



30 July 2012

SUMMARIES OF SUBMISSIONS RECEIVED BY THE JOINT CONSTITUTIONAL REVIEW COMMITTEE FOR THE 2012 PUBLIC SUBMISSIONS PROCESS

1. Introduction

The Joint Constitutional Review Committee was established in terms of Section 45(1)(c) of the Constitution of the Republic of South Africa, which provides for the establishment of the Joint Committee tasked with the annual review of the Constitution.

To give effect to this section, the Committee initiates this process by placing adverts in the media, inviting members of the public to propose amendments to the Constitution. This can either be a general submission or specific submission on a particular aspect of the Constitution as determined by the Committee. Once the submissions are received, they are forwarded to the Parliamentary Legal Services Office for consideration, in the light of current constitutional jurisprudence. The Committee is then duly briefed by the Parliamentary Legal Advisers on their tabled legal opinions in respect of each submission.

Below is a summary of the submissions received by the Committee for the public submissions process.

2 Summaries of submissions

2.1. Inkatha Freedom Party: CR 12-12

The IFP submits the following sections of the Constitution for review:

Section 41 (2): House of Traditional Leaders and Traditional Councils should be included as intergovernmental structures, to facilitate intergovernmental relations

Section 151 and 155: These sections should be amended by disestablishing municipalities and replacing them with Traditional Councils, to enable efficient service delivery in traditional communities.

Section 166: Traditional Courts should be included as some of the Courts.

Section 190 (1) (a): This section should be amended to provide for the Independent Electoral Commission to manage elections in traditional communities in consultation with the Traditional Councils.

Section 211: This section must be amended to provide that the institution of traditional leadership is guaranteed and protected, and not only recognised. The recognition of

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traditional leadership should include all layers of Traditional Leadership, to prevent the introduction of other layers outside the Constitution. The Houses of Traditional Leaders should be regarded as Departments operating under Parliament and Provincial Legislatures. It must also be specified that Traditional Councils are the primary local government structures in rural communities

2.2. Vusumzi Gcuma: CR 12-2

Mr Gcuma suggests the following amendments to the Constitution:

- Under Section 9 (2)...change the phrase 'equality INCLUDES' to 'equality MEANS the full enjoyment of all rights and freedoms, and to add 'BY ALL PEOPLE.
- In promoting the achievement of equality, legislative and other measures designed to protect or advance persons or categories of person disadvantaged by unfair discrimination MUST (not MAY, as stated in the Constitution, be taken.
- Section 38 (c) must be removed as it promotes sectoral interests.
- Section 88 (2) must be clarified as it is not clear whether the section refers to two consecutive terms, or any two terms in office, even if they are not in a row (his emphasis)
- Doing away with section 142 because South Africa is a unilateral state, not a federal state.
- The removal of the words 'May God protect our people' in the preamble, because South Africa is a secular state.
- Decriminalisation of the sex trade
- Legalising polyandry
- Reducing provinces from 9 to

2.3. Dr Johan Broodryk CR 12-3

Under Chapter 2 of the Constitution, Dr Broodryk suggest that, since the whole chapter deals with Ubuntu,, which is taught at academic institutions, students will find it convenient to study the Bill of Rights in order to understand African-ness

2.4. Commission on Gender Equality: CR 12-13

The Commission on Gender Equality recommends the inclusion of the disabled as a listed category in Section 9 (3) of the Constitution, who are a vulnerable group that face considerable discrimination and marginalisation , especially in the workplace.

The Commission also recommends that Section 132, which, in their opinion, provides Premiers with unrestrained powers to appoint MECs. They provide an example of a possible abuse of authority by a Premier who appoints only males to his or her Executive Council. To that end, the Commission recommends that Section 132 be reviewed in order to ensure compliance with gender equity targets when appointments are made by the Premier.



2.5 Commission on the Protection & Promotion of the rights of cultural, linguistic and religious communities: CR 12-14

The Commission's submission relates to the non-recognition of Xhosa as an official language and the teaching of Sepedi as a first language to Balobedu learners whose first language is not Sepedi.

