

2/4/5/5/1

PROPOSED PROGRAMME

WORKSHOP ON  
TRADITIONAL LEADERS AND INDIGENOUS LAW

MONDAY, 03 APRIL 1995  
09H00 - 13H00

VENUE : OLD ASSEMBLY CHAMBER

1. Status and Application of Customary Law - *Prof. T. Nhlapo*
  
2. The Role of Traditional Leadership:  
Executive and Legislative Functions of  
the State - *Prof. B.R. Mqeke*
  
3. Customary Law and the Bill of Rights with  
particular reference to the Gender  
Implications of Traditional Leadership - *Ms T. Madonsela*
  
4. Relationship of Traditional Authorities  
to other levels of Government; including:  
Local Government and other specialised  
structures - *Prof. F. de Villiers*

**CLOSURE**

*Tea will be served at 08H45 and 11H15*

# CONSTITUTIONAL ASSEMBLY

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REPUBLIC OF SOUTH AFRICA

REF NO:

## MEMORANDUM

TO: MEMBERS OF THEME COMMITTEES II, III, IV AND V  
FROM: HASSEN EBRAHIM  
DATE: 20 MARCH 1995

### RE: TRADITIONAL LEADERS

The National General Council of Contralesa met in a Workshop on Traditional Leaders and the constitution-making process on 17/18 March 1995. I attach under cover hereof a copy of their Press release for your information.

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## PRESS RELEASE

### NATIONAL GENERAL COUNCIL OF CONTRALESA

- meeting in a workshop on Traditional Leaders and the Constitution-making Process held at the Manhattan Karos Hotel, Pretoria, 17-18 March 1995

The role, powers and functions of traditional leaders in negotiations and governmental process in general should be expanded in order to ensure that the views and aspirations of millions of people are properly represented on all levels of government. The current process of registration of voters for local government elections, can only be successful if clarity is reached on the role and status of traditional leaders in rural government. Provision should therefore be made for traditional leaders to become more involved in the current negotiations, the development of a new constitution, participating in the formulation of policy options especially regarding the social and economic restructuring of South Africa, and the implementation of RDP and other policy measures.

These are some of the most important recommendations that will be presented to the Constitutional Assembly by the executive of CONTRALESA. At a workshop on the future of traditional leaders in South Africa, which was facilitated by the Centre for Constitutional Analysis (HSRC) over the week-end, traditional leaders from across South Africa were exposed to information regarding the experience of traditional authorities in other post-independent African states, experiences in South Africa since the implementation of the interim constitution, and major problem areas that exist at present.

CONTRALESAs emphasized that the experience of various African countries illustrate that at least in some cases, traditional authorities have over years of instability, provided a basis of stability and continuity - even though the fact that they were in many cases ignored and even abolished by the post-colonial governments. However, where many other democratic arrangements have failed or developed problems of various kinds, the institutions of traditional authorities have not only remained intact, they also fulfil a crucial role in the governmental process - especially on local levels and in the delivery of services.

The political and economic situation in Africa would have been much worse if it was not for the presence of traditional authorities and structures and approaches that accompany it.

The following are some of the most important recommendations that are being presented to the Constitutional Assembly:

- The democratic dispensation developed in South Africa should be developed in a manner which reflects the values of the whole community that it serves. The institution and role of traditional leaders, which have been in existence for longer than than liberal democracy in the West, have to be treated with respect and accordingly be integrated within the structures of national, provincial and local government
- Traditional authorities are organs of government in the same way as local and provincial levels - and must be treated accordingly. Traditional leaders have always had, and need continue to have, substantial legislative, administrative and even judicial powers which are exercised in conjunction with elected councillors and in consultation and cooperation with other levels of government (namely provincial and national)
- a series of meetings must be held between the Constitutional Assembly and the respective houses for traditional leaders in the provinces, in order to afford the opportunity for a proper dialogue. The understanding that was reached at the World Trade Centre to the effect that the Council for Traditional Leaders would be an integral part of the Constitutional Assembly must be implemented as a matter of urgency
- the constitution must acknowledge and protect the status of traditional authorities as fully fledged local government in rural areas. This means that all functions and powers guaranteed to local government, should also be accorded to rural local governments. These rural governments should be headed by the chief of the particular area, while elections will also be held for councillors

- traditional authorities, shall in their role as rural local government, render services of equal standard to all individuals residing in their particular areas of jurisdiction
- the powers of the provincial houses of traditional leaders should in general be strengthened and expanded. The fact that the houses in terms of the interim constitution only have advisory powers and that their advice can be ignored by the provincial legislature, undermines their credibility and legitimacy
- the establishment of the National Council of Traditional Leaders must be proceeded with as a matter of urgency in order to ensure that the will of traditional leaders is reflected on the national level

CONTRALESA wants to emphasize that traditional authorities have a crucial role to play in the democratization of South Africa, the formulation of policy on all levels of government, the social and economic restructuring of our country, and the implementation of various policy programmes - especially those related to rural areas.

CONTRALESA wants to express a serious concern that the process of drafting the new constitution could be perceived as overhasty by communities. Various aspects on the interim constitution have not yet been implemented or not tested in practice, while communities are now requested to consider improvements. The danger exists that in the same way that negotiations at Kempton Park were conducted with little public input, the current process could be exposed to criticism. With the view to making the Public Participation Programme more meaningful, the forums must also be held in the deep rural countryside and not only in towns and cities.

Nkosi Phathekile Holomisa (Ah! Dilizintaba)

President: CONTRALESA

18 MARCH 1995

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## MEMORANDUM

23 March 1995

To All Theme Committees

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### Re : Establishment of Commissions

All Theme Committees have been requested by the Management Committee to reconsider the establishment of commissions. You should please consider what issues, if any, in your Theme Committee are best dealt with in Commissions. Please direct responses to the Executive Director by Friday 1 April 1995.

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**HASSEN EBRAHIM**  
**EXECUTIVE DIRECTOR**

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