*[The following report replaces the Report of the Constitutional Review Committee, which was published on page 2 of the Announcements, Tablings and Committee Reports dated, 27 June 2017]*

**1. Report of the Constitutional Review Committee on 2015 Public Submissions, dated 21 June 2017**

1. **Introduction**

Section 45 (1) (c) of the Constitution, 1996 (the Constitution) provides for Parliament to establish a committee that should review the Constitution annually. In giving effect to this provision, Rule 102 (2) of the Joint Rules requires the CRC to annually, before the first day of May, by notice in the public media, invite the public to submit to the Committee, within 30 days, written representations on any constitutional matter. To this end, an advert calling for public submission was published on print media from 24 to 30 April 2015. The Committee received 22 submissions. Out of these, four from Support Public Broadcasting (SOS Coalition), Deaf South Africa (DEAFSA), South African Local Government Association (SALGA) and from Mr B McLellan were re-submitted from the 2013 submissions process.

The 22 submissions were categorised in terms of (1) those that were ready for deliberations and did not require a legal opinion, (2) and those that were suggested as requiring such. In this case, 10 submissions were referred to the Parliamentary Legal Services office for legal opinion/advice. Subsequently, the Legal Advisers on opinions /input /advice on those submissions briefed the Committee.

Hereunder are brief summaries of the submissions, and the Committee’s views and recommendations.

1. **Summaries of submissions**

**2.1 Submission 1 by Mr V Gcuma**

**Review of Chapter 2 of the Bill of Rights, in particular sections 7(2), s10, 11, 25(3) (c) and the inclusion of mayoral terms in the Constitution.**

In relation to section 7 (2), Mr Gcuma proposed the revision of the wording in that provision to read as: “Everyone, the State, in particular, must respect, promote and fulfil the Rights in the Bill of Rights”.

The committee is of the view that, section 7 read together covers the submitter’s proposal. Thus, there is no need to amend the Constitution as suggested.

In respect of section 10, which deals with the Right to Human Dignity and section 11, which deals with the Right to Life, the submitters submitted that, the extent to which those rights were protected was entirely without limitation. Therefore, they should be clarified so that they are stated in non-technical language. That if these two rights came into conflict with any other right, they would prevail.

The Committee is of the opinion that, the right to human dignity and the right to life are protected entirely. In a case where these rights are in conflict with any other right, the court, tribunal or forum adjudicating such a case would be guided by case law to ensure that these rights prevail and have no limits.

Mr Gcuma further proposed that 25(3) (c), which deals with the rights to property and compensation. The submitter proposed that the compensation after expropriation of property by the State must have no regard for the market value, as this had only led to profitmaking and subjected the restitution process to the law of supply and demand.

The Committee is of the view that the element of profitmaking which the submitter refers to is remedied by the words “the amount of compensation and the time and manner of payment must be just and equitable, reflecting an equitable balance between the public interest and the interest of those affected,…” covered in section 25 (3) of the Constitution.

The submitter further suggested the inclusion of mayoral terms in the Constitution. In doing so, Mr Gcuma proposed that, the Constitution should stipulate that mayors might not hold office for more than two terms. Similarly, Schedule 2 on Oaths and Solemn Affirmations must also provide for an oath and solemn affirmation by councillors and mayors.

The Municipal Structure Act 117 of 1998 covers the regulation of mayoral terms in office. That includes oaths and solemn affirmations by councillors.

**Recommendation**

The committee is of the view that, the proposals made in the submission on the requested sections of the Constitution are adequately catered for in the Constitution and existing legislation. Therefore, there is no need for a review of the Constitution in this regard.

**2.2** **Submission 2 by Mr D McGillycuddy**

**Review of section 88(2) of the Constitution**

The submission by Mr McGillycuddy requested a review of section 88(2) of the Constitution. The submitter holds that no person may hold office of the President for more than two terms. The committee is of the view that, the proposal is already provided for within the wording of section 88(2) of the Constitution, which, provides that “no person may hold office as President for more than two terms…”

**Recommendation**

The Committee is of the view that, the proposal by the submitter is already covered in the Constitution. Thus, there is no necessity for a review of the Constitution in this regard.

**2.3 Submission 3 by Mr A Mamagase**

The Committee feels that the submission does not propose a review of the Constitution, except for the submitter requesting to be assisted with the provision of copies of the Constitution to the Sekhukhune Magistrate Court in Lydenburg.

**Recommendation**

The committee recommends that, the submitter need to consult the provincial office of the Department of Justice in Lydenburg with his request.

**2.4 Submission 4 by Kingdom Governance Movement (KGM)**

The KGM submitted a number of proposal as follows:

**2.4.1 Proposal for amendment in the Preamble of the Constitution**

The KGM proposed a review of the Constitution by embracing Godly-Biblical Values. In doing so, the submitters proposed an amendment to the Preamble by adding the wording “Recognise God as the Creator and embrace the application of godly norms, ethics, morals, values and principles for the goodness of humanity”. The Committee is of the view that, section 15 of the Constitution guarantees freedom of religion for everyone. Furthermore, South Africa, through its diversity, has many religions. Thus, no religion is superior to the other. Similarly, section 9 (3) of the Constitution obliges the state not to fairly discriminate, amongst other things, against culture, religion and beliefs.