The Commission recommends the amendment of Section 6 of the Constitution and thereby recognising Xhosa as an official language under the Constitution.

2.5. Bonga Mthembu: CR 12-6

Mr Mthembu starts by asking, in reference to the words in the preamble 'Believe that South Africa belongs to all who live in it, united in our diversity', as to who are the rightful owners of the country, as it cannot be all who live in it.

With regard to the Supremacy of the Constitution, he argues that there should be a suitable balance between the Rule of Law and bringing economic freedom and true liberation in the country. He suggests an amendment of the Constitution by creating a 'hybrid model' to achieve this balance

He also suggests that the short version of *Die Stem* be dropped from the National anthem, as it is a reminder of the apartheid days.

He also suggests the addition of the Khoi and San languages as official languages, to promote the development of these indigenous languages

Regarding Section 25, he suggests that Parliament must amend this section to fast-track land distribution, even without compensation, where it is necessary or reasonable to do so, as economic freedom will not be realised until the land is returned to its rightful owners

He also suggests the abolition of provincial legislatures and executive councils, with provincial administration structures created to implement national policies and provide services at provincial level.

He also suggests that in a unitary state there would be no need for the National Council of Provinces.

He also suggests that the number of Members of Parliament in the National Assembly be reduced from 350-400 to 200 members

He argues that the Constitution should be amended to replace proportional representation with a constituency based/simple majority system, to make members more accountable to the communities and people they represent.



He goes on to suggest that an independent institution be created as a Chapter 9 institution to regulate the media in this country.

2.7. Brian Carr CR 12-7

Mr Carr's concern is about the enforcement of the Constitution. He refers to the lack of responses by local authorities who fail to respond to any written requests or queries or concerns about transgressions, thereby violating the right to provide responses within a given period, he states. He hopes that the Committee will look into the implementation of the above-mentioned rights,

2.8. Hon MJ Mahlangu, Chairperson of the NCOP CR 12-8

Hon Mahlangu MP submits a proposed amendment to Section 73 (4) of the Constitution, which provides that only a Member or Committee of the NCOP may introduce a Bill in the Council. He goes on to state that the majority of Section 76 Bills are introduced in the National Assembly, despite these Bills affecting provinces and requiring the maximum amount of time for consideration by the NCOP.

2.9. Nkosinathi CR 12-4

Nkosinathi raises a concern about the unequal salary notches of administration clerks in the Mpumalanga and Limpopo provinces, irrespective of the same tasks and duties performed, with some admin clerks pitched at Salary Level 5 while others are at Salary Level 3. He also raises the same salary structure for all admin clerks, irrespective of the qualifications of workers.

2.10. JM Ramokgoatedi CR 12-5

Mr Ramokgoatedi relates his experiences of seeing black people being transported in bakkies, with the white employers being seated alone inside the car while the black employee is seated at the back of the bakkie. He proposes that it should be regarded as an offence or a violation of human dignity for a person to transport a human being at the back of a goods vehicle.

2.11. Moses Mashile: CR 12-16

Mr Mashille suggests the following constitutional amendments:

- Traditional Leaders should be part of the NCOP delegation as contained in Section 42 and 60 of the Constitution, and the National House of Traditional Leaders be abolished.
- Chapter 212 should be amended, the council of traditional leaders needs to be elaborated. Its functions and duties should include enforcement of the code of conduct of traditional leaders like Health or Nursing Council, deal with disputes of traditional leaders, withdrawal of recognition etc



- Section 76 needs to be amended to include the referral of Bills to the National House of Traditional Leaders.
- Duties of the Chairpersons of the National House and Provincial House should be clarified and equated with those of the Speakers and Chairpersons of the National Assembly, NCOP and Provincial Legislatures
- Members of the Houses should be equated to Members of Parliament both nationally and provincially.

2.12. Institute of Accountability in South Africa: CR 12-11

The IFAISA canvasses three separate issues in its substantive submission, which are, in a nutshell, the establishment of an Anti Corruption Commission as a Chapter Nine institution, the superfluity of the 100% proportional representation system at this stage in the history of the democratic development of the nation, as well as the dysfunctional nature of the Judicial Services Commission, due to the abundance of political appointees in its ranks.

