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LEGAL OPINION

TO: Honourable Adv. SP Holomisa and
Honourable Mr BA Mnguni
Co-Chairpersons: Constitutional Review Committee

COPY: Mr M. Coetzee
Acting Secretary to Parliament

DATE: 17 October 2012

FROM: Constitutional and Legal Services Office
[Ms SS Isaac – Parliamentary Legal Adviser]

SUBJECT: Annual Submission to the Joint Constitutional Review
Committee
Submission 1: J.M. Ramokgoatedi

REFERENCE: 187/12



MEMORANDUM

**To: Honourable Adv. SP Holomisa and
Honourable Mr BA Mnguni
Co-Chairpersons: Constitutional Review Committee**

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From: Legal Services Office

Date: 17 October 2012

**Subject: Annual Submission to the Constitutional Review Committee
Submission 1: J.M. Ramokgoatedi**

FACT

1. Our office was requested by the co-chairpersons of the Joint Constitutional Review Committee to advise on the submission received from Mr J.M. Ramokgoatedi.
2. Mr Ramokgoatedi submits that section 10 of the Constitution, providing for the right to dignity, is silent on the enforcement and the protection of the dignity of the majority of the people especially that of African people. In support of this assertion he cites the example of white employers or supervisors driving bakkies without passengers in the front of the vehicle while black people sit at the back of the bakkie.
3. He states that this practice contradicts the Preamble and the Founding Provision in section 1(a) and (b) of the Constitution. He further states that the right to dignity of people especially that of African people is not sufficiently protected by the Constitution. He asserts that it should be an offence or violation of human dignity to transport a human being at the back of a goods vehicle.

LAW

4. The Constitution protects the right to dignity in general terms. In terms of section 10 it states that 'everyone has inherent dignity and the right to have their dignity respected and protected.' Section 7(1) of the Constitution directs that the Bill of Rights is a cornerstone of democracy in South Africa and that it enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom. Further, the state is obliged to respect, protect, promote and fulfil the rights in the Bill of Rights.¹ Section 8(1) of the Constitution provides that the Bill of Rights (including the right to dignity) applies to all law, and binds the legislature, the executive, the judiciary and all organs of state. The Bill of Rights also binds a natural or a juristic person if, and to the extent that, it is applicable, taking into account the nature of the right and the nature of any duty imposed by the right.²
5. The carrying of people at the back of goods vehicles is regulated by the National Road Traffic Act, 1996 (Act 93 of 1996). This Act governs road safety and prescribes in regulations when people may be transported at the back of goods vehicles. The relevant regulations state:

Regulation 247: Circumstances under which persons may be carried on goods vehicle³

No person shall operate on a public road a goods vehicle conveying persons unless that portion of the vehicle in which such persons are being conveyed is enclosed to a height of—

- (a) at least 350 millimetres above the surface upon which such person is seated; or
- (b) at least 900 millimetres above the surface on which such person is standing, in a manner and with a material of sufficient strength to prevent such person from falling from such vehicle when it is in motion.

Provided that no person shall be conveyed in the goods compartment together with any tools or goods, except their personal effects, unless that portion in which such persons are being conveyed is separated by means of a partition, from the portion in which such goods are being conveyed.

¹ Constitution of the Republic of South Africa, 1996. Section 7(2)

² Constitution. Section 8(2)

³ GNR.225 of 17 March 2000: National Road Traffic Regulations, 2000

Regulation 250: Persons not to be carried in goods compartment for reward

No person shall on a public road carry any person for reward in the goods compartment of a motor vehicle.

Regulation 333: Offences and penalties

Any person who contravenes or fails to comply with a provision of—

(v) regulation 247 (Circumstances under which persons may be carried on goods vehicle),

shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six years or to both such fine and such imprisonment.