The Constitutional Court judgement in Certification of the Constitution of the Western Cape (WCC), 1997 (CCT6/1997) [1997] ZACC 8; 1997 (4) SA 795 (CC); 1997 (9) BCLR 1167 (CC) (2 September 1997) held that phrase “in humble submission to the Almighty God” in the Preamble had no effect in the right of believers and non-believers. The invocation of a deity in these words to the Preamble of the WCC has no particular constitutional significance and echoes the peroration to the Preamble of the National Constitution”. The court, therefore, upheld and accepted the invocation of Almighty God.

**Recommendation**

The Committee is of the view that, while the South African Constitution is not opposed to religion, it does not support a specific religion. Therefore, amending the Constitution by embracing Godly- Biblical values as suggested, may not only impose specific religion and principles, but may also offend against the spirit and letter of the Constitution.

The African Christian Democratic Party (ACDP) registered its objection to the committee’s recommendation in this regard.

**2.4.2 Inclusion of Bill of Values in Chapter 1 (Founding Provisions) and Chapter 2 of the Constitution (Bill of Rights)**

The submitters further proposed that, the Bill of Values as contained in the Charter of Positive Values by the Moral Generation Movement should be incorporated in Chapter 1 and section 7 (2) of the Constitution. The Committee is of the view that the values contained in the Charter of Positive Values, which are based on the principle of Ubuntu, are the same as those covered in the Constitution. Therefore, amending the Constitution in this regard would amount to duplication.

The KGM also proposed an amendment to section 9 of the Constitution, by adding the word “natural” in section 9 (3). The Committee is of the view that, section 9 of the Constitution prohibits the State from unfairly discriminating against anyone directly or indirectly, amongst others, on the grounds of sexual orientation. In addition, if the State prescribes to people the type of sexual orientation they should engage in would amount to discrimination.

This matter was dealt with extensively in the case of *National Coalition for Gay and Lesbian Equality and Another v Minister of Justice and Others 1998 (12) BCLR 1517 (CC).*

**Recommendation**

The Committee feels amending the Constitution to accommodate the suggested amendment will be in conflict with the freedoms that are already protected.

The ACDP recorded its objection to the finding and recommendation in this regard.

**2.4.3 Proposal for review of section 22 and section 23 (3) of the Constitution**

**2.4.3.1 Review of Section 22**

The KGM submitted a proposal for amendment of section 22 of the Constitution “to include the taking into account of human dignity is a basic right for exercising the right to choose a trade, occupation or profession freely”. The committee believes the right to dignity is a foundational right that is connected to all other rights set out in the Constitution. The right to freedom of trade and profession is already covered in the Constitution.

**Recommendation**

The Committee is of the view that the submission does not permit a review of the Constitution.

**2.4.3.2 Review of Section 23 (3)**

The KGM further proposed an amendment of the section 23 (3) of the Constitution to include legal protection for employers during strike action.

The committee is of the view that, the submitters are not explicit on the legal protection that should be afforded to employers during a strike action. Importantly, section 34 of the Constitution and section 11 of the Regulation of Gatherings Act, 205 of 1993, express judicial legal protection of employers, respectively. In addition, section 17 of the Constitution contains a “built-in” limitation, which requires that, assemblies, demonstrations, pickets and the delivering of petitions should be conducted peacefully and without arms.

**Recommendation**

The committee is of the view that in light of the above, employers are afforded legal protection in terms of the Constitution and existing legislation. Therefore, there is no need to amend the Constitution in that regard.

**2.4.4 Proposal for review of section 26 (1) of the Constitution**

The KGM further proposed a review of section 26 (1) of the Constitution to include “the responsibility of each person to have access to adequate housing”. The Committee is of the view that, the right of access to adequate housing, as set out in the Constitution has been interpreted by the Constitutional Court in the matter of *Government of the Republic of South Africa and Others v Grootboom and Others [2000] ZACC 19, 2001 (1) SA 46 (CC)*. In this case, the court judgement sets out the roles and responsibilities of both Government and the citizens of South Africa in ensuring the right of access to adequate housing. Thus, the right to have access to adequate housing was interpreted by the courts in order to include the responsibility of each individual to ensure that such right is realised.

**Recommendation**

The committee is of the view that the proposed amendment does not warrant a review of the Constitution, as the “responsibility” referred to in the submission is already included through the interpretation of the right to have access to adequate housing by the Constitutional Court.

**2.4.5 Proposal for review of section 28 (1) (f) of the Constitution**

The submitters also proposed an amendment of section 28 (1) (f) of the Constitution to include the wording “including sexual activities”.

The Committee feels that the submitters do not set out reasons for their proposals, nor provide a definition of what they understand as sexual activities. In fact, the Constitutional Court in the matter of *Teddy Bear Clinic for Abused Children and Other v Minister of Justice and Constitutional Development and Another (CCT 12/13)[2013] ZACC 35; 2013 (12) BCLR 1429 (CC)* dealt with the application of statutory rape laws to consensual sexual acts when both parties are younger than the age of consent. The Court approaches children’s sexuality from the view of the right to dignity and as a normative development aspect of sexuality. In this case, the Court found that the criminalisation of consensual sexual activities between children between the age of 12 and 16 amounts to an infringement of their rights to privacy and dignity.

