anything of this nature is usually given to the Chief to circulate to his tribe. But in this case the copies of the laws were distributed by the Magistrates and

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the police direct to the people, even my representatives outside were not informed of this action by the police, but anybody obtained copies of the laws on application direct from the police. This is the second instance which I quote as to the manner in which the Government brought these laws into force.

Thirdly, the Magistrate personally came and explained these laws to the tribe. The explanations were by the Magistrate and not by me, and the replies of the tribe were also received by the Magistrate direct from the tribe and not through me.

Fourthly, every meeting about these Proclamations was held in the presence of the Magistrate.

Fifthly, the Bamanwato representatives who went to Pretoria did not tell me that they had been asked to give me the message of the High Commissioner so that I could inform the tribe. They said that the Chief's representative in Serowe was expected to co-operate with the Magistrate so that these laws should be brought into operation.

These are the stages by which the Proclamations were brought into force. The Government never consulted with the Chief about the laws but they spoke directly to the tribe. The Administration however failed to make progress, and now when they find it impossible for them to enforce the laws they turn to the Chief and they expect him to do what they have failed to do. This is how the work is being carried on.

There is one more important point in

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this, that is, when the High Commissioner spoke about these laws at Mahalapye recently, he spoke directly to the tribe and not through the media of the Chief.

I do not say that the above described procedure is the correct procedure on matters of this kind, and I was not pleased with it, because formerly all communications to the tribe were made through the Chief. But I am surprised at the attempt which the Government has made to enforce the law direct without the assistance of the Chief and when the Government has been unable to enforce such laws it expects the Chief to do so.

The Government, including our present Magistrate, know how the laws were received by the tribe. They know that when the laws were put out in draft form the tribe protested and rejected the laws on the grounds that they were impracticable, and they know that when the laws were finally promulgated the tribe explained their inability to enforce such laws. The Government knows all this, and although this is so, a letter comes on to say that on the 15th November the laws must be enforced.

I would like to compare this case with the other case with which I was entrusted by the Bamanwato tribe and sent overseas to speak about, that is, the mining question.

I was entrusted by the tribe and vested with authority by them to negotiate and conclude in England certain matters in connection with mining concession. After I had discussed this subject with the Secretary of State, he instructed me to return and find out the views of the tribe before proceeding..../

proceeding with the matter, but I told the Secretary of State that I had come from the tribe and was well acquainted with their views and that I could conclude the matter without further reference to them. However he insisted that I should consult with them again. I returned to South Africa, and at an interview with the High Commissioner I was again reminded to consult with the tribe before proceeding with further negotiations. I told the High Commissioner that no purpose would be served in my consulting the tribe again, but he too said I should return. The same thing happened with the Resident Commissioner.

At that time the Government was careful to see that what the Chief did should be what the tribe required. But today the Government cannot tell me that they are adopting the same attitude as that which they did in regard to the mining question.

At first it was the definite intention of the Government to adopt the same procedure but they found that the tribe did not agree with their views, and now the Chief is being used as a tool to pave the way. This is not at all a pleasant position for any Chief to find himself in. We are at a loss, and we do not know whether the policy of the Administration is that the Chief should first consult with the tribe or disregard the tribe in administrative measures which he takes.

It is some years now that we have been speaking about these laws. The discussions about them started in 1932, actually this is the fourth year while we are at these laws. We have spoken at great length to explain to the Government that

