



Joint Committee on Constitutional Review

Executive Summary of 2020 Submissions

11 November 2020

1. Background

The Joint Constitutional Review Committee (the Committee) met and resolved on a modus operandi of carrying out its work based on a proposal put forward to the Committee during a workshop held on 3 September 2020. The Committee received a briefing on the Committee's mandate, its applicable Joint Rules, the 2014 -2019 Legacy Report and matters considered and arising therefrom.

Briefly, an outline of the Committee is that it is established in terms of Section 45(1) (c) of the Constitution, 1996¹ (the Constitution) which provides for the establishment of a joint committee by Parliament, comprising of Assembly and Council members to review the Constitution at least annually.

In giving effect to this Constitutional provision, Rule 102 (2) of the Joint Rules of Parliament requires the Joint Constitutional Review Committee to annually, before the first day of May, by notice in the public media, invite:-

- the public,
- Assembly or Council Committees,
- Joint committees,
- Members of Parliament, and
- any organ of state

¹ The Constitution of the Republic of South Africa, 1996.

To submit within 30 days, written representations on any constitutional matter². To this end, the 6th Parliament Committee was established in the third quarter of 2019, and thus placed its first advert inviting public submissions in the media by May 2020. By the closing date of receipt of submissions, the Committee had received 58 emailed submissions, including 2 duplicates. All submissions of the 2020 year-cycle have been referenced and uploaded on Alfresco, an electronic archive of parliamentary documents categorised by committee for ease of access to the original submissions.³

2. Categorisation of submissions

The Committee agreed on a method of processing all submissions received by means of categorising them into three groups, namely:

- Category 1: Submissions which fall outside of the Committee's mandate;
- Category 2: Submissions which may require a parliamentary legal opinion, relevant stakeholder consultation and public hearings, and
- Category 3: Submissions which are ready for consideration by the committee

The review process of the Committee is aimed at assessing whether a submission possess a favourable desirability which may ultimately necessitate the amendment of the constitution as per the proposal(s) contained in the submissions. The Committee reviews the Constitution in order to make a

² Joint Rules of Parliament, 6th edition, June 2011.

³ <https://docs.parliament.gov.za>

pronouncement and recommendation to Parliament on the desirability of a submission in possibly amending the Constitution in accordance with public will.

Following a favourable review process, the Parliamentary Table of the respective Houses makes provision for allocation and referral of submission to:

- an appropriate Committee,
- the Portfolio Committee on Justice and Constitutional Development or,
- an Ad Hoc Committee is established and empowered to process a prospective draft Constitutional Amendment Bills in terms of the applicable parliamentary rules.

3. Submissions of the 2020 year cycle

Herein follows a summary of the email submissions received by the Committee during in line with Joint Rule 102 (2) (a)⁴, in chronological order with a recommendation on the category within which the Committee classifies each submission for purposes of consideration.

3.1 Submission 1 of 2020

Submitted by Robert Wassenaar, with a concern regarding the amendment of the Constitution to permit the South African Police Service (SAPS) to conduct a search of private persons “with first obtaining a warrant issued for this specific purpose”.

On reading this submission, it appears that the submitter is opposed to SAPS conducting searches ‘without’ first obtaining a search warrant, however made an error in his initial statement.

⁴ Annual notice in the public media, before the first day of May, inviting the public to submit to the Committee within 30 days, written representations on any Constitutional matter.

- **Recommendation on Submission 1: category 3**

The basic principles of criminal procedure are constitutionalised in the Bill of Rights. However, national legislation namely the Criminal Procedure Act 51 of 1977 and the South African Police Service Act 68 of 1995 both authorises the Police to search and to seize articles without a warrant in certain circumstances, wherein a standard measure of reasonableness is applied. It is therefore recommended that this submission be classified under category 3, which represents submissions that are ready for consideration by the Committee and do not necessitate further consultation for a determination on its desirability to possibly amend the constitution.

3.2 Submission 2 of 2020

Submitted by Kgosiemang Moloko, on the strengthening of the Constitution by legislating the appointment of internal auditors in the constitution, rather than by choice of organizations. The submitter alleges that there is a fundamental and systemic flaw requiring the inclusion of preventative controls under the Chapter 9 Institutions section for rectification. This submitter claims that there is a need for a future governance model that ought to be applied during and after occurrences of national disasters and contextualises this proposal with the Corona Virus Pandemic. The submitter argues that there should be four pillars of government instead of 3 in order to make internal auditors independent in organizations from Board/management, make internal auditor reports form part of organisational annual reports and thereby allowing the public access to internal auditor reports.

This approach would then result in governments/shareholders reclaiming their governance role that is currently abdicated to different organisations. It will also allow governments to govern through the constitution based on ongoing feedback by internal auditors. Ultimately, the public will be able to trace the

root causes of corruption based on gaining a constitutional right to access organizational reports of internal auditors' reports in organisations. This proposal in this submission is intended to support the work of external/Auditor general, as they will be able to focus on detective controls. Following the Corona Virus Pandemic the submitter is of the view that government requires the support of independent Internal Auditors, which the Committee ought to consider escalating by the addition of a Chapter 9 Institution called The Commission for Internal Auditors.

- **Recommendation on submission 2: Category 2**

It is recommended that this submission be classified under category 2 and that the Committee request a legal opinion from Parliamentary Legal Services for a considered determination on the desirability of this submission to possibly amend the constitution as proposed.

3.3 Submission 3 of 2020

The submitter, Catherine Walters, requests amendment of national legislation namely the Disaster Management Act and the Emergency Powers Act, for the addition of 6 senior Members of Parliament, the Speakers of both Houses and same number of whips of other political parties be legislated to vote on matters of disaster and emergencies, and that a majority of 55% pass the vote.

- **Recommendation on submission 3: category 1**

It is recommended that this submission be classified a category 1 submission as it proposes an amendment to national legislation, which is not within the mandate of the Committee.

3.4 Submission 4 of 2020

The submitter Nhloso Ntshulane, reiterated the need for the amendment of section 25 of the Constitution to allow for the expropriation of land without compensation with the effect of repealing the 1913 Land Act.

Recommendation on submission 4: category 3

It is recommended that this submission be classified under category 3 as one that has been thoroughly considered and concluded on by this Committee during the 5th parliamentary term. The submitter can be advised that this matter is currently under consideration and Parliament has established an Ad Hoc Committee to draft a Constitutional Amendment Bill to give effect to the proposal contained in this submission.

