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25 February 2011

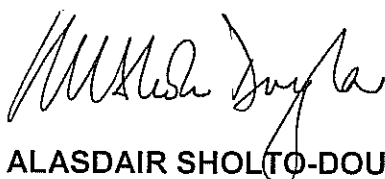
The Chairperson
Portfolio Committee on Justice and Constitutional Development
Parliament
email: vramaano@parliament.gov.za

Dear Sir

STATE LIABILITY AMENDMENT BILL [B2-2011]

Attached please find a report on the abovementioned bill for your urgent attention and appropriate circulation.

Yours faithfully



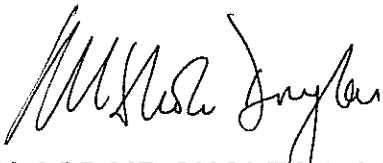
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MEMORANDUM RE STATE LIABILITY AMENDMENT BILL [B2-2011]
SUBMITTED BY THE PARLIAMENTARY COMMITTEE OF THE
GENERAL COUNCIL OF THE BAR OF SOUTH AFRICA

1. This memorandum contains the comment of the Parliamentary Committee of the General Bar Council upon the State Liability Amendment Bill.
2. It raises a concern about the constitutionality of an aspect of the newly formulated sub-section 2(4) and expresses a further concern about the vagueness of the exclusionary clause therein.
3. Other than that the Bill is supported.
4. It is suggested that by restricting execution against the State to movables only undermines the values of the Constitution which were held in the Nyathi case as foundational to our democracy (para 80 of the judgment).
5. Such restriction discriminates against ordinary citizens and may, depending on the peculiarity of the location and nature of movables belonging to the State, still leave ordinary citizens in no better position unless they can also execute against immovable property belonging to the State.
6. The distinction is considered to be unconstitutional *per se*.
7. The predicament of ordinary citizens in this regard may be exacerbated by the vagueness of the exclusionary clause.

8. The issue that arises is how, why and when the ordinary citizen must know that execution against movables of the State would severely disrupt service delivery, threaten life or put the security of the public at risk.
9. How must the creditor or the sheriff know the extent to which or not, for example, the attachment of tables and chairs in a police station would severely disrupt service delivery, or which beds in a hospital can be removed without threatening life, etc.
10. It is suggested that the onus in this regard should be on the State and that a proper procedure for intervention should be provided.



ALASDAIR SHOLTO-DOUGLAS SC
Chairperson: Parliamentary Committee of the General Council
of the Bar of South Africa

25 February 2011