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INFORMATION FROM NON-SELF GOVERNING TERRITORIES

POLITICAL AND CONSTITUTIONAL INFORMATION ON
AFRICAN AND ADJACENT TERRITORIES UNDER
UNITED KINGDOM ADMINISTRATION

Note by the Secretary-General

BASUTOLAND, BECHUANALAND AND SWAZILAND

In accordance with the statement of the Secretary-of State for Foreign Affairs of the United Kingdom of Great Britain and Northern Ireland on 27 September 1961, the Government of the United Kingdom has transmitted to the Secretary-General the following political and constitutional information on the Territories of Basutoland, Bechuanaland and Swaziland.

This information, which was received on 19 March 1963, is herewith submitted to the General Assembly at its eighteenth session.^{1/}

^{1/} In accordance with General Assembly resolution 1700 (XVI) of 19 December 1961, this information is also submitted to the Committee on Information from Non-Self-Governing Territories.

BASUTOLAND

GENERAL

1. Basutoland is an enclave entirely surrounded by the Territory of the Republic of South Africa. The Territory is mountainous in character. It is an African Territory and no non-Africans may own land or permanently settle there. The African population of Basutoland was 638,857 at the 1956 census when there were also 1,926 Europeans and 891 others. A large number of the Basuto take up employment in the Republic of South Africa; the 1956 census showed 154,782 absentees (in addition to the 638,857 enumerated in the Territory).

CONSTITUTION

2. The head of the administration of Basutoland is the High Commissioner (at present Sir John Maud) who is also responsible for the Bechuanaland Protectorate and Swaziland. He is appointed by the British Government and a Resident Commissioner (at present Mr. A.F. Giles) in Basutoland is directly responsible to him.

3. The present Constitution of Basutoland was introduced early in 1960. It was the result of the work of two Basuto Committees working together which produced a report in 1958 recommending certain constitutional changes which was unanimously approved by the Basutoland Council. The first elections under this Constitution were held in January 1960. The Constitution provides for an Executive Council and a Legislative Council known as the Basutoland National Council.

4. Under the Constitution, the Paramount Chief has certain powers and duties and a College of Chiefs is established to deal with matters concerning the chieftainship. This College exercises certain functions based on a combination of statute and Basuto law and custom.

Executive Council

5. The Executive Council comprises eight members: three members chosen by the Legislative Council from amongst their number; the Government Secretary, the Finance Secretary, the Assistant Attorney-General (the Attorney-General for

Basutoland, being Attorney-General also for the Bechuanaland Protectorate and Swaziland, is not resident in the Territory); one member of the Legislative Council nominated by the Paramount Chief; and the Resident Commissioner who acts as Chairman. The Executive Council in practice acts as the Cabinet of the Government of Basutoland; its recommendations though formally only "advice" to the High Commissioner and to the Paramount Chief, cannot be disregarded except under special circumstances requiring special procedures; and members observe the rule of collective responsibility in their relationship both to the High Commissioner and to the Legislative Council. A full ministerial system has not yet been established, but in practice members have assumed responsibility for particular departments or activities of government. The present members of the Executive Council are, in addition to the Resident Commissioner:

Mr. G.M. Hector	Home and External Affairs - Government Secretary
Mr. B.M. Khaketla	Education and Health (Freedom Party)
Mr. M. Lepolesa	Works and Commerce (Marema Tlou)
Chief Leshoboro Majara	Agriculture and Marketing (Paramount Chief's Nominee)
Chief S.S. Matete	Local Government (Marema Tlou)
Mr. F.G. Muirhead	Finance and Development, Posts and Telegraphs - Finance Secretary
Mr. B. O'Leary	Law and Legal Affairs - Assistant Attorney-General

THE LEGISLATURE

6. The Legislature is uni-cameral and consists of the Basutoland National Council which is made up of 80 members. The largest group in the Council consists of 40 members who are elected by the 9 district councils from among their own members (see section on Local Government) sitting as electoral colleges for that purpose. The electoral colleges consist of the elected members of the district councils. The remainder of the members of the Basutoland National Council are 22 Principal and Ward Chiefs, 14 members nominated by the Paramount Chief and 4 officials (the Government Secretary, the Finance Secretary, the Assistant Attorney-General and the Commissioner of Local Government).

