



The Joint Constitutional Review Committee Workshop Overview

21 August 2020

1. Mandate of the Constitutional Review Committee

The Joint Constitutional Review Committee (JCRC) is established in terms of Section 45(1) (c) of the Constitution, 1996 (the Constitution) which provides that Parliament must establish a joint committee of Assembly and Council members to review the Constitution at least annually.

In giving effect to this provision, Rule 102 (2) of the Joint Rules of Parliament requires the JCRC to annually, before the first day of May, by notice in the public media, invite the public, Assembly or Council Committees, joint committees, members and any organ of state to submit within 30 days, written representations on any constitutional matter.

The Committee's review process entails the tabling of all submissions received by the Committee by categorising them into three groups, namely:

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

In practice, the Committee carries out its work of reviewing the Constitution by engaging in this process, to arrive at a conclusive determination on the desirability of submissions proposing amendment of the Constitution. In doing so, public hearings are held with submitters of category 2 submissions for clarification and enhancement of Committee deliberations. This is done prior to the Committee's pronouncement on the desirability of each submission received.

The Committee then produces a report of its review process with recommendations of whether or not it is desirable for the Constitution to be amended, based on its consideration of the proposals contained in the submissions. The Committee report is thereafter tabled in both Houses for consideration. Following which, Submitters are advised of the recommendations made by the Committee and the resolutions taken by Parliament on their submissions.

2. Overview on the work of the 5th Parliament

Herein below follows, an overview that highlights the work carried out by the previous term's Committee, taken from its Legacy Report:

- In 2016, the JCRC of the 5th Parliamentary term adopted a report recommending that South African Sign Language be given official language status in South Africa. The submission by the Deaf South Africa Organisation, proposed a review of the Constitution so that South African Sign Language forms part of Section 6(1) of the Constitution, as opposed to being located in Section 6 (5)(a)(iii), as a language which requires development.
- In 2017, the Committee adopted its Strategic Plan and annual performance plan for the 2017-2018 year. The Committee processed many legacy submissions that dated back to previous parliaments. The submissions considered in this year had accumulated and not lapsed due to the extensive work done in the form of public hearings and consultations with specialists on various matters. However, these legacy submissions had rolled over to other years due to a lack of meeting time available for the Committee to conclude matters.
- In 2018, The National Assembly (NA) and the Council mandated the Committee to review and amend section 25 of the Constitution to make it possible for the state to expropriate land in the public interest without compensation. Following an extensive consultation process, on 4 & 5 December 2018, the Assembly and the Council respectively, recommended that Parliament should amend section 25 of the Constitution, urgently establish a mechanism to effect the necessary amendment to the relevant part of section 25 of the Constitution. Thereafter table, process and pass a Constitutional Amendment Bill before the end of the Fifth Parliament, as well as establish an ad hoc in terms of Rule 253 to initiate ad introduce legislation amending section 25 of the Constitution.
- In 2019, the Committee amalgamated its legacy report, reflecting recommendations to the 6th Parliament Committee to focus on submissions pertaining to languages and the referral of submissions that propose amendments which can be provided for in national legislation to the relevant Portfolio Committees.

3. Matters recommended for follow up by 5th Parliament

The Legacy Report of the previous term Committee notes and recommends the following matters for consideration by the 6th Parliament's Joint Committee on Constitutional Review, on the basis of work already covered during previous parliamentary terms on these matters.

It is important for the 6th Parliamentary Committee to note that upon conclusion on the official language status of South African Sign Language, many other indigenous groups enquired why their matters were not concluded in light of the length of time and resources spent on these matters.

It is also important for the Committee to consider prioritising conclusion on the Equal Education matter, which as considered by the previous Committee. Parliamentary legal advice was heard on this matter and Equal Education was invited to public hearings held in Parliament by the Committee. Equal Education presented their proposal and were able to answer clarity seeking questions to inform and enrich Committee deliberations. The Committee however ran out of time as Parliament rose for the end of the 5th Parliament. However, having heard the legal opinion on this matter the Committee recommended that the 6th Parliament Committee consider and conclude the Equal Education proposal as a legacy submission.

Herein below follows, a brief overview on the subject matter of the legacy submissions recommended for consideration and conclusion by the previous term Committee:-

3.1 Language Submissions

Consideration and finalisation of all legacy submissions pertaining to official language status, by holding a follow up meeting with stakeholders namely:-

- The Department of Arts and Culture;
- The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities (CRL); and
- The Pan South African Language Board

Following a meeting held 17 February 2017, the above-mentioned stakeholders were requested to return to Parliament and brief the Committee with a collaborative road map detailing the conditions that have been created for the development and use of languages. The following languages form part of the legacy submissions recommended for consideration and conclusion by the 5th Parliament Committee namely:-

- Whether Northern Sotho should be reflected as the official language as opposed to Pedi;
- Consider the development of the Xhosa language for Constitutional recognition as an official language ; and
- Consideration of the development of the Khoisan languages, for recognition as official languages.

It is recommended that the 6th Parliament Committee consider a follow up meeting with the relevant stakeholders on steps taken in terms of their competencies. The above-mentioned stakeholder are mandated to make pronouncements on and develop languages to eventually obtain official language status, in line with proposals made by submitters in previous parliamentary terms. However, the Committee of the 5th Parliament dissolved prior to finalization of this long standing matter.

3.2 Equal Education Review and amendment section 100 of the Constitution

- Equal Education Law Centre, a non-profit organisation with the objective of promoting quality and equality in the education system in South Africa, made a submission proposing that the Committee review amend section 100 of the Constitution.
- The submitters made compelling arguments for the strengthening of section 100 that provides for National Intervention for challenges pertaining to schooling matters. Their submission makes a proposal for the review of section 100 in order to make it more effective and argue that in its current form the section is futile.
- The 5th Parliament's committee sought a parliamentary legal opinion on this submission and following its consideration, made a recommendation in its report that the 6th Parliament Committee reconsider this submission as it was satisfied that there was

justification in law in support of amending the section. However, the previous Committee was unable to conclude on this matter timeously.

4. Conclusion

It is therefore requested that the first programme of the 6th Parliament's Joint Committee on Constitutional Review be crafted with a view of the above mentioned proposed method of processing submissions. It can be noted that the Committee is not bound by the work which the previous term's parliamentary committees were unable to complete, but ought to be aware of the these matters as they have and will most likely continue to arise until they are suitably considered.
