1. **Report of the Constitutional Review Committee on 2016 Public Submissions dated 20 March 2019**
2. **Background**

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 Constitutional Review Committee (CRC / the Committee) to annually, before the first day of May, by notice in the public media, invite: -

* The public, National Assembly (NA) Committees, National Council of Provinces (Council) Committees, Joint Committees, Members and Organs of State.

To submit to the Committee, within 30 days, written representations on any constitutional matter.

1. **Introduction**

The Committee during the 2016 public submissions process received 67 submissions, which were categorised as follows:

* **Category 1**- 15 submissions were categorised as being ready for deliberations and did not require a legal opinion;
* **Category 2** - 30 submissions were referred to the Parliamentary Legal Services office for legal opinion/advice. Subsequently, the Legal Advisers briefed the Committee on opinions /input /advice on those submissions.
* **Category 3** – were 22 submissions that do not fall within the Committee’s mandate.

1. **Synopsis of 2016 Public Submissions**

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

**3.1 CR 16/1 Submission by Khoisan Nation Self Defence Unit (KNSDU)**

The submitters assert that, the Defence Laws Amendment Act, in its current form does not cater for full participation of the integration of the Khoisan soldiers/Cape Corps. In addition, the repeal of the Integration Act 44 of 2001 had an effect on the Khoisan soldiers who were excluded during the SANDF integration process.

The submitters therefore, propose the following:

1. The repeal or amend laws that are inconsistent with the equality clause in the Constitution.
2. The re-instatement of the Integration Act No. 44 of 2001 to allow for the integration of the Khoisan soldiers who were excluded from the 1994 SANDF integration process.

The Committee feels the submission has no reference to a constitutional provision that should be reviewed. The submission refers to policy matters that fall outside the mandate of the Committee.

**Recommendation**

The Committee recommends that the submission should be referred to the Portfolio Committee on Defence and Military Veterans, the Joint Standing Committee on Defence and the Select Committee on Security and Justice.

**3.2 CR 16/2 Submission by Shepherd Silayi**

The submitter proposes a review of section 29 (2) of the Constitution, which speaks to the right to receive education in the official language or languages of choice in public education institutions, by including the wording ‘may have’.

The Committee feels the issue raised by the submitter is already catered for in section 6 of the South African Schools Act of No.84 of 1996, which prescribes several preconditions in relation to the determination of language policy in public schools, as well as in the National Curriculum Statement. The Committee is of the view that the proposal made by the submitter is a policy matter that does not necessitate a review of the Constitution.

**Recommendation**

The Committee recommend that, the submission should be referred to the Portfolio Committees on Education and Arts and Culture as well as the Pan South African Language Board (PANSALB).

**3.3 CR 16/3 Submission by Maletsane Phoffa**

The submitter proposes a review of section 25 (the property clause) to allow for the expropriation of land without compensation. The submitter further proposes that Black people must be taxed less than White people. The Committee feels that such a proposals fall outside its mandate. In effect, the proposal does not require a review of the Constitution.

The Committee contends that the issue on the proposal for the review of the property clause, a resolution was adopted by both Houses for an amendment of section 25 of the Constitution to allow for the expropriation of land without compensation. The matter is currently being considered by Parliament through an *ad hoc* committee that is looking into an amendment of section 25 of the Constitution.

The African Christian Democratic Party (ACDP) and the Democratic Alliance (DA) reserve their parties position on the aforementioned matters.

**Recommendation**

The submitter should be advised to monitor developments on the work of the *ad hoc* committee that is mandated to look into the amendment of section 25 of the Constitution.

**3.4 CR16/4 Submission by MM Mthombeni**

The submitter makes several proposals, which includes the following:

1. The removal of all unlimited rights of criminals who kill and hijack motors, as well as those who sell nyaope (drugs).
2. The transformation of the judiciary system in order to be more inclusive.
3. The abolishment of hate speech and action be taken against racisms.
4. The reinstatement of death penalty to reduce crime.
5. The confiscation of land from those who stole it during the years of the 1700s until now.
6. The closure of porous borders to control people who enter the country without valid permits.

 The Committee notes that:

1. Section 35 of the Bill of Rights provides for the rights of the arrested, detained and accused persons, to conditions of detention that are consistent with human dignity.
2. The government has introduced the Prevention and Combating of Hate Crimes and Hate Speech Bill, B9-2018., which will create an offence of hate crimes and hate speech. The Bill will also criminalise any conduct that amounts to an attempt, incitement, instigation and conspiracy to commit a hate crime.
3. The reinstatement of death penalty is in conflict with the Constitution of the Republic of South Africa and the spirit of the Amnesty International, which views death penalty as a denial of human rights.
4. The land claims issues are currently being considered by Parliament under the Expropriation Bill.
5. The issue of border control is within the ambit of the Departments of Home Affairs, Intelligence, Transport, Defence, South African Police Service (SAPS), Health and Public Works.

The Committee is of the view that, the submission raises policy matters that fall outside its mandate and do not require a review of the Constitution.

**Recommendation**

The submitter will be advised to monitor progress in respect of issues that are currently being considered by Parliament pertaining to relevant pieces of legislation possibly covering the matters raised, as this submission does not warrant a review of the Constitution.

The ACDP and the DA reserve their parties position on the issues raised in the submission.

 **3.5 CR16/5 Submission by James Dikwayo**

The submitter proposes an amendment to the current electoral system in which the President is elected through the National Assembly. The submitter, therefore, calls for amendment to section 86 of the Constitution to allow individual candidates to be elected as President.

The Committee supports the opinion that, in South Africa, the election of the President is linked to the concept of proportional representation. In addition, the submission does not specify an alternate electoral system South Africa should take nor a provision in the Constitution that should be amended.

The Committee is of the view that the submissions falls outside its mandate.

**Recommendation**

The submission does not necessitate a review of the Constitution.

* 1. **CR16/6 No Name Provided.**

The submitter submits the following:

1. The limitation of rights to vote to active income tax payers.
2. The limitation of rights of people convicted of a crime for the duration of their sentence.
3. To make offences of persons in positions of trust equal to treason.
4. The suggestion around the redistribution of land without compensation.