7. The Basutoland National Council has power to legislate for all persons in Basutoland in regard to most matters except those relating to external affairs, internal security and defence. These must be referred to the Basutoland National Council which acts as a consultative body to the High Commissioner in these matters. The assent of the High Commissioner and the consent of the Paramount Chief are required for laws passed by the National Council.
8. A Constitutional Commission was set up in 1962 to review the present Constitution; its report may be ready late in 1963.

ELECTIONS AND POLITICAL PARTIES

9. Elections under the present Constitution were held in January 1960 to elect 162 members of the 9 district councils. There were 4 political parties in the field, namely, the Basutoland Congress Party, the Basutoland National Party, the Marema Tlou Party and the Basutoland Progressive Association. Members of other smaller parties either stood as independents or supported one of the parties already mentioned. Subsequently, the deputy leader of the Congress Party and other members broke away from the Party and formed another group named the Freedom Party. A feature of the election was the large number of candidates who stood as independents and were successful. The Basutoland Congress Party had an over-all majority in three of the nine district councils, but many of the independents supported the Congress Party in their district councils.
10. Taking into account the Chiefs and the members nominated by the Paramount Chief, the strength of the parties in the National Council is as follows:

Basutoland Congress Party	27
Basutoland National Party	25
Independents	14
Marema Tlou	8
Basutoland Freedom Party	2

11. The Freedom Party and Marema Tlou amalgamated in December 1962. A Communist Party was formed in 1962.

JUDICIARY

12. The principal court of the Territory is the High Court, headed by the Chief Justice. The High Court exercises an original jurisdiction in both civil and criminal matters. In the Court, it is the practice for four assessors to sit with the presiding Judge in criminal trials, but in civil cases, the Judge normally sits alone where only law, other than Native law and custom, and not fact is involved. Where Native law and custom is involved, the Judge sits with four assessors or with two African assessors only depending on the character of the case.
13. The High Court also hears appeals from the subordinate courts. The subordinate courts are presided over by magistrates and hear cases of lesser importance in both civil and criminal matters.
14. There is also a system of Basuto courts to administer Basuto customary law, and appeals from these courts lie to the Judicial Commissioner's Court and from there to the High Court.
15. Appeals from the High Court lie, in certain circumstances to the Court of Appeal in the three High Commission Territories. The circumstances for which the appeal lies to this Court and the Court rules governing the appeal are the subject of local legislation.

LOCAL GOVERNMENT

16. The primary organs of local government are the district councils, each consisting of at least fifteen members elected by secret ballot on a common roll without regard to race, sex, colour or religion, every adult having one vote. Special provision is made for proxy voting for Basuto absent in South Africa. Each member represents approximately 2,000 electors. In addition to the elected members, all the Principal and Ward Chiefs are members of their respective district councils. Each council elects both a titular president and a working chairman, operates on a committee system, employs its own paid staff and has its own treasury. The responsibilities of the district councils include public health, transport, communications, markets, the imposition and collection of rates and taxes and the issue of certain licences.

BECHUANALAND

GENERAL

17. Bechuanaland is a British Protectorate consisting largely of desert country and very thinly populated. Its boundaries are with the Republic of South Africa, South West Africa and Southern Rhodesia. Although it occupies an area of some 225,000 square miles the total population is little over 300,000. The last census, taken in 1956, showed a population of about 300,000 Africans, 3,177 Europeans and 929 others. The population is not evenly distributed, the bulk of the people living in the eastern part of the Protectorate, with one fairly large tribe occupying the north-western corner. The central, western and southern areas, consisting of the Kalahari Desert, are extremely sparsely populated.

CONSTITUTION

18. The head of the administration of Bechuanaland is the High Commissioner (at present Sir John Maud) who is also responsible for Basutoland and Swaziland. He is appointed by the British Government and a Resident Commissioner (at present Mr. R.P. Fawcus) in Bechuanaland is directly responsible to him.

19. The present Constitution of Bechuanaland was introduced in 1960. It was the result of the work of a committee of the Joint Advisory Council, representing both Africans and Europeans, which had existed for some years. The Committee set up by the Council recommended that the Joint Advisory Council should be replaced by a Legislative Council with full powers to legislate for the affairs of the Territory, this legislation to be subject in the normal constitutional manner to the assent of the High Commissioner as the Queen's representative. These recommendations were embodied in an Order in Council made by the British Government in 1960.