**Recommendation**

The Committee is of the view that the proposed amendment does require a review of the Constitution, as the inclusion of the proposed amendment will amount to an infringement of the rights to privacy and dignity.

**2.4.6 Proposal for review of section 28 (3) of the Constitution**

Additionally, the KGM proposed an amendment to section 28 (3) of the Constitution to include the wording “and under parental and guardian authority”. The committee is of the opinion that, section 28 (3) as spelt out in the Constitution, ensures that all rights enumerated in section 28 are applicable to all children. Similarly, the Constitutional Court in the matter of *Teddy Bear Clinic for Abused Children and Other v Minister of Justice and Constitutional Development and Another [2013] ZACC 35* was explicit in that, the rights of children are not dependent on their relationships with their parents or guardians, but that they are the rights holders themselves. Thus, amending the Constitution, as proposed by the submitters will amount to an infringement of the rights of children who do not have parents or guardians. Moreover, the rights of children are not dependent of the existence of parents or guardians.

**Recommendation**

The Committee feels the proposal by the submitter does not warrant a review of the Constitution as it will amount to unfair discrimination.

**2.4.7 Proposal for review of section 29 (1) of the Constitution**

The KGM also proposed an amendment to section 29(1) of the Constitution, to include the wording “be educated in a character of integrity, responsibility and skills at the level of:

1. basic education, including adult basic education; and
2. further education, which the state, through reasonable measures, must make progressively available and accessible.”

**Recommendation**

The Committee is of the view that the proposal does not provide reasons that explain the rationale or provide a background to the proposed amendments. As a result, the proposed amendment is incoherent and does not make sense.

**2.4.8 Proposal for review of section 33 (1) of the Constitution**

The submitters proposed an amendment of section 31 (1) of the Constitution by including the wording “to enjoy religious rights and freedoms as contained in the South African Charter of Religious Rights and Freedoms”.

Accordingly, the proposal refers to the South African Charter of Religious Rights and Freedoms, which is purportedly adopted by Parliament in terms of section 234 of the Constitution. The submitters assume that, the aforementioned Charter has been adopted by Parliament.

**Recommendation**

The Committee maintains the proposed amendment cannot be supported as it refers to a document that has not yet been adopted by Parliament in terms of a constitutional provision.

* + 1. **Proposal for review of section 33 (2) of the Constitution**

The KGM also proposed an amendment to section 33 (2) of the Constitution should to include the words “values and”. Section 33(2) of the Constitution reads as follows:

“Everyone whose rights have been adversely affected by administrative action, has the right to be given records”.

The committee is of the view that, the founding values, as set out in the Constitution are objective values. These values do not only inform the interpretation of the Constitution and other law, but also set positive standards with which all law must comply in order to be valid. The Committee believes that, although the submitters propose the aforementioned amendment, the founding values provided in section I of the Constitution are objective values and not only inform the interpretation of the Constitution and other law, but also set positive standards with which all law must comply in order to be valid.

**Recommendation**

The Committee is of the view that, the Constitution already contains founding values which seek to underpin the rights contains in the Constitution. Thus, inclusion of the proposed wording “value and” as proposed is not justifiable.

**2.4.10 Proposal for review of section 35 of the Constitution**

The submission proposed a review of section 35 of the Constitution, to include a subsection (6) that should reads as follows:

“The rights enshrined in this section must be exercised with due regard to the violated rights and protection of the victims”.

Section 36 of the Constitution already contains a limitation clause, which sets out the grounds on which a right enumerated in the Constitution may be limited. Furthermore, this clause has been tested thoroughly in the Constitutional Court.

**Recommendation**

The Committee feels including the proposed subsection in section 35 will be a repetition as that proposal is already covered in section 36 of the Constitution. In addition, the submitters do not provide reasons for the proposed amendment.

**2.4.11 Proposal for amendment to section 11 of the Constitution**

The KGM also proposed an amendment to section 11 to include the wording “from conception”. The Committee feels the right to life is a right that is entrenched in the Constitution and is not a limited right. In addition, the Termination of Pregnancy Act 9 of 1998 gives women the right to terminate pregnancy. Above all, in the South African jurisprudence, the foetus is not considered as life and cannot be protected in terms of this right.

**Recommendation**

The Committee does not support the proposed amendment.

The ACDP recorded its objection to the committee recommendation in this regard.

**2.4.12 Proposal for amendment to section 15 (1) of the Constitution**

The submitters proposed an amendment to sub-section 15 (1) of the Constitution by adding the wording “provided that it does not include witchcraft, Satanism and any form of human sacrifice”. The committee is of the opinion that every right, as contained in the Bill of Rights is subject to section 36 of the Constitution, which covers the limitation of rights. Thus, each right needs to be tested against the limitation clause, as no right is absolute.

**Recommendation**

The committee does not support the proposed amendment as the limitation suggested can be effected through legislation.

The ACDP registered its objection to the committee’s recommendation in this regard.