The Committee is of the view that the issues raised in the submission do not refer to any sections of the Constitution that need review. In addition, the proposals made are policy matters that fall outside its mandate.

**Recommendation**

The submission doesnecessitate a review of the Constitution, but can be addressed in national legislation.

 **3.7 CR16/7 Submission by Chia-Hsiang Chu**

The submitter proposes the reinstatement of the death penalty and the removal of the right to vote for prisoners.

The Committee feels the submitter does not refer to provisions that should be considered for the purposes of amending the Constitution.

**Recommendation**

The submission does not necessitate a review of the Constitution.

 **3.8 CR16/8 Submission by Konya Venter Pieter**

The submitter proposes the reinstatement of the death penalty

 The Committee feels that it does not have a mandate to call for a national vote or referendum on laws.

The Committee is of the view that, the submission falls outside its mandate.

**Recommendation**

The submission does not necessitate a review of the Constitution.

**3.9 CR16/9 Submission by Goodman Luthuli**

The submitter proposes an enactment of a retirement funds legislation. The Committee is of the view that the proposal is a policy matter that falls outside its mandate.

**Recommendation**

The Committee recommends that the submission should be referred to a relevant parliamentary committee depending on the specifics of the retirement funds issue.

**3.10 CR16/10 Submission by Phil Melton**

The submitter proposes an amendment of the Constitution to include a penalty for a conviction of breach of the Constitution by the Constitutional Court.

The Committee is of the view that, the proposal falls outside its mandate. It is a policy matter that can be accommodated in national legislation.

**Recommendation**

The submission does not necessitate a review of the Constitution.

**3.11 CR16/11 Submission by Senhlwa Nelson Lekganyane**

The Submitter proposes the following:

1. The revival of the Van Zyl Slabbert Commission on Electoral Reform Report; and
2. A review of mining laws for development.

The Committee is of the view that, the proposals made by the submitters that falls outside its mandate and can be accommodated in national legislation.

**Recommendation**

The submission does not necessitate a review of the Constitution.

**3.12 CR16/12 Submission by Phillip Gonsalves**

The submitter proposes a review of the powers of the President.

The Committee feels the submission has no reference to a particular provision in the Constitution that should amended.

**Recommendation**

The submission does not necessitate a review of the Constitution.

**3.13 CR16/13 Submission by Fabian Makhanda**

The submitter proposes an amendment of section 179 of the Constitution, which deal with Prosecuting Authority. The submitter argues that, sections 179 (4), 5(d) and (6) of the Constitution do not sufficiently providefor the independence and impartiality of the National Prosecuting Authority (the NPA).

The Committee supports the opinion that, there is no justified basis to review section 179 of the Constitution for the provision of the independence and impartiality of the NP as these are sufficiently provided for in the current constitutional legal framework.

**Recommendation**

The submission does not necessitate a review of the Constitution.

However, the ACDP and the DA reserved their parties’ positions on this issue.

**3.14 CR16/14 Submission by Senhlwa Nelson Lekganyane**

The submitter proposes the following:

1. The introduction of a strict legislation to regulate protests and marches to avoid destruction of property and loss of life.
2. The change to the electoral system to allow individual candidates to be elected as President.
3. A review of the mining legislation to allow communities and their leaders to play a role in the development, improvement of living standards and economic growth in areas where mining occurs.

The Committee notes the following:

1. The Regulation of Gathering Act 205 of 1993 regulates protests, marches and associated actions.
2. The submission does not go into detail on how an individual election system as opposed to a party-based presidential election should be implemented.
3. The proposal to amend the mining legislation falls outside its mandate.

**Recommendation**

The Committee recommends that, the submission on the review of mining legislation should be referred to the Portfolio Committee on Mineral Resources for consideration.

 The ACDP and the DA reserve their parties’ position on the submission.

**3.15 CR16/15 Submission by Kagiso Gabriel Mathe**

The submitter proposes amendments to various provisions of the Constitution of the Republic of South Africa as follows:

1. The amendment of section 1 (2) of the Constitution, which deals with the supremacy of the Constitution.
2. The amendment of section 47 (a) (i) of the Constitution, arguing that the “Ministers and their deputies should be excluded from voting concerning matters of Parliament”.
3. The amendment of section48 of the Constitution, which provides that members must take oath of office before they begin to perform their function in the Assembly.
4. The amendment of section 52 (4) of the Constitution, which deals with the removal of the Speaker or Deputy Speaker.
5. The amendment of section 55 (a) of the Constitution, which provides for powers of the National Assembly.
6. The amendment of section 64 (4) of the Constitution, to provide for the Chairperson of the National Council of Provinces to resign political membership during his or her term of office.
7. The amendment of section 83 (b) of the Constitution to allow for the removal of the President from office for “any infringement of the Constitution”.
8. The amendment of section 84 (2) (e) of the Constitution, to allow for the establishment of a Committee comprising of members of the National Assembly and the Presidency to make all executive appointments.
9. The amendment of section 89 (1 of the Constitution for the removal of the President “by a unanimous vote”.
10. The amendment of section 91 (a) of the Constitution to curb any determinable number of Ministers and the Deputies so as to avoid a bloated number of Cabinet Ministers and their Deputies as that has huge financial ramifications to the taxpayers.

(k) The amendment of section 96 of the Constitution to allow for the Ministers and Deputy Ministers to declare their business interests before appointment to office. Furthermore, that they be subjected to a lifestyle audit.