Executive Council

20. The Executive Council, which sits under the chairmanship of the Resident Commissioner, acts in practice as the Cabinet of the Government of the Bechuanaland Protectorate. Its recommendations, although formally only "advice"

to the High Commissioner, cannot be disregarded except under certain circumstances requiring special procedures; and members observe the rule of collective responsibility in their relationship both to the High Commissioner and to the Legislative Council.

21. The Executive Council consists of 10 members: 4 unofficial members, 2 official members and the Government Secretary, Finance Secretary, and Assistant Attorney-General, besides the Resident Commissioner himself. Although a ministerial system has not yet been introduced, members assume responsibility for particular departments or activities of the Government. The present membership of the Council is as follows:

Mr. A.J.A. Douglas	Government Secretary: Political Civil Service, Information, Labour
Mr. J.A. Allison	Administration Secretary: Tribal Affairs, Social Services
Chief Bathoen	Unofficial member associated with Administration Secretary
Mr. N.V. Redman	Development Secretary: Natural Resources, etc.
Mr. R. England	Unofficial member associated with Development Secretary
Mr. Seretse Khama	Unofficial member associated with Government Secretary's subjects
Mr. A.J. Beeby	Financial Secretary
Mr. D.J.C. Morgan	Unofficial member associated with Township Development, Works and Communications
Mr. A.G. Tilbury	Assistant Attorney-General: Law

LEGISLATIVE COUNCIL

22. The Legislative Council which first met in June 1961 has power to legislate for the affairs of the Protectorate generally, subject to certain reserved powers remaining with the High Commissioner. It has a majority of elected members, who make up 21 of the Council's 35 members. Of these, 10 are Africans elected by an

African Council as described below, 10 are Europeans elected by secret ballot by Europeans organized in 10 constituencies, and one is an Asian elected by Asians throughout the Protectorate by postal vote. The African Council replaced the former African Advisory Council whose composition it closely follows. It consists of the chiefs of the 8 principal tribes as permanent ex officio members; and 32 other members elected by tribal or district councils for 13 divisions in the Protectorate, with the Resident Commissioner as president and not more than 7 other officials. The method of election or appointment varies, but in each division at least some of the members were elected by secret ballot in the 1961 elections and the elective principle is rapidly being extended.

23. The African Council has various functions allotted by the Constitution but, when acting as an electoral college only, none of the official members takes part. The first elections under the new Constitution were held early in 1961. They did not take place on party lines as at that time no political parties were sufficiently organized in the Protectorate to take part.

24. There are now two parties: The Bechuanaland Democratic Party which has the support of several African members of the Legislative Council, and the Bechuanaland Peoples Party which is split into two factions. Both aim at independence.

JUDICIARY

25. The principal court of the Territory is the High Court, headed by the Chief Justice. This court is a Superior Court of Record, having an original jurisdiction in both civil and criminal matters. The presiding Judge generally sits with four assessors (two administrative officers and two Africans) who act in an advisory capacity except in civil cases where only law other than African law and custom is involved. There are also subordinate courts presided over by magistrates with limited powers in civil and criminal matters. The High Court hears appeals from these courts and appeals from the High Court lie to the Court of Appeal which hears appeals from all three High Commission Territories.

LOCAL GOVERNMENT

26. Local government in the Protectorate is mainly carried out through the twelve tribal authorities. In 1957 the principle was generally adopted that each authority should include a representative council, properly constituted to represent the people of the area. Each of these local administrations has its own treasury and certain powers of taxation and expenditure which are controlled through finance committees.

27. There are township authorities at Francistown and the adjacent Tati Town, in the Northern Protectorate.

SWAZILAND

GENERAL

28. The Territory of Swaziland, which is wholly surrounded by the Territory of the Republic of South Africa and of Portuguese East Africa, is the home of the Swazi people, a composite people of various clan origins, who have their own tribal institutions and system of government. The 1956 census showed the population to be 240,511. This figure includes 11,728 Swazi who were temporarily employed outside the Territory and 3,470 foreign Africans temporarily employed in Swaziland. The Africans comprised 97 per cent of the population, Europeans 2.4 per cent and others 0.6 per cent. At the end of 1960, the population was estimated at 273,000, made up as follows: 261,500 Swazi, 9,700 Europeans and 1,800 others.

