**MINUTES OF**

**THE CONSTITUTIONAL REVIEW COMMITTEE**

**HELD ON** Thursday 22 August **IN** Student Governance Boardroom **AT** 17h00

**IN ATTENDANCE**

KEITUMETSE LEBESA (SPEAKER OF STUDENT PARLIAMENT)

NHLAKANIPHO SIYANDA MKHIZE (DEPUTY SPEAKER INTERNAL)

TSHENOLO NTWAGAE (SPC COMMUNICATIONS OFFICER)

ANTHONY MARTIN ANDREWS (2ND YEAR LLB STUDENT)

NTINA MTHOMBENI (NON-SPC MEMBER)

OMOLEMO MOTALE (NON-SPC MEMBER)

THULANI HLATSHWAYO (MEMBER OF STUDENT GOVERNANCE)

**ABSENT**

THATEGO SELAHLE (DEPUTY SPEAKER EXTERNAL)

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**AGENDA**

1. Mandate of the Constitutional Review
2. Processes the Committee will be adopting
3. Amendment of the Student Parliament Constitution
4. Proposed dates and time for next meeting

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1. **OPENING**

The speaker opens the meeting at 17:08.

The speaker announces the absence of the deputy speaker external who has provided a reason for her absence. Her excuse is due to personal reasons and she will be unavailable for the whole week.

1. **ATTENDENCE**

All attendees were present with the exception of the Secretary General, Ms. Thatego Selahle, who, prior to the meeting, submitted an excuse for her absence. In Ms. Selahle’s place is Ms. Tshenolo Ntwagae.

1. **AGENDA POINTS**
2. Mandate of the Constitutional Review

The Speaker brings forward the fact that the mandate of the Constitutional Review committee is not stipulated. Due to this, he sees it necessary that the committee have a mandate and a procedure that they establish for themselves to function on going on forth.

Speaker points out that before this meeting of the committee, he had emailed all members a mandate that he proposes may be suitable for the functioning of the Constitutional Review Committee.

Speaker reads mandate as proposed as in his emails:

“The constitutional review committee will be a committee formed in terms of Addendum J2. It will mainly be tasked with the amendment of the Student Parliament (SP) Constitution, additionally, after the amendment process, a member of the review committee will then be mandated to stand before the house and introduce the amendments”

Speaker opens the floor to gather suggestions regarding establishing a mandate. Additionally, to open discussion to bring forth suggestions as regarding processes that the committee will adopt in the amending process of the SP constitution.

Proposition: As communicated between the speaker and the deputy speaker internal, the committee is here to try to align changes which have been made to the constitution. The next step is to open up suggestions to the public to see which provisions they see necessary to be revised. Following that, the committee would need to review the suggestions and present the suggested amendments to the house at the extraordinary meeting (which was initially scheduled for 27 August 2019). The Student Parliament Committee (SPC) has suggested a few provisions that may need revision.

Question: In terms of gathering a public opinion, how will that be advertised? Conversations of this matter are not widely talked about on campus and therefore, we need to adopt methods to advertise this well to garner enough public opinion.

Proposition: Constitutional review processes need critical engagement and what makes engagement meaningful is access to information. The changes which are to be made are those which will suit the constituencies, in line with the Student Constitution, which will provide the broader framework. It is important to note that the recommendations made by the SPC are not conclusive as they are still to be presents to the house.

Questions: Where were these recommendations published? If not published, where can the broader public have access to them? The concern here is open information.

Response: What was discussed is that this Review Committee evaluates the provisions which people want to change. The provisions that SPC has seen as requiring to be revised are merely suggestions which are open to the Review Committee to accept or reject. These are not conclusive. As the SPC is an entity which functions with this constitution, they have identified where revisions may be necessary to make the fully encapsulate the mandate of SP.

Additional Response: The SPC is not jumping any processes, they will be following the same procedure that the public will be following. Since the SPC has been working with the SP constitution, the speaker has requested that SPC members lookout for provisions which they would like to bring forward to the Review Committee to consider amending. Like any other suggestions which will be brought forth, the suggestions will be taken by the Review Committee and presented to the house. As, constitutionally, the Review Committee is at the forefront of amendment processes and not the SPC.

Question: If addendum J2 gives a schematic representation and there is no procedure or protocol in terms of the SPC, what gives the Review Committee the standing to cooperate other than just being a committee under the auspices of the SP constitution?

Proposition: it is important that there is a procedure the Review Committee is bound by. The committee should not have full discretion.

Proposition: Today’s meeting is constitutional as it is in the SP constitution for there to exist a Constitutional Review Committee. It is now just to work ahead and create a mandate for the Committee as it is not specified in the SO constitution.

We currently have a skeleton structure of a mandate:

1. Allow public suggestions
2. Analyse the suggestions
3. Find ways to amend the provisions
4. Present amendments to the house to be accepted or rejected

The final decisions do not lie within the power of the SPC or the Review committee. The Review Committee is only there to facilitate the conversation and therefore establish guidelines.

POINT OF DEPARTURE:

Each member of the Review committee will write up a proposed mandate. At the next Review Committee meeting the mandates will be evaluated and will be structured in a way to create a functional mandate for the committee. It is important that this is not an individual mandate, rather a collective mandate.

1. Processes the Committee will be adopting

The SP constitution does not specify on procedures in which the Review Committee is supposed to abide by. Therefore, this can be seen as leeway that the drafters of the currently working constitution have given to the Review Committee to establish processes that they deem necessary to make the amendment process effective and efficient.

Suggestion: Consider the amendment process that it is in the SP constitution and use it appropriately to the amendment of this constitution. The process given will work as a guideline.

