



## CENTRE FOR CONSTITUTIONAL RIGHTS

*Upholding South Africa's Constitutional Accord*

Patron: The Hon Mr Justice Ian G Farlam

### **Mr V Ramaano**

Portfolio Committee on Justice and Constitutional Development  
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21 July 2011

Dear Sir

### **Re: Submissions on the Superior Courts Bill [B7 - 2011]**

1. The Centre for Constitutional Rights (the Centre) is a non-profit organization dedicated to upholding the Constitution<sup>1</sup>. To this end, the Centre seeks to promote the values, rights and principles in the Constitution; monitor developments, including draft legislation that might affect the Constitution; inform people and organizations of their constitutional rights; and assist people and organizations to claim their rights. The Centre accordingly welcomes the opportunity to make submissions on the Superior Courts Bill, 2010 (the Bill) as the Centre wishes to congratulate the Department on addressing most of the concerns raised about earlier versions of the Bill.
2. In particular the Centre applauds the manner in which the Bill entrenches institutional independence of the judiciary by placing the management of judicial functions squarely in the hands of the judiciary and by permitting it to determine its own financial requirements. The Centre also applauds the streamlining and integration of the court system facilitated by the Bill.
3. The Centre is however concerned about the unfettered power granted to the Chief Justice in clause 8. In terms of that clause the Chief Justice is compelled to obtain the support for any directive or protocol of the majority of members of a forum of judicial officers, the composition of which is left entirely to his or her discretion in terms of sub-clause 8(1). As the purpose of the forum is to act as a check and balance on the authority of the Chief Justice, the

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<sup>1</sup> Constitution of the Republic of South Africa, 1996

Centre believes that sub-clause 5(a) should be amended to safeguard against any loading of the forum. A proposed amendment would be:

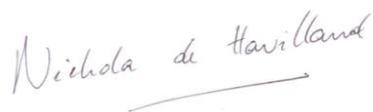
*(5) Any protocol or directive in terms of subsection (3)-*

*(a) may only be issued by the Chief Justice if it enjoys the majority support of all the heads of Superior Courts; and*

*(b) must be published in the Gazette.*

4. The Centre would also ask that sub-clause 8(4)(c) be amplified, as presently the scope of what Lower Court judicial functions the Judge President of a Division is expected to co-ordinate is unclear.
5. The Centre would like to enhance the debate on this Bill and contribute constructively to its enactment and would be happy to address the Committee on this point.

Yours faithfully

A handwritten signature in cursive script that reads "Nichola de Havilland". A horizontal line is drawn underneath the signature.

**N de Havilland**