

REPUBLIC OF SOUTH AFRICA

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**PORTFOLIO COMMITTEE AMENDMENTS  
TO**

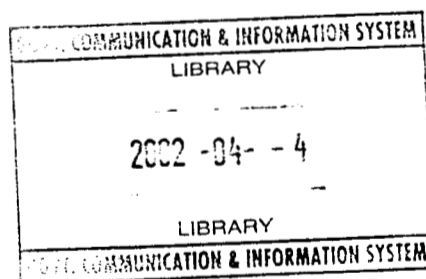
**COMMISSION FOR THE  
PROMOTION AND  
PROTECTION OF THE RIGHTS  
OF CULTURAL, RELIGIOUS  
AND LINGUISTIC  
COMMUNITIES BILL**

[B 62—2001]

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*(As agreed to by the Portfolio Committee on Provincial and Local Government  
(National Assembly))*

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[B 62A—2001]

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## AMENDMENTS AGREED TO

### COMMISSION FOR THE PROMOTION AND PROTECTION OF THE RIGHTS OF CULTURAL, RELIGIOUS AND LINGUISTIC COMMUNITIES BILL [B 62—2001]

#### LONG TITLE

Long Title rejected.

#### NEW LONG TITLE

1. That the following be a new Long Title:

**In giving effect to the provisions of the Constitution—**

- \* to provide for the composition of the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities;
- \* to provide for additional functions of the Commission;
- \* to provide for the convening of a national consultative conference;
- \* to provide for the establishment and recognition of community councils; and
- \* to provide for matters connected therewith.

#### PREAMBLE

Preamble rejected.

#### NEW PREAMBLE

1. That the following be a new Preamble:

#### PREAMBLE

**WHEREAS** the South African nation consists of a diversity of cultural, religious and linguistic communities;

**AND WHEREAS** past policies have bequeathed a legacy of division and inequality between these communities;

**AND WHEREAS** the Constitution seeks to—

- \* heal these divisions of the past;
- \* establish a non-racial and non-sexist society based on democratic values, social justice and fundamental human rights;
- \* promote equality;
- \* promote respect for, and the protection of, the rights of cultural, religious and linguistic communities; and
- \* promote unity in our diversity;

**AND WHEREAS** the Constitution has created a range of institutional mechanisms to ensure the stability of the democratic order, including a Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities;

**AND WHEREAS** the Commission in fulfilling its constitutional task should play a key role in assisting with the building of a truly united South African nation bound by a common loyalty to our country and all our people:

CLAUSE 1

1. On page 2, after line 7, to insert:

“community council” means a voluntary association of persons or community organisations based on the principle of freedom of association and which represents a cultural, religious or linguistic community and includes a cultural council envisaged by section 185(1)(c) of the Constitution:

2. On page 2, in line 8, to omit “Constitutional institution” and to substitute “constitutional institution”.

HEADING

1. On page 3, in line 10, to omit “*PART 2: STATUS AND OBJECTS OF COMMISSION*” and to substitute:

***PART 2: STATUS, OBJECTS, POWERS AND FUNCTIONS OF COMMISSION***

CLAUSE 3

Clause rejected.

NEW CLAUSE

1. That the following be a new Clause:

**Status of Commission**

3. The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities referred to in section 181(1)(c) of the Constitution—

- (a) is independent;
- (b) is a juristic person; and
- (c) must be impartial and must exercise its powers and perform its functions without fear, favour or prejudice.

CLAUSE 4

Clause rejected.

NEW CLAUSE

1. That the following be a new Clause:

**Objects of Commission**

4. The objects of the Commission are—

- (a) to promote respect for and further the protection of the rights of cultural, religious and linguistic communities;
- (b) to promote and develop peace, friendship, humanity, tolerance and national unity among and within cultural, religious and linguistic communities, on the basis of equality, non-discrimination and free association;
- (c) to foster mutual respect among cultural, religious and linguistic communities;
- (d) to promote the right of communities to develop their historically diminished heritage; and
- (e) to recommend the establishment or recognition of community councils in accordance with section 36 or 37.

