



**PARLIAMENT**  
OF THE REPUBLIC OF SOUTH AFRICA

**COMMITTEES**

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## **Joint Committee on Constitutional Review**

### **Submissions of the 6<sup>th</sup> Parliamentary term**

28 April 2023

#### **1. Background**

This report discusses submissions processed by the Joint Committee on Constitutional Review during the 6<sup>th</sup> Parliamentary term. Over this period the Committee considered 66 submissions, received a briefing on all submissions; considered legal opinions and conducted public hearings with some of the submitters on the 17<sup>th</sup> and 31 March 2023. Following its review process, what remains is for the Committee to take a decision on whether the submissions discussed below may possibly result in amending the Constitution. The Committee must then adopt and table a report of this work to Parliament in terms of the applicable Joint Rule.

Below is a tabulated summary of the submissions, legal advice and public hearing input where applicable and the Committee's decision on the desirability of these submissions in possibly amending the Constitution, should

Parliament deem it necessary. The highlighted sections of the table group submissions on the same subject matter or submitters whom have made presentations to the Committee.

<b>No.</b>	<b>SUBMISSION REFERENCE</b>	<b>NAME OF SUBMITTER(S) &amp; SUBJECT MATTER</b>	<b>LEGAL ADVICE</b>  <b>LEGAL REF.: 133/2020 PRESENTED 26/11/2021</b>	<b>DESIRABILITY TO AMEND THE CONSTITUTION YES OR NO</b>
<b>1</b>	<b>2 of 2020</b>	<b>Kgosiemang Moloko</b>  Add a Chapter 9 Institution called the Commission for Internal Auditors (AGSA) Auditor-General of South Africa.	AGSA is authorised to investigate and refer irregularities to relevant public bodies to take appropriate legal action in terms of national legislation.  The Public Audit Amendment Act No.5 of 2018 recently amended to deal with material irregularities, can improve the concerns raised in this submission. It therefore does not necessitate amendment of the Constitution.	

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2	6 of 2020	<p><b>Andries Havenga</b></p> <p>Review of all accountability provisions, namely:            Section 19 on political rights of citizens;            Section 89(b) on removal of the President;            Section 96, on Conduct of Cabinet members.</p>	<p>Legal advice pointed to a list of 15 pieces of national legislation that contribute to enhancing integrity, transparency and accountability.</p> <p>Advice stated that provisions exist in the Constitution but are not exercised by those in power because exercise of the powers is discretionary.</p> <p>South Africa has a National Anti-Corruption Framework and legislation such as the Executive Members Ethics Act No.82 of 1998 among others. Undertake parliamentary oversight more thoroughly in areas of the public service where powers are exercised by discretion. It is therefore not necessary to review and amend the accountability provisions in the Constitution as proposed.</p>	
3	36 of 2020	<p><b>Paul Hoffman</b></p> <p>Insert a new Chapter 9 Institution aimed at eradicating corruption</p>	<p><b>LEGAL REF: 138/2020 PRESENTED: 26/11/2021</b></p> <p>The HAWKS are specialized body specifically created by statute to investigate “priority crimes”, and the definition of ‘priority crimes’ in the SAPS Act is broad enough to include corruption. Legal cautioned that this would duplicate existing institutions. Where national legislation covers proposals in a submission, amendment of the constitution is not desirable.</p>	

No.	SUBMISSION REFERENCE	NAME OF SUBMITTER & SUBJECT MATTER	LEGAL ADVICE  LEGAL REF: 135/2020 PRESENTED:26/11/2021	DESIRABILITY TO AMEND THE CONSTITUTION  YES OR NO
4	32 of 2020	<p><b>Khutso Selowa on behalf of Valodagoma</b></p> <p>make Khilovedu an official language recognised under s6(1)</p>	<p>Declaring a language official does not translate to more use. The Bill of Rights refers to ANY language and not an official language in particular. However, once made official the state has pressure to support its development. The Language Board has a mandate to promote other languages and this is a matter of respect rather than promotion and development. This has been important for identity recognition. Because a range of languages are used for broadcasting.</p> <p>Education in mother tongue is done where it is reasonably practical to ensure sufficient teaching materials in that language. Should Khilovedu be afforded the same status, as an official language consideration must be had for how this would affect the nation as a whole. Consideration must be had for the number of speakers, geographic location, extent of disadvantage, preference of the community, and availability of resources to practically promote the language, distinction between it and other languages, and risk of it becoming obsolete.</p>	