**2.4.13 Proposal for amendment to section 15 (3) (b) of the Constitution**

In addition, the KGM proposed an amendment to sub-section 15 (3) (b) of the Constitution by adding the wording “and must be premised on the principle that minors cannot enter into a marriage”. Section 24 of the Marriage Act, 25 of 1961, which governs the solemnisation and registration of marriage sin South Africa provides that,

“ no Marriage Officer shall solemnise a marriage between parties of whom one or both are minors unless the consent which is legally required for the purpose of contracting the marriage has been granted and furnished to him in writing”,

For the purposes of sub-section (1) a minor does not include a person who is under the age of twenty one years and previously contracted a valid marriage which has been dissolved by death or divorce.”

**Recommendation**

The Committee is of the view that, the section 24 of the Marriage Act, 25 of 1961 covers the suggested amendment. Therefore, there is no need to repeat such provision in the Constitution.

The KGM further proposed that, “marriage must be between one male and female person to perpetuate humanity”. The Constitutional Court in the case of *Minister of Home Affairs and Another vs and Fourie* *and Another* 2006 1 SA 542 (CC) held that, the common law definition of marriage and section 30 (1) of the Marriage Act of 1961 was inconsistent with the Constitution, to the extent that they did not allow to same-sex couples the status and benefits of marriage accorded to opposite-sex couples. Whilst the Court acknowledged the important role religion plays in public life, it opined that it was another for religious doctrine to be used as a source for interpreting the Constitution. Also, it would not be orderly to employ religious sentiments of some as a guide to the constitutional rights of others. However, the Civil Union Act No.17 of 2006 changes the discriminatory background of common law in respect to same-sex relationships. Similarly, the law allows churches to refuse to perform civil unions.

**Recommendation**

The Committee does not support the proposed amendment.

The ACDP registered its objection to the committee’s recommendation in this regard.

**2.4.14 Proposal for amendment to section 16 (2) of the Constitution**

The submitters proposed an amendment to sub-section 16 (2) of the Constitution by including the word “or” at the end of sub-section 16 (2) (c), and by adding a new sub-section 16 (2) (d) with the following wording:

“explicit pornography, sexual intercourse and any other form of sexual representation that may be harmful; to children and sensitive citizens”.

The committee is of the view that, the proposal is covered by section 19 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 32 of 2007. This provision prohibits the exposure or display of child pornography or pornography to children. Anyone who exposes children to pornography would be committing a sexual offence.

**Recommendation**

The Committee does not support the proposed amendment as it is already covered in existing legislation.

The ACDP registered its objection to the committee’s recommendation in this regard.

**2.4.15 Proposal for amendment to section 17 of the Constitution**

The KGM further proposed an amendment to section 17 of the Constitution by including the wording “with due respect to private and public property and rights of others”. The committee is of the opinion that section 8 of the Gatherings act 205 of 1993, which deals with conduct of gatherings and demonstrations, ensures that, all gatherings are conducted in a peaceful manner.

**Recommendation**

The Committee is of the view that, the amendment proposed is already covered in the existing legislation and in the Constitution.

**2.4.16 Proposal for amendment to section 19 (1) of the Constitution**

The KGM proposed an amendment to section 19 (1) of the Constitution by adding the wording;

(a) “… and or non-partisan political organisation”;

(b) “…or non-partisan political organisation or movement”;

(c) “…and or non-partisan political organisation/constituency based public representatives …”, respectively.

The Committee is of the view that South Africa’s democracy is based on a multi-party democracy, which is based on different parties ruling the country collectively in terms of proportional representation. Therefore, politics and political parties cannot be separated in South Africa’s political landscape. On the other hand, there is no prohibition on anyone who would like to have a constituency based public representatives campaign as proposed by the submitters in sub-section 19 (1) (c).

**Recommendation**

The Committee is of the view that the proposal by the submitters is best placed in the Electoral Act No.73 of 1998, the Electoral Laws Amendment Act No.34 of 2003 or the Local Government: Municipal Electoral Act No.117 of 1998, and does not necessitate an amendment of the Constitution. However, the proposed amendment requires a change of the electoral system and overhaul of the political system.

**2.4.17 Proposal for amendment to Chapters 4 and 10 of the Constitution**

The KGM further proposed a review of the current electoral system to allow the electorate to directly elect the President of the country and the Premiers in each province, as well as the election of ward councillors at local government.

In respect to the proposal for the election of the President, the submitters argue that the President should no longer be elected by the National Assembly at an election presided by the Chief Justice, but through direct election by the electorate. Furthermore, the Chief Justice should rather inaugurate the President. Essentially, the submitters were suggesting a review of sections 42 (3), 86 (1) and (2) of the Constitution. Similarly, the proposal suggested that Premiers should be elected directly by the electorate. Thus, the proposal calls for a review of section 128 (1) of the Constitution.

In addition, the submitters suggested that, once the Presidents and Premiers are elected, they should cease their positions as executive members of political parties that nominated them on the party lists as candidates for appointment in government office. Furthermore, these political office bearers should not be removed from office based on violating the political party constitution. The proposal, therefore, is for a review of sections 87, 89, 128, as well as an insertion of a new subsection as section 130 (5) of the Constitution.

Likewise, the KGM proposed that, the Speaker, Deputy Speaker and the Presidency Officers should resign from any executive position on their political parties once elected by Parliament or provincial legislatures. The proposal called for a review of section 52 of the Constitution by inserting a new sub-section as 52 (6).