#### NEW CLAUSES

1. That the following be new Clauses:

##### **Powers and functions of Commission**

5. (1) The Commission may do all that is necessary or expedient to achieve its objects referred to in section 4, including to—

- (a) conduct information and education programmes to promote public understanding of the objects, role and activities of the Commission;
- (b) conduct programmes to promote respect for and further the protection of the rights of cultural, religious and linguistic communities;
- (c) assist in the development of strategies that facilitate the full and active participation of cultural, religious and linguistic communities in nation-building in South Africa;
- (d) promote awareness among the youth of South Africa of the diversity of cultural, religious and linguistic communities and their rights;
- (e) monitor, investigate and research any issue concerning the rights of cultural, religious and linguistic communities;
- (f) educate, lobby, advise and report on any issue concerning the rights of cultural, religious and linguistic communities;
- (g) facilitate the resolution of friction between and within cultural, religious and linguistic communities or between any such community and an organ of state where the cultural, religious or linguistic rights of a community are affected;
- (h) receive and deal with requests related to the rights of cultural, religious and linguistic communities;
- (i) make recommendations to the appropriate organ of state regarding legislation that impacts, or may impact, on the rights of cultural, religious and linguistic communities;
- (j) establish and maintain databases of cultural, religious and linguistic community organisations and institutions and experts on these communities; and
- (k) bring any relevant matter to the attention of the appropriate authority or organ of state, and, where appropriate, make recommendations to such authority or organ of state in dealing with such a matter.

(2) The Commission may, in order to perform its functions properly—

- (a) determine its own staff establishment and the terms and conditions of employment for its staff within a policy framework determined by the Minister;
- (b) appoint employees and seconded personnel to posts on its staff establishment;
- (c) obtain the services of any person by agreement or appropriate arrangement, including the services of any national or provin-

- cial department or functionary or any institution, to perform any specific task or function;
- (d) acquire or dispose of any right in or to property, but ownership in immovable property may be acquired or disposed of only with the consent of the Minister;
  - (e) open and operate its own bank accounts, subject to the Public Finance Management Act, 1999 (Act No. 1 of 1999);
  - (f) insure itself against any loss, damage, risk or liability;
  - (g) perform legal acts, or institute or defend any legal action in its own name;
  - (h) engage in any lawful activity, whether alone or together with any other organisation in the Republic or elsewhere, aimed at promoting the objects of the Commission;
  - (i) interact and co-operate with foreign institutions performing similar functions to those of the Commission; and
  - (j) do anything that is incidental to the performance of its functions.

**Cooperation between Commission and other constitutional institutions and organs of state**

6. (1) The Commission may—
- (a) make appropriate arrangements with another constitutional institution or an organ of state to assist the Commission in the performance of any of its functions in so far as such institution or organ has the power to assist the Commission; and
  - (b) delegate to a constitutional institution or organ of state with which it has made arrangements any of its powers that may be necessary for the rendering of the agreed assistance.
- (2) The Commission must co-operate with other constitutional institutions and organs of state where the functions of the Commission overlap with those of such other constitutional institutions or organs of state.
- (3) The Commission may in terms of section 185(3) of the Constitution report any matter that falls within its functions and powers to the South African Human Rights Commission for investigation.

**Investigations by Commission or investigating committee**

7. (1) The Commission may conduct an investigation in terms of section 5(1)(e) itself or may designate one or more Commission members or other persons as an investigating committee to conduct the investigation on its behalf.
- (2) For purposes of an investigation, the Commission or an investigating committee may—
- (a) by notice in writing summon a person to appear before the Commission or the committee, as the case may be—
    - (i) to give evidence; or
    - (ii) to produce a document available to that person and specified in the summons;
  - (b) call any person present at a meeting, whether summoned or not—
    - (i) to give evidence before the Commission or committee, as the case may be; or
    - (ii) to produce a document in that person's custody at the meeting;
  - (c) administer an oath or solemn affirmation to a person contemplated in paragraph (b);
  - (d) question any person contemplated in paragraph (c) or have such a person questioned by a person designated by the Commission or committee, as the case may be; and

(e) retain for a reasonable period a document produced in terms of paragraph (b)(ii).