			<p>Alternatively, it is proposed that consideration be had for the inclusion of Khelivedu to the section 5(a) list of languages sighted for development in the Constitution. It is proposed that a Language Bill be promulgated aimed at regulating and promoting the use of non-official languages within municipalities and national government.</p> <p><b>PUBLIC HEARING: 31/03/2023</b></p> <p>A call for the restoration of the dignity of Valovedu and the potential that the 4<sup>th</sup> Industrial Revolution can offer Khelovedu. The correction of Khelobedu as a dialect of northern Sotho/ Sepedi, or as a marginal language in the SA official language family has roots in the punitive exercise by colonial government.</p> <p>The historical background and context is emanates from the demotion of Queen Modjadji to a chief in the 1970s is a systematic suppression of missionary and civil language standardization process. The needs to be further development of the digital tools for low resourced languages like Khelovedu with very little published material. Opportunity offered by recordings drawn from the Bible translation for unpacking Khelovedu. Technology can assist in bridging the cap through the Fourth Industrial Revolution.</p>	
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<b>No.</b>	<b>SUBMISSION REFERENCE</b>	<b>NAME OF SUBMITTER &amp; SUBJECT MATTER</b>	<b>LEGAL OPINION</b>  <b>LEGAL REF: 136/2020</b> <b>PRESENTED: 26/11/2021</b>	<b>DESIRABILITY TO AMEND THE CONSTITUTION YES OR NO</b>
5	33 of 2020	SA Secular Society  Removal of reference to God in the Preamble	Provided legal framework in the Bill of Rights emphasized the Certification Judgment case confirming that, what is in Preamble is not unconstitutional and does not necessitate amendment.	
6	34 of 2020	Martin van Staden of The Free Market Foundation (FMF),  Review of s1 and the s36 cross-referenced with s37.	<b>LEGAL REF: 137/2020</b>  <b>PRESENTED: 26/11/2021</b>  Legal advised that the submission from the FMF does not call for an amendment or a review of the Constitution. Rather proposes impact assessment of policy and legislation. This matter is not within the constitutional review mandate. The gist of the submission is that government is acting unconstitutionally with reference to section 1 of the Constitution and does not propose review of the Constitution.	

No.	SUBMISSION REFERENCE	NAME OF SUBMITTER & SUBJECT MATTER	PUBLIC HEARING: 17/03/2023	DESIRABILITY TO AMEND THE CONSTITUTION YES OR NO
7	2 of 2021	<p><b>Accountability Now</b></p> <p>Insertions to: s179 on the NPA; s181 to include an Integrity Commission further s182; s192A; s193; s194; s205; and s206 for eradication of serious corruption.</p>	<p>Propose for the introduction of a constitutional amendment and enabling legislation for the establishment of constitutionally compliant anti-corruption machinery in Chapter 9 of the Constitution, through the establishment of the proposed Integrity Commission (Ch9IC).</p> <p>Propose that parliament redefine grand corruption and kleptocracy, in order to differentiate between the work of the Ch9IC, NPA and SAPS. Submitters propose a cut-off amount of R5 million and matters below that threshold be dealt with by the Hawks and NPA, and those above that amount by the Ch9IC.</p>	

No.	CATEGORY 2 SUBMISSION REFERENCE	NAME OF SUBMITTER & SUBJECT MATTER	LEGAL OPINION  LEGAL REF: 145/2017/NM PUBLIC HEARING: 11/11/2020 COMMITTEE BRIEFED: 26/11/2021	DESIRABILITY TO AMEND THE CONSTITUTION YES OR NO
8	52 of 2020	<p><b>Equal Education</b></p> <p>Review and amend s100 on National Interventions in schooling matters, by strengthening &amp; making it effective.</p>	<p>The lack of clarity of roles and responsibilities, leads to confusion and diminished accountability amongst state organs during s100 interventions. This is detrimental to the vulnerable and affected parties.</p> <p>Currently there are no guidelines more than the principals that are stipulated in Section 100 of the Constitution to implement interventions and this has caused much confusion with regard to roles and responsibilities of state actors.</p> <p>The lack of clarity regarding the scope, powers and procedures of an intervention has lead to disputes of exercise of power of intervention in the Eastern Cape. Since national intervention as provided for in s100 is a crucial mechanism to ensure delivery of services and uniformity within the Republic.</p> <p>It was advised that there be promulgation of legislation to provide safeguards to prevent the possible abuse of Section 100 interventions on frivolous grounds. The opinion supported the amendment of s100 (3) of the constitution as this would be beneficial in making Government more efficient.</p>	



