Constitutional Court Review

Instructions for Authors

The Constitutional Court Review (CCR) is an international journal of record that tracks the work of the Constitutional Court of South Africa. The long essays, replies, articles and case comments use recent decisions to navigate more general currents in the Court’s jurisprudence. The Journal follows a strict double-blind, peer-reviewed editorial process. The CCR invites contributions from outstanding scholars but also considers unsolicited submissions that fit with the aims and scope of the Journal. It is published annually.

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I. EDITORIAL POLICY

Submission of a manuscript implies that the material has not previously been published, nor is being considered for publication elsewhere. Contributions are accepted on the understanding that the authors have the authority for publication. Contributions must conform to the principles outlined in Ethical considerations in research publication <https://www.nisc.co.za/products/97/journals/constitutional-court-review>. The Journal has a policy of anonymous (double-blind) peer review. Authors’ names are withheld from referees; authors and the editors must ensure that any identifying material is removed from the manuscript. The Editor reserves the right to revise the final draft of the manuscript to conform to editorial (house style) requirements.

Articles accepted for publication will attract an article processing charge (APC) of ZAR 12 000 (excl. VAT). The Journal has an APC waiver policy for authors whose funding arrangements are inadequate to cover the amount of the APC. The APC waiver-policy and procedures for applying for a waiver can be found at <https://www.nisc.co.za/openaccess>. Applications, which are considered on a case-by-case basis, must be made prior to submission via email to <journals@nisc.co.za>. Note that the Journal has an annual quota for APC waivers. It may not be possible to accommodate all APC waiver requests made during the year.

I. CONTRIBUTION FORMAT & LENGTH

As a general rule, the Constitutional Court Review accepts submissions in the following formats:

• **Lead Essays and Responses:** Essay length will vary depending upon the nature of the contribution. We have had lead essays that range from 65 to 80 pages. Thus, these lead essays – commissioned as such – may run over 30 000 words. Responses to lead essays – commissioned as such – may range from 10 000 to 25 000 words. Replies have been, on occasion, longer than the Lead Essay.

• **Articles:** Articles, commissioned as such or received by open call, should fall within a range of 12 000 to 25 000 words. As with all pieces, exceptions can and will be made.

• **Comments:** The distinction between articles and case comments can be somewhat artificial. Case comments will often have a range and depth that outstrip articles (at which point we often call them articles.) However, for pieces that narrow their focus to a single case and its more limited ramifications, we would expect between 6 000 to 10 000 words.
Where exceptions are required, they will be negotiated between editors and authors. Consult recent copies of the journal at <https://www.nisc.co.za/products/97/journals/constitutional-court-review> for examples of each type of contribution.

### III. MANUSCRIPT PRESENTATION & SUBMISSION

Manuscripts should be emailed to the Editor-in-Chief, Professor Stu Woolman at: <stuart.woolman@wits.ac.za>. Manuscripts should be in English and prepared in MS-Word format. Submissions should include a title page (as a separate file) with the following information:

- **Title.** The title should be short and descriptive, bearing in mind the need for discoverability using standard search terms.
- **Abstract** of 200 to 300 words
- **Keywords.** These four to six terms can be single words or phrases of more than one word. However, phrases tend to be less helpful as search terms in isolating groups of similar articles because the phrases are often unique (to that particular piece). The keywords facilitate discovery of the article and so should be chosen with care. Keywords should not repeat words/terms that are already in the title, since the title will already be parsed by search engines
- **Author details.** Full name, title, institutional (or other) affiliation(s), and email address
- **Acknowledgements.** (e.g. ‘I thank X, Y, Z, the editors and anonymous reviewers for their helpful comments on this piece.’)

The body of the article should be in a separate document. Please remove names and other identifiers to facilitate anonymous peer review. Prepare the manuscript according to the format and style conventions below. Manuscripts that do not conform to the Journal’s style and format conventions may be returned to the author for remedy without further evaluation. In general, authors should strive to present their arguments clearly and should avoid repetition and padding. We ask authors to be ruthless with their own prose.

### IV. MAIN TEXT

The CCR house font style is Garamond size 11. Quotations of more than five lines/two sentences must be indented and in a smaller font size 10.