The Committee notes the following:

1. The Committee feels the proposed amendment in section 1 (2) is not necessary as it is already provided for in section 2 of the Constitution.
2. Section 47 sets out the requirements for membership of the National Assembly and the circumstances where membership may be lost. Thus, the proposal by the submitter will jeopardise the work of Parliament.
3. The proposal to amend section 48 of the Constitution is a policy matter that falls outside its mandate.
4. The proposal to amend section 52 of the Constitution is a policy matter that falls outside its mandate.
5. The proposal for an amendment to section 55 (a) is unclear.
6. The proposal to amend section 64 (4) of the Constitution is a policy matter that falls outside its mandate.
7. In respect of the proposal to amend section 83 (3) of the Constitution, section 89 (1) (b) of the Constitution already provides for the ground under which the President may be removed. Thus, the proposal does not require an amendment to the Constitution.
8. Amending section 84 (2) as suggested will curtail the powers of the President and breach the doctrine of separation of powers.
9. The removal of the President entails political consideration. The submitter does not clearly stipulate how members should be curtailed from exercising this political choice.
10. The Constitution does not limit the number of Ministers and the Deputy Minister the President may appoint. In effect, the President may choose the number he or she wishes to appoint to enable him of her to adequately discharge government duties.

The proposal is a policy matter that falls outside its mandate.

1. The Executive Members’ Ethics Act, 1998 (Act No, 82 of 1998) is the legislation envisaged in section 96 (1) of the Constitution.

The Committee feels the proposals listed above fall outside the mandate of its mandate.

**Recommendation**

The submission does not necessitate a review of the Constitution**.**

 **3.16 CR16/16 Submission by Rajesh Maharaj**

The submitter calls for the Committee to revisit the recommendations of the Slabbert Commission Report regarding the electoral system.

The Committee is of the view that, the submission does not call for a review of the section 46 of the Constitution, which the Electoral Act of 1998 is enacted in accordance with. The assumption is that; the submitter implores the Committee to ensure the implementation of the Slabbert Commission recommendations.

**Recommendation**

The submission is a policy matter that requires a review of the Electoral Act. Thus, the submission will be referred to a relevant parliamentary committee.

**3.17 CR16/17 Submission by Olefile C. Moiloa**

 The submitter calls for Parliament to review public funding of parties that are also represented in the local spheres of government.

The Committee feels the proposal made is a policy matter that is covered in the Party Political Funding Act 6 of 2018.

**Recommendation**

The submission does not necessitate a review of the Constitution.

 **3.18 CR16/18 Submission by Phumudzo Nedzivhani**

The submitter proposes a number of constitutional provisions that should be reviewed.

1. Amendment to Chapter 5 of the Constitution, which deals with the President and National Executive.
2. Amendment to Chapter 2, which covers the Bill of Rights.

The Committee notes that following:

1. The concern around the term of office of the President is covered in section 88 (2) of the Constitution.
2. Section 96 of the Constitution provides for the Conduct of Cabinet members and Deputy Ministers. It therefore, prohibits the President from acting in a way that is inconsistent with his or her office or exposes him or herself to any situation that involves the risk or conflict of interest between official duties and personal interest.
3. In South Africa, the appointment of Minister and Ambassadors does not depend on the consent of the National Assembly, it is the prerogative of the President as spelt out in sections 91 (3) (b) and 84 (2) (i) of the Constitution, respectively.
4. In South Africa, the removal of the President is provided for in section 89 of the Constitution. However, the Constitution of the Republic does not cover the removal of the Deputy President. The grounds listed under section 89 of the Constitution, are broad enough to cover the offences of treason, bribery or other high crimes or misdemeanours. Thus, there is no necessity to amend the Constitution in this regard.

Similarly, the removal of other public officers appointed by the President is catered for in other provisions of the Constitution and in the relevant legislation. Therefore, there is no need for constitutional amendment required in this regard.

1. Section 231 of the Constitution deals with international agreement covers the proposal made around the treaties.
2. The rights proposed by the submitter in various sections of Chapter 2 of the Constitution are already covered in the Constitution.

The Committee feels the issues raised are policy related and fall outside the mandate of the Committee.

**Recommendation**

The submission does not necessitate a review of the Constitution.

 **3.19 CR16/19 Submission by Adv. MG Mathovheke**

The submitter proposes that the President must be elected by the people of South Africa not by the majority political party, as it is case at present.

The Committee supports the opinion that, the appointment of the President read with section 42 of the Constitution, is a generally accepted electoral model informed by the concept of democracy. In South Africa, the election of the President is linked to the concept of proportional representation. Amending the current system, as suggested by the submitter, will alter the proportional representation nature of South Africa’s electoral system

**Recommendation**

The submission does not require a review of the Constitution.

 **3.20 CR16/20 Submission by Ms Aadilah Meas**

The submitter proposes the insertion of an impeachment clause in the Constitution. In addition, the submitter questions why Parliament has no quota system. Whether the Constitution was purposely designed to “keep the majority dominating the minority”.

The Committee notes the following:

1. Section 89 of the Constitution provides for the removal of the President if such motion is supported by the two-thirds of the Members of the National Assembly. Additionally, the removal is based on the grounds of a serious violation of the Constitution or law, serious misconduct or inability to perform the functions of office. In this case, the proposal by the submitter is provided for in the aforementioned constitutional provision.
2. Regarding the proposal for a quota system in Parliament, the Committee accepts the opinion that, section 46 (1) (d) provides that the NA will be constituted based on proportional representation as per the results of the national election.

The Committee feels the proposals such as an impeachment provision are already catered for in section 89 of the Constitution. The introduction of the quota system goes against the tenets of democracy.

**Recommendation**

The submission does not warrant a review the Constitution

 **3.21 CR16/21 Mr Wilson Mengo**

The submitter proposes an amendment to the numbering of section 239 of the Constitution. The submitter holds a view that, the definition provision as found in this provision was drafted incorrectly.

The Committee supports the opinion that, South Africa’s legislative drafting style is in accordance with the international standards of drafting or the international drafting conventions. In this case, the definition section is required to follow the alphabetic order when listing out definitions for any legislative instruments.

**Recommendation**

There is no need to amend section 239 as it is aligned to and conforms with the internationally accepted drafting standards.

 **3.22 CR16/22 Submission by Ntebo L Morudu**

The submitter proposes the following:

1. The limitation on the powers of the President.
2. The President should not be affiliated to any political party.
3. The national anthem should not be chosen by the President

**Recommendation**

The Committee feels that the proposals by the submitter do not necessitate a review the Constitution.

