



**PARLIAMENT**  
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**MEMORANDUM**

[Confidential]

**TO:** Adv SP Holomisa, MP  
Mr BA Mnguni, MP  
Co-Chairpersons of the Joint Constitutional Review Committee

**COPY:** Acting Secretary to Parliament  
[Mr M Coetzee]

**FROM:** Constitutional and Legal Services Office  
[Dr BE Loots – Parliamentary Legal Adviser]

**DATE:** 17 October 2012

**CRC REF:** CR12-14

**REF:** 196/2012

**SUBJECT:** OPINION ON THE CONSTITUTIONAL REVIEW SUBMISSION OF THE COMMISSION FOR THE PROMOTION AND PROTECTION OF THE RIGHTS OF CULTURAL, RELIGIOUS AND LINGUISTIC COMMUNITIES PROPOSING THE AMENDMENT OF SECTION 6(1)

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## INTRODUCTION

1. Our Office was requested to advise on the submission of the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities ('the Commission') for the annual constitutional review by the Joint Constitutional Review Committee ('the Committee').

## OVERVIEW OF SUBMISSION

2. The Commission is a Chapter 9 Institution, tasked in terms of section 185(1)(a) of the Constitution of the RSA, 1996 ('the Constitution') –  
*"to promote respect for the rights of cultural, religious and linguistic communities".*
3. The submission of the Commission is a reaction (following a fact finding mission) to a long standing complaint lodged by the Balovedu community to the Commission on behalf of the Khelovedu speaking community, based on "the non-recognition of Khelovedu as an official language and the teaching of Sepedi as a first language to the Balovedu learners".
4. The Commission's submission calls for a section 6(1) constitutional amendment, to include Khelobedu as an official language.

## RELEVANT CONSTITUTIONAL PROVISION

5. Section 6(1) and (5) of the Constitution currently reads as follows:

(1) *The official languages of the Republic are Sepedi, Sesotho, Setswana, siSwati, Tshivenda, Xitsonga, Afrikaans, English, isiNdebele, isiXhosa and isiZulu.*

...

(5) *A Pan South African Language Board established by national legislation must –*

(a) *promote, and create conditions for, the development and use of –*

(i) *all official languages;*

(ii) *the Khoi, Nama and San languages; and*

(iii) *sign language.*

## CONSTITUTIONAL BACKGROUND

6. The Constitutional Court in *In re: Certification of the Constitution of the RSA, 1996*<sup>1</sup> in considering the final text of section 6 admitted that “[l]anguage is a sensitive issue in South Africa”.<sup>2</sup>

7. In evaluating the content of section 6, the court considered the object of Constitutional Principle XI which stated that –

*“the diversity of language and culture shall be acknowledged and protected, and conditions for their promotion shall be encouraged.”*

8. The court reasoned that based on this principle, the focus of section 6 was to be the protection of linguistic diversity, “not the status of any particular language or languages”.<sup>3</sup> As such, the court left the responsibility to the Constitutional Assembly to decide on the granting of official status to languages.<sup>4</sup>

9. In finding that the final text of section 6 was “directed at fostering linguistic diversity”,<sup>5</sup> the court noted that –

*“The South African indigenous languages, however, have suffered great historical neglect and are threatened with extinction. In that light it is neither unreasonable nor discriminatory for the ... [Constitution] to mandate the Pan South African Language Board to take special steps to protect these especially vulnerable indigenous tongues.”*<sup>6</sup>

## LEGAL OPINION

10. Based on the above mentioned judgment of the Constitutional Court, the inclusion of any language as an official language within the text of the Constitution is not a legal matter, but rather a policy one which requires a decision to be taken by the legislature.

<sup>1</sup> 1996 (10) BCLR 1253 (CC).

<sup>2</sup> 1996 (10) BCLR 1253 (CC) at par 209.

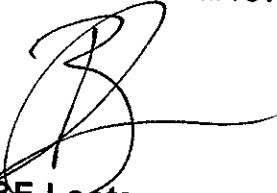
<sup>3</sup> 1996 (10) BCLR 1253 (CC) at par 210.

<sup>4</sup> See 1996 (10) BCLR 1253 (CC) at par 210. By implication that weighty responsibility has now been passed on to Parliament.

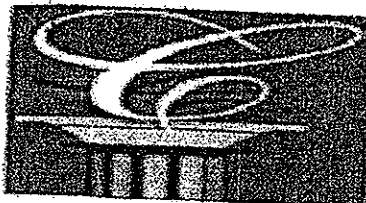
<sup>5</sup> 1996 (10) BCLR 1253 (CC) at par 210.

<sup>6</sup> 1996 (10) BCLR 1253 (CC) at par 211.

