

# CONGRESS OF SOUTH AFRICAN TRADE UNION (COSATU)

Reference: CCT 23/96

29 May 1996

FOR ATTENTION: MS URMILA BHOOLA  
Messrs Cheadle, Thompson and Haysom  
P O Box 30894,  
BRAAMFONTEIN  
2017

Gentlemen

## **CERTIFICATION OF NEW CONSTITUTIONAL TEXT: RE SUBMISSIONS BY COSATU: YOUR REF. U BHOOLA/COS 1003**

Your facsimile of 28 May regarding the above matter refers.

I have been asked by the President of the Constitutional Court to inform you that COSATU is welcome to comment on clause 241 (the immunity clause) in its written submissions.

Yours sincerely  
Ms M Nienaber

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28 May 1996

ATTENTION: MRS M S NIENABER

The Registrar  
Constitutional Court  
Braamfontein

Dear Mrs Nienaber

## **APPLICATION TO CERTIFY A NEW CONSTITUTIONAL TEXT IN TERMS OF SECTION 11 OF THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1993: SUBMISSIONS BY COSATU**

Thank you for your letter of 24 May 1996 regarding the above matter.

We apologise to the reference to clause 39(4) of the Draft Constitution, referring to an earlier draft, adopted by the Constitutional Assembly. We understand that clause 39(4) has been deleted

and has been replaced by clause 241. This is the clause referred to as the "immunity clause" in our previous letter and Coastu would wish to comment on this clause in its written submissions.

Kindly confirm that this is in order.

Yours faithfully  
Urmila Bhoola (Ms)  
CHEADLE THOMPSON & HAYSOM

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24 May 1996

Cheadle Thompson & Haysom  
P O Box 30894  
BRAAMFONTEIN  
2017

Dear Sirs

**APPLICATION TO CERTIFY A NEW CONSTITUTIONAL TEXT IN TERMS OF SECTION OF THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1993: SUBMISSIONS BY COSATU**

I have been asked by the President of the Constitutional Court to inform you that the following directions have been given in response to your letter dated 22 May 1996 written on behalf of the Congress of South African Trade Union.

1. The Congress of South African Trade Unions may submit written argument to the Court in regard to clause 23 of the Constitution.
2. Such written argument shall be brief and succinct and shall be lodged with the Registrar of the Constitutional Court by not later than 18 June 1996. It should deal with the objections to the said clause which may have been lodged with the Registrar in terms of paragraphs 2, 3, 4 or 5 of the directions given by the President of the Constitutional Court on the 13th May 1996.
3. Upon receipt of the written argument referred to in paragraph 2 hereof, further directions be given indicating whether or not the Congress of South African Trade Unions will be permitted to present oral argument at the public hearing in amplification of its written argument.

I have also been asked by the President of the Court to draw your attention to the fact that the Constitution submitted to the Court for certification does not contain a Clause 39(4). Was the

reference to such a clause in your letter made in error, or was it intended to refer to another clause in the Constitution?

Yours faithfully

M S NIENABER

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22 May 1996

The Registrar  
Constitutional Court  
Braamfontein

Dear Mrs Nienaber

**APPLICATION TO CERTIFY A NEW CONSTITUTIONAL TEXT IN TERMS  
SECTION 71 OF THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA  
1993: SUBMISSIONS BY COSATU**

We represent the Congress of South African Trade Unions ("COSATU").

Our client has a material interest in the outcome of the process of certification of the new Constitution adopted by the Constitutional Assembly on 8 May 1996. In particular, our client has an interest in the formulation of the labour rights entrenched in the new Constitution, which affects its membership directly. Our client would seek to make submissions to the Constitutional Court on the labour relations clause (clause 23) and the immunity clause (clause 39(4)) on the basis that in these clauses are consistent with the Constitutional Principles entrenched in the interim Constitution and that the new Constitution should accordingly be certified.

However, the directions issued by the Constitutional Court in terms of Rule 15 of its Rules, provide only for the following parties to make submissions:

1. Political parties represented in the Constitutional Assembly;
2. Any other party wishing to object to the certification of the Constitution.

The Directions accordingly preclude our client from making written submissions and presenting oral argument before the Constitutional Court in support of the labour rights and immunity clauses. These are obviously matters which are of fundamental interest to the entire labour movement in South Africa. Given its direct interest in the labour rights, our client believes that its submissions would be helpful to the Court.

We are accordingly instructed to request that our client is permitted to make written submissions and, if necessary, to present oral argument before the Constitutional Court, defending the above mentioned clauses in the new Constitution.

We would also seek the Court's direction as to:

- (1) whether our client would be required to comply with the 1 000 word limit submissions;
- (2) whether it would have to file full heads of argument; and
- (3) the date by which its' written submissions would have to be lodged.

Furthermore, bearing in mind that our client would want to defend the clause mentioned above, it would be helpful if, for the purposes of preparing its' written submissions, it has access to submissions made by other parties in regard to the labour relations and immunity clauses. Our basis for this request is that it in an application before the Constitution Court, an amicus curiae would have the opportunity to peruse the applicants' and respondents' heads of argument.

We await your urgent response in this regard.

Should you require, any further information or clarification do not hesitate to contact the writer hereof.

Yours faithfully  
Urmila Bhoola (Ms)  
CHEADLE THOMPSON & HAYSOM