

CONGRESS OF TRADITIONAL LEADERS OF SOUTH AFRICA (CONTRALESA)

RESPONDENT'S OBJECTION TO THE CERTIFICATION OF THE NEW CONSTITUTION BILL

TAKE NOTICE THAT the Respondent notes its objection to the certification of the new Constitution on the following grounds:

1.

CHAPTER 2

Section 8(2) *inter alia* provides that the Bill of Rights binds natural persons. The application of the equality clause horizontally will inflict an irreparable harm to the entrenched cultural values of the indigenous people of South Africa in that:

- (a) For instance a male person who deflowered a virgin and made her pregnant might escape liability against our culture which renders a male partner delictually liable.
- (b) The lobola or bogadi system will be adversely affected.
- (c) The institution of traditional leadership is mainly based on the principle of male primogeniture.
- (d) The Rules of intestate succession will be adversely affected.
- (e) The religious practice of Muslim communities (e.g. Mosque) will be seriously eroded.

In the circumstances it is respectfully submitted that the Chapter does not comply with constitutional principles XIII and XXXIV.

2.

CHAPTER 7

The Constitution expressly provides that there will be municipalities throughout the Republic which will have both executive and legislative authority (See Clause 151). This chapter is not consistent with the provisions of principles XIII and XVII in that there is no role for traditional leaders at a local Government level. There are traditional authorities with some of the counsellors democratically elected in country which from time immemorial are local governments in the rural areas are present interim Constitution Act 200 of 1993 recognises this fact.

3.

CHAPTER 8

The chapter dealing with the courts of law does not make provision for customary courts that have been in existence from time immemorial. These courts presided over by traditional leaders and their councils. We are of the view, these courts like other courts of the land should be recognised in the Constitution. These courts protects and promotes the cultural values of the indigenous people of South Africa.

In the premises it is our respectful submission that this provision does not comply with principles XIII and XXXIV.

4.

CHAPTER 12

This chapter provides that it will no longer be imperative for the Governments (Provincial and National) to make provision for the establishment of the Houses and Council of Traditional Leaders. The chapter expressly provides that the Governments may do so. We believe that the Constitutional Assembly *should have* made provision for the representation of the Traditional Authorities in the Council of Provinces or make provision for the houses of Traditional Leaders in accordance with the present Interim Constitution Act 200 of 1993.

In our respectful submission these provisions undermines the provisions of principles XIII and XVII

DATED AT UMTATA ON THIS 30th DAY OF MAY 1996

NKOSI M NONKONYANA
FOR CONGRESS OF TRADITIONAL LEADERS OF SOUTH AFRICA