The submitters also proposed an amendment of section 151 of the Constitution to amend the local municipal system into a constituency based electoral system through constituency election of municipal wards.

The KGM further proposed that, the Public Protector should be empowered to take binding and appropriate remedial action. Accordingly, the recent Constitutional Court pronouncement on the Public Protector’s remedial action addresses KGM’s proposal.

On the issue of the a proposal around the election of the President, the Committee feels that, in line with section 1 (d) of the Founding Provisions, section 42 (3) of the Constitutions provides that the National Assembly is elected to represent the people and to ensure government by the people. Similarly, section 42 (3) provides that members of the National Assembly, as elected representatives of the people, must ensure government by the people by choosing the President.

On the proposal for a review of the electoral system, the Committee is of the view that, the South African electoral system is prescribed in terms of the Constitution and national legislation. That includes the Electoral Commission Act, 1996 (Act No. 51 of 1996), Electoral Act, 1998 (Act No. 73 of 1998), Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998) and the Municipal Electoral Act, 2000 (Act No. 27 of 2000). Importantly, South Africa chose proportional representation over the constituency system. The Constitutional Court in the *United Democratic Movement v President of the RSA and Others (1) 2002 (11) BCLR 1179 (CC)* confirmed that, a decision on which electoral system should be followed is a matter of political choice.

**Recommendations**

1. In respect to a proposal around a review of the Constitution to change the electoral system, the Committee is of the view that, the decision to make changes to the electoral system will require an engagement by political structures.
2. In respect to a proposal on the binding decisions of the Public Protector, the committee is of the view the proposed amendment is best placed in the Public Protector Act rather than in amending the Constitution. The submitters will be advised to submit their proposal to the Portfolio Committee on Justice and Correctional Services as it falls within its ambit.

(3)The submitter should be advised to consult the Constitutional Court judgement on the binding nature of the Public Protector’s remedial action.

**2.4.18 Proposal for amendment to section 195 (1) (i) of the Constitution**

The submitters proposed an amendment to section 195 (1) (i) of the Constitution by including the word “merit” as part of the criteria for employment within the public administration. The committee is of the view that, the assessment of any person’s ability and all other terms mentioned in section 195(1) (i) of the Constitution in respect of appointment are by implication inclusive of the word “merit” which can be read into this section.

**Recommendation**

The Committee is of the view that inserting the suggested wording will result to a repetition and will open up room for ambiguity in the interpretation of section 195 (1) (c) of the Constitution.

**2.5 Submission 5 by Mr C Renze**

The submission by Mr Renze related to a violation of his constitutional rights by institutions intended to uphold the protection of human rights. The committee feels the submission does not propose a review of the Constitution, but should rather be submitted to a relevant committee.

**Recommendation**

The Committee recommends that, the submitter should direct his petition to the Select Committee on Petitions and Executive Undertakings.

**2.6 Submission 6 by Mr C Benson**

The submission did not propose an amendment to the Constitution, but rather related to newspaper articles, which the submitter wrote to the Cape Argus, Weekend Argus, Cape Times, as well as De Rebus respectively, covering the period 1993 to 2015.

The committee feels, although the submission speaks to a number of matters in the Constitution, such as the issue of the Public Protector, there is no clear proposal as to which specific provisions of the Constitution require a review.

**Recommendation**

The Committee is of the view that, the submission does not speak to a review of the Constitution.

**2.7 Submission 7 by Mr M Nkosi**

Mr Nkosi requested a review of the Constitution to include a section that would deal with gender inequality in state institutions. Further, that gender representation should be constitutionally guaranteed and not be left to the policies of political parties.

The Committee acknowledges progress that has been made thus far in addressing gender inequalities in state institutions. Such progress is evident in section 9 (3) of the Constitution which provides for the state not to unfairly discriminate directly or indirectly against anyone on one or more grounds, including amongst others, gender. The movement towards 50 percent representation of women in state institutions should be regarded as possible progress.

**Recommendation**

The Committee is of the view that, the proposal is covered in the Constitution and existing legislation.

**2.8 Submission 8 by Mr B Mbindwane**

The submitter proposed amending section 167 (4) (e) of the Constitution as follows:

1. To apply to the Deputy President of the Republic of South Africa and the Speaker of the National Assembly. In doing so, Mr Mbindwane submits that, the proposal to include the Deputy President and the Speaker of the National Assembly is due to powers and privileges that each of them may enjoy as they ascend into the Presidency, in the event that the President is unable to perform his or her duties.

The Committee is of the view that, section 167 (4) (e) is sufficient as it applies to Parliament. Thus, amending it to make it applicable to the Speaker of the National Assembly will only serve to weaken the section, as by implication it would mean that the same section is not applicable to the Chairperson of the National Council of Provinces. The strength of this provision has already been tested at the Constitutional Court *in Doctors for Life International v Speaker of the National Assembly 2006 (6) SA 416 (CC)*, where the Court found this section as adequate protection by the respective institutions to fulfil their constitutional obligation.

