

JC Const review
27 August 2010



PARLIAMENT
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LEGAL OPINION

TO : Honourable SP Holomisa, MP
: Honourable BA Mnguni, MP
: Co-Chairperson of the Joint Constitutional
Review Committee

COPY : Secretary to Parliament

DATE : 20 July 2010

SUBJECT : Legal opinion on the submission by Mr
Miya to the Joint Constitutional
Review Committee

LEGAL ADVISER : Mr N Vanara

COMMITTEE REFERENCE : 4

REFERENCE NUMBER : 74 / 10



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LEGAL OPINION

TO : Honourable SP Holomisa, MP
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: Co-Chairperson of the Joint Constitutional Review Committee

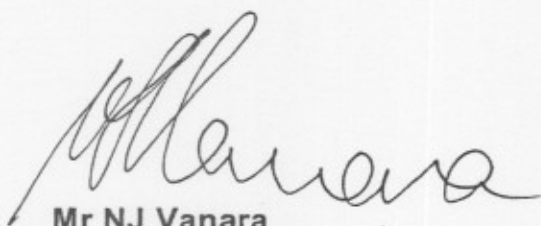
DATE : 20 July 2010

SUBJECT : Legal Opinion on the submission by Mr Miya to the Joint Constitutional Review Committee

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1. Our Office was requested to advise on the submission by Mr Miya for constitutional review of certain provisions of the Constitution by the Joint Constitutional Review Committee.
 2. Mr Miya argues for the amendment of sections 165(3) and 182(3) of the Constitution to extend powers of the Public Protector to include powers to investigate court decisions. The amendment would enable state institutions supporting constitutional democracy, such as the Public Protector, to protect and strengthen democracy in South Africa and to prevent any branch of government from monopolizing political power.
 3. Mr Miya further argues for the amendment of section 196(4) of the Constitution by extending the powers and functions of the Public Service Commission to include the improvement of service delivery at local government.

4. The extension of the powers of the Public Protector and the Public Service Commission are policy matters to be decided by the Committee.

5. I however, disagree with Mr Miya's interpretation of section 182(3). In my view section 182(3) has no negative effect on the Public Protector's performance of its functions in terms of both section 182 of the Constitution and the Public Protector Act, 1994 (Act No. 23 of 1994).

A handwritten signature in black ink, appearing to read 'Vanara', written in a cursive style.

Mr NJ Vanara

Parliamentary Legal Adviser

CR4

Constitutional Review Committe

Subject Invitation for Public Submissions

Written Submission from : Mr.NP Miya

N. t.

TEL:85

Section of the Constitution that I feel need to be reviewed.

Section 182(3) that navarate (tell) "Public Protectors" may not investigate Court decisions.

Above section indicates that Public Protector may discard or disobey his as regulated by national legislation. it also clear that Public Protector may fail to apply his function from Sec 182 (1) (a) to (2) including the additional powers and functions that he has as prescribed by national legislation.

It is thus up to the constitutional court to define such words as a equal protection of the laws and such doctrines as that the separation of powers.

What South African think of as "Checks and balances" is a set of institutional arrangements to prevent any branch of government from monopolizing political power.

Constitutional Review Committee

Invitation for Public Submissions

Written Submission from : Mr.NP Miya

Section of the Constitution that I feel need to be reviewed.

Section 165 (3) Court and Administration of Justice

- Subsection (3) State .No person or organ of state may interfere with Functioning of the Courts.
- I. -Above section deny people including Public Protector access to investigate Court decision.
- ii. Section 165(5) An order or decision issued by a court binds person to whom and organs of State to which it applies.
-What if an order was issued by single person wrongfully through correct administrative Process.
-My social request or Submission is as follows we have state Institutions supporting Constitutional Democracy let them protect and strengthen Constitutional Democracy in the Republic of South Africa.

Constitutional Review Committee

Invitation for Public Submissions

Written Submission from : Mr.NP Miya

Section of the Constitution that I feel need to be reviewed.

1. Section 196 (4) The powers and functions of the commission.
 - (a) To promote the values and principles set out in section 195 evaluate the organization and administration, and the personnel practices, of the Public Service.
 - Including subsection (4) (e)
 - My submission is that Public ~~is that~~ Public Service Commission it is also Institution supporting constitutional democracy .The Commission is accountable to the National Assembly it is therefore important to ~~pay~~ its role as regulated by national legislation.
 - To be responsible and accountable being a mediator between public and the government to help strengthen Democracy. By also participating with local governments to improve service.