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these are not the laws of this country; we pointed out to the Government that if these were new laws and did not pretend to be in accordance with our laws it might have been possible to enforce them as we would see how the Government would enforce them, but the Government has made a mistake in calling them native laws; even the Government can see that these laws are difficult and cannot be enforced in this country. I will give three instances in substantiation of the above assertion. It is said that these laws are based upon our native laws and according to customs under which we live. Now according to Setsoana custom the highest Kgotla is the Chief's Kgotla, and if it is anything that is being based on Setsoana custom the Chief's Kgotla cannot possibly be lost sight of. But it is amazing to find that the Government admits that in the provisions of the laws they had forgotten to include the Chief's Kgotla. For instance the High Commissioner's Office is the central office of all the three High Commissioned Territories and in any laws promulgated for these territories these officers cannot possibly be forgotten, but in regard to these Proclamations it is said that the Paramount Chief's Kgotla which is the central office in the native administration of a territory had been forgotten and that it will now be provided for. I do not know whether any Chief could possibly be pleased with a law like this, and be expected to say to the tribe that such laws are good when his Kgotla has been ignored. No official could do so. But this is what we are expected to do.

Secondly, in the draft law it was stated

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that four or five people should be nominated to assist the Chief in the matters of administration. Eventually it was discovered that this was not possible and did not conform with our custom, but to meet the case it is now stated that the Chief should nominate or designate numberless people who would be his councillors. It is impossible to nominate numberless people some of whom are incapable of performing what they are expected to do. The British Government believes in the administration by selected officers, and I take it that this was the policy and the intention of these laws, because it was stated that four or five people should be nominated. It appears this principle was found impracticable in native administration and now it is suggested that numberless people should be designated to fall in with the requirements of the native custom. This is the second error on the part of the Government which I say they have admitted.

The third error is this. It is said that the lineage Kgotlas should continue to function although they do not come within the ambit of these Proclamations. It has been said that the laws are made for the better administration of this country. I do not know whether it is for the better administration of the country to say that certain offices which came within the ambit of native administration should, under the new law, be left out of the law and to act as they wish. According to Setsoana law even the smallest Kgotla is subject to the higher Kgotlas. Our system of administration which is continuous is based upon these minor Kgotlas; they are the foundation of the native administration..../

administration, and if ignored the whole structure collapses. Cases are started from minor Kgotlas and they find their way until they get to the Chief's Kgotla.

These are the three errors which if the Government had based the laws upon the existing native custom they would never have made. Even today these errors have not been rectified even in the light of the new provisions intended to put them right. The new provisions appear to be intended to justify rather than to rectify.

I am not afraid to tell the Magistrate that these laws will never function; and that it is advisable to find other laws in their place. I do not doubt that as the Chief and his authority have been set aside the Government can find some other authority to put in his place. I realise that the Government can easily do this, but I am quite certain that these laws would never work even then and that other form of law will still have to be introduced even if they are left in force: these laws would be purely nominal and would not function. I hear today that there are other tribes who are practising these laws; I have not been to these tribes, but according to my knowledge of our native custom I say they can not function. It will be said on records that they are put into operation but in practice they will not function. We hear that at Mokwena people have been nominated to assist the Chief, but if one went there he would find that at the Chief's Kgotla there are such councillors, but he will find again that at the other Kgotlas in the same town the old custom is in vogue: still it is said that these laws are functioning in other

districts. People have different ways of looking at things: some people will readily say that they agree to do anything even though they are not capable to do so, while others would rather say straightaway they are unable. In our case we may be found guilty of disobedience of the laws, but we prefer to state the truth. I have already stated that it is ten years since I took over the Chieftainship, in that period I have found that there are certain laws which are said to be in force and yet in truth they are not. I shall give one instance of this. The Secretary of State came here once and at a meeting convened for him he spoke about the tribal work and stated that it was the declared policy of the Government that it will no longer call on people to do any labour without remuneration, but that as far as the Chief and tribe were concerned they could continue to do their tribal duties by means of unpaid labour as usual. The outcome of the question was about Makoro Quarantine Camp. We had stated that if the Camp was intended for our benefit we wished to contribute free labour towards such work. In pursuance of the above Government policy the Government did pay for the labour in connection with the quarantine work. This their action, however, was never repeated in the after works. We have since made aerodromes for the Government, the labour was not paid for. I know that the Government never forces us to do these duties, but it always asks for our help, and naturally the Chief cannot refuse the higher authority. The motor road to Maun was mostly made by regimental labour - the labour which the Government said it would not employ to do its works..../

works. Actually the law has been found to be impracticable but it has not been set aside, and in England it is known to be practicable law that the Government does not resort to free labour though in truth they do. I could quote similar instances, but I quote these instances to show that there have been times when laws have been found impracticable but still remained in force though they do not actually function.