3.5 Submission 5 of 2020

Submitter Kim Finkelstein responded by submitting that she does not wish to see the constitution amended.

- **Recommendation on submission 5: category 1**

It is recommended that this submission be classified as one that is not in line with the Committee's mandate of reviewing the constitution for possible amendment.

3.6 Submission 6 of 2020

Submitter Andries Havenga proposes that the Committee consider the review and amendment of the accountability provisions of the Constitution. He substantiates his submitting that accountability to the electorate is crucial for meaningful participation in a democratic system. The submitter hopes that the proposals he submits will result in the immediate suspension of political persons in high office in the event of questionable conduct of a serious nature. The

submitter goes on to say that the Constitution is flawed with regard to the accountability of the president and cabinet as can be seen from section 89 on the Removal of the President.

The submitter proposes that section 89 (b) which provides for the removal of the President from office on the grounds of a serious misconduct, is too vague. The submitter is of the view that it is not made clear what the exact grounds for removal are, furthermore that no mention is made of suspension from office of the incumbent president in certain circumstances. Moreover, this needs to be added into the Constitution for clarity.

Section 96, deals with the Conduct of Cabinet members, stating that they must act in accordance with a code of ethics prescribed by national legislation, and may not:- a) undertake any other paid work; b) act in any way that is inconsistent with their office; or c) use their position or any information entrusted to them, to enrich themselves or improperly benefit any other person.

The submitter is of the view that there is no consequences for non-compliance with a, b, and c is mentioned and is of the view that non-compliance must presumably be dealt with under the Code of Conduct for parliamentarians which imposes no threat of criminal sanction for serious misconduct by members of parliament.

The submitter is of the view that there is no specific provision in the Constitution whereby a President, Minister or Member of Parliament, against whom a prima facie case of serious misconduct has been made, can be suspended from office pending a final decision by court or an administrative body.

The submitter proposes that the Constitution must give more protection to citizens against Members of Parliament, who, once elected currently have no obligation, other than within political party structure, to be accountable to the people that elected them.

This submitter also request a review of section 19 in Chapter 2 of the Bill of Rights on political rights, be amended with the addition of a subparagraph (4) to provide that “Every citizen has the right to transparent and accountable governance by government”.

- **Recommendation on submission 6: category 2**

It is recommended that this submission be classified under category 2 and that the Committee request a legal opinion from the Parliamentary Legal Services. This will support Committee considerations on the desirability of the proposals contained in this submission, to amend the Constitution.

3.7 Submission 7 of 2020

Submitter Yannick Pousson, is simply of the view that he does wish to see the constitution amended.

- **Recommendation on submission 7: category 1**

This submission does not propose any section for review or amendment in the constitution, and is should therefore be classified as a category 1 submission which denotes submissions that are not in line with the Committee’s mandate.

3.8 Submission 8 of 2020

The Submitter Jean Richmond, submitted that he does wish to see the Constitution amended, stating that any official in government that is under investigation for corruption and not upholding the law should be suspended immediately, receive a minimum salary and the process to find the facts be done with urgency. Furthermore, that persons found guilty of corruption be jailed.

Submitter also requested that the Committee eliminate Black Economic Empowerment as he is of the view that it does not work.

The submitter stated that people should vote for the head of a political party and not just the party.

The submitter stated that no single political party should have the power to decide on matters that affect the whole nation e.g. Lockdown and requested that all political parties be involved from start to end and that there be 100% transparency on decisions.

The submitter is of the view that no amendment should be made to existing rules that protect all South Africans without direct involvement of all political parties e.g. Land Reform.

The submitter also submitted that the adherence to official rules and formalities pertaining to Small Medium and Micro Enterprises be excluded from law.

- **Recommendations on submission 8: category 1**

It is recommended that this submission be classified as a category 1 submission as it does not make reference to the sections of the Constitution that require amended. The submitter calls for the repeal of national legislation and matters that can be considered for amendment in existing legislation. Because of these reasons, this submission not within this Committee's mandate.

3.9 Submission 9 of 2020

Submitter Freeman Bhengu, made a submission pertaining to a law excluding refugees and asylum seekers from participation in any political activities in South Africa, stating that this law should be extended to include that no foreigners should be allowed to vote.

- **Recommendation on submission 9: category 1**

This submission pertains to matters that can be addressed by the Refugees Amendment Act 33 of 2008. However, this submission is one that does not refer to the need to review the Constitution and therefore falls outside of the scope of this Committee's mandate.

3.10 Submission 10 of 2020

Submitter Waseela Jardine, requested a review to the Constitution in order to provide for the death penalty. The submitter is of the view that a return of capital punishment will reduce the number of senseless murders and rape. The submitter is of the view that is unfair for murders and rapist to relax in jail and get parole for good behaviour when considering the bizarre amount of women and children are being sexually molested.

- **Recommendation on submission 10: category 3**

It is recommended that this submission be classified under category 3 as one that is ready for consideration and has been considered by this Committee during previous parliamentary terms.

Capital Punishment was abolished in South Africa on 6 June 1995, by the ruling of the Constitutional Court in *S v Makwanyane*⁵. Although popular sentiment appears to favour reinstatement of the death penalty, there is according to research no conclusive evidence to prove that the death penalty is more of a deterrent than the existing sanction of life imprisonment.

The committee has been previously advised by legal services that this matter is policy decision to made by the Committee, and the Committee has resolved that the matter of the amending the Constitution to include Capital Punishment would not be a desirable constitutional amendment.

3.11 Submission 11 of 2020

Submitted by Patrick Leonard, who simply indicated that he does not wish to see the constitution amended as it is the best Constitution in the world.

- **Recommendation on submission 11: category 1**

This submission is not in line with the Committee's mandate and should be classified a category 1 submission.

3.12 Submission 12 of 2020

Kiara Luis submitted that she does not wish to see the Constitution amended.

⁵ *S v Makwanyane* (CCT3/94),[1995] ZACC 3;1995(6)BCLR

- **Recommendation on submission 12: category 1**

This submission is not in line with the Committee's mandate and should be classified a category 1 submission.

3.13 Submission 13 of 2020

Tertius Ferreira simply submitted that he does not wish to see the Constitution amended.

- **Recommendation on submission 13: category 1**

It is recommended that this submission be classified as a category 1 submission on account of it not being within the Committee's mandate.

