



Joint Committee on Constitutional Review
Overview on Language Submissions

6 October 2020

1. Introduction

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.¹

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. After the closing date for the representation, the Committee must identify those constitutional matters it intends to review, taking into account any representations received in response to the invitation.²

The Committee has received 58 submissions for the 2020 year-cycle in response to its call for public submissions by the closing date of end of May this year; however, this paper is prepared with a focus on submissions received by the Committee in relation to official language recognition in the Constitution.

2. Constitutional provisions on Language

Languages form part of Chapter 1, which comprises of the Founding Provisions of the Constitution and Section 6 details the subsections pertaining to languages recognised and used by communities in South Africa. The section on language in the Constitution is set out as follows:

2.1 Languages

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

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

² The Joint Rules of Parliament, 6th Edition, June 2011.

(2) Recognising the historically diminished use and status of the indigenous languages of our people, the state must take practical and positive measures to elevate the status and advance the use of these languages.

(3) (a) The national government and provincial governments may use any particular official languages for the purposes of government, taking into account usage, practicality, expense, regional circumstances and the balance of the needs and preferences of the population as a whole or in the province concerned; but the national government and each provincial government must use at least two official languages.

(b) Municipalities must take into account the language usage and preferences of their residents.

(4) The national government and provincial governments, by legislative and other measures, must regulate and monitor their use of official languages. Without detracting from the provisions of subsection (2), all official languages must enjoy parity of esteem and must be treated equitably.

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

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

(i) all official languages;

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

(iii) sign language; and

(b) promote and ensure respect for—

(i) all languages commonly used by communities in South Africa, including German, Greek, Gujarati, Hindi, Portuguese, Tamil, Telegu and Urdu; and

(ii) Arabic, Hebrew, Sanskrit and other languages used for religious purposes in South Africa.”³

It is important to note that the JCRC only makes a pronouncement on the desirability of proposed amendments to the Constitution. In terms of the Joint Rules governing the processes of the Committee, it is only empowered to consider prospective amendments to the Constitution by undergoing an initial review process that acts as a feasibility assessment. This process assess whether or not it is favourable to ultimately amend the Constitution.

Worthy to note is that a Bill amending the Constitution must be passed by the National Assembly, with a supporting vote of at least two thirds of its members, and by the National Council of Provinces, with a supporting vote of at least six provinces, if the amendment relates to a matter that affects the Council.⁴

³ Section 6, the Constitution of the Republic of South Africa, 1996.

⁴ Section 74(3), the Constitution of the Republic of South Africa, 1996.

3. Background on language submissions

During the 5th Parliament, on 17 February 2017, stakeholders briefed the JCRC, 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 (PanSALB). The briefing was on the status of progress in as far as the development of other indigenous languages that made submissions to the Committee for official status recognition namely:

- South African Sign Language
- Xhosa and
- Khoi, Nama and San languages

The Committee responded to this briefing by requesting that the stakeholders work together and return to the Committee with a collaborative road map detailing the conditions that have been created for the development and use of indigenous languages that have made submissions to the Committee requesting official language recognition under section 6(1) of the Constitution. However, the 5th Parliament's JCRC dissolved before finalisation of some of these matters, namely Xhosa, Khoi, Nama and San languages.

Herein below follows, a description of submissions considered by the previous term's Committee requesting a review and amendment of the Constitution in order to gain official languages status recognition.

4. South African Sign Language

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.

A recommendation was made to both Houses of Parliament on the favourable desirability of South African Sign Language gaining official language status and Parliament passed a resolution to this effect, and this resolution concluded the matter in as far as the mandate of the JCRC is concerned.

It is important for the 6th Parliamentary Committee to note that it is now within the prerogative of the Table of both Houses to allocated this matter to the appropriate Committee for processing. The necessary Constitutional Amendment Bill will be promulgated, in terms of the relevant committee's rules, to give effect to the identification of South African Sign Language as the 12th official language under section 6(1) of Constitution.

5. Khilovedu submission 32 of 2020

During this year's annual call for public submissions, the Committee received a submission 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, Balovedu and Bulovedu 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.

The submitter submits that the hurdle commonly cited by PanSALB as the reason for the slowed pace in the process of recognising the Khilovedu language was the lack of an existing written orthography that could be used to develop the language further. To address this hurdle the submitter included a published comprehensive Khilovedu orthography. This orthography and dictionary produced in 2018 is currently being developed as an English-Khilovedu picture dictionary aimed at Grade R-3 learners.

This newly published dictionary together with the available archived resources dating back to 1930s, present fertile grounds for recovering and formalising the language in favour of Khilovedu speakers. The submitter would like an opportunity to address the Committee on this submission to further elaborate on this matter in order to answer clarity seeking questions.

5.1 Recommendation on submission 32 of 2020

It is recommended that this submission be classified with the category of submissions requiring a legal opinion from the Parliamentary Legal Services. This will support Committee considerations when deliberating on the desirability of the proposals contained in this submission, to amend the Constitution.

In addition, the Committee ought to consider consulting PanSALB as the organisation established to promote multilingualism, to develop official languages and to protect language rights in South Africa. In addition to this, the advice of a Parliamentary legal opinion, the presentation of this submission by its submitters to the Committee and any other relevant stakeholders, will sufficiently capacitate the Committee with information to thoroughly deliberate on the desirability of the Khilovedu language being cited as an official language under section 6(1) of the Constitution.

6. Nama, Khoi, San and Swahili languages

The Committee has not received any submissions in relation to the recognition of the Nama, Khoi, San and Swahili languages, as official South African languages. It is advisable for the Committee to consult the relevant institutions established for the development and promotion of indigenous languages to ascertain what progress has been made by bodies mandated with the objective of developing languages.

This will in turn provide the Committee with justified grounds to consider all representations received, concerning matters identified by the Committee in terms of those constitutional matters it has identified and intends to review in terms of its Rules.

7. Conclusion

It is recommended that the 6th Parliament Committee consider all matters received by it, in terms of its applicable Joint Rules, consider consultations with submitters in the form of public hearings and engage in any necessary follow up meetings with relevant stakeholders on steps taken in terms of their competencies.

This will in turn ensure that the Committee is acting in terms of its mandate by considering all representations concerning matters received and identified by the Committee.

Consultations with stakeholders mandated to make pronouncements on the development of languages, to eventually obtain official language status, is a crucial and balanced approach intended to support and inform committee deliberations, emanating from submissions made to the Committee.