Finally I desire to say that when we petitioned the King we had realised that the law had been accepted by the High Commissioner and approved by the Secretary of State. We were therefore hoping that another Court would listen to our petition. We had thought that in transmitting this letter to the Magistrate that it would be submitted eventually to the Privy Council because in reality we were appealing against the decision of our Administration. But our petition was returned to us by the high authority, and now it remains unheard and we have no way to appeal. This is quite clear to us. We have no intention of disregarding the ruling of our department of Administration, all we are endeavouring to do is to find support of the liberal policy of the British Government where the right of appeal is a privilege given to its every citizen, and not regarded as a sign of disloyalty to the Crown or a disregard of the decision made by those in power. I still humbly ask the Government to assist me in deciding what would be the best way of bringing this issue of the Treaty and Constitutional relations between His Majesty the King and our protected State before the Privy Council. We

foresee..../

foresee that even though the laws are enforced they will not function.

I am today expected to nominate the people. When these laws were made I realised that the Government were not merely trying them on; I knew they were serious, and with all this understanding I told the Government that it was impossible to work these laws. When it was said that the laws were put out for discussion, we told the Government that we objected to them, because we saw that they could not function. When the laws were promulgated we stated that we were unable to put them into force. When we said this it was not a try on, we were telling the truth. We are surprised that we told that we expected to enforce these laws. There is no reply that we shall give other than that we have already said when we said we are unable. We know perfectly well that we look to our Government for protection, but we looked ahead and we told our Government that we are unable to enforce these laws though they regard them as suitable laws. These are my words. I have nothing further to add but if the Magistrate wishes to talk to me or ask me anything I shall be happy to reply.

If the tribe have anything to say they may now say it. I thank the Magistrate and our friends for being present at this meeting because we live together, and it is only right that they should know what is going on in the country and not have to rely to hearsay.

HEADMAN MATHIBA:

It is now a long time that we have been talking..../

talking about these laws. When one has travelled for a long distance one becomes tired. Nevertheless I have one word which I would like to say before the Magistrate, perhaps it will not be pleasant to hear, but it is not intended to annoy the Magistrate. I shall be stating what is expected of us today. There is a saying about the English people that everyone has a right to air his grievances and to be listened to. We have never been disloyal to our Government and we are still loyal today. My reason for alluding to this saying is that when we were first informed of these laws we told the Government that we found them impracticable because they were not Setsoana laws as the Government had said, and when a small man said so it was fitting for the big man to have asked the small man what his laws are; we asked that Mr. Priestman should come here to explain to us how these laws are working in other countries, but all these requests were not granted. We sent a petition but it was not replied to. It would seem as though the saying which I have quoted only applies to white people, because when we said the laws were impracticable there was no meeting like this today with the Magistrate before us to ascertain what our laws were. We apprehend of only one course left to us, it is the last day today, and that as the Government wishes to come to some finality that finality will be banishment to us. In our past experience we did not know that we had done anything wrong, but our Chief was taken away from us. There was no question of murder having been committed for which the Government could have taken him away.