3.14 Submission 14 of 2020

Louise Boyes, submitted that she wishes to see the constitution amended in as far as the Disaster Management or any process which excludes a full Parliament from decision making in this regard must be removed from the Constitution. Furthermore, the submitter requested that any major decisions like a national lockdown must include consultation with the public.

- **Recommendation on submission 14: category 3**

It is recommended that submission 14 be classified as a category 3 submission which denotes a submission which is ready for consideration by the Committee as is. On the face of it, this matter raised in this submission is already catered for in national legislation, namely the Disaster Management Act and Regulations pertaining thereto, which in term is giving effect the protection of the Human Rights contained in the Bill of Rights namely Chapter 2 of the Constitution.

The objective of disaster risk management is to avoid, mitigate or manage the impact of potential hazards and does not require a constitutional amendment as this is already given effect to as expressed in existing enabling legislation. In respect of managing the potential risk of disasters the South African government (including all spheres of government and all organs of state) is obliged to adhere to its international obligations, commitments and undertakings.

2.15 Submission 15 of 2020

Submitter James Arnt, submitted that he does not wish to see the Constitution amended

- **Recommendations on submissions 15: category 1**

It is recommended that this submission be classified as a category 1 submission on account of it not being within the Committee's mandate.

2.16 Submission 16 of 2020

Submitter Patrick Dickson also expressed that he does not wish to see the Constitution amended.

- **Recommendation on submission 16: category 1**

It is recommended that this submission be classified as a category 1 submission because of it not being within the Committee's mandate.

3.17 Submission 17 of 2020

Submitter Avis Rens, submitted that he does not wish to see the Constitution amended, as they are of the belief that any amendment will end up restricting existing human rights.

- **Recommendation on submission 17: category 1**

It is recommended that this submission be classified as a category 1 submission because of it not being within the Committee's mandate.

3.18 Submission 18 of 2020

Submitter Fiona Cameron expressed that they do not wish to see the Constitution amended.

- **Recommendation on submission 18: category 1**

It is recommended that this submission be classified as a category 1 submission because of it not being within the Committee's mandate.

3.19 Submission 19 of 2020

Submitter Etienne Boeke submitted that he does not wish to see the Constitution amended as most reason for amendments are to take peoples freedoms away.

- **Recommendation on submission 19: category 1**

It is recommended that this submission be classified as a category 1 submission because of it not being within the Committee's mandate.

3.20 Submission 20 of 2020

Submitter Chris Blaine, submitted that he would like to see the Constitution amended in order to change the Right to Equality that allows racial discrimination for disaster support, and employment. The submitter is of the view that all South Africans should benefit and that discrimination intended to address past law discrimination is negative and divides citizens. The submitter is of the view that the law needs to be changed to focus on equal opportunity.

- **Recommendation on submission 20: category 3**

It is recommended that submission 20 be classified as a category 3 submission which denotes a submission which is ready for consideration by the Committee as is.

This submission can be considered on the basis of existing national legislation on Equality, namely the Promotion of Equality and Prevention of Unfair Discrimination Act, (PEPUDA or the Equality Act, Act No. 4 of 2000) is a comprehensive South African anti-discrimination law. It prohibits unfair discrimination by the government and by private organisations and individuals and forbids hate speech and harassment. The act specifically lists race, gender, sex, pregnancy, family responsibility or status, marital status, ethnic or social origin, HIV/AIDS status, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth as "prohibited grounds" for discrimination.

However, this Act also contains criteria that courts may apply to determine which other characteristics are prohibited grounds, namely employment discrimination is excluded from the ambit of the act because the Employment Equity Act, 1998, addresses it.

It is therefore recommended that the submission does not necessitate a possible amendment to the Constitution as the matters this the submissions are detailed and can be considered the in subordinate legislation.

3.21 Submission 21 of 2020

Submitted by Nicole Terblanche, who simply submitted that she does not wish to see the constitution amended.

- **Recommendation on submission 21: category 1**

This submission falls outside of the Committee's mandate it does not make a proposal of any sections of the constitution that require review. It is therefore classified a category 1 submission.

3.22 Submission 22 of 2020

Submitted by Russell Warwick, simply stating that he is opposed to the constitution changing in order to all SAPS or any other agency the right to enter and search his house, car, person or any other private property without a valid warrant.

- **Recommendation of submission 22: category 1**

This submission is statement and not proposal for review of any sections of the constitution, it is therefore noted but is not in line with this Committee's mandate is classified a category 1 submission.

3.23 Submission 23 of 2020

Submitter Phoebe Daniels submitted that the constitution should not be amended.

- **Recommendation on submission 23: category 1**

This submission falls outside of the Committee's mandate it does not make a proposal of any sections of the constitution that require review. It is therefore classified a category 1 submission.

2.24 Submission 24 of 2020

Submitted by Willie Kirsten, and submits that the constitution should not be amended as it would lead to abuse of power and an undermining of human rights.

- **Recommendation on submission 24: category 1**

This submission expresses a statement and is not in line with the committee's mandate. It is therefore classified a category 1 submission.

2.25 Submission 25 of 2020

Submitted by Johanna Kirsten, who submits that he does not wish to see the constitution amended.

- **Recommendation on submission 25: category 1**

This submission expresses a statement and is not in line with the committee's mandate. It is therefore classified a category 1 submission.

2.26 Submission 26 of 2020

Submitted by Olivia White who is of the view that people found guilty of harming others should not possess the same rights as law-abiding citizens. Suggested that there be a publication of proposed changes that should be made to the Constitution so that the citizens can give input on them.

- **Recommendation on submission 26: Category 1**

This submission makes a statement of the process that is already followed in the legislative process. However, because this submission does not make suggestions of sections of the constitution which require review, it falls short of the Committee's mandate and should be classified a category 1 submission.

3.27 Submission 27 of 2020

Submitter Petrus Classen, submitted that he does wish to see the constitution amended.

- **Recommendation on submission 27: Category 1**

This submission expresses a statement and is not in line with the committee's mandate. It is therefore classified a category 1 submission.

3.28 Submission 28 of 2020

Submitter Retha Duminy, submitted that she objects to suggested variations in the Constitution to enable SAPS to search, people, property and possessions without a warrant as it constitutes a breach of privacy and result in a grave violation of rights.