On the second proposal, the fact that, the Deputy President and the Speaker of the National Assembly may ascend to the seat of the President, in the event that the he or she cannot perform his or her duties, cannot be sufficient basis for the proposed amendment. The reason is that, when and if this unforeseen eventuality takes place, the Deputy President or the Speaker of the National Assembly would no longer occupy their current seats, but the seat of the President, and section 167 (4) (e) of the Constitution would apply automatically. Therefore, there would be no prejudice to the Republic of South Africa as section 167 (4) (e) covers the concerns raised by the submitters.

1. By replacing “may” with “must” as the former makes this provision discretionary. Therefore, replacing it with “must” will make it mandatory. The Committee is of the opinion that, that is not necessary, as the relevant provision is already mandatory.

The submitter argues that, the Constitutional Court is correctly ceased with the responsibility to pronounce on the failure by the President and Parliament to fulfil their constitutional obligations as set out in section 167 (4) (e) of the Constitution due to the constitutional knowledge and expertise of the Justices of Constitutional Court. The Committee is of the view that, it is only the Constitutional Court that may decide on matters falling under section 167 (4) (e) of the Constitution. Thus, no other court, Chapter 9 institution or any other body has the competency to pronounce on the failure by the President and /or Parliament to fulfil a constitutional obligation.

Also, the submitter makes a comparison of Chapter 9 institutions and the Constitutional Court by arguing that, these institutions are not adequately suited to pronounce on matters falling under section 167 (4) (e) of the Constitution. Often, Chapter 9 institutions rely on the findings of the Chairperson of the relevant Chapter 9 institution, without the benefit of collective wisdom, which the Constitutional Court enjoys from its 11 Justices.

**Recommendation**

The Committee is of the view that, the amendments proposed in the submission do not necessarily require a review of the Constitution as it sufficiently provides for the concerns raised.

**2.9 Submissions 9, 10 &14 by Mr Magongwa and Deaf South Africa (Deafsa)**

The Deafsa requested a review of sections 6 (1) and 6 (5) (a) to include the South African Sign Language (SASL) as an official language. Deafsa was of the opinion that, while SASl is well recognised in the Constitution and given a special status, it was not sufficient to enable deaf people to enjoy all constitutional rights.

The Committee also engaged the Department of Arts & Culture (DAC), Pan South African Language Board (PanSALB) and the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities (CRL Commission) in a view to get broad perspective on the status of the SASL and other languages, based on the submissions that were previously made. The Committee accepted the fact that, the issue of addressing the proposal for declaring SASL as an official language is long overdue. Therefore, necessary formalities should be made by Parliament to ensure that amendment of the Constitution to accommodate this.

**Recommendation**

The National Assembly and the National Council of Province should facilitate an amendment of the Constitution to include SASL as one of South Africa’s official languages.

**2.10 Submission 11 by Mr A Mamagase**

The submission did not propose a review of the Constitution, but rather requested the Committee to evaluate the effectiveness of the Constitution.

**Recommendation**

The Committee is of the view that, the proposal does not fall within its ambit.

**2.11 Submission 12 &13 by SOS Coalition: Amendments to Chapter 9**

The SOS Coalition proposed a review of certain provisions of Chapter 9 of the Constitution. That included amendments to the South Africa Broadcasting Corporation (SABC) and Independent Communications Authority of South Africa (ICASA).

**Amendments to the South Africa Broadcasting Corporation**

The submitters proposed transformation of the SABC into a Chapter 9 institution as a way of protecting the SABC’s independence.

**Amendments to Independent Communications Authority of South Africa**

Similarly, the SOS submitted that, the provisions that relate to the appointments and removal of members of Commissions and general statements on independence must apply to the communications regulatory because of its importance in shaping the nature of the communications environment upon which citizens depend to meet their information needs.

In addition, the SOS called for amendments to or insertions in respect of sections 181 (1), 192, 192A, 193 and 194 of the Constitution.

The Committee is of the view that, Parliament exercise its oversight role over the SABC through the Portfolio Committee on Communications. Therefore, issues raised by requesting the SABC to be included as a Chapter 9 institution are remedied by the role Parliament plays in its oversight work over the Department of Communications. Similarly with ICASA, by virtue of it being a communications regulatory authority, and its independence being constitutionally protected in respect of its activities and functions. Section 192 of the Constitution protects the independence of the broadcasting regulatory authority.

**Recommendation**

The committee feels that the amendment proposed by the submitters could be addressed in the existing pieces of legislation that relates to communications in the Republic. In this case, the Independent Communications Authority of South Africa Act No. 13 of 2000 and Electronic Communications Act No. 36 of 2005. The committee recommends that the submitters should be directed to submit their proposals to the Portfolio Committee on Communications.

**2.12 Submission 15 by Mr F Nkoeng**

The submission did not propose a review of certain section of the Constitution, except to make a proposal for general moral regeneration based on his personal convictions.

**Recommendation**

The Committee is of the view that, the submission as it stands, does not speak to a review of the Constitution.

**2.13 Submission 16 by Mr D Williams**

The submission was in a form of poems, which the submitter wrote on issues faced by the country and his achievements on work done for marginalised members of his community. The Committee is of the view that, the submission does not give clarity on which part of the Constitution require a review, except setting out the submitter’s achievements.

**Recommendation**

Therefore, the Committee is of the view that the submission does not speak to a review of the Constitution.