(3) If an investigating committee has been appointed to conduct an investigation on behalf of the Commission, the committee must report and make recommendations to the Commission in respect of the investigation at the completion of the investigation.

#### **Reporting by Commission**

8. (a) The Commission must report annually to the National Assembly on its activities and the performance of its functions.

(b) Copies of the report referred to in paragraph (a) must also be distributed to persons and institutions referred to in section 26(1).

#### **CLAUSE 5**

1. On page 3, in line 35, to omit "8" and to substitute "12".
2. On page 3, in line 37, to omit "7" and to substitute "11".
3. On page 3, from line 39, to omit paragraph (a) and to substitute:
  - (a) must determine the number of members to be appointed to the Commission in terms of subsection (1)(b), but may, when appointing members for a new term of the Commission, increase the number so determined after the names of the selected persons have been submitted in terms of section 11(3)(d); and
4. On page 3, from line 44, to omit subsection (3) and to substitute:
  - (3) The Commission must be composed in such a way that it—
    - (a) is at least broadly representative of the main cultural, religious and linguistic communities in South Africa;
    - (b) broadly reflects the gender composition of South Africa; and
    - (c) collectively possesses sufficient knowledge and experience concerning issues relevant to—
      - (i) the promotion and protection of the rights of cultural, religious and linguistic communities; and
      - (ii) nation-building.

#### **CLAUSE 6**

1. On page 4, in line 5, to omit "4(1)" and to substitute "4".
2. On page 4, from line 6, to omit subsection (2) and to substitute:
  - (2) The following persons are disqualified from becoming or remaining a member of the Commission:
    - (a) A person who on any of the grounds set out in section 47(1)(c), (d) or (e) of the Constitution is not eligible to be a member of the National Assembly;
    - (b) a person who fails to resign as provided for in section 16(3)(c);
    - (c) a person who has been removed from office in terms of section 17; or
    - (d) a person who has been convicted of a crime or an offence in respect of which a court has determined that hatred based on race, ethnicity, gender or religion played a role.

## CLAUSE 7

Clause rejected.

## NEW CLAUSE

1. That the following be a new Clause:

**Procedure for appointment of members**

11. (1) Whenever it is necessary to appoint the members of the Commission contemplated in section 9(1)(b), the Minister must—

- (a) through advertisements in the media, nationally and in each of the provinces, and, where necessary, by other means, invite organisations or individuals within the cultural, religious and linguistic communities of South Africa to nominate persons complying with section 10 for appointment to the Commission;
- (b) take further steps to invite organisations and individuals within the cultural, religious and linguistic communities of South Africa to nominate persons complying with section 10 for appointment to the Commission if the initial nominations as a result of advertisements or invitations referred to in paragraph (a) would not meet the requirements of section 9(3);
- (c) compile a list of the names of persons nominated in respect of each of the various cultural, religious and linguistic communities, setting out the prescribed particulars of each individual nominee; and
- (d) appoint a selection panel consisting of persons who command public respect for their fair-mindedness, wisdom and understanding of issues concerning South African cultural, religious and linguistic communities.

(2) Any nomination made pursuant to an advertisement in terms of subsection (1)(a) or an invitation in terms of subsection (1)(b) must be supported by—

- (a) the personal details of the nominee;
- (b) particulars of the nominee's involvement in cultural, religious and linguistic affairs, including a list of the cultural, religious and linguistic organisations of which that nominee is a member, an office-bearer or in which that nominee is an active participant;
- (c) particulars of the nominee's knowledge and experience concerning issues relevant to—
  - (i) the promotion and protection of the rights of cultural, religious and linguistic communities; and
  - (ii) nation-building; and
- (d) any other information that may be prescribed.

(3) The selection panel must—

- (a) select persons who qualify to be members of the Commission and who would be most suited to serve on the Commission;
- (b) select persons whose appointment would meet the requirements of section 9(3);
- (c) select from the list compiled in terms of subsection (1)(c) at least one and a half times the number of members to be appointed as a result of—
  - (i) a new term of the Commission;
  - (ii) an increase in the number of members contemplated in section 9(1)(b); or
  - (iii) a vacancy; and
- (d) submit the names of the selected persons to the President together with reasons why they were selected.