Recommendation on submission 28: category 1

This submission expresses a statement which is noted by the Committee but does not however give the Committee a proposed change to the Constitution for it to consider and thereby falls short of the committee mandate and therefore classified a category 1.

3.29 Submission 29 of 2020

Submitted by Mrs M Belcher, and submits that any change to any part of the constitution that will affect the rights of citizens, employee, homeowners and parents is rejected, especially those that will negatively affect privacy.

Recommendation on submission 29: category 1

The submission makes a statement which is noted by the Committee but which is not in line with the Committee's mandate and therefore results in the classification of this submission into category 1.

3.30 Submission 30 of 2020

Submitted by Yolandi Tesner, stating that she does not wish to see the Constitution amended.

Recommendation on submission 30: category 1

This submission expresses a statement and is not in line with the committee's mandate. It is therefore classified a category 1 submission.

3.31 Submission 31 of 2020

Submitter John Wilkinson, submitted that he has be unaware of this committee and its mandate in terms of the enabling section 45(1) (c) of the Constitution. This submitter made comments on the passing of national legislation namely the Independent Police Investigative Directorate Amendment IPID Amendment Bill⁶ asking the Committee whether the President signed this legislation.

This Bill was signed by the President into law by 26 May 2020, became IPID Act 27 of 2019, and referred to the Government Gazette 43385.

The Submitter also commented on an article named titled the '*Reply by the President Cyril Ramaphosa to the debate by the Presidency Budget Vote in the National Assembly in Cape Town*'. The submitter is of the view that the success of the deployment of the South African Defence Force (SADF) to assist the SAPS in the prevention and combating of crime and restoration of law in communities terrorised by gangsterism, needs the cooperation and contribution of many within various organs of the state, within civil society and within affected communities.

⁶ Independent Police Investigation Directorate Amendment (B25-2018)

The Submitter went on to share stories of how the Country is untied only by its Constitution but remains extremely divided in many other ways, furthermore, the submitter noted that none of the political parties have matured to the point where they are leading people well and mentioned this as one of the triggers of a failed state. The submitter concluded his submission by wishing the Committee well in its review process and requested a link to the Committee's previous review reports and an acknowledgement of his submission.

- **Recommendation on submission 31: Category 1**

This submission expresses a statement and is not in line with the committee's mandate. It is therefore classified a category 1 submission.

3.32 Submission 32 of 2020

Submitted by Khutso SK on behalf of Valodagoma NPC, an organisation with the mandate of enhancing, developing and advocating for language, culture, heritage and well-being of Khilovedu, Valovedu and Vulovedu in terms of all that is for their betterment. Following up on the call to have Khilovedu recognised as an official language of South Africa as echoed by The Modjadi Royal House of Valovedu since the inception of democracy in South Africa.

Furthermore, submitting that this was acknowledged and endorsed in February 2019 by President Cyril Ramaphosa, instructing institutions like Pan South African Language Board (PanSALB) to develop Khilovedu to official status recognition.

- **Recommendation on submission 32: category 2**

It is recommended that this submission be classified under category 2 and that the Committee request a legal opinion from the Parliamentary Legal

Services. This will support Committee considerations on the desirability of the proposals contained in this submission, to amend the Constitution. In addition, the Committee ought to consider consulting the PanSALB as the organisation established to promote multilingualism, to develop official languages and to protect language rights in South Africa, to advise it on the status of Xhosa language being cited as an official language in section 6(1) of the Constitution instead of under section 6(5) as a developing language.

3.33 Submission 33 of 2020

Submitted by the South African Secular Society, submitted that it requests the Committee to recommend to Parliament to clear up contradictions in the Constitution which amounts to unfair discrimination. The submitters quoted the equality clause in section 9 of the Constitution and stated that despite the provision that the state may not discriminate unfairly directly or indirectly against anyone on one or more grounds including religion, conscience, belief, culture...etc. The Preamble to the contrary states ‘God protect our people...’ and that the reference to “God” contradicting the previous clause which states ‘*Build a united ... South Africa*’, and the prohibition in the Bill of Rights against discrimination on the grounds of religion, conscious, belief and culture.

The submitters go on to submit that among many beliefs in our country, there are those we speak for the nonreligious, mentioning that the 2001 Census classified 15,1% of the population as having “no religion”. The submission argues that references to a god – or any god– is an insult to their intelligence and their rational beliefs, and is a way of excluding the secular members of society from full participation. The submitters therefore request a removal of the reference to

“May God protect our people. Nkosi Sikelel' iAfrika. Morena boloka setjhaba sa heso. God seën Suid-Afrika. God bless South Africa. Mudzimu fhatutshedza Afurika. Hosi katekisa Afrika.”

- **Recommendation on submission 33: category 2**

It is recommended that this submission be classified under category 2 and that the Committee request a legal opinion from the Parliamentary Legal Services. This will support Committee considerations on the desirability of the proposals contained in this submission, to amend the Constitution.

3.34 Submission 34 of 2020

Submitted by Martin van Staden of the First Market Foundation, is dedicated to promoting a climate of appreciation throughout South Africa, among the public and government, for the Rule of Law and makes a submission to the committee for the following:

- 1) The appreciation and the importance of section 1 of the Constitution, which has been neglected in public policy. Section 1 is the most entrenched provision in the Constitution and contains the values that must inform all law and government conduct.
- 2) Secondly, the importance of impact assessments in public policy is discussed as a constitutional imperative that government has also neglected. Impact assessments inform the public about the potential unintended and detrimental consequences of new legislation, regulation, and policies, and must be fair and balanced. Without such assessments, public participation is government is undermined.
- 3) Thirdly, we briefly elaborate on the nature of constitutionalism that government must also have regard to when going about its businesses, and this is done with particular reference to the Constitution Eighteenth

Amendment Bill and threats to nationalise the Reserve Bank. Both these envisioned interventions would undermine the fabric of constitutionalism within which the Constitution rests, and must be abandoned.

4) Finally, the nature and operation of sections 36 (the general limitations provision) and 37 (the derogation provision) of the Constitution are elaborated with reference to how these provisions ought to (have) operate(d) during the COVID-19 lockdown. We are concerned that government has gone beyond what the Constitution allows it to do during times of public crisis, and encourage a return to constitutional conformity.

- **Recommendation on submission 34: category 2**

It is recommended that this submission be classified under category 2 and that the Committee request a legal opinion from the Parliamentary Legal Services. This will support Committee considerations on the desirability of the proposals contained in this submission, to amend the Constitution.

