

**REPUBLIC OF SOUTH AFRICA**

Department of Arts, Culture, Science and Technology

**BUREAU OF HERALDRY**

[Date Fax received: 29 May 1996]

The Registrar  
Constitutional Court  
Braamfontein

**SEAL OF THE REPUBLIC: OMISSION FROM THE NEW CONSTITUTION**

1. The Constitutional Court has invited public comment on the draft of the new Constitution, prior to its certification.
2. In the light of this invitation I would like to bring to the Court's attention what seems to be a glaring omission which could have far-reaching implications.
3. What is most disturbing is that I can find no reference in the new Constitution, as adopted by the Constitutional Assembly on 8 May 1996, to the Seal of the Republic.
4. This seal was provided for in Section 2(3) of the Constitution of the Republic of South Africa Act, No.200 of 1993, and in the previous Constitutions of 1961 and 1983.
5. In line with international practice, Section 83(3) of the Constitution of the Republic of South Africa Act, 1993, prescribes that 'The signature of the President on any instrument shall be confirmed by the seal of the Republic'.
6. Apart from being impressed on the signed original of legislation the seal of the Republic, to mention but two examples, is also used to certify the commissions of officers in the Services, and consular appointments. Certification of the latter appointments is, in the international context, of particular relevance.
7. The importance of the national or 'Great Seal' as an instrument of government may be judged from the fact that it is traditionally considered to be the supreme emblem of sovereignty, the only instrument by which on solemn occasions the will of the Head of State can be expressed. Absolute faith is universally given to every document purporting to be under the 'Great Seal', as having been duly sealed with it by the authority of the Head of State. It is my understanding that the seal of the Republic is also impressed on international treaties and agreements.

8. It is therefore unthinkable that the new Constitution contains no reference to the seal of the Republic - the supreme emblem of sovereignty - and that section 82 of the new Constitution, for example, makes no provision for the formal sealing of legislation.
9. The failure to make provision for the seal of the Republic in the new Constitution, would presumably imply its abolition and make its continued use unconstitutional, with far-reaching implications.
10. In the circumstances, may I suggest that section 5 of the new Constitution be expanded to make provision for both the national flag and national seal. This could be done as follows:

‘National flag and seal of the Republic

- 5.1 The national flag of the Republic is black, gold, green, white, red and blue, as described and sketched in Schedule 1.
- 5.2 The seal of the Republic under the previous Constitution shall be the seal of the Republic under this Constitution.

- 16 The latter part of this proposed amendment would be in line with the provision incorporated into Section 2(3) of the Constitution of the Republic of South Africa Act, No.200 of 1993.
- 17 Should the design of the seal of the Republic later change, this could be addressed by an appropriate amendment to the Constitution but in the interim, at least, it would seem to be of critical importance that the Seal of the Republic - as the supreme emblem of sovereignty - should not be left out of the new Constitution.

Yours faithfully,  
STATE HERALD

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Reference: CCT 23/96

**FOR ATTENTION: MR F G BROWNELL**

Bureau of Heraldry  
Department of Arts, Culture, Science and Technology  
Pretoria

Dear Mr. Brownell:

**CERTIFICATION OF NEW CONSTITUTIONAL TEXT**

Thank you for your submission of 29 May 1996.

I have been asked by the President of the Constitutional Court to advise you as follows:

1. The Constitutional Court is required in terms of section 71 of the Constitution to certify whether or not the constitutional text adopted by the Constitutional Assembly complies with the 324 constitutional principles set out in Schedule 4 of the Constitution.
2. The Constitutional Court cannot add to, amend or delete any of the provisions of the constitutional text drafted by the Constitutional Assembly.
3. Should you contend that the constitutional text as adopted by the Constitutional Assembly and submitted to the Constitutional Court for certification does not comply with the constitutional principles set out in Schedule 4, you should set out in writing the particular Constitutional Principle/s that have not been complied with, and submit such in writing to me by not later than 31 May 1996. Any such contention will be taken into account by the Constitutional Court when it decides whether or not the Constitutional text adopted by the Constitutional Assembly complies with the said constitutional principles.

MS M NIENABER

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**REPUBLIC OF SOUTH AFRICA**

Department of Arts, Culture, Science and Technology

BUREAU OF HERALDRY

Dear Ms. Nienaber

**OMISSION FO THE 'SEAL OF THE REPUBLIC' FROM THE NEW  
CONSTITUTION**

Thank you for your letter CCT 23/96 of 30 May 1996, in answer to my submission of 29 May 1996.

In reply, may I submit for the kind consideration of the Constitution Court the following contention that the constitution text adopted by the Constitutional Assembly and submitted t the Constitutional Court for certification, does not fully comply with one of the constitutional principles set out in Schedule 4 of the present constitution.