**2.14 Submission 17 by** **South African Local Government Association (SALGA)**

SALGA proposed amendments to a number of provisions in the Constitution as follows:

**Amendment to section 67: Voting Right in NCOP**

The submitters proposed a review of the Constitution to grant a greater participation right to local government in the legislative process. SALGA therefore, proposed an amendment to section 67 by removing the wording “but may not vote”.

The committee is of the view that, the participation in the NCOP as per the Constitution was intended to give a voice to local government and not to give a vote. Therefore, accepting the proposed amendment would amount to giving a voice and a vote to an organisation that is not representative of all local government in South Africa.

**Amendment to section 139: Provincial Intervention in Local Government**

SALGA also proposed an amendment to section 139 of the Constitution, which deals with provincial intervention in local government. The submitters argued that, the provisions found in section 139 (1) of the Constitution are too severe in that they do not properly align with the broad cooperative and intergovernmental principles of respect, non-encroachment, mutual trust and good faith in section 41 of the Constitution.

The Committee referred to cases where court pronounced on matters of mutual trust and good faith. The matter of *Premier of the Western Cape and Others v Overberg District Municipality and Others* (the Overberg case) is an example of where the court dealt with the issue of mutual trust and good faith, as provided for in section 41 of the Constitution, which covers the principles of co-operative government and intergovernmental relations. The Committee is of the view that, it is only the Constitutional Court that may decide on matters falling under section 167 (4) (e) of the Constitution.

**Recommendation**

The committee feels the proposal does not require a review of the Constitution.

**Amendment to section 163: Organised Local Government**

In addition, SALGA proposed an amendment to section 163 of the Constitution, which deals with organised local government. The submitters suggest that, the Organised Local Government Act 52 of 1997, which is aimed at giving effect to section 163, omits to facilitate organised local government’s participation in provincial legislatures. SALGA argues that, an amendment to the Organised Local Government Act is necessary to entrench participation of organised local government in provincial structures through enabling provision in the Constitution.

The committee therefore, feels there is no need for a review of section 139 both in common and constitutional law.

Lastly, SALGA requested that consideration should be given to the budget constraints experienced by organised local government. The proposal was that, organised local government should be granted financial support that is to be reflected in the Division of Revenue Act.

**Recommendation**

The Committee is of the view that, there is no need to amend the Constitution based on the aforementioned proposals as that could lead to unintended consequences.

**2.15 Submission 18 by Mr G Travers**

The submitter called for a review of section 165 of the Constitution, which covers judicial authority. The submission examined the administrative independence, financial independence, constitutional principles, and international best practice applicable to the judiciary.

The committee the is of the view that, the functions set out in section 8 of the Superior Court Act, No. 10 of 2013 are designed to give impetus to the independence of the judiciary. In effect, the Superior Courts Act brings the requirement contained in the *Van Rooyen* judgement to life. In that case, the Constitutional Court argued that, the judicial independence “requires judicial officers to act independently and impartially in dealing with cases that come before them, and at institutional level it requires structures to protect courts and judicial officers against external interference”. The *Van Rooyen* judgement further indicates that the institutional independence of the judiciary is a constitutional principle and norm, which is a justification to the Constitution 17th Amendment Act, which introduced the norms and standards into section 165 of the Constitution. Sections 10, 11 and 54 of the Superior Courts Act therefore, enhances the independence of the Judiciary.

**Recommendation**

The Committee is of the view that, there is no need to amend the Constitution in this respect as some of the proposals made are already covered in existing legislation.

**2.16 Submission 19 by Vuka Afrika Foundation**

The submission by Apostle Gobodo of Vuka Afrika Foundation proposed amendments of the Preamble, sections 1, 7 (1) and (2), 8, 11, 36 (1) and 39 (1) (a) of the Constitution. Vuka Afrika Foundation proposed that the Constitution must recognise and promote Godly-Biblical Values, and must have inalienable human rights that are based on Biblical Values. The submitters argued that, the foundation of the Constitution is anchored on the Godly-Biblical Values and that these values must reflect in the Preamble of the Constitution, as well as in the Bill of Rights of the Constitution.

The submitter also proposed amendments to section 7 (1) of the Bill of Rights by adding the wording “This Bill of Rights is informed and guided by the Godly-Biblical Values contained in section 1…”. In respect of section 7 (2), the proposal was to amend the provision by adding the words “in alignment with the Godly-Biblical Values”.

The Committee noted that although the submitters mentioned in the submission that they were proposing amendment to section 8 of the Constitution. No such amendment is indicated in the submission.

The submitters also called for an amendment to section 11 of the Constitution by adding the wording “including unborn babies from conception”.

Lastly, Vuka Afrika called for an amendment of section 36 (1) by adding the words “Godly-Biblical Values” to add as a criteria/standard for the limitation of the rights that are afforded by the Constitution. In addition, the submitters proposed an amendment to section 39 (1) (a) by adding the words “Godly-Biblical Values” as a standard for interpreting the Bill of Rights.

The Committee is of the opinion that, the Constitution guarantees the right to freedom of religion, belief and opinion to all. In addition, section 9 of the Constitution provides for equality and states that no one can be discriminated against because of religion, amongst other listed grounds. Thus, amending the Constitution to reflect Godly-Biblical Values would potentially offend against constitutional rights to freedom of religion, equality, amongst others.