3.35 Submission 35 of 2020

Submitted by Prof. Nogwaja Zulu of Haward College, submitted that she would like to focus section 6 of the Constitution and discuss the use of official languages. Prof Zulu indicated that she would like to make both a written and oral presentation and asked the Committee to indicate which is better.

- **Recommendation on submission 35: category 1**

Because the submitter made a statement on the section of the constitution, they would like discuss and did not in fact make the submission discussing the section within the period given to all submitters, makes the submission

one that falls outside of the Committee's mandate. And it is therefore recommended that this submission be classified under category 1, denoting a submissions which is not technically in line with the Committee's mandate.

3.36 Submission 36 of 2020

Submitted by Paul Hoffman Senior Counsel of the Institute for Accountability in Southern Africa, submitting the need for a new Chapter 9 Institution in terms of Constitutional Court ruling in the Glenister case majority judgment of March 2011. The submitter is of the view that the Hawks are not up to the task of countering grand corruption. Their structural and operational lack of security of tenure of office is the underlying problem, which is exacerbated by executive instead of parliamentary control and oversight of their duties.

The submitter requested an opportunity to present their submissions made to this Committee in previous parliamentary terms on this matter, as a need for reform against corruption is urgent. Furthermore, because South Africa is currently on the Security Council of the United Nations and the President leads the African Union, it is imperative for the Committee to cease the opportunity of being exemplary in efforts that counter corruption, in the form of the establishment of an additional Chapter 9 Institution to strengthen the irradiation of corruption.

- **Recommendation on submission 36: category 2**

It is recommended that this submission be classified under category 2 and that the Committee request a legal opinion from the Parliamentary Legal Services. This will support Committee considerations on the desirability of

the proposal contained in this submission, to amend the Constitution with the addition of a Chapter 9 Institution to combat corruption.

3.37 Submission 37 of 2020

Submitted by Waseela Jardine, to change the constitution in order to remove any provision in it that provides for the blacklisting of individuals due to the negative impact blacklisting has on person future official endeavours and the stigma attached thereto by prospective employers.

- **Recommendation on submission 37: category 1**

Because the Constitution does not make reference to blacklisting of persons, the submitter should notified that it is not within the Committee's mandate to make changes to provisions not provided for within the constitution. It is recommended that this submission be classified under category 1, denoting submissions that are not in line with the Committee's mandate.

3.38 Submission 38 of 2020

Submitted by Graham Smith, who submits that the Constitution is adequate as it is and does not require any amendments. That it is the responsibility of the government to conduct its self in accordance with the constitution and serve all citizens and that if there are shortcomings, the flaw is in the execution of governance and no flaw in the Constitution.

Recommendation on submission 38: category 1

It is recommended that this submission be classified under category 1, denoting submissions that are not in line with the Committee's mandate, however the Committee takes note of all submissions.

3.39 Submission 39 of 2020

Submitted by Louise Boyes, who wishes to have disaster management or anything which diminishes full parliament from being included in decisions removed from the Constitution. The submitter is of the view that any major decision like a lockdown must include consultation with the people of this country.

- **Recommendation on submission 39: category 3**

It is recommended that submission 39 be classified as a category 3 submission which denotes a submission which is ready for consideration by the Committee as is.

A state of national disaster in terms of the National Disaster Act and Regulations applicable thereto has a far-reaching impact on people's rights, but they are finely balanced against people's Constitutional rights. However, the limitations are permissible if done in terms of section 36 also known as the limitation clause. The Disaster Management Act states that any regulations or directions made under it must only go as far as is necessary to assist, protect and give relief to the public, protect property, prevent disruption and deal with the effects of the disaster.

The balancing of proportionality which is allowed by the courts when faced with a pandemic weighs in favour of allowing the government strong powers. In a constitutional state if disaster management regulations do not find the appropriate balance, they may be challenged in court. Thus, this matter is one provided for by the Constitution in section 36, however the matter as raised in the submission is one that is specifically addressed in national legislation and applicable regulations and does not necessitate an amendment of the Constitution.

3.40 Submission 40 of 2020

Submitter Desiree Lotter submits that she does wish to see the Constitution change to reflect that anyone who has been investigated or corruption or fraud or tender tempering should not be allowed to hold a position of power. As this leads to citizens of the country not being able to trust in the government.

- **Recommendation on submission 40: category 3**

It is recommended that submission 40 be classified as a category 3 submission that denotes a submission that is ready for consideration by the Committee as is. Because South Africa is constitutional state where the rule of law is in its most basic form, is the principle that no person is above the law. The rule follows from the idea that the law is based on fundamental principles that discovered based on relevant national legislation to investigate and charge persons or organisations accused of transgressing the law. Accordingly, the Constitution does not need to be amended as it already reflects the proposal made in this submission in its found principles.

3.41 Submission 41 of 2020

Submitter Marinus Uys, does not wish to have the constitution amended as the submitter is of that view that it is perfect as it is and accountability is the problem.

- **Recommendation on submission 41: category 1**

It is recommended that this submission be classified under category 1, denoting submissions that are not in line with the Committee's mandate of reviewing and amending the Constitution.

3.42 Submission 42 of 2020

Submitter Jason Rogers, submitted that he does not wish to see the constitution amended.

- **Recommendation on submission 42: category 1**

This submission is noted and it recommended for classification under category 1, denoting submissions that are not in line with the Committee's mandate of reviewing and amending the Constitution.

3.43 Submission 43 of 2020

Submitted by Adrian Davies, requesting the committee to consider review of chapter 12 of the Constitution on Traditional Leaders, by abolishing unelected person from holding power or accessing state or provincial resources, hereditary title to land worked by or inhabited by others.

Recommendation on submission 43: category 3

It is recommended that submission 43 be classified as a category 3 submission that denotes a submission that is ready for consideration by the Committee as is.

Section 211 of the Constitution provides for the recognition of the institution, status and role of traditional leaders in accordance with customary law, subject to the Constitution.

This matter given effect to in terms of national legislation, namely the Traditional Leadership and Governance Framework Amendment Act 2 of 2019 and is recently passed into law by both Houses of Parliament emanating from the public extensive public participation work undertaken by the Portfolio Committee on Cooperative Governance and Traditional Affairs.

It would therefore not be desirable for this Committee to begin a practice of undoing all the consultative work put into further protecting the rights and recognition of the status and role of traditional leaders, as this was done in terms of customary law, and not arbitrarily.