No.	CATEGORY 2 SUBMISSION REFERENCE	NAME OF SUBMITTER & SUBJECT MATTER	LEGAL OPINION  LEGAL REF: 139/2020 COMMITTEE BRIEFED: 26/11/2020	DESIRABILITY TO AMEND THE CONSTITUTION YES OR NO
9	53 of 2020	<p><b>Justine Ballot</b></p> <p>Review of sections: - 1; 2; 11; 12; 14; 27; 35; 38.</p> <p>To provide for clearer constitutional limitations on government during a state of national disaster.</p>	<p><b>Section 1</b>, the submitter misunderstood the concept of sovereignty of the State because membership to United Nations does not force the state to comply. Section 231 of the Constitution requires parliamentary ratification of treaties for them to bind RSA. It was advised that this part of the submission had no standing in law.</p> <p><b>Section 2</b> on the Supremacy of the Constitution was also found to not require strengthening through review and amendment because it cannot be limited by any action or legislation.</p> <p><b>Section 11</b> on the right to life, due to euthanasia not being legalised in SA, forced euthanasia would still amount to a crime because of the absolute right to life. Section 12 to include the right to self-defence and right to bear arms, it was advised that the SA legal system already regulates the rights proposed for review.</p> <p><b>Section 14</b> right to privacy for murderers does not apply because the victim should have more rights than the criminal. It was advised that this proposal seemed misplaced and does not require the Committee's consideration.</p>	

			<p><b>Section 27</b> proposal for the government not forcing persons to be vaccinated, it was advised that the default position is that the decision to accept or refuse medical treatment is always that of the patient. This section not does not require review and amendment.</p> <p><b>Section 35</b> to include the right of persons detained under quarantine. It was recommended that the right speaks rather to the application of rights and not the working of s35 specifically.</p> <p><b>Section 38</b> proposal to set up an organisation within the judiciary to report human rights violations especially during a state of disaster. It is advised that within the scope of s38, persons seeking redress for such violations but without means, could be represented by civil society organisations to access justice. This is further entrenched by s34 right to access to courts. The Legal Aid South Africa Act is also enacted to ensure access to justice. Additionally s182 avails the services of the Public Protector in terms of the Public Protector Act to all persons and communities.</p> <p>In conclusion, the concerns raised in this submission are found to not necessitate amendment of the Constitution to provide the relief sought. It may however be an issue of implementation of existing national legislation.</p>	
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No.	CATEGORY 2 SUBMISSION REFERENCE	NAME OF SUBMITTER & SUBJECT MATTER	LEGAL OPINION  LEGAL REF: 140/2020 COMMITTEE BRIEFED: 26/11/2021	DESIRABILITY TO AMEND THE CONSTITUTION YES OR NO
10	54 of 2020	<p><b>Justine Ballot</b></p> <p>Need for Constitutional provisions to protect officials against corrupt instructions and the need to review the Constitution to include the right against self-incrimination.</p>	<p><b>Section 195</b> of the Constitution sets out the “Basic values and principles governing public administration” and applies to all officials in the public administration.</p> <p><b>Section 197</b> provides for the Public Service that must function in terms of national legislation that must execute the lawful policies of the government.</p> <p><b>Section 3</b> of the Protected Disclosure Act also deals with protected disclosures and provides that “no employee or worker may be subjected to any occupational detriment by employer conduct after making a protected disclosure.”</p> <p>The right to self-incrimination is also provided for in s35 on arrested, detained and accused persons in the Constitution. This right is protected at both the arrest and trial phases of the criminal justice process.</p> <p>The framework of the Constitution and the legislation giving effect to it, sufficiently cover the concerns raised.</p>	