- Use UK English such as ‘s’ rather than ‘z’ spellings, eg recognise, nationalise.
- Numbers from one to ten are spelt out in words unless they refer to section or schedule numbers in statutes.
- Dates: 1 January 1999; the 1980s and 1990s (not 1990’s).
- Use per cent not % (e.g. eight per cent or 38 per cent).

#### 1 Subheading levels

- **Level one heading:** bold, all capitalised, numbered I, II, III etc.
- **Level two heading:** bold, sentence case, numbered A, B, C etc.
- **Level three heading:** italic, sentence case, numbered 1, 2, 3 etc.
- **Level four heading:** plain, sentence case, numbered aa, bb, cc etc.
- **Level five heading:** italic, sentence case, numbered i, ii, iii etc.
For example:

I INTRODUCTION

A Understanding what the Constitution requires

1 The meaning of the right to vote

   aa Democracy and the right to vote

   i South African cases

2. Case law

Depending on author preference, it is possible to either include the full case name (excluding the citation) in the main body of the text the first time it is referred to, for example Occupiers of 51 Olivia Road Berea Township and 197 Main Street Johannesburg v City of Johannesburg & Others ("Olivia Road"), or to provide the full case name and citation in a footnote and refer only to the abbreviated case name in the main body of the text, for example Olivia Road.

3. Statutes

The full name of the statute including its number and year needs to appear in the main text. In other words, do not place the number and year of an Act in a footnote. This can be followed by an abbreviation in brackets, e.g. Promotion of Administrative Justice Act 3 of 2000 (PAJA), subsequent references are to ‘PAJA’.

   Use ‘s’ or ‘ss’ (plural) instead of ‘section(s)’ unless it is the beginning of a sentence.

4. Quotations

Quotations should be clearly indicated by single quotation marks, with double quotation marks used for quotes within quotes. Where a quotation is two sentences long or runs to more than five lines, it must be in a smaller font, indented as a separate paragraph, with a line space above and below, and with no quotation marks or leader dots. Pay attention to accuracy when quoting directly.

5. Abbreviations

Abbreviations may be used for case names, eg (Olivia Road). However, the case name must be set out in full with full double-barreled citation the first time it is referred to, followed by an italicised abbreviation in brackets. If a case is abbreviated in a footnote (rather than in the main text), it is preferable for it to appear at the end of the sentence. The abbreviation can then be used throughout the main text and for cross referencing purposes in footnotes, eg the Court in Olivia Road held or the Olivia Road Court held.

   • Abbreviated references to legislation can also be used in the body of the text (e.g. PAJA, PAIA or the Administrative Justice Act, the Information Act).

   • Council for Conciliation, Mediation and Arbitration (CCMA) can occur within the text itself.

   • The Constitutional Court is always abbreviated as ‘the Court’; all other courts are referred to as ‘the court’.
6. Avoid awkward or archaic turns of phrase

- Avoid polite legal clichés and wasted words such as ‘the learned judge’, ‘the learned author’, ‘with respect’, ‘with the greatest respect’, ‘it is submitted’ or ‘the authors humbly submit’.
- Judges can be referred to as Judge or Justice, preferably should be referred to as ‘Smith J’ or ‘Smith JA’ or ‘Smith LJ’. Avoid formulations such as ‘his Lordship’ or ‘the honourable’.
- Please eschew archaic uses of the first person. So, ‘it is my view’ or ‘I argue’ is preferable to ‘it is the view of the present author’, ‘it is this writer’s argument’. We know it’s your well-grounded belief.
- Write in the active voice. In short, ‘is’ can almost always be eliminated by a dynamic verb often found in adjectival form in the same sentence.

V. FOOTNOTES

The Journal makes use of footnotes, not parenthetical references. All articles, notes, comments, book reviews and contributions to the current developments section must make use of footnotes. Footnotes are in Garamond size 9.

1. Case law – South African cases

We expect double-barrelled citations for all South African cases. In most instances, this would mean SAFLII’s (ZACC, ZASCA or, if a High Court, something like ZAKZNHC) followed by Juta’s SALRs (e.g. 2008 (3) SA 208 (CC))

- *Occupiers of 51 Olivia Road Berea Township and 197 Main Street Johannesburg v City of Johannesburg & Others* [2008] ZACC 1, 2008 (3) SA 208 (CC) (‘Olivia Road’).