3.44 Submission 44 of 2020

Submitter Warren van Niekerk, submitted that he disapproves of the Disaster Management Act and he would like every party to have representation and power in decisions that get made, and added that Parliament must be explicitly involved.

- **Recommendation on submission 44: category 1**

This submission makes reference to disapproval of provisions which ought to be made in national legislation. Therefore, it is recommended that this submission be classified under category 1 as submissions that are not in line with the Committee's mandate of reviewing the Constitution.

Because although the submitter is of the view that the Constitution should be amended, the submission contains comments regarding the submitter's disapproval of national legislation namely, Disaster Management Act.

3.45 Submission 45 of 2020

Submitted by Ashley Weatherdon, who submitted that she would like to see the constitution amended. That she applauds the government for the steps taken to contain the spread of the Covid-19 Pandemic. However, the submitter disagreed with the ban on the sale of cigarettes and alcohol and is of the view that it caused desperation which led to an increase of black market sales in this regard. Furthermore, that she noted that smoking increases health risks but asserted that this is made worse by poor quality tobacco which was also very expensive. She added that cigarettes should

be sold and stating that people will not share cigarettes, and requested that the ban on alcohol sales remain because it causes intoxication but submitted that cigarettes do not pose the same threat and therefore there is no logical explanation for the ban.

- **Recommendation on submission 45: category 1**

Because the submitter only expresses her personal views on matters that do not necessitate a review or possible amendment of the Constitution, it is recommended that this submission be classified under category 1 submissions. Denoting submissions that are not in line with the Committee's mandate.

3.46 Submission 46 of 2020

Submitter Mthandazo Ndlovu Hlahla, on behalf of Oxfam South Africa (OZA) submits to that they would like to make an oral presentation of their written submission to the Committee on the need to amend the and align the Electoral Act, The Ingonyama Act.

Recommendation on submission 46: category 3

It is recommended that submission 46 be classified as a category 3 submission that denotes a submission that is ready for consideration by the Committee as is.

Because the submitters make it clear that they would like to make an input on the amendment and alignment of national legislation, the submitters should be advised that matters pertaining to their submission are currently before parliamentary committees for consideration.

The amendment of the Electoral Act No. 78 of 1998 is currently before the Committee on Home Affairs and the Select Committee on Security and Justice respectively.

Whereas matters pertaining to the KwaZulu-Natal Ingonayama Trust Act No. 9 of 1997 are recommended for referral to the Committee on Rural Development and Land Reform, as this committee is mandated consider matters arising out of this legislation.

Amendment of national legislation is not in line with the Constitutional Review Committee's mandate.

3.47 Submission 47 of 2020

Submitter Fungani Moyia, submits that he is opposed to SAPS having rights to search someone's house, car or person without a warrant, as he is of the view that this is against freedom of the people.

- **Recommendation on submission 47: category 1**

Because the submitter makes a statement not bearing on the review of amendment on any section of the Constitution, it is recommended that this submission be classified a category 1 submission. Denoting a submission that is not in line with the Committee's mandate of reviewing and amending sections of the Constitution.

3.4 Submission 48 of 2020

This is a duplicate and identical submission, to submission 2 of 2020, made by the same submitter Kgosiemang Esau Moloko, which was resent as is on a later date.

- **Recommendation on submission 48: category 1**

Because this is a duplicate submission it is recommended that it be eliminated from the 2020-year cycle of submissions by way of replacement with submission 2 of 2020.

3.49 Submission 49 of 2020

Submitter Iain Cochrane, submits his strong opposition to the amendment of the Constitution to allow SAPS to conduct searches of vehicles, houses and person of private individuals “with” obtaining a warrant of issued for this specific purpose.

- **Recommendation on submission 49: category 3**

It is recommended that submission 46 be classified as a category 3 submission that denotes a submission that is ready for consideration by the Committee as is.

The Johannesburg High Court made a ruling against warrantless searches and gave Parliament 2 years to appropriately amend the South African Police Service Act, so that the new provision in this Act expressly excludes “any private home and/or any person inside such a home.”

This amendment will also apply to the Criminal Procedure Act section 22, that warrantless searches may be conducted if the person concerned agrees, or if a police official is confident of getting a warrant, but that this delay would defeat the purpose of the search.

The courts continue to interpret the Constitution in a way that vindicates basic human rights. This submission is one that can be catered for in national legislation and does not necessitate an amendment of the constitution for further protection of rights already provided for.

3.50 Submission 50 of 2020

This submission was submitted by Iain Cochrane to indicate a request for correction of a grammatical error made in initial submission 49. The submitter requests the committee to read the “without” into his submission instead of “with” in relation to his opposition to the amendment of the constitution to permit warrantless searches by SAPS.

- **Recommendation on submission 50: category 1**

It is requested that the Committee take note of all submissions received by it and be made aware of duplicate submissions or submissions with errors and requests for correction.

It is important for the Committee to take note of this category of submissions for procedural accuracy and record keeping purposes.

Following the acknowledgement of these submissions, the committee may illuminate this category of submission on account of not being within the Committee's mandate.

3.51 Submission 51 of 2020

This is duplicate submission of submission 4 of 2020, by the same submitter Nhloso, making an identical submission, requesting a review and amendment of section 25 to allow for expropriation of land without compensation and requested a reversal of the 1913 and act.

- **Recommendation on submission 51: category**

Because this is a duplicate submission, it is recommended that it be eliminated from the 2020-year cycle of submissions by way of replacement with submission 4 of 2020.

3.52 Submission 52 of 2020

Submitter Astrid of Equal Education, submitted for the review and amendment of section 100 of the constitution, in order to strengthen the section and make it more effective. Section 100 provides for National Intervention for challenges pertaining to schooling matters. This submission makes a proposal for the review of section 100 in order to make

it more effective and argue that it is futile in its current form and this could not possibly have been what the constitutional drafters intended. The submitters argue that section 100(1) (b) of the Constitution has been applied with fail when attempting to apply in efforts to address challenges in the Provinces. They submit that failure in proper application of this section is due to a lack of clarity regarding the roles and responsibilities of state actors during inventions.

