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TO: CONSTITUTIONAL ASSEMBLY

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ATTENTION: MR H EBRAHAM

**RE: MEMORANDUM SUBMITTED BY CONTRALESA TO THE
CONSTITUTIONAL ASSEMBLY ON CHAPTER 7 OF THE
CONSTITUTIONAL TEXT**

**NO OF PAGES: 9
(incl. this one)**

DATE: 7 OCTOBER 1996

SENT BY: ADV M NONKONYANA

**MESSAGE: URGENT ATTENTION AND SUBMISSION TO
CONSTITUTIONAL ASSEMBLY**

MEMORANDUM SUBMITTED BY CONTRALESA TO THE CONSTITUTIONAL ASSEMBLY ON CHAPTER 7 OF THE CONSTITUTIONAL TEXT

1. **INTRODUCTION**

- 1.1 The traditional leaders of South Africa were part of the Negotiating Forum that negotiated and agreed on constitutional principles which are binding to the Constitution Assembly.
- 1.2 Principle XIII expressly provides that "The institution, status and role of traditional leadership, according to indigenous law, shall be recognised and protected in the Constitution.
- 1.3 Furthermore Principle XVII provides that:
- "At each level of government there shall be democratic representation.
This principle shall not derogate from the provisions of principle XIII."
("Our emphasis")
- 1.4 We submitted our views to the Constitutional Assembly in 1995 and further parties and groups submitted their proposals and we all stated that the role of traditional leaders in this country should be entrenched.
- 1.5 All those views were ignored and we had no choice but to file our objection to

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the certification if the Constitutional text became in our view the text was not comply with the agreement between traditional leaders and all political parties at the World Trade Centre are Constitutional talks which are contained in the above constitutional principles.

1.6 We once more wish to submit our proposals to the Constitutional Assembly with a view to have a Constitution that will be respected by all the people of this country.

1.7 We would like further to remind honourable members of the Constitutional Assembly that we agreed at the World Trade Centre Constitutional talks that the council of traditional leaders would be part of Constitutional Assembly.

1.8 The traditional leaders of South Africa from virtually all the provinces met in Durban on 27 August 1996 and inter alia unanimously resolved that we should approach the Constitutional Assembly with a view to persuade it to revisit all the clauses that we had objected to and of course to take on board our submissions on chapter 7 of the Constitutional text.

2. PARTICIPATION OF TRADITIONAL COMMUNITIES IN LOCAL GOVERNMENT STRUCTURES

2.1 We need to define and adopt mechanism to enable our communities to participate in the Local Government structures.

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2.2 In our respectful opinion we should have a three-tier structure of Local Government viz:

- 2.2.1 Metropolitan Local Government
- 2.2.2 Village/Municipal Councils
- 2.2.3 Traditional Authorities

2.3 We say so because the system of Administration is not the same and above all rural development has been neglected in favour of urban development. If these structures are fused there is a potential danger that the much needed rural development will be neglected again. Furthermore we have received reports to the effect that some of these urban councils are bankrupt and services have collapsed. We do not want to find ourselves in a position to pay the debts that are owed by these councils.

2.4 We are therefore of the view that Local Government elections should be held in respect of rural areas. However, the Councillors elected should be the Councillors of a Traditional Authority which of course will be chaired by a Traditional Leader. A head of each Traditional Authority should perform his or her duties in consultation with the democratically elected councillors.

2.5 The envisaged Local Government elections in 1995 will be dominated by Political Party Politics i.e. Political Parties will nominate and canvass for the election of their candidates. The question then is whether this will be proper

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in rural areas, given the fact that, our system of governance especially through the peoples assemblies like "Imbizo", "Kgotla" etc. we have maintained unity of our people by for instance nominating committees without due regard to their political affiliation. Theoretically speaking, it is possible in our areas that any political party including those that are opposed in principle to our institution and those who took our land may win the elections and introduce policies designed to destroy our institution.

- 2.6 We are of the view that a new legislation is needed. Such a piece of legislation should of course be passed after it has been referred to the council or House of Traditional Leaders in terms of the Interim Constitution.
- 2.7 The other option which can be explored is a District Councils model of Local Government which is provided for in the Interim Constitution. The Interim Constitution, inter alia, provides that there shall be an elected local government which shall take political responsibility for the provision of services within an area of Traditional Authority and that traditional leaders shall be ex officio members of such a Local Government and shall be eligible to be elected Chairperson of such Local Government. These district councils may be established in respect of each magisterial district and even in respect of more than one magisterial district especially for the small villages.
- 2.8 The role of Kings and their councils is not at all clear. The Kings including Regional Authorities, do exist and to perform their functions in terms of the

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enabling legislation. This issue was raised at the World Trade Centre talks and could not be resolved. The view that more than one magisterial district should constitute a district council may provide for a substitute of such Regional Authorities. We will have to define the role of our Kings or other senior Traditional Leaders who chair the Regional Authority meetings.

3. LATEST PROPOSALS

- 3.1 The Interim Constitution Act, Act No 200 of 1993 "Constitution", for a (3) tier-structure of Government.
- 3.2 Section 174 of the Constitution expressly provides for the establishment of a competent authority which should make provision for Rural Local Governments with differentiated powers, function and structures, according to certain specified considerations.
- 3.3 Section 181 of the Constitution also provides that Traditional Authorities shall continue to exist and to exercise and perform the powers and functions vested in them in terms of the law.
- 3.4 Section 183(2)(b) provides that any Provincial Bill pertaining to Traditional Authority or any matters having a bearing thereon shall be referred by the Speaker to the House of Traditional Leaders for its comments before the Bill is passed by such legislature.

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- 3.5 The Traditional Leaders will be ex officio members of Local Government Structure in terms of Section 182 of the Constitution.
- 3.6 We have agreed that there should be six Local Government structures in the Province and that within an area of a Local Government structure there will be primary authorities. The municipalities and farming areas have been accorded a status of a Primary Authority.
- 3.7 The rural communities governed by Traditional Authorities have not been granted a status of a Primary Authority. We do not find any justification to discriminate Rural Communities in this way. We are of the firm view that Traditional Authorities must be recognised as a Primary Authority in respect of our areas. A Traditional Leader should be a chairperson of such authority and the councillors should be democratically elected (see Schedule 4, Principle No XVII of the Constitution).
- 3.8 The Traditional Leaders within an area of any of the six Local Government structures should be ex officio members of the Local Government structure in accordance with Section 182 of the Constitution. Section 182 grants Traditional Leaders an en officio status to a fully pledged Local Government not to any structure of that Local Government.
- 3.9 If the Traditional Authorities are recognised as Primary Authorities it would mean:-

- 3.9.1 That the territorial integrity of such authority is maintained.
- 3.9.2 Voters rolls for each Traditional Authority will be maintained and checked by all members of the community within its area of jurisdiction.
- 3.9.3 This Primary Authority shall be a vehicle to deliver R.D.P. in those poverty stricken areas.
- 3.9.4 The stability prevailing in rural area will be enhanced.
- 3.9.5 The perception that the Government is biased in favour of urban development will be eliminated.
- 3.9.6 The suggestion of separating Traditional Authority from Rural authority per se with a potential conflict of interest will be avoided.

4. CONCLUSION

- 4.1 We will be pleased if the Constitutional Assembly would invited us to make oral submissions.
- 4.2 Further submissions in this regard may be submitted by a delegation of traditional leaders of South Africa in accordance with Resolution adopted at

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Durban Conference which was held on 27 September 1996.

ADV M NONKONYANA

M.E.C. MEMBER