<b>No.</b>	<b>CATEGORY 2 SUBMISSION REFERENCE</b>	<b>NAME OF SUBMITTER &amp; SUBJECT MATTER</b>	<b>LEGAL OPINION</b>  <b>LEGAL REF: 141/2020</b>  <b>COMMITTEE BRIEFED: 26/11/2021</b>	<b>DESIRABILITY TO AMEND THE CONSTITUTION YES OR NO</b>
<b>11</b>	<b>58 of 2020</b>	<b>Romola Naido</b>  Review of sections: 18; 22; 27(1) (b); 34; 37(1) (a) and (b); 171; 173; 174(5); 178(1) (e) & (j).	Legal Opinion advised that none of the proposed amendments require amendment of the Constitution as all these matters are provided for e.g. proposal that parliament meet virtually is a moot point that is currently provided for.  The proposed amendment to section 27(1)(b) of the Constitution, to ensure the eradication of pit latrines. In 2021, the Limpopo Education Department has been ordered by court to provide plans to eradicate these. The department had until the end of March 2023 to do so. Section 27 and the Centre for Child Law have created an online tool to track accountability in this regard.	

Below follows a table of the 2021 submissions and input from the public hearings held on the 17 and 31 March 2023, where applicable.

No.	NAME & SUBMISSION REFERENCE	SUBJECT MATTER	DESIRABILITY TO AMEND THE CONSTITUTION YES OR NO
1	<b>Sakeliga Business League</b>  <b>CRC 1 of 2021</b>	<p><b>Section 1(a)</b> read with section 22 on freedom of trades and occupations and section 1(c) on the Rule of Law – must permeate any legislation and regulations promulgated by government. It is evident that this has not happened. Had it happened, legislation like the National Minimum Wage Act would never have been enacted. <b>Section 1(b)</b> on Non-racialism, it is evident that government has engaged in racialist rhetoric and public policy since 1994. The state has found various means of justifying racialized public policy, but has paid no mind to the fact that those justifications must be read as compliant with section 1, and particularly section 1(b), which directly prohibits racialism.</p> <p>The protection of private property rights, that is, the property rights of individuals and juristic persons. Any laws or state measures that go against protection of property rights are committing violence against the constitutional order.</p>	
2	<b>African Criminal Justice Reform</b>  <b>CRC 3 of 2021</b>  <b>Public Hearing 17/03/2023</b>	<p>Appointment of the NDPP (and other senior positions in the NPA) must be clearly described in the Constitution requiring an open, transparent process that relies on evidence, is based on merit and protected from political interference and assesses candidates objectively against the criteria set in section 195(1) of the Constitution.</p> <p>Amend <b>section 179</b> on the NPA by providing for a removal procedure along the lines of what has now been developed in respect of the removal of the President and functionaries of Chapter 9 institutions.</p>	

No.	NAME & SUBMISSION REFERENCE	SUBJECT MATTER	DESIRABILITY TO AMEND THE CONSTITUTION YES OR NO
3	<p><b>Mr Matome Chidi of African Law Reform</b></p> <p><b>CRC 4 of 2021</b></p> <p><b>Public Hearing 31/03/2023</b></p>	<p><b>Sections 173</b> – development of African Law on consultation with traditional leaders and its addition to existing text of the Constitution.</p> <p><b>Section 211(3)</b> – the courts must apply customary law subject to the Constitution. Addition to heading of Chapter 4 to read “AND AFRICAN LAW COMMISSION”. Parliament must enact legislation, within 18 months, to establish a Commission for the development of the African law. The outcome of the work of the Commission shall be the source of the development of the African law.</p>	
4	<p><b>Activate Change Drivers</b></p> <p><b>CRC 5 of 2021</b></p>	<p><b>Section 152(1) (e)</b> - should be amended to compel local government to include communities in matters of local governance, this should be mandatory. Public Participation at local government level should be compulsory.</p>	
5	<p><b>Lungiswa Nguye</b></p> <p><b>CRC 6 of 2021</b></p>	<p><b>Section 91(3)</b> - compels the President to appoint any two members of the National Assembly to serve as cabinet minister. The amendment should allow the President to appoint any suitably qualified South African citizen.</p> <p><b>Section 207 (1)</b> - be amended to provide for the appointment of the National Commissioner of Police, the National Director of Public Prosecutions or any other office bearer who must exercise independence in their duties. This process should be similar to the appointment of the judiciary, or by way of establishing an independent panel that will advise the President accordingly, and on approval by a two-thirds majority of the National Assembly.</p>	