- (4) The President must—
- (a) appoint the members of the Commission from the names of the selected persons submitted in terms of subsection (3)(d); and
  - (b) comply with section 9(3) when making the appointments.

CLAUSE 8

1. On page 4, in line 48, to omit “6” and to substitute “10”.
2. On page 4, from line 53, to omit subsection (4).

CLAUSE 9

1. On page 5, in line 6, to omit “5(1)(b)” and to substitute “9(1)(b)”.

CLAUSE 10

1. On page 5, from line 14, to omit subsection (2) and to substitute:
  - (2) The members of the Commission are appointed in a part-time capacity, but the Chairperson, Deputy Chairperson and not more than three other members may be appointed in a full-time capacity.

CLAUSE 12

1. On page 5, in line 39, to omit “6” and to substitute “10”.
2. On page 5, in line 41, to omit “13” and to substitute “17”.
3. On page 5, after line 43, to add:
  - (3) A member is regarded as having resigned if that member—
    - (a) accepts nomination for the National Assembly, the National Council of Provinces, a provincial legislature or a municipal council;
    - (b) is appointed as an office bearer of a political party; or
    - (c) is an office bearer of a political party, a member of the National Assembly, a permanent delegate to the National Council of Provinces, a member of a provincial legislature or a member of a municipal council and fails to resign from such office within 30 days of having been appointed as a member of the Commission.

CLAUSE 13

1. On page 6, in line 4, to omit “Assembly” and to substitute “National Assembly”.

CLAUSE 14

1. On page 6, in line 8, to omit “8” and to substitute “12”.



2. On page 6, in line 9, to omit "5(1)(b)" and to substitute "9(1)(b)".
3. On page 6, in line 10, to omit "7" and to substitute "11".

CLAUSE 15

1. On page 6, from line 15, to omit subsection (1) and to substitute:

(1) The Chairperson of the Commission decides when and where the Commission meets, but must convene a meeting within 30 days after the receipt of a request supported by a majority of the members to convene a meeting of the Commission.

CLAUSE 17

Clause rejected.

NEW CLAUSE

1. That the following be a new Clause:

**Decisions**

**21.** (a) The Commission must take decisions in a consensus-seeking manner that gives effect to the principle of unity in diversity as reflected in the Constitution.

(b) If the Commission fails to reach consensus on a question before the Commission, a decision on the question can only validly be taken by a supporting vote of at least the majority of the total number of the members of the Commission.

CLAUSE 18

1. On page 6, from line 31, to omit paragraph (a) and to substitute:

(a) establish one or more committees consisting of members only or members and staff or other persons, to assist the Commission in the performance of its functions; and

CLAUSE 20

Clause rejected.

PART 5

Part rejected.

CLAUSE 24

Clause rejected.

## NEW CLAUSE

1. That the following be a new Clause:

**Convening**

**24.** (1) (a) The Commission must convene two national consultative conferences during every term of the Commission, the first of which must take place within the first 12 months of a new term of the Commission.

(b) The Minister must be consulted if the Commission needs to convene more than two national consultative conferences during a particular term of the Commission.

(2) The Commission may generate funding for a national consultative conference in addition to money appropriated for that purpose by Parliament.

## CLAUSE 25

Clause rejected.

## NEW CLAUSE

1. That the following be a new Clause:

**Purpose**

**25.** The purpose of a national consultative conference is to provide a forum for—

- (a) the consideration of—
  - (i) a report by the Commission on its activities, accomplishments and challenges; and
  - (ii) any recommendations of the Commission;
- (b) the evaluation of progress in South Africa with regard to—
  - (i) the promotion of respect for and the furthering of the protection of the rights of cultural, religious and linguistic communities; and
  - (ii) the furthering of peace, friendship, humanity, tolerance and national unity among and within cultural, religious and linguistic communities, on the basis of equality, non-discrimination and free association;
- (c) the formulation of requests and recommendations to the Commission concerning matters mentioned in paragraph (b)(i) or (ii);
- (d) the discussion of resolutions before the conference concerning requests to, and priorities for, the Commission; and
- (e) promoting appreciation for cultural, religious and linguistic diversity.

