



**PARLIAMENT**  
OF THE REPUBLIC OF SOUTH AFRICA

**COMMITTEES**

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**Joint Committee on Constitution Review**

**To:** Members of the Constitutional Review Committee

**From:** Sisanda Sipamla  
Content Advisor

**Date:** 14 February 2017

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**Deliberations on the desirability of 2015 Submissions**

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**1. Background**

The Constitutional Review Committee held a meeting on 25 November 2016, the Committee was briefed on the 2015 Submissions which included resubmissions emanating from the 4<sup>th</sup> democratic Parliament. Following a presentation by the Content Advisor, the Committee agreed on the classification of the submissions into 3 categories as presented. Category 1 stipulates submissions which are ready for consideration. Category 2 designates submissions which require legal/specialist or relevant stakeholder opinion and category 3 recognises submissions that do not relate to the mandate of Committee.

The Committee then received presentations by the Parliamentary Legal Services on legal opinions designated under category 2 submissions. A total of 22 Submissions were officially tabled to the Committee.

## 2. Matters Arising

- 2.1 Agreement on the classification of the submissions;
- 2.2 Emphasis on the consistency in referencing submissions;
- 2.3 Prioritisation of legacy submissions especially those on language status;
- 2.4 Use and referral to the source and support documents provided, namely: -

- A file containing copies of the original 2015 Submissions;
- An Executive Summary and PowerPoint presentation on 2015 Submissions;
- Legal Opinions on the 2015 Submissions.

## 3. 2015 Submissions abstract

Committee is advised to take into account the approved classification, the recommendations provided in the support documents and responses to clarify seeking questions during the briefing meeting with reference to the minutes of 25 November 2016. Herein follows a chronological breakdown of the 22 Submissions: -

## 4. Category 1 has 5 Submissions which are ready for consideration:

No.	Ref. & Submitter	Section for review	Remarks
1	CR 1/15 by Mr V Gcuma	Chapter 2 Bill of Rights: s7(2), s10, s11, s25(3)(c)	Proposed sections are covered in national legislation, refer to recommendations in Executive Summary
2	CR 2/15 by Mr D McGillycuddy	Chapter 5 The Presidents: s88 (2)	Proposed review is already provided for within the wording of s 88 (2)
3	CR 3/15 by Mr A Mamagase	No section for review Requests copies of the Constitution	submitted 2 submissions incl. submission CR 11/15
4	CR12/15 by SOS Coalition	Review of Chp 9 Institutions to incl. the SABC	Made 2 submissions incl. submission CR 13/15 on same subject matter
5	CR13/15 by SOS Coalition	Review of Chp 9 Institutions to incl. the SABC	Made 2 submissions incl. submission CR 12/15 on same subject matter

5. Category 2 has 10 Submissions which required a legal opinion:

No.	Ref. & Submitter	Section for review	Remarks
6	CR 4/15 by Kingdom Governance Movement	chapter 4 Parliament chapter 5 The President and National Exec. chapter 7 Local Government chapter 10 Public Administration	Considered by 3 legal advisors due to length of the submission
7	CR 8/15 by Mr B Mbindwane	Chapter 8 Courts & Administration of Justice: s167 to s170	Proposed amendments are according to legal opinion not necessary. The Constitution provides for the concerns raised in the submission but the matters remain a policy matter for the Committee to decide
8	CR 9/15 by Mr L Magongwa	s 6(1) and s 6(5): Chapter 1 The Founding Provisions: 3 Submissions relating to the same matter	
9	CR 10/15 by Mr L Magongwa	s 6(5) of the Constitution recognizes SASL as an unofficial language that the PanSALB must "promote, and create conditions for, the development and use of".	
10	CR 14/15 by Mr L Magongwa  ----- <b>Legal Ref:65/2015</b>	<b>South African Schools School's Act</b> recognises Sign Language as official for use in public schools.  <b>Use of Official Languages Act</b> requires the language policy of national departments; public entities or enterprises will effectively communicate with the public whose language is SASL.  <b>Pan South African Language Board Act</b> directs the Board to initiate, research, promote and develop the use of all official languages in RSA, including the Khoi, San and sign language.	CRC was advised that the decision to amend section 6(1) to include SASL as an official language is a policy consideration to be decided by the Committee, and there is no legal obstacle that prevents the Committee and Parliament from such a consideration.

11	CR 17/15 by SALGA	<b>Chapter 4: s 67</b> (Voting right in NCOP)		To more than just participate in the NCOP but to vote "where local government issues are voted on".	Late 2013 resubmission, submitted after 2015 closing date. s 67 Legal advised based on case law and s 154(2), that voting is not the only form of participation, policy decision for the committee to on the desirability of the voting rights of SALGA representatives.
	<b>Legal Ref: 67/2015</b>	<b>Chapter 6: s139</b> (Provincial Intervention in Local Government)  Provision is not aligned to broad co-operative and intergovernmental principles of respect, mutual trust and good faith required by s 41 of the Constitution.  ----- <b>Chapter 7: s163</b> (Organised Local Government)  <b>The Organised Local Government Act</b> aimed at giving effect to section s163 omits to facilitate "organised local government's participation in provincial legislatures".			CRC advised that the proposal to direct municipalities to disclose non-compliance, detailing the support to be offered by province, does not infringe ideas associated with the principle of co-operative government. The proposed is a policy issue for the for the CRC to decide on its desirability.  ----- CRC advised: the request can be met by Parliament broadening national legislation namely, the <b>Local Government Act</b> . Furthermore, budget details ought to not go into the constitution to maintain a broad and adaptable nature of the constitution. The <b>PFMA</b> is the type of the legislation where this proposal can be factored. Ultimately it is for the CRC to decide on the desirability to amend the Constitution as proposed.
12	CR 18/15 by Mr G Travers  ----- <b>Legal Ref:68/2015</b>	Chapter 8 Courts and Admin of Justice: s165  Submission examines the constitutional principles, international and regional best practice, and the administrative and financial independence of the Judiciary.			CRC advised that at the time the Constitution 17 <sup>th</sup> Amendment introduced norms and standards through the Superior Courts Acts. It is clear that the matter requested for review was taken into account. What is proposed is not the correct legislative design for addition in the Constitution.
13	CR 19/15 by Vuka Africa	Chapter 1 The Founding Provisions: Preamble - s1, Chapter 2 Bill of Rights: s7(2); s11; s36; s39			Presentation of legal opinion deferred to the next meeting. Legal Advisor unable to present due to assisting Ad Hoc Committee on SABC.