2.13. John Price: CR 12-10

Mr Price provides a lengthy background for his proposal, which is that the role and powers of the President, his powers of appointment and term of office, must be reviewed.. He recommends that Section 42 (3) of the Constitution should be amended to provide for the following:

- After its first sitting after a general election, the National Assembly should elect an Executive Council consisting of no less than 9 members of the Assembly, who cease to be members of the Assembly upon their appointment to the Executive Council
- The Executive Council would then appoint amongst themselves a President, who presides as a Chairperson of this Council for a period of 12 months from the opening of Parliament
- The Executive Council exercises all the powers and responsibility of a President, including those in terms of Section 84 of the Constitution. The Council makes decisions by majority vote, and when there is a division of equal vote, the President has a casting vote. Council members may also be cabinet ministers.
- Once the President's 12 month term has expired, another member of the Council must be chosen by the votes in the council, and the same process will happen after the next general election.
- There may be no fewer than 7 members in the Council and no more than 9, and any vacancy must be filled by a majority vote at a special meeting of the Assembly..

2.14. Dina Bogatsu CR 12-9

Ms Bogatsu raises issues about the unfair treatment of people with learning disabilities in her community at Matlosana, who cannot progress to Grade 12 because their special needs are not catered for. Disabled people are generally discriminated against by the municipalities and private industries, who refuse to provide them with jobs. She wants the Committee to follow



up on this and in particular, on the case of her son with learning disabilities, who was fired by Zimba Company because he does not have a Grade 12 certificate.

2.15. Langa Nkabinde CR 12-15

Mr Nkabinde proposes Section 139(1) of the Constitution should be changed in that 'MAY' is replaced with 'MUST' so that when there are grossly underperforming municipalities, measures of intervention have to be taken. He also suggests that there should be a new sub-clause 139(1)(b)(1) which should read:

The necessary steps may include deploying appropriately qualified provincial officials to oversee the expenditure of funds and the provisions of service in accordance with the provisions laid down under section 152(1)(a)-(e).

He also suggests that Section 10 of the Constitution be amended, because in a culturally diverse South Africa, a constitution with Western legal norms and values should also incorporate African norms and values such as Ubuntu.

2.16. Modjadji Royal Nation: CR 12-

The Modjadji Royal Nation suggests that the Constitution be amended to ensure that Xhelovedu is added as one of the official languages recognised in Section 6 of the Constitution. This complaint raises similar concerns as those in the CRL Commission submission, which is discussed in page 3.

2.17. Centre for Constitutional Rights; CR 12-17

The Centre for constitutional Rights has made a detailed submission to the Committee, the crux of which is a proposed amendment of Section 47 (3)(c) on the basis that it indirectly impedes the right to freedom of expression and association of the Members of the National Assembly, and that it limits accountability, responsiveness and openness by preventing a free mandate on the Members. The Centre also argues that this approach indirectly infringes on the principle of separation of powers since Parliament and the NA no longer hold the Executive accountable for its decisions or actions.

The Centre also recommends that the current electoral system be reviewed, and that the recommendations of the Van Zyl Slabbert Electoral Task Team be followed up.

2.18. Lebohang Lance Nawa: CR 12-1

Mr Nawa raises the following issues in his submission:

- The Constitution, through its preamble, does not locate South Africa within the African continent; in particular the rich cultural history.



- This also manifests itself in Section 232 and 233, which endorses the relevance of international laws at the expense of African influenced law like customary law.
- The indifference of the constitution towards culture, which is configured as an appendage to other concepts such as culture, despite these concepts being the component parts of culture.
- Arts and Culture is a concurrent function between national and provincial government in Part A of Schedule 4 of the Constitution, and municipalities end up sidelining culture from their service delivery or development agenda

Sources

1. Submissions CR 12 -1 to CR 12-18
2. Constitution of the Republic of SA, Act 108 of 1996