11. In the event that the Committee is of the opinion that the requested section 6(1) amendment for the inclusion of Kheolvedu as an official language is not favourable, but that the discriminatory past of the Kheolvedu community nevertheless deserves constitutional protection, the amendment of section 6(5)(a)(ii) could be an alternative option.
12. However, such an amendment would similar to section 6(1) require a policy decision to be taken by the legislature. It is therefore for the Committee to take a policy decision whether to recommend or oppose the proposed amendment in its constitutional review report.



**Dr BE Loots**  
**Parliamentary Legal Adviser**



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**CR12-14**  
**COMMISSION**  
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PROPOSAL FOR AMENDMENT OF SECTION 6 (1) OF THE CONSTITUTION OF  
THE REPUBLIC OF SOUTH AFRICA: SUBMISSION ON THE RECOGNITION OF  
KHELOBEDU AS OFFICIAL LANGUAGE OF THE REPUBLIC SOUTH AFRICA

From: The Commission for the Promotion and Protection of the Rights of  
Cultural, Religious and Linguistic Communities

# OVERVIEW ON KHELOBEDU LANGUAGE

By

The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities

## 1. Legislative Background

The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities (CRL Rights Commission) is a Constitutional Institution established through Act 108 of 1996 to strengthen Constitutional Democracy. The CRL Rights Commission draws its mandate from the CRL Rights Commission Act (Act 19 of 2002); tasked with a mandate of ensuring that cultural, religious and linguistic rights of communities in South Africa are promoted and protected; including historically diminished heritage.

The CRL Rights Commission is also mandated to conduct programmes that are aimed at promoting respect for and further protection of, amongst others, linguistic communities. Furthermore, the Commission CRL Rights is entrusted with a responsibility to monitor, investigate and research any issue concerning the rights of cultural, religious and linguistic communities. Meaning that the CRL Rights Commission plays a critical role in influencing the development of policies and legislation so as to ensure sensitivity to all communities.

## 2. Purpose

The purpose of this submission is to give the Constitutional Review Committee background on challenges faced by Khelobedu speaking community; also to submit that Khelobedu be recognised as an official language of South Africa.

### **3. Background**

The government has totally committed itself to multilingualism as both ethos and practice in South Africa. Even the constitutional obligations are explicit, wherein it is stated that "Recognising the historically diminished use and status of the indigenous languages of our people, the state must take practical and positive measures to elevate the status and advance the usage of these languages" (Act 108 of 1996, p4).

The submission is based on a long standing complaint lodged by Balovedu community to the CRL Rights Commission by a concerned community member (Mr Madlakadlaka) on behalf of Khelovedu speaking community. The issue in this matter is about the non-recognition of Khelovedu as an official language and the teaching of Sepedi as a first language to the Balovedu learners.

The concerns revolved around the fact that the Balovedu community wanting Khelovedu to be recognized as an official language; and that their children should be taught Khelovedu as their mother-tongue and first language in schools. A fact finding mission was conducted by the CRL Rights Commission in order to listen to the submissions by the community. The community is dissatisfied with non-action on the matter that they raised before the Constitution was finalised, the interim Constitution that is. The submission is therefore aimed at assisting the Constitutional Review Committee to be able to give advice on how government can better handle the matter.

#### **3.1 Observations by the Commission**

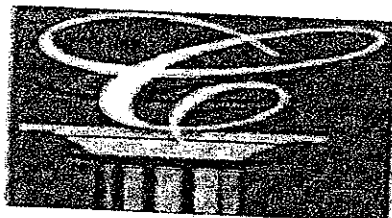
- The Commission observed that the concerns raised are the concerns of the community at large, need further attention by the Constitutional Review.
- The Balovedu community aired their concerns, putting more emphasis on the difficulties that they experience at school in that they are forced to learn in Sepedi as their mother tongue thus their first language.

### **4. Concluding Remarks**

It must be noted that the genesis of this development was subsequent to a long standing complaint lodged by Bishop Madlakadlaka representing Balobedu community in Bolobedu in 2006. The fact in issue relates to the non-recognition of Khelobedu as an official language and the teaching of Sepedi as a first language to the Balobedu learners whose first language is not Sepedi.

It is our submission therefore that the Committee should consider altering the social position of Khelobedu-a language of the previously disadvantaged linguistic community- in a manner that would place it on par with other languages. This can be achieved by recognising Khelobedu as one of the official languages of South Africa. It is the submission of the CRL Rights Commission that section 6(0) of the Constitution of the Republic of south Africa be reviewed and amended to include Khelobedu as one of the official languages.





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**C O M M I S S I O N**  
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