- **Recommendation on submission 52: category 2**

This submission is one which was submitted during the 5th parliament but the previous committee did not have sufficient time to conclude on this matter. A legal opinion was requested from Parliamentary Legal Services and favourable recommendation was made on the desirability of the proposal contained in this submission. It is therefore recommended that the Committee classify this submission as a category 2 submission, consider the legal opinion and invite the submitters to make an oral presentation at public hearing intended to clarify any clarity seeking questions the Committee may have. This will in turn capacitate the Committee with sufficient information to make a decision on the desirability of amending constitution as proposed.

3.53 Submission 53 of 2020

Submitted by Justine Ballot, who made 2 submissions, the first consisting of two parts. In the first part the submitter submits for the review of the Constitution in order to add what is proposed in listed 'sections' which are referred to as chapters in the submission as follows:-

“Chapter 1

The sovereignty of the country must be strengthened so that outside, unelected organisation like the WHO cannot override our constitution.

Chapter 2

The supremacy of the constitution must be strengthened forcing the ANC to justify (constitutionally) any action before that action is taken when possible. If not possible then within 7 days under an emergency.

Chapter 11

The right to life including the right to refuse any form of forced euthanasia.

Chapter 12

The right to self defence and the right to bear arms.

Chapter 14

The right to privacy for murderers does not apply because the victim should have more rights than the criminal. The ability to track the most serious crimes using meta data for the investigation.

Chapter 27

The government cannot force a person to be vaccinated against their will. Provision to opt out of mandatory vaccinations must be part of constitutional protections.

Government control, or scientific expert control of who can be euthinased must be illegal. This is up to the individual or the family. Automatically the default setting in no euthinasia.

Chapter 35

Must include the rights of a person who is detained under a quarantine as this can be abused. This includes employment, finance and living space protection. In other words a person detained under quarantine cannot lose their job, be kicked out the property, lose their income or vehicle, be blacklisted etc.

Chapter 38

The state must set up an organisation within the judiciary to assist people in approaching the courts to report human rights abuses, and especially during a lockdown and state of disaster.”

In the second part of this submission, the submitter makes a proposal for the review of the Constitution in order to provide for the insertions of State of Disaster Regulations, and made a proposal to the following effect:-

State of Disaster Regulations

“There need to be clear constitutional limitations for the government in a state of disaster. There needs to be civilian and judicial/parliamentary oversight over any state of disaster councils e.g. The National Coronavirus Command Council to prevent abuse of power. Suspending parliament or the judiciary during a lockdown state of disaster is unconstitutional.

During any state of disaster, civilians are also a stakeholder as the rules affect them. Transparency of any external experts used, especially financial and organisational links must be published. The military cannot be used as an enforcement tool as their powers fall outside the constitution. Their mandate during a state of disaster must be humanitarian. If needed for enforcement, state of emergency provisions apply for a limited time and location with heave oversight.”

- **Recommendation on submission 53: category 2**

It is recommended that this submission be classified under category 2 submissions that require a legal opinion from the Parliamentary Legal Services. This will support Committee considerations on the desirability of the proposals contained in this submission.

3.54 Submission 54 of 2020

Submitted again by Justin Ballot, proposing that the constitution be reviewed to contain a protective provision for officials to refuse instructions that are in violation of the constitution. A proposal for the inclusion of the right not to self-incriminate.

Also requested that the constitution include a legal way to end the state of disaster and not leave it up to the particular minister who initiated it. The submitter is of the view that this leaves the process open to abuse and is a form of a soft coup.

- **Recommendation on submission 54: category 2**

It is recommended that both submissions from Justin Ballot be combined into one submission e.g. that submission 53 and 54 both become submission 53 of 2020 and be categorised under the category 2 submissions, denoting submissions which require legal opinion to guide committee deliberations on the feasibility of constitutional review proposals contained in the submission.

3.55 Submission 55 of 2020

Submitter Justin Ballot, is a duplicate submissions which identical to submission 54 of 2020.

- **Recommendation on submission 55: category 3**

Because this is a duplicate submission it is recommended that it be eliminated from the 2020-year cycle of submissions as it is provided as initially submitted.

3.56 Submission 56 of 2020

Submitted by Mark Kosmas, who submits his objection to SAPS searches without a warrant, as the submitter is of the view that this may result in fraudulent behaviour, burglary and violence. And the submitter wants the Committee to consider his proposal when considering this matter of SAPS searches without warrants. Submitter also submitted that they are prepared to do an oral presentation to the Committee if required.

- **Recommendation on submission 56: category 1**

It is recommended that this submission be classified under category 3, which represents submissions that are ready for consideration by the Committee and do not necessitate further consultation for a determination on its desirability to possibly amend the constitution.

Over and above the provisions permitting warrantless searches under prescribed circumstances, in national legislation namely, the Criminal Procedure and SAPS Act, the practise is that the courts continue to interpret the Constitution in a way that vindicates basic human rights. Ultimately, the basic principles of criminal procedure are constitutionalised in the Bill of Rights.

3.57 Submission 57 of 2020

Submitted by Claudia Mirino, who also makes a submission against the warrantless searchers on the basis of it being an invasion of private property. The submitter requests the committee to delete laws permitting government officials right to enter private property without a search warrant.

- **Recommendation on submission 57: category 3**

It is recommended that this submission be classified under category 3, which represents submissions that are ready for consideration by the Committee and do not necessitate further consultation for a determination on its desirability to possibly amend the constitution.

Similarly as advised, national legislation namely the Criminal Procedure Act 51 of 1977 and the South African Police Service Act 68 of 1995 both authorises the Police to search and to seize articles without a warrant in certain circumstances, wherein a standard measure of reasonableness is

applied. However, the basic principles of criminal procedure are constitutionalised and are strongly protected in the Bill of Rights.

3.58 Submission 58 of 2020

Submitted by Ramola Nadio, who submits for the consideration of review of the following sections:-

Section 18: Freedom of Association read with section 22: Freedom of Trade, Occupation, or Profession. The submitter would add either in either section 18 and/or in section 22 that everyone has a right not to be compelled to join an association in order to practise their trade, occupation, or profession. The submitter is of the view that the state must not favour advocates who belong to voluntary private associations over those practitioners who practise independently as sole legal practitioners and who are since 2018 registered as members of a statutory regulatory authority.

