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Proofread by Refiloe Seiboko
Design by Hond CC
Cover photo by Yolanda Boozyen
Printed by Hanso Print

ISSN 1683-2566
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of South Africa

Volume 35, number 1 ■ April 2022

advocate

Iphaphabhuku labameli basemajajini baseNingizimu Afrika
Dzhenala ya dzangano la vhaadivokati vha Afrika Tshipembe
Die Suid-Afrikaanse Balietydskrif ■ The South African Bar Journal
Kgatisobaka ya boadfokata ya Africa-Borwa
Jenali ya magwetha ya vavanyisi van Afrika-Dzonga



FROM THE EDITOR

December 10, 2021 was the 25th anniversary of the final Constitution. We had, as a nation, been hit hard by irrational and unfair travel bans that had been imposed on South Africa by most of the world simply because our scientists were excellent and had detected the Omicron variant before others. Our tourism sector, already on its knees, was dealt a severe blow. People who had not seen family overseas for two years cancelled their tickets. Case numbers rose.

But one thing that apparently unites us in SA is adversity. Red list se whatwhat. We got out our trifle bowls. We Dezemba'd. That morning I asked on Twitter: "Today is the 25th anniversary of the Constitution. What's your favourite section and why?"

The lawyers got the ball rolling. But what lifted my heart was to see how many others engaged with, and had a sense of ownership of, the Constitution. It was also pleasing how diverse the answers were. The preamble, the right to dignity and the right to equality got the most love. But all kinds of strange and obscure sections got mentioned – journalist Lester Kiewit even responded "the part where food stuff is mentioned twice" – referring to the schedule that sets out the colours of our national flag, one of which is described as "chilli red".

People seemed really to know the Constitution.

Some of my favourite responses: @MamoketeLijane said "Section 28 on children's rights for me. I made the ones who don't pay rent read through it and we discussed what each of the provisions meant. All they asked was whether the police would arrest anyone who beat them in violation of 28(1)(d)". I liked that parents are discussing and arguing about the Constitution with their kids.

@anthonyaltbeker said s206 on the oversight of policing was "such a glorious mess. It's like a talented, over-dragged sixties rock band". Even where the drafting may be a mess, we still own and love the Constitution.

@Ms_PBMS: "Section 9 provides everyone with equal protection and benefit of the law – including non-citizens." Even as countries around the world were rejecting us with their red lists and even as terrifying xenophobia is on the rise, our Constitution reminds us of our best selves, of who we want to be.

@lwnuclear said: "The unwritten section, that still needs writing, that doesn't allow government to pull rank and take our entjies." This was my favourite, reminding us that where we feel the Constitution is inadequate, we have the power to amend it and make it better.

Even those that rejected it – "throw the whole thing in the dustbin" said @LordPercyK (so, section 16, I thought) – were engaged, were part of the discussion.

It felt like the tree – the chosen symbol of the Constitution in SA – was indeed rooted deeply. My little corner of Twitter was a happy wholesome space that day.

But it was only about a month later that tourism minister Lindiwe Sisulu, in her "personal capacity" wrote an opinion piece, published on IOL, which cast the Constitution in a very different light: as a document that was not pro poor, whose roots were unAfrican, the product of a political compromise and enforced by "house negroes".

Perhaps the less said about that intervention the better. But as it happened, Advocate had last year already decided to make its theme for the April edition "the Constitutional Court – looking forward, looking backwards". When the editorial committee chooses themes, we never know what people will submit. But what came to us, published here in our Forum section, all engaged thoughtfully with the Constitution and the Constitutional Court.

Tembeka Ngcukaitobi looks at the roots of the Constitution and places them within the history of the oppression of Africans and their resistance to white colonial rule. Stuart Wilson acknowledges the political compromise but argues that nonetheless the Constitution has been harnessed to change the law of property in real and meaningful ways – and the role of the courts in doing that. Mariq van der Westhuizen reminds us of the centrality of the right to dignity – as a constitutional value rooted in the history of our country which should guide how we criticise and talk about our courts.

Judge Brooks argues for an amendment of the law on confessions when we know that the reality is one of possible abuses of power by the police. Judge Davis takes a critical look at the role played by the Constitutional Court in the development of competition law and Quentin du Plessis explores the complex relationship between law and justice.

On these pages – unlike some – we engage robustly, respectfully, critically about our Constitution and the Constitutional Court – a document and institution that belongs to us. **A**

The editor contributes to Advocate as an autonomous author. The views she expresses are entirely her own, and do not purport to represent any view or position of Advocate or of the GCB.