Case names in italic with ‘v’ for versus.

In the absence of an SALR citation, it is acceptable to use a Butterworths citation:


However, triple-barrel citations are fine.

- *Occupiers of 51 Olivia Road Berea Township and 197 Main Street Johannesburg v City of Johannesburg & Others* [2008] ZACC 1, 2008 (3) SA 208 (CC), 2008 (5) BCLR 475 (CC).

- use commas rather than semi-colons between various citations (e.g. [2008] ZACC 1, 2008 (3) SA 208 (CC)).

Cross referencing cases

- *Olivia Road* (note 8 above) at para 45. (Where the case is not cited in the immediately preceding footnote).
- Use ‘Ibid.’ (Where the case and the paragraph reference (or the page reference in the case of a book or a journal) is the same as that in the immediately preceding footnote).
- Use ‘Ibid at para 45.’ (Where the case cited is identical, but the paragraph is not.)

Use paragraphs rather than page references wherever possible. This should always be possible for South African cases in roughly the last decade. All South African Constitutional Court decisions and most Supreme Court of Appeal, Land Claims Court and High Court decisions follow this practice.
2. **Case law – foreign cases**

Use US citations rather than S Ct or another citation form. Again, double-barrelled citations are welcome. Try to avoid: *Romer v Evans* 116 S Ct 1620, 1627 (1996). Please look up the US citation; it is always available online. Avoid using abbreviated names of litigants, eg use Regents of the University of California not Regents of the Univ. of Cal. Examples:


3. **Bracketing**

We encourage the use of brief parenthetical explanations of case holdings and quotations. Examples:

- *S v Makwanyane* [1995] ZACC 3, 1995 (3) SA 391 (CC)(Court holds that death penalty constitutes a violation of rights to life and human dignity.)
- *Wisconsin v Yoder* 406 US 205, 123 SCt 456 (1972)(Supreme Court finds that compulsory school attendance for children of Amish religious community impairs right to free exercise of religion under 1st Amendment.)
- If you are quoting from a text, then provide both the page number and use quotation marks where appropriate:
  - E Mureinik ‘A Bridge to Where? Introducing the Interim Bill of Rights’ (1994) 10 *South African Journal of Human Rights* 31 (Mureinik argues that: “The drafters designed the Bill of Rights, and the Constitution as a whole, to foster a culture of law based upon justification, and no longer on mere authority and coercion.”)

   Capitalise the first word inside a bracket (Courtholds ...) or (Dworkincontains ...)

Do not use spaces in between brackets.

- *S v Makwanyane* [1995] ZACC 3, 1995 (3) SA 391 (CC)[No Space](Court holds that death penalty constitutes a violation of rights to life and human dignity.)

2. **Journal articles**

When citing journal articles give author’s initial and name, full title in quotation marks, year in parenthesis, volume number, full (not abbreviated) title of journal (italicised), first page of article, page referred to. Avoid the use of ‘at’ between first page and page referred; use a comma instead, e.g. 315, 325 *(not 315 at 325).*

The *SAJHR* should be cited as *South African Journal on Human Rights*. The *Columbia LR* should be cited as *Columbia Law Review*.

3. Books

When citing books, give author’s first initial and name, full title (italicised), edition, year, page reference. There is no need to state the place of publication and publisher. Page numbers should not be preceded by ‘p’ or ‘pp’. Co-authors must be joined by an ampersand (&) rather than ‘and’.


Translations should be indicated thus: K Marx *Das Capital* (1867)(trans J Mander, 1976) 121.

4. Chapters in books

Author’s initial and name, full title in quotation marks, initial and name of editor(s), full title (italicised), year, first page of article, and specific page referred to in the text.


Subsequent references:
- Ibid at 9‒12.
- Cohen (note 1 above) at 9‒10.

5. Statutes

- Promotion of Administrative Justice Act 3 of 2000 (PAJA)
- Local Government: Municipal Finance Management Act 56 of 2003 (MFMA)
- Childrens Act 38 of 2005

Depending on author preference, it is possible to use the abbreviation for the name of an Act in subsequent references. If referring to a specific section/s, use the abbreviation ‘s’ or ‘ss’ except at the beginning of a sentence.