CONSTITUTION

29. The head of the administration of Swaziland is the High Commissioner (at present Sir John Maud) who is also responsible for Basutoland and Bechuanaland. He is appointed by the British Government and a Resident Commissioner (at present Mr. B.A. Marwick) in Swaziland is directly responsible to him. Close contact is maintained between the administration under the Resident Commissioner and the Ngwenyama (or Paramount Chief) and his counsellors, who are consulted by the Resident Commissioner on all matters concerning the African population.

30. The focus of the Swazi nation is the Ngwenyama. The Ngwenyama is advised by his kinsmen and chosen counsellors. Constitutionally he cannot take decisions without the approval of two formally constituted councils. The smaller of the two councils, the Liqogo, consists of the more important of the Ngwenyama's kinsmen and a number of chosen advisers. The larger council is known as the Libandla, which is a general council representative of the nation. The full council meets annually. At its widest extension it is a council of all the adult males in the nation. It represents the people and their opinion and is the intermediary between the Paramount Chief and the people when he wishes to communicate with them. The Libandla deals with purely national matters which are brought to it by the Liqogo and rarely takes the initiative, although it has the power to do so. It is recognized by the Swazi as the final body from which approval for any contemplated act or legislation by the Ngwenyama should be obtained.

31. The European Advisory Council was established in 1921 (but not given statutory recognition until 1949) to advise the administration on matters affecting the European residents of Swaziland. This Council is elected by the European population and usually meets twice a year.

JUDICIARY

32. There is a High Court for the Territory, presided over by the Chief Justice, who is also the Chief Justice of Basutoland and Bechuanaland. This Court exercises an original jurisdiction in both civil and criminal matters and also hears appeals from the subordinate courts, presided over by magistrates. The subordinate courts have powers to hear cases of lesser importance in both civil and criminal matters. From the High Court appeals lie to the Court of Appeal for the High Commission Territories.

33. There are also Swazi courts, administering Swazi customary law, from which appeals lie in criminal cases to the Higher Swazi Court of Appeal, thence to a Judicial Commissioner, and from him in certain cases to the High Court. In civil cases, appeals from the Higher Swazi Appeals Court go direct to the High Court, if allowed.

LOCAL GOVERNMENT

34. There are six proclaimed townships, in each of which there is an urban area advisory committee, under the chairmanship of the district commissioner, which advises him on the administration and welfare of the township and surrounding urban area. These Committees consist of up to five elected members and certain government officials. There are, in addition, African advisory committees, which advise the district commissioner on the needs of the African population. The possibility of granting municipal status to two of the townships is now being considered.

35. Outside the urban areas, the local Government of the Swazi people is carried on mainly through the Swazi machinery with Chiefs advised by their own Liqoqo and Libandla. The Chiefs are grouped in twenty-nine areas, each group forming an inkundla (plural tinkundla).

RECENT DEVELOPMENTS

36. In 1960, the European Advisory Council suggested that the time had come for constitutional advance and the Paramount Chief announced his desire that Africans and Europeans should continue to live together in amity; he suggested the establishment of a Legislative Council on which both would be represented. Consequently, at the end of 1960, the Resident Commissioner initiated discussions, in a Constitutional Committee consisting of both Swazi and Europeans, to examine the problem of setting up legislative and executive councils. In this task the removal of racial discrimination in the Territory was early and readily accepted as a vital requisite. The Committee presented its report to the British Government in December 1961, and in March 1962 it was published, together with a dispatch from the Secretary of State for the Colonies. Constitutional talks were held at the Colonial Office in London in January-February 1963 and were followed by further discussions in Swaziland.

37. The political parties represented at the talks were the Swaziland Progressive Party (split into three factions), the Swaziland Democratic Party and the Mbandzeni National Convention. The Eurafrican Association was also represented. The Progressive Party was an Association from 1929 to 1960. The other two parties came into existence in 1962 and formed an alliance in January 1963. All the parties are in opposition to the Swazi National Council which claims to represent all Swazis.