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This is the way in which our Government attends to our grievances, we natives. Today I know the same thing will occur because one of our Chiefs today is in the desert. As far as I know he was not permitted to explain himself in defence like ourselves today. His sentence was a bitter one because he had not committed any crime. No person is sentenced without first being tried. I have no words to add, because we know that the Government has authority and can do as it pleases. Although we have been as loyal as we could we still expect that we will probably get into trouble. We have been loyal to our Government and have never been heard to desire to be under any other Government. There is no wrong that can be shown to us that we have done before the Government. That is why I doubt the application of justice to all irrespective of colour. We have continually said the laws were bitter to us, but we continue to have them thrust back on us. We shall suffer just like a dog which is thrashed by its master and which still returns to its master - there is no fault which we have done. Any punishment which is ahead of us we shall receive without having done any unlawful act. The laws are not our laws; if they were our laws opportunity to compare them should not have been refused us.

HEADMAN DISAN RADITLADI:

I greet the Magistrate. I have not many words except what I said originally that I am unable to put the laws into force. We, the Bamanwato tribe, say we find the laws impossible of application. We do not say we refuse them, as only a person in authority could do that. What

we..../

we have said is we are unable, we do not know the Government's intentions and whether they are listening to us. If we attempted to carry out these laws we should find them impracticable. I agree with what the Chief said about telling an untruth to higher authorities. If we said quickly that we would act and then did not carry out our words, we would be in trouble. These laws cannot be carried out by us because they are not in accordance with our native law. I agree with the Chief that the Government wishes our regiments to do its work, and it thereby contravening its own laws. If we were in their position we would be under arrest. That is why I say if we are unable we should say so, so that if we are under arrest it will be known that we said we are unable.

HEADMAN T.P. SEBINA:

I wish to say something which was said regarding mining. When that matter was discussed, it was said by the Government that the Chief does not consult the tribe and acts on his own. It is true our Magistrates have met us several times in connection with these laws, and it is evident ~~that~~ the Government wished to hear the feeling and views of the tribe about these laws. In truth we have not refused, we are unable, we do not see how these laws are in accordance with our native custom. The Government could see that the tribe is unable, and when it realised this it decided to try another method, viz., that tried at Mahalapye by the High Commissioner who said to the Chief it would now be his burden to put the laws into operation. The High Commissioner knew that the Chief has authority over the tribe, and that if the High Commissioner approached the Chief the Chief might force his people. It is amazing that some time back it was stated..../

stated that the Chief did not consult the tribe, but today he is being asked to act in this way. We as a tribe say that we have been unable, but now the Chief is being told that he should force the law on us, whether we like it or not. What will be done to the Chief because he is not able to force us?

HEADMAN BAISE:

We have refused, and now I am awaiting developments.

HEADMAN P. M. SEBINA?

I stand to corroborate what has been said and to add my own words. On the 14th September, 1933 the High Commissioner who had come to depose Tshekedi said that he should tell the tribe to return to their homes, and directed that in a few days the tribe elect an Acting Chief and a Council to work with such Chief. I was not present but I heard that meetings were held to nominate the Chief but it was found impossible to do so. The Government knows this. In these laws it is said that Councillors should be nominated to assist the Chief and the Bamanwato say it is impossible ~~to do so~~ to do so. The Chief was banished, and he was brought back because it was not possible to elect another Chief, and this was the truth and no joking matter. Now we mean what we say when we say we are unable to enforce the laws, and we have informed the Government time and again that we do not know these laws.

At one time we asked our Magistrate to show us how this could be done and he did not show us. Mathiba said that he could see that we shall be banished. I should like to quote the words of Lord Snell in the House of Parliament regarding the deposition of Chief Tshekedi in 1933: "I very much fear that the aim on this occasion was to break the opposition of the Bechuanaland Chief to the

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Draft Proclamations to which he was asked to submit, and the aim was to produce a tamed and obedient Chief". That is what a European said in England. When we say we are unable and are being compelled to act we think of what this man said.