1. In terms of the provisions of Constitution Principle IV, in Schedule 4 of the Constitution of the Republic of South Africa, No.200 of 1993, 'The Constitution

- shall be the supreme law of the land. It shall be binding on all organs of the State at all levels of government’.
2. This is as it should be, but in my humble opinion the integrity of the Constitution as ‘the supreme law of the land’ is compromised by it not making specific provision for the ‘Seal of the Republic’.
  3. The requirement that instruments of State be sealed, in addition to being signed, is and always has been an important security measure against fraud and misrepresentation. Since the founding of the Union of South Africa in 1910, there has been a consistent provision for the sealing and thus certifying of the authenticity of instruments of State.
  4. Under the Letters Patent constituting the Office of Governor-General issues under Royal Warrant of 29 December 1909 and published for general information in Government Gazette No.1 of 31 May 1910, section II provides that:  
  
‘There shall be a Great Seal of and for the Union, which the Governor-General shall keep and use for sealing all things whatsoever that shall pass the said Great Seal ...’
  5. Subsequent to the passing of the Statute of Westminster in 1931, the South African Parliament passed the Royal Executive Functions and Seals Act, 1934 (Act No.70 of 1934), section 1 of which provided for a Royal Great Seal and Royal Signet for the Union of South Africa.
  6. Section 4(2) of this Act prescribed that ‘The King’s sign manual shall further more be confirmed by the Great Seal on all royal proclamations and he may, by proclamation, prescribe from time to time which other public instruments bearing his sign manual shall pass either the Great Seal or the Signet’.
  7. Section 4(3) of this Act further prescribed that ‘The Keeper of the Seals shall affix either the Great Seal or the Signet, as the case may be, to any instrument bearing the King’s sign manual and the countersignature of one of His Majesty’s Ministers of State for the Union and required to pass either the Great Seal or the Signet.
  8. In the Republic of South Africa constitution Act, 1961 (Act No.32 of 1961), section 18(1) prescribes that ‘There shall be a Seal of the Republic ...’, which in terms of section 18(2) ‘shall ... be used on all public documents on which the Royal Great Seal or the Royal Signet of the Union of South Africa or the Governor-General’s Great Seal was immediately prior to the commencement of this Act required to be used’.
  9. Section 22(1) of this Republic of South Africa Constitution Act, 1983 (Act No.110 of 1983) once again provides that ‘There shall be a seal of the Republic ..’

- and section 22(2) states that it shall 'save in so far as may otherwise be determined by the State President, be used on all public documents on which it was required immediately prior to the commencement of this Act'.
10. Section 2(3) of the Constitution of the Republic of South Africa Act, No.200 of 1993 prescribed that "...the seal of the Republic under the previous Constitution shall be the .... seal of the Republic under this Constitution'.
  11. The importance of the 'Great Seal' or 'Seal of the Republic' as the supreme emblem of sovereignty has thus enjoyed an unbroken recognition since the establishment of the Union of South Africa on 31 May 1910.
  12. Since all executive acts by the President are executed under the Constitution, which in terms o Constitutional Principle IV, 'shall be in supreme law of the land', I believe that the new Constitution does not comply fully with this principle in that it fails to provide, by mean of the 'Seal of the Republic' for due certification of the President's signature on instruments of State.
  13. The importance of the national or 'Great Seal' as an instrument of government may be judged from the fact that it is traditionally considered to be the supreme emblem of sovereignty, the only instrument by which on solemn occasions the will of the Head of State can be expressed. Absolute faith is universally given to every document purporting to be under the 'Great Seal', as having been duly sealed with it by the authority of the Head of State. It is my understanding that the seal of the Republic is also impressed on international treaties and agreements.
  14. The failure to make provision for the seal of the Republic in the new Constitution, would presumably imply its abolition and make its continued use unconstitutional, with far-reaching implications.
  15. In the circumstances may I suggest that section 5 of the new Constitution be expanded to make provision for both the national flag and national seal. This could be done as follows:  
  
    'National flag and seal of the Republic:
    - 5.1 The national flag of the Republic is black, gold, green, white, red and blue, as described and sketched in Schedule 1.
    - 5.2 The seal of the Republic under the previous Constitution shall be the seal of the Republic under this Constitution.
  16. The latter part of this proposed amendment would be in line with the provision incorporated into Section 2(3) of the Constitution of the Republic of South Africa Act, No.200 of 1993.

17      Should the design of the seal of the Republic later change, this could be addressed by an appropriate amendment to the Constitution but in the interim, at least, it would seem to be of critical importance that the Seal of the Republic - as the supreme emblem of sovereignty - should not be left out of the new Constitution.

Yours faithfully,  
STATE HERALD