In respect to a proposal to amend section11 of the Constitution by adding wording “including unborn babies from conception”, The High Court in the matter of *Christian Association v Minister of Health and Others (Reproductive Health Alliance as Amicus)* 2005 (1) SA 509 (T) ruled that the “everyone” as provided in section 11, does not extend to unborn children, which do not have legal personality under the Bill of Rights.Furthermore, section 2 of the Choice of Termination of Pregnancy of Pregnancy Act 92 of 1996 provides that pregnancy may be terminated.

On the proposal for amending the Constitution to reflect the Christian principles by adding the wording “Godly-Biblical Values”, the Committee is of the view that, whilst the Constitution of South Africa is not opposed to religion, it does not support a specific religion**.** Therefore, amending the Constitution to reflect “Biblical Values” may not only impose specific religion and principles, but may also offend against the spirit and letter of the Constitution, in particular the right to equality for all.

On the issue of granting constitutional rights to unborn children, the Choice of Termination of Pregnancy of Pregnancy Act 92 of 1996 regulates this situation. As mentioned above, the constitutionality of this Act was tested and the Constitutional Court upheld its constitutionality. Thus, granting constitutional rights to unborn children, as proposed by the submitter would be in contravention of the Constitution and the Act.

**Recommendation**

In the light of the above, the Committee is of the view that amendments proposed in the submission would go against the spirit and the letter of the Constitution. Therefore, there is no need to review the Constitution.

The ACDP registered its objection to the committee’s recommendation in this regard

**2.17 Submission 20 by Bishop Mashile**

The submitter proposed amendments to the following provisions:

(a) the Preamble;

(b) Section 42 (2) which deal with the participation of the NA and the NCOP in the legislative process;

(c) Section 166, which determines the courts of the country, section 211 (1) which deals with traditional leaders,. The submission requests the addition of Khoisan leaders in section 212 (2) (a), as well as a review of section 178 which covers the establishment and the constitution of the Judicial Services Commission.

On the proposal to amend the Preamble, the Committee is of the view that, the preamble and other provisions in the Constitution provides that, the government of the Republic is made up of freely elected representatives. In addition, membership to the institution of traditional leadership is mostly by means of inheritance and birth right to royalty. Essentially, section 211 of the Constitution recognises the institution, status and the role of traditional leadership. Therefore, amending the Preamble of the Constitution, as proposed would amount to duplication of the provision of section 211.

The committee is of the view that the submitter should monitor developments in the Traditional Courts Bill and the Traditional and Khoi-San Leadership Bill [B23-2015] that are currently considered by Parliament, respectively. Probably, some of the aspects raised by the submitter in the submission may be remedies by such legislation.

**Recommendation**

The submitter will be advised to monitordevelopments in the Traditional Courts Bill and the Traditional and Khoi-San Leadership Bill [B23-2015].

**2.18 Submission 21 by Mr B Ngobese**

The submission did not specify or requested a review of provisions in the Constitution, but rather contained disagreements the submitter had with existing legislation and Constitutional Court rulings. The Committee is of the view that, the submission does not speak to a review of the Constitution.

**2.19 Submission 22 by Mr B MacLennan**

The submitter suggested deletion of phrases*“May God protect our people. Nkosi Sikelel’ iAfrika. Morena boloka setjhaba se heso. God seen Suid-Afrika. God bless South Africa. Mudzi fhatutshedza Afurika. Hosikatekisa Afika.”*in the Preamble of the Constitution. The submitter argued that, recognising God in the Constitution –in fact any deity- runs counter to the fact that South Africa belongs to all people, some of whom do not believe in a God. The submitter is of the view that because South Africa belongs to all who live in it, united in its diversity, and because the Constitution aims at healing the divisions of the past and establish a society based on fundamental human rights, these words should be deleted as they refer to deity.

The committee, in considering the submission took note of the was referred to the certification judgement, where the Constitutional Court held that the invocation of a deity does not amount to discriminating against those who do not believe in God.

**Recommendation**

The committee does not support the suggested amendments based on among other things, the pronouncements that were made by the courts.

The ACDP objected to the Committee’s recommendation pertaining to:

* A proposal by the KGM for a review of the the Preamble of the Constitution by embracing Godly-Biblical Values.
* A proposal by the KGM and Vuka Afrika to amend the Constitution to reflect the Christian principles by adding the wording “Godly-Biblical Values”,
* A proposal by the KGM to amend sub-section 15 (1) of the Constitution by adding the wording “provided that it does not include witchcraft, Satanism and any form of human sacrifice”.
* A proposal by the KGM that “marriage must be between one male and female person to perpetuate humanity”.
* A proposal by Vuka Afrika Foundation to amend section 16 (2) of the Constitutionby including the word “or” at the end of sub-section 16 (2) (c), and by adding a new sub-section 16 (2) (d) with the wording: “explicit pornography, sexual intercourse and any other form of sexual representation that may be harmful; to children and sensitive citizens”.
* A proposal by Vuka Afrika Foundation to amend section11 of the Constitution by adding wording “including unborn babies from conception”.

**Report to be considered.**