14	<p>CR 20/15 by Mr Mashile</p> <p>Legal Ref: 83/2015</p>	<p>1. Chapter 1 The Founding Provisions: Preamble- s1;</p> <p>2. Chapter 3 Co-Operative Government: s42(2);</p> <p>3. s73 Bill consideration process</p> <p>4. s105 Composition and elections of provincial legislatures</p> <p>5. s166 Judicial System reviewed to include Traditional Courts</p> <p>6. s 211(1) addition of Khoisan leaders</p> <p>7. s 212(2) the addition of "role of the <u>House of Traditional Leaders operating as a lower House of Parliament</u>".</p>	<p>RSA belongs to all who live in it, which includes traditional leaders by implication, s 211(1) recognises traditional leaders sufficiently.</p> <p>The NA&amp;NCOP cannot include traditional leaders as they are not democratically elected.</p> <p>National Legislation namely s18 of the Traditional Leadership and Governance Framework (TLGF) Act 41 of 2003, covers the proposed change of s73.</p> <p><b>s16 TLGF Act</b> recognises the provincial house of traditional leadership. <b>s 2 &amp; 2B</b> require premiers to recognise traditional communities and leaders.</p> <p>Schedule 6, item 16(6)(a) rationalises all courts including traditional courts, the exercise has not been finalised since the <b>Traditional Courts Bill</b> lapsed. CRC advised to reject proposal to allow processes under way to rationalise traditional courts in line with the Constitution.</p> <p>If TLGA Act does not recognise Khoisan leaders and communities, it is the obligation of the Northern &amp; Western Cape premiers to do so. CRC advised not to amend the Constitution.</p> <p>TLGF Act &amp; <b>National House of Traditional Leaders Act</b> are national legislation envisaged in terms of s212 of the Constitution, and have done what the submission seeks to request.</p>
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<p><b>15</b></p>	<p>CR 22/15 by Mr Maclennan</p> <p>-----</p> <p><b>Legal Ref:</b> 81/2015</p>	<p>Chapter 1 The Founding Provisions: Preamble - s1</p>	<p>Case law shows that the Constitutional Court held that the invocation of a deity in the constitution does not amount to discrimination against non-believers. Legal advised the Committee that this submission is undesirable.</p>

**8. Category 3 has 7 Submissions that do not relate to the mandate of Committee**

These submissions do not stipulate a proposal for the review of sections in the Constitution and are generally not within the Committee's mandate. The approval of the classification of 2015 Submissions suggests that the Committee may resolve to not consider the submissions in the table below: -

No.	Ref and Submitter	No proposed section for review
16	CR 5/15 by Mr C Renze	ref to Executive Summary recommendation to SC on Petitions and Executive Undertakings
17	CR 6/15 by Mr C Benson	No proposed section for review
18	CR 7/15 by Mr Nkosi	ref to Executive Summary recommendation general request for 50% gender equality in Government Institutions but no proposed section
19	CR 11/15 by Mr A Mamagase	No proposed section for review, requests committee to do an evaluation of where the Constitution is effective. Not mandate of the Committee.
20	CR 15/15 by Mr F Nkgoeng	No proposed section for review, makes proposal for general moral regeneration based on his personal convictions addressing various issues from E-folls to RDP extension requests.
21	CR16/15 by Mr D Williams	No proposed section for review, but poems of work done by submitter as excellent Department of Correctional Services Official.
22	CR 21/15 by Mr B Ngobese	No proposed section for review, expresses dissatisfaction with national legislation. Layover submitter who was unable to attend 2013 Public Hearings and promised another opportunity by the Committee.

#### 9. Resubmission from 2013

1. Submission CR 9/15 by Mr L Magongwa representing Deaf Federation SA
2. Submission CR10/15 by Mr L Magongwa (representing Unisa)
3. Submission CR12/15 by SOS Coalition (made two submissions)
4. Submission CR13/15 by SOS Coalition (review of Chp 9 to incl SABC)
5. Submission CR17/15 by SALGA (late 2013 resubmission, s 67, s139, s163)
6. Submission CR21/15 by Mr MacIenne (preamble, 2013 layover submissions)

#### 10. Conclusion

The tabling of the 2015 Submission, agreement on the categorisation and consideration of the legal opinions will allow the Committee to deliberate meaningfully on its strategy regarding the following:

- which submissions require oral presentation by the submitter in order to satisfy Parliament's Public Participation objective, and for the clarification of any ambiguous aspects raised during deliberations; and
- which submissions require further consultation with stakeholders or specialists

These engagements are envisaged to assist the Committee in delivering on its mandate of resolving on the desirability of each submission requesting a review of the Constitution.

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