 **3.23 CR16/23 Submission by Tessa Paulsen**

The submitter makes a number of proposals that includes the following:

1. The abolishment of the term “Coloured” and reinstate cultural identity through the identification such as Khoi, Malay, Indian and others.
2. The rectification that the Griqua are the true Khoi.
3. The recognition of foreign marine records.
4. The rectification of the history and recognition of Khoi.
5. The implementation of policies that allow for the independence of cultural organisations from political parties.

The Committee feels the submitter does not refer to any provision/s in the Constitution that needed to be review in order to accommodate the aforementioned proposals.

**Recommendation**

The submission does not require a review of the Constitution.

**3.24 CR16/24 Submission by Mac Oswald**

The submission does not list any provisions in the Constitution that should be reviewed. Instead, it lists comments governance related matters.

**Recommendation**

The submission does not fall within the mandate of the Committee.

**3.25 CR16/25 Submission by Elsa Post**

The submission does not list any proposal for provisions in the Constitution that should be reviewed, but rather comments around the notion of respect as a constitutional right.

The Committee feels the submission does not fall within the mandate of the Committee.

**Recommendation**

The submission does not necessitate a review of the Constitution.

* 1. **CR16/26 Submission by Adv. HA Mukhavela**

The submitter submits the following:

1. The position of the National Director of Public Prosecutions should be filled through a conventional recruitment process where all suitable candidates are invited to apply.
2. Section 179 (6) should be amended to remove the Minister of Justice from exercising a final responsibility over the National Prosecuting Authority (the NPA).
3. An inclusion of a subsection in section 188 that will obligate the Auditor-General to submit his or her reports to the NPA and SAPS so that they take action against people implicated therein.

The Committee feels the proposals made by the submitter relates to matters of policy and fall outside its mandate.

**Recommendation**

The Committee recommends that section in the submissions that should referred to a relevant parliamentary committee as the matters raised can be addressed through national legislation.

The ACDP and the DA reserve their parties’ position on the matter.

**3.27 CR16/27 Submission by Jesse Greaves**

The submitter proposes a review of section 46 (1) of the Constitution to allow for proportional representation and a constituency representation in the National Assembly.

The Committee feels amending the Constitution as suggested will alter the general nature of section 46 from a general proportional representation guideline to a specific formula prescription provision.

**Recommendation**

The submission does not require a review of the Constitution. However, the ACDP and the DA reserve their parties’ position on the matter.

**3.28 CR16/28 Submission by LV Sizani**

The submitter proposes a review of section 196 of the Constitution, which deals with the Public Service Commission (the PSC). The submitter calls for the amendment of sections 196(4) (f) (ii) and 196 (4) (d) of the Constitution in particular. The submitter submits that the PSC should have no role in the grievance procedure between government, as an employer and its employees. In the submitter’s view, once government employees are dismissed, the PSC’s function lapses.

The Committee supports the opinion that, the issues raised by the submitter can be addressed by amendments to the Public Service Act and the Labour Relations Act, instead of the Constitution. The proposals made are policy related and fall outside the scope of work of the Committee.

The Committee feels the matter raised relates to policy and fall outside the mandate of the Committee

**Recommendation**

The Committee recommends that the submission should be referred to a relevant parliamentary committee.

* 1. **CR16/29 Submission by Mr Green**

The submitter proposes the following:

1. The appointment of Chapter 9 office bearers should be tasked to a retired judge not the President.
2. The public should participate in the appointment of the Public Protector.
3. The Speakers should be non-partisan.
4. The secret ballot should be permitted to allow MPs to vote with their conscience.

The Committee feels the proposals made by the submitter falls outside its mandate.

**Recommendation**

The submission does not require a review of the Constitution.

**3.30 CR16/30 Submission by Thandi Ngcobo**

The submitter proposes a review of section 25 (7) of the Constitution.

The Committee is of the view that, the matter raised by the submitter is currently dealt with by Parliament.

**Recommendatio**n

The Committee recommends that, the submitter monitor developments in the work of the *ad hoc* committee that deals with the amendment of section 25 of the Constitution.

**3.31 CR16/31 Submission by SN Mitchell**

The Committee notes that, the submission does not point to any provision in the Constitution that should be reviewed. The submitter rather points to issues that he cites as being a (failure of the South African Constitution”.

**Recommendation**

The submission falls outside the Committee’s mandate.

**3.32 CR16/32 Submission by Mr Moathlodi**

The submitter calls for the reduction in the number of Provinces as the current systems has an impact on the resources so as in service delivery.

The Committee notes that, the submission does not point to a provision in the Constitution that should be reviewed. Thus, the submission does not assist it in determining the desirability for a review of the Constitution. The Committee feels the submission falls outside the Committee’s mandate.

**Recommendation**

The submission does not require a review of the Constitution.

**3.33 CR16/33 Submision by Michael James**

The submitter proposes amendments to the Citizenship Act No. 88 of 1995.

The Committee is of the view that the submission falls outside its mandate. It is a policy matter that should be accommodated in national legislation.

**Recommendation**

The Committee recommends that; the submission should be referred to the Portfolio Committee on Home Affairs.

**3.34 CR16/34 Submisison by Mr Winser**

The submitter submits as follows:

1. Bestow upon a legal definition of Personhood not only on those born from a mother’s womb, but from their conception.
2. Regard the legal definition of marriage as between a naturally born man and a naturally born woman.
3. The recognition of the Khoikhoi and the San as South Africa’s first people.

The Committee notes that, there is no specific constitutional provision, which the submitter wishes to be reviewed.

**Recommendation**

The submission does not require a review of the Constitution as the views expressed by the submitter can be accommodated in national legislation.

The ACDP supports the sentiments of the submission, but reserves its position on the issue.

**3.35 CR16/35 Submission by Mr J Martins**

The submitter calls for the revision of section 86 of the Constitution, which deals with the election of the President. The submitter opines that, the provision as set out currently, encroaches on the separation of powers.