No.	NAME & SUBMISSION REFERENCE	SUBJECT MATTER	DESIRABILITY TO AMEND THE CONSTITUTION YES OR NO
6	<p><b>Dube business Enterprise</b></p> <p><b>CRC 7 of 2021</b></p>	<p><b>Preamble</b> be amended to reflect that South Africa belongs to all citizens who legally live in it and not just all who live in it.</p> <p><b>Bill of Rights</b> should provide for revision of all International Agreements impacting the National budget.</p> <p><b>Section 17</b> right to Assembly, demonstration, picketing and petition explicitly state that no one has the right to violate the rights of South Africans or disrupt services during such.</p> <p><b>Section 29</b> right to basic education, including adult basic education be amended to provide that non-citizen can be accommodated but at their own cost.</p> <p><b>Chapter 12</b> must provide for two court systems, one for Traditional Affairs and another for General matters by European /Dutch. State must add traditional leaders to all its courts.</p> <p><b>Chapter 13 s219 (1) (a)</b> should include mandatory revision of the Remuneration of persons holding public office.</p> <p><b>Section 214 (1) (a) – (c)</b> state that the State should have the accurate data of its citizens and non-citizens.</p> <p><b>Chapter 14</b> the state do away with all deputy positions except that of the deputy president.</p>	

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7	<p><b>Mr Lawson Naidoo of Council for the Advancement of the South African Constitution</b></p> <p><b>CRC 8 of 2021</b></p> <p><b>Public Hearing</b> <b>17/03/2023</b></p>	<p><b>Chapter 9</b> - change to the structure of the Constitution based on the Report of the ad hoc Committee on the Review of Chapter 9 and Associated Institutions (“the Asmal Report”) submitted to the National Assembly on 31 July 2007.</p> <p>Proposed the establishment of a single human rights body named the “South African Commission on Human Rights and Equality.</p> <p>CASAC submits that the recommendations of the Asmal Report are essential to the optimisation of Chapter 9 and associated institutions and that Parliament should move with some urgency.</p>	
8	<p><b>Helen Suzman Foundation</b></p> <p><b>CRC 9 of 2021</b></p> <p><b>Public Hearing</b> <b>17/03/2023</b></p>	<p><b>Section 174</b> - JSC must publish and make available any additional criteria considered when appointing a judicial officer. Not including these additional criteria in this section leaves the possibility of the criteria changing from time to time.</p> <p><b>Section 178</b> - on the composition of the JSC currently at a minimum of 23 commissioners with at least eleven drawn from political ranks. This number can be expanded to fifteen by section 178(1) (j) which allows the President, to appoint a further four commissioners with no qualification of where these commissioners need to be chosen. It is proposed that the number of commissioners be adjusted to reflect a smaller JSC membership with less political influence.</p>	



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9	<b>Kara Heritage Institute</b>  <b>CRC</b> <b>10 of 2021</b>	<b>Section 5 and 6 (1)</b> - Propose that the Constitution be amended to include Kiswahili as one of the official South African Languages. Heads of state of the Southern African Development Community agreed to promote the recognition and teaching of Kiswahili. The South African government has agreed to introduce Kiswahili in South African Schools as the universities of Zimbabwe and Namibia are teaching in Kiswahili. Recognition of Kiswahili as one of the official languages will assist South Africa and the SADC Region, in particular, to promote Pan Africanism and the African Cultural Renaissance.	
10	<b>Dr D Metuge &amp; Mr S Ntola</b>  <b>CRC</b> <b>12 of 2021</b>	<b>Chapter 6</b> - the inclusion of an express provision for South Africa's territorial waters in the Constitution to provide clarity on the territory and the reach.  <b>Section 103</b> of the Constitution, comprises of the nine provinces however, <b>Schedule 1A</b> does not include the territorial waters, arguably excluding South Africa's constitutional reach in this region owing to uncertainty of whether its four coastal provinces have a marine component.	