Question: How do we justify the decisions we have made as the Review Committee?

Response: What we say is not legally binding. The job of the Review Committee is not to deeply look into the constitution and make binding amendments, it is rather to facilitate a constitutional process as far as possible.

Proposition: We need to consider putting forth a minimum requirement of SP members present on the day that the amendments will be voted in so that the constitutional rule giving a vote of 50% + 1 power is fair. A minimum of around one hundred members makes it possible for as many views of the SP to be heard.

Proposition: With the above being said, it is then important to see where the responsibilities of the Review Committee extend. Mobilisation of the student body is now an area in which needs to be considered.

It is important that the parliament sitting does not dissolve due to poor attendance.

Question: in a situation where there may be an influx of suggestions, are we to go through each individual suggestion or do we use our discretion?

Proposition: As a non-binding entity, using our own discretion may be seen as controversial.

Response: All suggestions will be put forth to studpar@sun.ac.za

The Review Committee is constitutionally mandated to review each suggestion even though the process can be seen as tedious. It is also to be remembered that the house gets the final say. The Review Committee does not hold absolute decision-making power this thus reduces the occurrence of bias controversies.

Proposition: The SP constitution has given this entity power which works within constitutional guidelines, therefore, it is to be trusted that the members of the committee are competent enough to be working in the amendment process and will make decisions that do not infringe on the constitutional rights of the student body.

Proposition: The overall responsibility is to be transparent and allow open conversation. The committee is there to act as an independent body which prevents the SPC from directly facilitating this process in order to prevent questionable biases. The controversy of the SPC submitting suggestions is that they are merely a representative body and do not constitute of the whole SP members (the student broader body).

Proposition: As mentioned ahead that the SPC have recommendations it is important to know that they do not have legally bonding powers and therefore their ability to submit provisions to revise should be considered, their suggestions are equal to any other suggestions.

Proposition: Regarding a timeline, section 104, subsection 4 of student constitution stipulates:

“CHAPTER 4 comes into effect on the first day of the fourth term of 2019.”

This thus allows for the amendment process to continue into the fourth term. With consideration that the new SPC comes into power on the 1st of November 2019.

Proposition: Check with Alex Pagel, former Chief Justice, to see how they

conducted their amendment of the Student Constitution. To then see if the

process can be adopted an altered specifically to suit the SP constitution

amendment.

Question: how much time is given to work with?

Proposition: It would be fitting to work in the time frame of now (22 August 2019) and 1 September 2019

Response: General rejection to the timeline as it is too short. The amendment process must be treated delicately as it is a constitutional matter and therefore deals with the lives of students. It is important that the process is not rushed.

Mr. Andrews put forward that he will look at and consult a thesis by Samira Muhammed which talks about meaningful engagement. Meaningful engagement is important in the amendment process. The composition of the committees changes regularly thus, the main concern is the constituency and the interests of the institution.

All constitutions have to go under review because they change every five years. The SP constitution works under the Student Constitution and thus the two need to be aligned and that is up to the courts to determine. It is also up to the court to interpret to what extent are the provisions of the two constitutions to be misaligned. The court is there to give the committee as much structure as possible. They are not doing the job of the Review Committee.

POINT OF DEPARTURE:

It will be the responsibility of the Review Committee to look at processes that have previously been taken and to strategically incorporate them into the process of the amendment of the SP constitution. Therefore, consult Mr Pagel.

1. Amendment of the SP Constitution

The drafters of constitution would consider the capacities of each individual represented in addendum J2. Therefore, if it is called for that the deputy speaker internal be part of the Review Committee (as is in addendum J2) he is able to use his powers to consult with student court.

Proposition: The controversy lies within separation of powers

Response: There’s a difference between the amendment process and the mandate of the constitutional review committee. There is the action of the amendment and then there is the administrative process. The student court lies within the administrative structure and therefore separation of powers is not being infringed on.

Proposition: It is important that the committee itself has its functioning processes. The committee should not rely on other structures, i.e. Student Court. Thus, it is the duty of the Review Committee to function on a process that they have established. Where the constituencies have disagreements, they are within full rights to reject what is being presented. Rejections should be supported by reasons to therefore allow the review committee to discuss among themselves again and consider alternative amendment solutions.

The Constitutional Review Committee is an entity enshrined in the constitution and should thus exercise its power as much as possible without having to rely on other structures. The other structures are there for guidance.

POINT OF DEPARTURE:

The amendment process is dependent on the mandate. Once the mandate is established the functioning of the committee will be clearer.

Additional remarks:

* Create a group where there is an information pool allowing all members of the review Committee. This reduces administrative work within the committee and ensures better communication between members.
1. **PROPOSED DATES AND TIME FOR NEXT MEETING**

26 August 2019, 17:00

The purpose of the next meeting is to create a mandate in which the Review Committee can work on. Then to decide which approach to take such as approaching the constituencies and promoting public participation.

Individual mandates moving forward?

Additional Remarks:

* Worries about the constitution coming to effect should be put aside. It is more important to diligently amend the constitution.
* Where there are disagreements, the court will inform the Review Committee on where there are discrepancies.

Homework:

* Individually write up mandates and to then discuss them all to come to a consensus of one mandate.
* Consult Mr Alex Pagel
* Mr Andrews: Consult the thesis by Samira Muhammed
1. **CLOSING**

The speaker reiterates the importance of public participation and meaningful engagement in this process. Time is something to be looked at, but it is also important to efficiently amend the constitution.

It is also a goal to amend the constitution before the new SPC members comes into office to avoid confusion.

Meeting adjourned at 18:16.