Mathiba said that we are told that it has ever been the glory of a British Dominion that justice shall be equal to all, irrespective of colour or race; we do not know whether this justice is meant for us. When we could not agree with the Resident Commissioner at Mafeking we appealed to the High Commissioner but our protest was ignored. At another time we requested that Mr. Priestman should come and explain how similar laws functioned in other territories, but no reply was received. In the course of arguments we have asked that an Impartial Commission should be sent here, but this was not granted. Finally we petitioned the King and the reply was read out this morning. We requested that this Territory be under the control of the Colonial Office, but we have not received a reply. We hoped that the British Government metes out justice to every tribe. But when one speaks like I do, it is generally pointed out that such a man has no confidence in the Government, yet when requests etc. are all ignored it is natural to ask what the matter is. If these laws are enforced we will be turned into a lot of prisoners. The Government knows that we are loyal and that we rely on its protection. We are not a conquered people, but merely sought protection under the British Flag. The Government has already stated that this land belongs to us and that we are not British subjects. Whenever we see compulsions like this, it reminds us of the cannons of 1933 but even if they

came...../

came again today we would not fight. But it might then be said that because the cannons had been here for the second time the country is now a conquered territory and the people British subjects. We are made to think thus on account of being told that the High Commissioner will take a further step, for the taking of this further step is just to force us to act in accordance with these laws. I pray you Chief, that you will not force us to operate these laws - they are impracticable. Although you have been asked to force us, I ask you to listen to us when we say we are unable to comply with the laws. In their present form these laws will never be good in this country: we say they should be altered to conform to Setsoana custom, as was the original idea: the bad laws in our laws could be rectified by the Government and reasons therefor given. If this had been done at first there would have been no talk today. I deny that we have ever agreed to these laws as has been said and stated in public journals.

HEADMAN NKOBELE:

I say we are unable. I have given a report of all what took place at Pretoria.

CHIEF TSHKEDI:

I had forgotten one point. There is the allegation that these laws were framed in consultation with us. I humbly bego to state that the laws were framed by the Government without consultation with us, and after the laws were made we were asked how to put them into effect. This is not consultation.

Another thing is this, that today it is difficult to nominate people, the Government itself experienced this difficulty, but I am surprised to find that the Government is forcing..../

forcing me to do what it has been unable to do. It is not reasonable to conclude that because I was not in favour with the Proclamations the people have been induced to object. I make this because it has happened in the past that the Government has been able to nominate people even though I had signified my objection to such nomination. Even today there are people who are selected by the Government at School Committees and others taken as Assessors to the Special Court though I had disapproved of such nomination on the grounds that such were the people who do not assist me in administration. I had no say in their choice, and shall it be said today that because the Chief cannot nominate the Government is also unable to nominate? We are no longer discussing the merits of the laws because time for that has been passed, what we are doing is just an expression of our feeling so that they can be recorded.

In regard to these laws, if the Government were not a High Official we should say that the Government has itself broken its own laws. The Proclamations under discussion are a definite breach of the Treaty and Constitutional Agreements made with our fathers. I have said that we are no longer discussing but recording our feelings.

I had expected that in accordance with the English principles now that our Administration had made a law which has been strenuously opposed by the people, when a Petition was made by the people against such law a separate body would be detailed to listen to such petition and I still humbly request the Administration to advise and assist us how this Petition can be presented to the Privy Council, so that the matter could be dealt with according to the merits of the case. Perhaps the Magistrate might have something to say.

MAGISTRATE:

I greet the Chief and tribe. I will speak in

English..../

English today. I have not a great deal to say. I have only come here as a listener. The position is clear. The law has placed on the Chief the responsibility for designating his councillors and up-to-date this has not been done. The High Commissioner gave the Chief to the 15th of this month to carry out the laws. The matter is in the High Commissioner's hands. I think I can suggest what might be advice. What the High Commissioner is seeking is not the reply that "I am unable"; he wants it to be said that "I have tried and I have failed". That seems to me what he is after. Some people say "I refuse". As Disang said, however, only a man in authority can say that. The Chief says "I am unable". There is nothing more I want to say excepting that I will convey what has happened to the Government.