## CLAUSE 26

Clause rejected.

## NEW CLAUSE

1. That the following be a new Clause:

### Composition

26. (1) A national consultative conference may comprise such persons as the Commission may invite, but must include—

- (a) members of the Commission;
- (b) delegates from cultural, religious and linguistic communities;
- (c) delegates from every community council recognised in terms of section 37;
- (d) delegates from the National House of Traditional Leaders, the South African Human Rights Commission, the Pan South African Language Board, the Commission on Gender Equality and the National Youth Commission;
- (e) delegates from the national government designated by the Minister;
- (f) delegates from each provincial government designated by the Premier of the province concerned; and
- (g) delegates designated by organised local government.

(2) The Commission must—

- (a) through advertisements in the media, nationally and in each of the provinces, invite cultural, religious and linguistic communities to nominate delegates representing those communities to a national conference;
- (b) take further steps to invite organisations and individuals in order to ensure broad representation in respect of delegates referred to in subsection (1)(b).

(3) The Commission, after consultation with the Minister, may—

- (a) determine the maximum number of delegates to a national consultative conference; and
- (b) determine the maximum number of delegates that may be designated or invited in terms of subsection (1)(d), (e), (f) and (g).

(4) The number of delegates designated or invited in terms of subsection (1)(d), (e), (f) and (g) may not exceed one-third of the maximum number of delegates to a national consultative conference.

(5) Any institution or body sending delegates to a conference must give due consideration to gender balance in the selection of delegates.

### CLAUSE 30

1. On page 9, from line 40, to omit subsection (2) and to substitute:

(2) The chief executive officer holds office—

- (a) for an agreed term not exceeding five years, but which may be renewed;
- (b) subject to the terms and conditions applicable generally to employees of the Commission; and
- (c) on the terms and conditions set out in a written employment contract which must include terms and conditions setting performance standards.

### CLAUSE 34

1. On page 10, after line 35, to insert:

(3) The Commission may seek to acquire gifts, donations or sponsorships to assist the Commission with the achievement of its objects, but such gifts, donations or sponsorships must be dealt with in accordance with the Public Finance Management Act, 1999 (Act No. 1 of 1999), and any regulations and instructions made and issued under that Act.

2. On page 10, in line 37, to omit “(Act No. 1 of 1999)”.

PART 8

Part rejected.

NEW PART

1. That the following be a new Part:

**PART 7: COMMUNITY COUNCILS**

**Recommendation of establishment of community councils**

**36.** (1) Persons belonging to a cultural, religious or linguistic community may form, join and maintain cultural, religious and linguistic associations and other organs of civil society as envisaged in section 31 of the Constitution.

(2) The Commission may recommend to a community, which is not organised, to initiate and establish a community council at a provincial or national level if the establishment of such a council would be conducive to—

- (a) the promotion and protection of the rights of such a community; and
- (b) the promotion and development of peace, friendship, humanity, tolerance and national unity among and within the different communities in South Africa.

**Recognition of community councils**

**37.** (1) A community council envisaged in section 36(1) or (2) may, in the prescribed manner, apply to the Commission for recognition.

(2) The Commission may in writing recognise a community council for purposes of participation in a national consultative conference and section 38.

(3) A community council recognised in terms of subsection (2) may apply to the Commission or any other organ of state for financial assistance.

**Aims of community councils**

**38.** (1) The aims of a community council recognised in terms of section 37 should be to—

- (a) preserve, promote and develop the culture, religion or language of the community for which it is recognised; or
- (b) advise the Commission on, and assist the Commission in, matters concerning the achievement of the objects of the Commission.

CLAUSE 38

1. On page 11, in line 16, to omit “performing a duty or exercising a power” and to substitute:

exercising a power or performing a duty

CLAUSE 40

1. On page 11, in line 33, to omit "23(2)(a)" and to substitute "7(2)(a)".
2. On page 11, in line 37, to omit "23(2)(b)" and to substitute "7(2)(b)".