The Committee supports the opinion that, considering the Constitutional Courts interpretation of the separation of powers as a constitutional doctrine that does not require an absolute separation. The sections in the Constitution that deals with the appointment of the President and the Executive from membership of the National Assembly, with Ministers retaining their membership, do not infringe on the separation of powers doctrine.

The Committee feels the submission falls outside its mandate

**Recommendation**

The submission does not necessitate a review of the Constitution.

**3.36 CR16/36 Submission by Ms E Motlhaping**

The submitter proposes amendment to section 35(3) (k) of the Constitution. The submission highlights the challenges faced in finding foreign language interpreters for foreign nationals who are suspected of criminal activity. Accordingly, the submitter seeks to limit the application of the rights in section 35 (3) 9k) so that an accused will be tried in an official language or where not practicable, the proceeding be interpreted in an official language.

The Committee notes the legitimacy of the submitter’s concern about the cost of sourcing foreign language interpreters. There are concerns around the cost implication for the State in respecting, protecting, promoting and fulfilling all fundamental rights. The opinion is that, the submitters proposal may curtail the accused right to a fair trial, including the right to “adduce and challenge evidence”.

The Committee feels the issue raised by the submitter is a policy matter that falls outside its mandate.

**Recommendation**

The submission does not necessitate a review of the Constitution, but rather a strengthening of legislation.

**3.37 CR16/37 Submission by Mr S Finger**

The submitter argues that the Constitution should be reviewed to include a clause that allows for the citizens to elected the President of their choice, not the once imposed by the political party.

The Committee is of the opinion that; the submission does not specify a provision in the Constitution that should be reviewed to assist the Committee in determining the desirability for amending the Constitution.

**Recommendation**

The submission falls outside the mandate of the Committee.

**3.38 CR16/38 Submission by Mr Kgosiemang Esau Moloko**

The submitter recommends a minimum governance structure to strengthen weak governance. In addition, the submitter proposes that an inclusion of the Office of Internal Auditors as one of the Chapter 9 Institutions will strengthen governance, by preventing frauds and corruption before it happens, help with continuous training, as well crate quality employment for youth.

The Committee is of the view that, the submitter does not stipulate the constitutional provision that should be review to accommodate his proposal.

**Recommendation**

The submission does not necessitate a review of the Constitution.

**3.39 CR16/39 Submission by Adv. NM Masemola**

The submitter proposes an amendment to section 6 of the Constitution to replace Sesotho sa Leboa with Sepedi. The submitter further proposes a scrapping of the level of provincial government.

The Committee is of the view that the matter regarding the designation of Sepedi will have to consider further. The proposal for the abolishment of Provinces is a policy issue that falls outside the Committee’s mandate.

**Recommendation**

The Committee recommends that the language issue should be included in the committee’s legacy report for further consideration by a committee that will be established in the sixth Parliament.

**3.40 CR16/40 Submission by Phakamani Dlamini**

The submitter proposes the expropriation of land without compensation.

The Committee considered this matter and its recommendations were adopted by Parliament, which had since established an ad hoc committee to facilitate a promulgation of a bill that will amend section 25 of the Constitution.

**Recommendation**

The Committee recommends that the submitter should monitor the developments in the work of the *ad hoc* committee that deals with the amendment of section 25 of the Constitution.

**3.41 CR16/41 Submission by K Maibelo**

The submitter proposes a review of section 86 (1) which deals with the election of the President and its accompanying Schedule 3 on Electoral Procedures, in particular Part A (1) (a) which, sets out the formula by which seats are allocated for membership to the National Assembly from which the President is elected.

The Committee feels the submission falls outside its mandate.

**Recommendation**

The submission does not warrant a review of the Constitution.

**3.42 CR16/42 Submission by Henry Isaacs**

The submitter calls for reform that includes the following:

1. The identification of the Khoisan as the highest people.
2. The “Coloureds” must have their own international identity card.
3. The Khoisan should have their “sole” government.

The Committee is of the view that, the proposed reforms fall outside its mandate. The submission, therefore, can be catered for in national legislation, namely, the Traditional Khoisan and Leadership Bill.

**Recommendation**

The Committee recommends that the submission should be referred to the Portfolio Committee on Co-operative Governance & Traditional Affairs.

 **3.43 CR16/43 Submission by Kwena Matuba**

The submitter, supported by other 10 people listed on the submission calls for a review of the following constitutional provisions:

1. Section 29 (1) (a-b) which deals with the right to basic education; and
2. Section 11 which deals with the right to life.

The submitters disagree with the provision that state that everyone has the right to education. The submitters further disagree with the right to the termination of pregnancy, and condemns sexual orientation rights.

The submission speaks to the disagreement of the Right to Education as well as the Equality Clause. The submitters also propose a review of the rights of prisoners due to the rise in police murders.

In essence, the submitters call for the review of the Choice of Termination of Pregnancy Amendment Act No.1 of 2008 and the Civil Union act 17 of 2006.

The Committee feels the submission does not direct the Committee as to why and how these laws should be changed.

**Recommendation**

The submission does not necessitate a review of the Constitution.

The ACDP supports the sentiments of the submission and reserves its position on the matter.

**3.44 CR16/44 Submission by Raesibe Priscilla Mahapa**

The submitter, supported by 4 other people listed on the submission calls for a review of section 27 (1) (a) which provides for “everyone’s right to have access to healthcare services, including reproductive health care”. The submitter calls for a review of social grants pertaining to the number of children the government may give assistance to. The submitters call for government to limit the reproduction rights as this may assist in reducing government social bill.

The Committee feels the submission is a policy matter that falls outside its mandate.

**Recommendation**

The submission does not necessitate a review of the Constitution.

**3.45 CR16/45 Submission by Koeiva Dinyake**

The submitter supported by four other people listed on the submissions call for a review of section 15 (2) (a-c) of the Constitution which, lists the grounds under which religious observance may be conducted in state or state-funded institutions.

