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CAPE TRADITIONAL LEADERS

MEMORANDUM

TO: TO ADMINISTRATION: TECHNICAL COMMITTEES

ATTENTION: MELODY EMMETT

DATE: TUESDAY 8TH JUNE 1993

RE: COMMENTS ON THE REPORTS OF THE TECHNICAL COMMITTEE ON  
CONSTITUTIONAL MATTER

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INTRODUCTION:

- 1.1 We acknowledge receipt of the Memorandum dated 4th June 1993 which was faxed to us very late on that day and was received by our offices on Monday to the effect that we should submit our comments to the Technical Committees today.
- 1.2 We would like to re-iterate that it is our firm view that the institution of Traditional Leaders should be recognised in the future constitution of the new South Africa. We are basing our view on the fact that the overwhelming majority of the people of this world recognise this institution as their institution. The reason why this institution has survived the colonial era as well as the apartheid era clearly supports our view that this is the

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people's institution that should be recognised. With this in mind we are of the view that it should be enshrined in the future constitution.

1.3 We would like to re-iterate what we said when the constitutional principles were debated on the 3rd of June as well as on prior dates as regards our appreciation for the manner in which the technical committee has performed its task.

2. COMMENTS:

2.1 Paragraph 2.12 of the third report which was submitted to the Negotiation Council on Constitutional Committees by the Technical Committee on 27th May 1993 read as follows :-

" The status of Traditional leaders shall be acknowledged and recognised in an appropriate manner in the constitution. Unless provided otherwise by the legislation, Indigenous law shall be applied to the extent that it is compatible with the provision of the fundamental rights contained in the Constitution".

2.2 This Clause emphasises the status of Traditional Leaders and with respect is not in accordance with our suggestions which is based on the will of our people, namely that the



institution of traditional leadership should be recognised in the future constitution. It is our view that if the Council approves this principle as drafted it will create an impression that the traditional leaders want to secure only their status and not our people's institution. This Clause as amended also maybe intepreted in a manner which is contrary to the views of our people in that some people regard this institution as belonging to the catergy of the so-called interest groups, which is not the case. Furthermore, the expression, "... recognise in an appropriate manner ..." is to us a general statement which maybe interpreted to mean different things to different people and for that reason it may even dilute or be interpreted contrary to the spirit of the constitution.

2.3 We are accordingly of the view that this Clause should be re-drafted in accordance with our suggestion in the Memorandum which was received by the Multi-Party Conference on the 19th May 1993 which is amongst the inputs which are attached to Volume 4 of a report on Constitutional matters. The first recommendations thereof reads as follows:-

" The set of constitutional principles should also expressly provide for the recogniiton and preservation of traditional leadership."

2.4 We therefore suggest that Clause 2.12 should be amended to read as follows:-

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" The institution of traditional leadership together with its traditional Councils as established by Customary Law and Usage shall also be acknowledged and recognised in the Constitution. Customary Law shall be recognised and be applied provided that it is not repugnant to the provisions of the fundamental human rights contained in the Constitution."

3. CONCLUSION:

3.1 In conclusion, we may as well indicate that we are of the view that the negotiating council should only agree on the general constitutional principles which are necessary for the future constitution and for this reason should not delve into what we may regard as the function of the Constituent Assembly/Constitution Making Body as regards the specific provisions of a future Constitution.

3.2 We have read the general Constitutional principles and in our view it is in accordance with what we have stated in the previous paragraph. We accordingly re-iterate our appreciation for the wonderful piece of work which this Committee has produced.

DATED AT UMTATA THIS 08TH DAY OF JUNE 1993.

  
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M NONKONYANA  
FOR CAPE DELEGATION

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