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Our Ref: Mr Patel

Your Ref:

Date : July 2009

Constitutional Review Committee
PO Box 15
Cape Town
8000

Dear Sir/Madam
Re: Review of Constitution

If the Constitutional review committee is sincere about suggestions that will impact on our constitution, they would consider our suggestions carefully.

At the moment, we do not have a crime that is Classified as a Constitutional Crime. We have requested the SALC to consider legislation being amended to incorporate this species of crime or allow for the common law crimes to be developed to the point that cognizance is taken of this type of crime.

Officials can only be subject to scrutiny where they breach fundamental rights, is if they are subject to a High Court Application. This is in conflict with the Equality clause of the constitution, which require all to equal protection of the law. Subjects are easily brought before courts in regard to criminal matters but officials , if they breach constitutional rights which are clear, would have to be brought before the Civil Court.

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We enclose some papers herewith which will explain the difficulties lay people have in enforcing rights In the High Court matter in issue, the UDM subjected the WCC to financial ruin because they had the public funds to pursue a case which they lost, against the WCCC who were acting in the interests of the community.

Obtaining Government assistance where officials are the culprits, is an unachievable task. We would like the constitution to be amended to incorporate a provision, which will give subjects a right to lay criminal charges against officials where they breach Constitutional rights.

Please consider this issue.

Yours faithfully

A handwritten signature in dark ink, appearing to be a stylized 'K' or similar character, positioned above a dashed line.



the doj & cd

Department:
Justice and Constitutional Development
REPUBLIC OF SOUTH AFRICA

BRANCH: LEGISLATIVE DEVELOPMENT

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FAX COVER SHEET

DATE: 30 July 2009

TO:	Chairperson of the Constitutional Review Committee: Inkosi S P Holomisa
FAX:	(021) 461-9462

FROM:	A van der Walt
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NO PAGES:	Including this page: 22

SUBJECT: SUBMISSION OF PROPOSED CONSTITUTIONAL AMENDMENTS TO THE CONSTITUTIONAL REVIEW COMMITTEE

MESSAGE: Letter attached for your attention please. The original letter is posted on 30 July 2009. Kind regards.

A van der Walt



the doj & cd

Department:
Justice and Constitutional Development
REPUBLIC OF SOUTH AFRICA

J 454

BRANCH: OFFICE OF THE DIRECTOR-GENERAL

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(hh050709)

Inkosi S P Holomisa, MP
Co-Chairperson: Constitutional Review Committee
P O Box 15
CAPE TOWN
8000

Dear Inkosi Holomisa

**SUBMISSION OF PROPOSED CONSTITUTIONAL AMENDMENTS TO THE
CONSTITUTIONAL REVIEW COMMITTEE**

My Department received submissions from Messrs Patel and McLeod containing proposed amendments to the Constitution of the Republic of South Africa, 1996. Copies of the submissions are attached for your information.

After having considered those submissions, and having taken into account the relevant Rules of the Joint Rules of Parliament, I am of the view that the Constitutional Review Committee is in the best position to consider the proposals contained in those submissions. I am therefore taking the liberty of referring the submissions to you for consideration by the Constitutional Review Committee, when it conducts its annual review of the Constitution.

Yours respectfully

ADV-MENZI SIMELANE
DIRECTOR-GENERAL: JUSTICE AND CONSTITUTIONAL DEVELOPMENT

Date: 24/7/19

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17/2/09

2/2/09

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Our Ref: Mr Patel Your Ref: Date : 15/2/2009

The Honourable
Secretary

TO WHOM IT MAY CONCERN

Dear Sir/Madam
re: General Comments

We refer to the review of the Constitution which tends to occur annually. If it is not possible to consider my suggestions for possible inclusion in the amendments to the Constitution, perhaps the appropriate persons or institutions need to look into the possibility legislation being drafted or amendments being implemented, which give effect to the suggestions incorporated herein.

I have had the opportunity of dealing with cases where, officials have blatantly conducted themselves, which is not only reprehensible but also analogous to a crime. There has been an abuse of discretion, the employment of illegal tactics to prevent a community from exercising their rights and in particular, the failure of institutions to assist people in upholding their rights, is cause for concern to us. Many institutions, which assist people in protecting constitutional rights, due to financial, resource and personnel constraints, are unable to come to the rescue of people. We recently dealt with a matter where there were allegations of charges for tariffs being levied for water which was not only invalid but also illegally imposed. Neither the organ of State concerned nor Government institutions (including the Human Rights Commission-Durban) would acknowledge the complaint or take constructive and decisive action against the organ of State, who continued to cut off water supply, remove water meters and terminate access to water, carte blanche, even of those who were paying for the water, but as a means to target especially the Indian community and politicians, adopted a blatant and reckless display of the abuse of power by going into premises with personnel who were armed and displaying brute strength as a means of coercion or submission to consumers.

Politicians, without exception, tend to shy away from such abuse, either because the power emanates from their own cronies or because, their own political allies are resorting, somewhere else, with the same tactics.

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We have learnt, that exercising a fundamental right in our country, whilst we have one of the best legal systems comparable to those of the world, is not an easy reality and the prohibitive costs of approaching courts of law, remains a serious indictment to our generally noble and respected judicial system.

In view of the foregoing, the recognition by our Courts of Constitutional damages, as punitive damages which are quasi criminal in nature, as an expression of moral condemnation, is an impressive introduction in our law, which provides for civil remedies to persons who have suffered harm in our Country. But alas, monetary compensation, does not always deliver true remedies because these are usually paid by the State for an errant official whose usual transgressions and delinquent behavior, still remain without any recourse, through easy access to the law, by the community.

Our suggestion is that a new species of offence ought to be created, as with the Corruption Act, that targets officials and administrative staff, who breach their Constitutional responsibilities to the public and the most vulnerable. Abuse of public funds, leaving investigation to the State does not provide adequate relief-clearly, members of the community who contribute to the coffers of the Treasury, should also have a say in laying criminal charges where necessary. There should also be a charge, which can be titled, Constitutional Crime, identifying those aspects of conduct which seek to violate human rights, which the State can distinguish with those that require one to resort to a civil remedy and one which allows immediate access to the courts, either in a lower Court of Regional Jurisdiction, which will allow civil as well as criminal jurisdiction.

If we are serious about upholding principles of our Constitution, officials are not afraid because they will act correctly, there is no reason to avoid such a positive step being taken. Administrative bureaucracy must not delay this process.

If anyone is keen to push for this, please direct a suggestion to the Department of Justice and Constitutional Development, as we do not feel that the current Common Law or Statutory offences suffice to protect against constitutional incursions by officials.

Yours faithfully

Rashid Patel (Mr)