The submitters propose to government to establish an institution that could hire religious leaders who could be assigned to schools. This will improve the moral behaviour of learners/students and manage religious practices.

The Committee feels the proposals by the submitters are catered for by the Promotion and Protection of Cultural, Religious and Linguistic Communities (the CRL) and in Chapter 4 of the Constitution.

**Recommendation**

The Committee is of the view that, the submission does not necessitate a review of the Constitution as it can be addressed in national legislation.

The ACDP supports the sentiments of the submission and reserves its position on the matter.

**3.46 CR16/46 Submission by Khomotso Komape (representing a youth organisation)**

The submitter supported by 16 other people listed on the submission proposes a review of various provisions in the Constitution, which includes the following:

1. A review of section 195 (1) (f) of the which provides for accountability in the public administration.
2. A review of section 11 of the Constitution, which provides for the right to life.
3. A review of section 195, which deals with basic values and principles governing public administration.
4. A review of section 27 (1) (a-c) which deals with every one’s right to health care, food, water and social security.
5. A review of section 9 (3) which lists grounds on which the state may not unfairly discriminate directly or indirectly against anyone.
6. A review of section 15 (1) (1) which provides for everyone’s right to freedom of conscience, religion, thought, belief and opinion.
7. A review of section 29 (1) (a-b) whichdeals with the right to basic education.

The Committees notes the following:

1. The submission on the lack of pay point for old people is a policy matter that should be referred to a relevant parliamentary committee.
2. Regarding the proposal for a review in section 9 (3) of the Constitution, the submission does not provide a clear constitutional amendment which the committee should consider. In that case, the submission falls outside the Committees current process.
3. In respect of abortion and the right to life, the submission does not clearly stipulate the issue taken with abortion. Therefore, there is no clarity as to what constitutional text the Committee would have to address through a possible amendment. It can be assumed that the submission takes issue with the application of the Choice on Termination of Pregnancy Act No. 92 of 1996. The Committee feels the submission falls outside its current constitutional mandate and should be referred to a relevant parliamentary committee.
4. Regarding the lack of resources related to health care, the concern raised is a policy related issue that concerns service delivery and falls outside the mandate of the Committee. The submission should be referred to a relevant parliamentary committee.
5. In respect of access to education, the Committee feels the submission falls outside its mandate as the issue of education facilities is a policy matter that does not require an amendment to the constitution, but could be referred to a relevant parliamentary committee. In this case, the Portfolio Committee on Basic Education.
6. Regarding the issue of transparency and accountability of the public service, the Committee feels the submitter does not give guidance as to the specific issues that should be addressed through a constitutional amendment.

**Recommendation**

The Committee recommends that the submission that proposes a review of section 9 (3) should be included in the legacy report for consideration in the next parliament.

**3.47 CR16/47 Submission by Phuthi Herbet Dikhoba**

The submitter, supported by 15 other people listed on the submission proposes a number of sections in the Constitution that should be reviewed. These include the following:

1. The prohibition of sex work in terms of section 15 of the Constitution. The Committee feels the matter falls outside the mandate of the Committee as it is exhaustively provided for in legislation.
2. The review of section 9 of the Constitution to transform the judiciary. The Committee feels the submitters do not provide reasons why the judicial system must be transformed.
3. The submitters do not give reasons to justify the proposed change in the electoral system.
4. Regarding a proposal for the abolishment of abortion, section 12 (2) (a) of the Constitution provides a right to everyone to bodily and psychological integrity, which includes the righto make decisions concerning reproduction.

(e) The submitters do not provide reasons the current constitutionality sanctioned SAPS should be changed.

(f) The same sex marriages are recognised in law and this recognition is in line with section 9 of the Constitution.

1. Section 217 (1) of the Constitution provides for public procurement. It further provides that, when an organ of state in the national, provincial or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective. The Committee feels that issues raised in the submission relates to policy and fall outside its mandate.

**Recommendation**

The submission does not necessitate a review of the Constitution.

**3.48 CR16/48 Submission by Masekwameng Raisibe Welhemina**

The submitter supported by other 11 people proposes a review of a number provisions in the Constitution, that includes the following:

1. A review of section 9 of the Constitution.
2. The reinstatement of the death penalty to curb the rampant killing of people.
3. The reinstatement of corporal punishment in schools. The submitters argue that, the absence of corporal punishment is the cause of high failure rate at schools.
4. A review of section 103 (1) of the Constitution to reduce the number of provinces. The Committee feels the proposal falls outside its current mandate.
5. The proposal to address the issue of employers who do not comply with maternity leave laws.

The Committee notes as follows:

1. There is no clarity on what is defective that requires curing through a review process. Section 9 (1) provides that everyone is equal before the law.
2. The reinstatement of the death penalty correlates with section 11 of the Constitution which provides that everyone has a right to life. The proposal is inconsistent with the constitutional principles.
3. Section 28 of the Constitution provides for the rights of a child. Similarly, sections 10, 12 (1) & 28 (1) (d) are aimed at the protection of learners from being subjected to corporal punishment.
4. The proposal for a review of section 103 (1) of the Constitution to reduce the number of provinces falls outside its current mandate.
5. The Committee is of the view that, there is no need to review section 23 (1) of the Constitution in order to address concerns related to lack of compliance with labour laws as the recourse should be with the courts of law.

The Committee is of the view that, the issues raised by the submitters fall outside its mandate and can be addressed in national legislation.

**Recommendation**

The Committee does not warrant a review of the Constitution.

**3.49 CR16/49 Submission by Abia Nkoeng**

The submitter proposes a review of section 103 of the Constitution to reduce the provinces from nine to five. The justification for the proposal is that the saving that would be acquired from reducing the number of provinces could be utilised to address unemployment.

The Committee is of the view that, the suggestion to reduce the number of provinces does not specify those that should be retained.

The Committee accepts the view that, section 103 (3) (a) of the Constitution is crafted in a manner that is open to the idea of re-determining provincial boundaries or geographical areas. Similarly, sections 74 (3) and 74 (8) of the Constitution are enabling provisions that permit the amendment concerning provinces.

