

H W THERON

**SUBMISSION TO THE CONSTITUTIONAL COURT,
CASE Nr: CCT/23196**

**RE: THE APPLICATION FOR THE CERTIFICATION OF THE NEW
CONSTITUTIONAL TEXT IN TERMS OF SECTION 71 OF THE
CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1993.**

In the above application, and in accordance with the directives given by the President of the Constitutional Court in terms of rule 15, I hereby submit the following comments and objections regarding the certification of the Constitution adopted by the Constitutional Assembly on 8 May 1996:

1. Although the Founding Provisions, section 3(2) Chapter 1 of the proposed text, refers inter alia to the RIGHTS and DUTIES of all citizens, only the said rights are defined, i.e. Chapter 2, with no reference to the duties and responsibilities these rights will entail or be subjected to.

To have a Bill of Rights entrenched in the Constitution is necessary, but equally necessary is the requirement to predetermine and entrench the said duties and responsibilities, or then at least the basis on which this will be established, and by whom.

The question can also be asked whether non performance, in terms of these duties, can result in the loss of rights, and then again, who will be the judge of both the said non-performance and the extent to which the rights, as a result thereof, will be affected.

My submission is therefore that the defined rights, without adequate clarity or specifics in terms of the required counter-performances, is *de facto* not enforceable and therefore not certifiable.

2. In section 9(2) of the proposed text, the right to adopt legislature and other measures, to promote equality of persons disadvantaged by unfair discrimination, can in itself be discriminatory, contravening the stipulations of subsection (4) thereof, including the applicable section 8(2) of the present Constitution if applied unchecked and without predetermining inter alia the criteria by which the so-called "unfair" discrimination will be judged.

Section 9(5) of the proposed text likewise allows for 'unfair' discrimination to be established as 'fair' without any indication of the criteria to be applied.

I therefore submit that both sections 9(2) and 9(5) are potentially discriminatory, in essence a contradiction in terms and, due to the lack of reasonable limitations, incompatible with inter alia the applicable addendum 4 Constitutional Principle nr.IV.

3. In general I wish to make the comment that a constitution should preferably be a once-of document, able to withstand the test of time. In many ways the proposed text has failed to rid itself from the past and still carries the unnecessary baggage of the struggle.

[Editor's Note: Letter from United Christian Action dated 31 May 19?? was attached but illegible]

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 inform you that your submission will in due course be taken into account by the Constitutional Court.