6. The Regulations to the National Road Traffic Act prohibits people from being carried at the back of a goods vehicle unless the back is enclosed to the specified height requirements, is made of material that will prevent a person from falling off the vehicle and people are not conveyed in the same compartment with any tools or goods. A violation of Regulation 247 may result in a sentence of a fine or imprisonment not exceeding six years or a fine and imprisonment not exceeding six years. Further, in terms of Regulation 250 no one may be carried for reward in the goods compartment of a motor vehicle on a public road.
7. The carrying of passengers on the back of goods vehicles raises many safety concerns⁴ as these vehicles do not have any protection for passengers in the event of an accident.⁵ Further, most often it is members of vulnerable groups that are transported in this manner. Farm workers and casual labourers have little choice but to travel at the back of good vehicles to ensure that they secure employment. Children from economically disadvantaged areas are also often transported to school at the back of goods vehicles.⁶ This manner

⁴ Automobile Association (AA) 'Passengers on Goods Vehicles' <<http://www.aa.co.za/about/press-room/commentary/passengers-on-goods-vehicles.html>> [Accessed 17 October 2012]. The AA criticises the carrying of passengers at the back of goods vehicles stating: 'Workers in general are still transported on the back of open vehicles with little or no protection from the elements, let alone a vehicle crash.'

⁵ Arrive Alive 'Transportation of Passenger' <<http://www.arrivealive.co.za/pages.aspx?i=439>> [Accessed 17 October 2012]. 'Arrive Alive also criticises the carrying of passengers at the back of goods vehicles stating: 'Motor cars are specifically designed for the conveyance of persons, and cars have all the modern devices for the safety of passengers such as seat belts, air bags, etc. and the maximum number of persons permitted to be conveyed in a motor car is prescribed. But...[t]here are no safety requirements to protect persons being carried on the back of a bakkie, except for the height of the sides, and the number of persons which may be carried on the back of a bakkie is not limited.'


⁶ 'KZN bans use of bakkies for transporting learners' <http://www.sabc.co.za/news/a/4ee5b3804c7a963eb743fffbee4ee9ea/KZN-bans-use-of-bakkies-for-transporting-learners-20120825> [Accessed 17 October 2012].

of transportation not only exposes passengers to extreme risk in the event of an accident but may also impact on their constitutional rights including the right to dignity.

8. Hence, the laws allowing for people to be transported at the back of goods vehicles must be assessed to determine if they adequately protect the lives of people, especially the most vulnerable in society. At present there is a total prohibition only on the carrying of people for reward in the goods compartment of a motor vehicle on a public road. Therefore, there may be a need for further laws and measures to protect those who are being transported on goods vehicles.
9. Any decision to further prohibit the carrying of people at the back of goods vehicles must be made in light of the various constitutional provisions including the obligation on the state to respect the dignity of people. The Committee may therefore consider referring this submission to the relevant Committee dealing with transport to determine if the existing regulations are adequate to address the submitters concerns and uphold the constitutional right to dignity.

Conclusion

10. The Constitution does provide a framework for the protection of human dignity. Existing legislation sets out the safety requirement for transporting people at the back of a goods vehicle. However in light of the constitutional right to dignity, the Committee may consider whether the existing prohibitions and penalties are adequate to protect people. Any further criminalisation of the prohibitions does not require a constitutional amendment but may require an amendment to the National Road Traffic Act. Such an amendment is a policy decision for the Committee and Parliament to make.



Ms SS Isaac

Parliamentary Legal Adviser

CORRECTED VERSION

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02 May 2012

c/o Ms Pat Jayiya

Constitutional Review Committee

Parliament of the Republic of South Africa

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Dear Madam

WRITTEN SUBMISSION TO THE CONSTITUTION REVIEW COMMITTEE AS PER PUBLIC INVITATION IN THE CITY PRESS DATED 29th APRIL 2012

I herein wish to furnish my proposed constitutional amendment in terms of section 45 (1)(c) of the constitution of the Republic of South Africa, 1996 as follows:

Chapter 2 (Bill of Rights) subsection 10 of the constitution deals with "Human dignity" and it is silent on the enforcement and the protection of the dignity of majority of the people, especially Africans for example it is very much disturbing to see that even today after 1994 some conservative whites are still de-valuing the dignity of Africans or regard some of us as stinking skunks.

If you drive / walk around in the urban or Rural areas, you will see some white employers or supervisors driving LDV'S (Bakkies) sitting alone in front seats but carrying a black person at the back of

LDV's or trucks. This practice sabotages our government programme of National Unity and Social cohesion

This practice also contradicts our constitution " Preamble" and the founding provision in chapter 1(a) and (b)

PROPOSED AMENDMENT

- That it should be regarded as an offence or violation of human dignity to transport a Human being at the back of a goods vehicle.

Your co-operation is highly appreciated.

Yours faithfully

J.M RAMOKGOATEDI
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