The Committee is of the view that, the proposed amendment is a policy matter that falls outside its mandate.

**Recommendation**

The submission does not warrant a review of the Constitution, but can be dealt with in national legislation.

**3.50 CR16/50 Submission by Ramara Phuti Nelson**

The submitter proposes a review of section 103 of the Constitution which deals with provinces. The submitter proposes a reduction of provinces in order to provide services

The Committee is of the view that, the suggestion by the submitter to reduce the number of provinces does not specify those that should be retained. In addition, section 103 (3) (a) of the Constitution is crafted in a manner that is open to the idea of re-determining provincial boundaries or geographical areas. Similarly, sections 74 (3) and 74 (8) of the Constitution are enabling provisions that permit the amendment concerning provinces.

The Committee is of the view that, the proposed amendment is a policy matters that falls outside its mandate.

**Recommendation**

The submission does not warrant a review of the Constitution, but can be dealt with in national legislation.

**3.51 CR16/51 Submission by Ikeraam Korana**

The submitter rejects the entire Constitution on the basis of legitimacy. The submitter argues that, the current South African Constitution is in violation of international laws and treaties.

The Committee is of the view that, the submission does not refer to a provisions in the Constitution that should be reviewed, except to reject the entire Constitution.

**Recommendation**

The Committee feels the submission does not necessitate a review of the Constitution.

**3.52 CR16/52 Submission by Adv. N Masemola**

The submitter proposes an amendment to section 6 of the Constitution to replace Sesotho sa Leboa with Sepedi. The submitter further proposes a scrapping of the level of provincial government.

The Committee is of the view that the matter regarding the designation of Sepedi needs further consideration. On the issue of the proposal for the abolishment of Provinces, the Committee matter is a policy issue that falls outside its mandate.

**Recommendation**

The Committee recommends that the language issue should be included in the committee’s legacy report for further consideration in the sixth Parliament.

**3.53 CR16/53 Submission by Tshepiso Magano**

The submitter calls for the review of section 9 (3) of the Constitution. The submitter proposes the review of this provision and amend the term “class” on of the grounds for discrimination. The submitter states that discrimination on the basis of “class” deprives citizens the opportunity to elevate themselves without assistance of the state, and therefore infringes on other relevant constitutional rights.

The Committee feels there is no justifiable basis to amend section 9 (3) of the Constitution. This is due to the fact that, the Constitution, the Act and various decisions sufficiently provide for the concerns of the submitter.

**Recommendation**

The submission does not necessitate a review of the Constitution.

**3.54 CR16/54 Submission by Foundation Nation Restoration (FNR)**

The submitters propose an amendment of Chapter 12 of the Constitution, to recognise the FNR in the Constitution. The submitter argues that, the term “Foundation Nation” refers to indigenous people of southern Africa, commonly known as Khoi and San (Bushman).

The Committee accepts the opinion that, sections 30 and 31, read with sections 9 and 235 of the Constitution protect and promote cultural recognition and practices that maintain self-determination of any community in the Republic. Furthermore, section 212 (1) of the Constitution was invoked in the enactment of the Framework Act, although an oversight on the recognition of Khoi and San traditional authority occurred. The Traditional Leadership Act is inclusive and expressively recognises leadership and communities of the Foundation Nation.

The Committee feels the submission falls outside its mandate.

**Recommendation**

The submission does not warrant a review of the Constitution.

The ACDP supports the sentiments of the submission and reserves its position on the matter.

**3.55 CR16/55 Submission by Mr Mmusi Maimane, MP**

The submitter proposes an amendment to section 89 of the Constitution by inserting section 89A to deal with the cessation of term of office of President. The submitter argues that, the proposed amendment does not obviate the National Assembly’s ability to remove the President as outlined in section 89 (1) of the Constitution.

**Recommendation**

The Committee is of the view that, the matter does not necessitate a review of the Constitution as Parliament is looking into the matter.

The ACDP and the DA reserve their parties position on the matter.

 **3.56 CR16/56 Submission by The Green Hearts**

The submitter calls for a review of section 28 (1) (d) of the Constitution. The submitter argues that, section 28 (1) (d) in its current form does not protect children when it comes to abuse and degradation through child pornography. In addition, the submitter states that not only manufacturing, but the possession and distribution of child pornography images should be considered a schedule 5 or 6 crime not a violation of the Publications Act.

The Committee accepts the opinion that, since the offences related to child pornography are found in the Sexual Offences Act and Films and Publication Bill, the submission does not require a review of the Constitution.

The Committee is of the view that, the submission is a matter of policy that falls outside its mandate

**Recommendation**

The committee recommends that the submission should be referred to a relevant parliamentary committee.

The ACDP supports the sentiments of the submission and reserves its position on the matter.

 **3.57** **CR16/57 Submission by Elizabeth Malebo**

The submitter requests an amendment to section 6 (1) of the Constitution for the recognition of the South African Sign Language as an official language.

The Committee dealt with this matter and a recommendation for allowing an amendment of section 6 of the Constitution was adopted by Parliament.

**Recommendation**

The Committee will advise the submitter to monitor progress regarding the implementation of the resolution of Parliament on this matter.

 **3.58 CR16/58 Submission by Bhekinkosi Michael Mtolo**

The submitter proposes an amendment to section 217 of the Constitution, which deals with procurement. The submitter proposes an amendment to this provision to provide for the upliftment of black people in general and Africans in particular.

The submitter further proposes an amendment to section 25 of the Constitution to provide for the Valuer-General to have power to determine the compensation price of expropriated land, and that such decision should be final and binding.

The Committee supports the opinion that, there is nothing in the current wording of section 217 (2) that prevents the advancement of Africans in particular. Also, Section 9 of the Constitution enshrines the right to equality of all people. The Committee, therefore, feels there is no necessity to amend to Constitution, as suggested by the submitter.

In respect of an amendment to section 25 (2) of the Constitution, the Committee is of the view that the proposal is a policy matter that falls outside its mandate and can be dealt with through national legislation.