Section 34: Access to Courts, the submitter submits that there is a Constitutional Court precedent that a private forum or tribunal does not include private arbitration. I recommend that this section be amended to include private arbitration. It is really unfair to deprive litigants in person the right to have access to court. They need to have access to the courts in the same way that those who can afford it are given that opportunity during lockdown or at any other time. The Constitution must reflect this very clearly and unequivocally. I recommend that the following words “either in person or by way of a remote audio or audio-visual hearing via a digital platform” should be added after the words “in a fair public hearing”. We need to have more courts and offering both services is the progressive way forward.

Section 34 and section 171: Court procedures and section 173: Inherent power

The submitter recommends that section 34 must be cross-referenced with sections 171 and 173 so that there must be a separate roll for the high court, Supreme Court of Appeal and the Constitutional Court. The submitter is of the view that this will result in constitutional matters being placed on a separate roll where cases can be expedited rather than having to wait in a queue. (Notwithstanding the case management procedures recently introduced in the Gauteng Division) with Road Accident Fund, Divorce and PRASA matters that clog up the roll. In creating separate court rolls for constitutional matters before the high court, there will be little need to file applications on an urgent basis. The submitter requests that Sections 171 and 173 must be clarified to identify the source of the authority to give directions in respect of court procedures to give effect to the section 34 right to access to courts.

Section 174(5): Appointment of Judicial Officers, the submitter submits that subsection 174(5) be revised to clarify that the President can appoint other appropriately qualified persons (with no judicial experience) as judges of the Constitutional Court. The submitter is of the view that this proposed amendment would allow for diversity of opinion and expertise rather than limiting the pool of nominees to traditional sources.

Section 178(1)(e) and (j): Judicial Service Commission the submitter recommends that subsections 178(1)(e) and (j) be amended. Subsection 178(1)(e) refers to “two practising advocates”. In reality, the General Council of the Bar appoints advocates by way of a nomination. Independent sole practitioners, who are not members of any voluntary association of advocates, are not represented on the JSC. The submitter is of the view that the provisions as they currently stand are in direct conflict with the principles of fairness, equity, and equal opportunities for all legal professionals and indeed the opportunity for civil society to have a say on judicial appointments.

Section 37 with reference to the COVID-19 crises and public health emergency. States of Emergency, the operative word in the section heading is “States”. This is in the plural. This section refers to a number of different states of emergency, including natural disaster or a public emergency. Given the differing views and interpretation of section 37, it is worth re-visiting in this review of the Constitution. In the circumstances, the submitter recommends that section 37 must be amended to delete the connecting word “and” between sub-subsection 37(1)(a) and 37(1)(b). In its place, I recommend the replacement by the word “or”. Secondly, there needs to be a very clear setting out of constitutional powers given to the President as head of the national executive as to his powers, roles, and functions during an emergency.

In this regard, the submitter also wish to recommend that section 42(6) also be amended to provide clearly for members of Parliament to be able to sit in person separately in different provinces, as well as to meet via a remote digital platform in line with the Fourth Industrial Revolution.

Section 27(1)(b) on healthcare, food, water, and social security, the submitter proposes that Section 27(1)(b) must be amended to add a provision that the state must ensure within a year that pit latrines are eradicated everywhere in the Republic. The submitter that the inequalities in the country have to be resolved urgently. Parliament must review the Constitution as well as by way of clear directions to organs of state to implement policies in this regard.

- **Recommendation on submission 58: category 2**

It is recommended that this submission be classified under category 2 submissions that require a legal opinion from the Parliamentary Legal Services. This will support Committee deliberations on the desirability of the proposals contained in this submission.

4. Table of submissions

Herein below follows are table illustrating the numerical breakdown of submissions received by the Committee during the 2020-year cycle:-

	CATEGORY 1	CATEGORY2	CATEGORY 3
SUBMISSIONS	33	9	12
CONSIDERED		1	
DUPLICATE	2		1
TOTAL SUBMISSIONS:	54 (excluding duplicate and considered submissions)		

The Committee received 58 emailed submissions, but because of 3 duplicate submissions and 1 considered submission, has 54 submissions recommended for consideration for the 2020 year-cycle of these:-

- 33 submissions are recommended for categorisation under category 1 submissions.
 - 2 of these 33 submissions are duplicate submissions, e.g. submission 48 of 2020 is an identical submission, to submission 2 of 2020, made by the same submitter. Submission 50 of 2020 retracts submission 49 of 2020 based on a request by the submitters because of a grammatical error.
- 10 submissions are recommended for categorisation under category 2 submissions that denotes submissions that may require a parliamentary legal opinion to support committee deliberations.

- Of these 10 submissions, 1 submission has already been considered by the Committee, namely submission 52 of 2020 by Equal Education, on section 100;
- 12 submissions are recommended for categorisation under category 3 submissions, which denotes submissions that are ready for consideration by the Committee. 1 of these 12 submissions has been retracted on account of being a duplicate submission, namely submission 51 of 2020 is identical to submission 4 of 2020, and therefore counts as 1 submission.

5. Conclusion

The Committee is advised to take note of all submissions received by it, consider its satisfaction with the recommended categorisation in order to accordingly process all of the 2020-year cycle submissions. The 6th Parliament Committee took a decision to first consider all legacy submissions, as per the recommendations of the 5th Parliament's Committee Legacy Report, prior to its consideration of the current Parliament's 2020-year cycle submissions.

The total number of factual submissions before the Committee amount 54 submissions. Although the Committee received 58 submissions for the 2020-year cycle. This number takes into account 3 duplicate submissions, namely submission 48; submission 50; submission 51 and 1 legacy submission stemming from the 5th Parliament, namely submission 52 of 2020 by Equal Education. The Committee considered submission 52 of 2020, through presentation by its submitters on 11 November 2020 with a briefing by the parliamentary legal services.

What remains is for the Committee to deliberate and decide on the desirability of the proposed amendments to the Constitution as contained in all the submissions. In its processes, the Committee may possibly take into account parliamentary legal advice, relevant stakeholder consultation and embrace public hearings with submitters where necessary. These are avenues suggested to assist the Committee with arriving at its decision on the desirability of each submission in possibly amending the Constitution.

Joint Rules governing this Committee's Review process only go as far as the Committee making its recommendations to both Houses of Parliament on the desirability of submissions to amend the Constitution. Hereafter, Parliament makes a resolution on the referral and allocation of favourable submissions, which pass this Committee's desirability test. Moreover, it is within Parliament's digression to approve this Committee's recommendations for referral and allocation of favourable submissions to the appropriate committee that is empowered by its Rules to promulgate a draft Constitutional Amendment Bill.