- PAJA s 6
- MFMA s 3
- Childrens Act s 1

6. The Constitution


The Interim Constitution requires a footnote. ‘The Interim Constitution has been repealed.’ Thereafter, ‘Constitution’ or ‘Final Constitution’ and ‘Interim Constitution’ may be used in the text and notes.

Subsequent references
- Constitution s 181(1)
- IC s 50
7. **Law Reform Commission papers**


8. **Parliamentary debates**

- NCOP Debates col 125 (24 February 1999)

9. **Treaties & international instruments**

Give ILM reference where available, failing which give UNTS reference or full UN Doc or OAU Doc reference.

- General Agreement on Tariffs and Trade, 30 Oct 1947, Protocol Amending the General Agreement to Introduce Part IV on Trade and Development and to Amend Annex I (8 Feb 1965) 572 *UNTS* 320.

For most *well-known multilateral treaties*, there’s no need for a bibliographical reference.

- Universal Declaration of Human Rights (1948)
- International Covenant on Civil and Political Rights (1966)

10. **Newspaper articles and Internet sources**

Newspaper articles and many internet sources can be treated much like other written sources: Author ‘Article Name’ *Newspaper/Internet Source (Date)*, available at http://www.xxx. It is not necessary to record the date that the site was last visited.

VI. MORE GENERAL RULES

1. Eliminate ‘See’ from the beginning of all footnotes.

Exceptions:
We allow ‘see’ when they are buried in a footnote.
- For more on the contention that the idea of self-government should be considered to be the core component of a Constitution, even one with a justiciable Bill of Rights, see F Cachalia ‘Separation of Powers, Active Liberty and the Allocation of Public Resources: The E Tolling Case’ (2005) 132 South African Law Journal 285.

We allow ‘See also’ after primary citations.

2. Use ‘&’ rather than ‘and’ in footnotes

3. Titles are in first letter caps, no matter whether they are articles, books, newspaper articles or online documents.

4. On the use of ‘Section’, ‘section’ or ‘s’ with respect to the Constitution.
Write out ‘Section’ (capital S as in ‘Section 25 of the Constitution) to begin a sentence. Lower case ‘section’ is used in other instances (e.g. ‘In FNB, the Constitutional Court provided its first full length analysis of section 25 of the Constitution). However, it is not necessary to keep
repeating ‘section 25 of the Constitution’ throughout the text. The idea is to make it clear that we are talking about the Constitution, as opposed to another form of law. However, to repeat ‘section 25 of the Constitution’ each time would be truly unwieldy, cumbersome and just plain ol’ bad writing. In footnotes, the preferred form is Constitution s 25.

5. Please don’t forget to use ‘at’.
   • AB CC (note 4 above) at para 197.

6. Some footnotes are complicated.

We still try to make each component part as simple as style allows. Some citations warrant a brief description in a parenthetical; some require a number of sentences; some require only a prior reference such as “(note x above)” and a page number.

Example:

Gerrand (note 52 above) at 142 (Observes that ‘in terms of ancestral beliefs, family systems have rigid boundaries based on blood ties.’) Gerrand’s view is echoed by the KwaZulu-Natal Commissioner for Traditional Leadership Disputes and Crimes, Professor Jabulani Mphalala, who has stated that ‘it would take years before there was a flexibility of mind about adoption among most South Africans. […] Ancestral spirits look after their relatives and no-one else. In our religion, in our culture, this thing is ring-fenced.’ C Dardagan ‘Red-Tape Slowing down Adoptions’ IOL (21 February 2014), available at https://www.iol.co.za/lifestyle/family/parenting/red-tape-slowing-down-adoptions-1650829. See also Mokomane & Rochat (2010)(note 52 above) at ix; Rochat, Mokomane & Mitchell (note 52 above) at 124 (A study participants remarks: ‘When you are born, there are certain things that ancestors require of us. They know who our child is and where he is. Just imagine if you adopt a Biyela child and join the child to the Mthembus. There will be war between the Biyela and Mthembu ancestors, both ancestors will fight over who owns the child.’)