The Committee is of the view that the proposals fall outside its mandate.

**Recommendation**

The submission does not necessitate a review of the Constitution as they can be dealt with in national legislation.

 **3.59 CR16/59 Submission by South African National Deaf Association (SANDA)**

The submitters propose an amendment of section 6 (1) of the Constitution to include South African Sign Language (SASL) as an official language.

The Committee dealt with this matter and a recommendation for allowing an amendment of section 6 of the Constitution was adopted by Parliament.

**Recommendation**

The Committee recommends that the submitter should monitor progress regarding the implementation of the resolution of Parliament on this matter.

 **3.60 CR16/60 Submission by S Nomnganga**

The submitter make reference to the Bill of Rights, namely; section 9 (equality), section 10 (human dignity), section 11 (right to life), as well as section 15 (freedom of religion), section 16 (freedom of expression), section 18 (freedom of association), section 19 (political association) and section 22 (trade with focus on occupation).

The submission does not call for a specific constitutional amendment. The content draws on the spirit of the Constitution as a living document that adapts to the social needs of the people by referencing certain provisions of the Bill of Rights to call for the consideration of a basic income grant.

The Committee is of the view that, the submission is a policy matter that falls outside its mandate.

**Recommendation**

The submission does not warrant a review of the Constitution.

 **3.61 CR16/61 Submission by S Buthelezi**

The submission is on behalf of the Progressive Professionals Forum. The submitter makes proposals on various constitutional provisions as follows:

1. The amendment to section 25 of the Constitution in order for compensation paid for the property to be based on the actual expenses incurred.
2. The amendment of section 41 of the Constitution to change the tiers of government. The submitter suggests that there should be no executive powers at Provincial and Local Government. The current structure hinders service delivery.
3. The amendment of section 235 of the Constitution to remove the elements that enable the establishment of areas such as Orania.
4. The repugnancy principle that subjugates Customary Law to Roman Dutch Law.
5. The amendment of the Preamble.

The Committee is of the view that, the proposal around section 25 is currently being considered by the *ad hoc* committee that is looking into the amendment of section 25 of the Constitution. Other proposals raised in the submission do not necessitate a review of the Constitution as they are policy related and can be addressed in national legislation.

**Recommendation**

The submission does not warrant a review of the Constitution.

 **3.62 CR16/62 Submission by Griqua Royal House**

The submitters propose an amendment to Chapter 12 of the Constitution to include Khoi-san in Traditional Leaders wording in sections 211 and 212 of the Constitution.

The Committee asserts that Parliament is processing the Traditional and Khoi-San Leadership Bill. Furthermore, the Khoi-San racial groups are expressly recognised and given scope to all formations of Traditional Houses established in terms of legislation.

**Recommendation**

The Committee feels the proposal by the submitters does not necessitate a review of the Constitution since the matter has been looked at by Parliament.

 **3.63 CR16/63 Submission by Molefi Tsolo**

The submitter requests for copies of the Constitution to be distributed in learning institutions.

The Committee feels the submission does not call for a review of the Constitution, but a policy matter that should be addressed by a relevant government department.

**Recommendation**

The Committee recommends that the request should be referred to the Department of Justice and Correctional Services for implementation.

 **3.64 CR16/64 Submission by Grant Snell**

The submitter requests the Committee to consider the “constitutional business model” with reference to the national and provincial concurrent powers, and how it affects policy formulation and implementation.

The Committee feels the submission falls outside its mandate.

**Recommendation**

The submission does not necessitate a review of the Constitution.

 **3.65 CR16/65 Submission by Independent Communications Authority (ICASA)**

The submitter proposes amendments to section 181 which deals with the establishment and governing principles of the State Institutional Supporting Democracy (Chapter 9 Institutions) and 192 which deals with the broadcasting authority.

In respect of an amendment to section 181 of the Constitution, the submitter calls for an additional provision (sub-section g) to include the Electoral Communications Commission, as one of the state institutions which strengthens democracy.

In respect of an amendment to section 192 of the Constitution, the submitter proposes an establishment of an independent commission to regulate broadcasting, telecommunication and postal services in the public interest, and to ensure fairness and diversity of view that represents South Africans.

The Committee feels the proposal made by the submitter are matters of policy that fall outside its mandate.

**Recommendation**

The Committee recommends that the submission should be referred to a relevant parliamentary committee.

 **3.66 CR16/66 Submission by Mr Ngobeni**

The submitter requests his community to be provided with copies of the Constitution. The submitter also raises concerns relating to section 22 of the Constitution, that relates to a right to trade, profession and occupation and section 27 of the Constitution, that provides for the right to social security.

The Committee feels the issues raised by the submitter are policy related and falls outside its mandate.

**Recommendations**

1. The request for copies of the Constitution will be referred to the Department of Justice and Correctional Services for implementation.
2. The concerns raised that relates to trade and social security, respectively will be referred to relevant parliamentary committees.

 **3.67 CR16/67 Submission by Equal Education and Equal Education Law Centre**

The submitters call for an amendment of section 100 (2) of the Constitution, which regulates the role of the NCOP when an intervention has become necessary and section 100 (3) of the Constitution which deals with national intervention in provincial administration. The submitters argue that, an amendment to section 100 (2) will foster accountability and help the NCOP to fulfil its mandate. The proposal to amend section 100 (3) is to make the enactment of legislation regulating the intervention process mandatory.

Following the legal opinion and deliberations the Committee supported the proposed amendment of section 100 (3).

**Recommendation**

The Committee recommends that the submission should be included in the legacy report for consideration in the sixth parliament.

1. **Resolutions**
2. Each submitter should be advised on the Committee’s decision on his or her submission.
3. Submissions that relates to matters of policy should be referred to relevant parliamentary committees.
4. Submissions that relates to a request by individuals or communities for copies of the Constitution should be referred to the Department of Justice and Correctional Services for implementation.
5. Submissions that are flagged for further consideration should be included in the Committee’s legacy report.

Report to be noted.