

THE CONSTITUTIONAL COURT OF SOUTH AFRICA

**CASE NO: CCT103/25
CCT144/25**

In the matter between:

CASE NO.: CCT 103/25

PREMIER OF THE WESTERN CAPE GOVERNMENT

First Applicant

**AMABHUNGANE CENTRE FOR
INVESTIGATIVE JOURNALISM NPC**

Second Applicant

and

SPEAKER OF THE NATIONAL ASSEMBLY

First Respondent

**CHAIRPERSON OF THE
NATIONAL COUNCIL OF PROVINCES**

Second Respondent

MINISTER OF FINANCE

Third Respondent

AND

In the matter between

CASE NO.: CCT 144/25

THE CITY OF CAPE TOWN

First Applicant

**AMABHUNGANE CENTRE FOR
INVESTIGATIVE JOURNALISM NPC**

Second Applicant

SOLIDARITY

Third Applicant

and

THE SPEAKER OF THE NATIONAL ASSEMBLY	First Respondent
THE CHAIRPERSON OF THE NATIONAL COUNCIL OF PROVINCES	Second Respondent
THE MINISTER OF FINANCE	Third Respondent
THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	Fourth Respondent
SPEAKER OF THE EASTERN CAPE PROVINCIAL LEGISLATURE	Fifth Respondent
SPEAKER OF THE FREE STATE PROVINCIAL LEGISLATURE	Sixth Respondent
SPEAKER OF THE GAUTENG PROVINCIAL LEGISLATURE	Seventh Respondent
SPEAKER OF THE KWA-ZULU NATAL PROVINCIAL LEGISLATURE	Eighth Respondent
SPEAKER OF THE LIMPOPO PROVINCIAL LEGISLATURE	Ninth Respondent
SPEAKER OF THE MPUMALANGA PROVINCIAL LEGISLATURE	Tenth Respondent
SPEAKER OF THE NORTHERN CAPE PROVINCIAL LEGISLATURE	Eleventh Respondent
SPEAKER OF THE NORTH WEST PROVINCIAL LEGISLATURE	Twelfth Respondent
SPEAKER OF THE WESTERN CAPE PROVINCIAL LEGISLATURE	Thirteenth Respondent

AMABUNGANE'S CONSOLIDATED HEADS OF ARGUMENT

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INTRODUCTION

- 1 AmaBhungane Centre for Investigative Journalism NPC is the second applicant in CCT 103/25 and CCT 144/25. It is a non-profit company dedicated to promoting open, accountable and just democracy through investigative journalism in the public interest.¹
- 2 AmaBhungane has a direct and substantial interest in the Public Procurement Act 28 of 2024. It participated in every stage of the public participation process leading to the enactment of the Act. It was one of nine civil society organisations that wrote specifically to both Parliament and the Presidency to warn of procedural and substantive shortcomings in the legislative process.²
- 3 AmaBhungane has been granted leave to intervene as a party in both matters.³ Its intervention rests on three foundations: its direct participation in the legislative process; its public interest mandate to investigate and expose procurement-related corruption; and the constitutional and public character of the issues raised in these proceedings.⁴

¹ AmaBhungane's Founding Affidavit in the intervention application (**Intervention FA**), CCT 144/25 Record, Vol 15, p1415, paras 1 to 4.

² Intervention FA, CCT 144/25 Record, Vol 15, pp 1421 to 1423, paras 19 to 24.

³ AmaBhungane's Consolidated Founding Affidavit (**CFA**), CCT 144/25 Record, Vol 16, p1578, para 7; Order of the Constitutional. Court Order dated 2 October 2025, CCT 144/25 Record, Vol 17, pp 1730 to 1737.

⁴ Intervention FA, CCT 144/25 Record, Vol 14, pp 1425 to 1426, paras 27 to 28.

- 4 These proceedings fall within the exclusive jurisdiction of this Court under section 167(4)(e) of the Constitution, which provides that only this Court may decide that Parliament has failed to fulfil a constitutional obligation.⁵
- 5 These consolidated written submissions are filed in compliance with the directives of this Court dated 22 December 2025.⁶ In accordance with paragraph 4 of those directives, we endeavour not to repeat submissions contained in the first applicants' written submissions. We focus on the particular perspective and evidence that amaBhungane, as a civil society participant in the legislative process, is uniquely placed to offer.
- 6 In what follows, amaBhungane will address: its role and standing; the constitutional framework; the specific deficiencies in the process as demonstrated by amaBhungane's evidence; the cumulative effect of those deficiencies; and the appropriate remedy.

AMABHUNGANE'S ROLE AND STANDING

- 7 AmaBhungane is at the forefront of investigative journalism concerning public procurement-related corruption. It received local and international acclaim for its participation in the collaborative investigation into state capture, which

⁵ *Doctors for Life International v Speaker of the National Assembly* [2006] ZACC 11; 2006 (6) SA 416 (CC) paras 27–28.

⁶ Directives dated 22 December 2025, CCT 144/25 Record, Vol 21, pp 2076 to 2082; Directives dated 2 October 2025, para 1, CCT 144/25 Record, Vol 17, pp 1730 to 1737.

exposed a network of corruption in public procurement between the state and the Gupta family during former President Zuma's presidency.

- 8 AmaBhungane's interest in this matter is not abstract. It participated directly and substantially in the public consultation process at every stage. Before the National Assembly, amaBhungane made written and oral submissions on the Bill. Before the National Council of Provinces (**NCOP**), it made further written submissions. It was one of nine civil society organisations that specifically wrote to both Parliament and the Presidency warning them of procedural shortcomings.⁷
- 9 AmaBhungane's case is therefore based on its first-hand experience of the legislative process. This Court has the benefit of amaBhungane's direct account of how the process unfolded, and the ways in which it fell short of the constitutional standard.
- 10 In addition, amaBhungane acts in the public interest under section 38(d) of the Constitution. The public has an evident interest in a procurement system that is transparent, fair, accountable, and effective. The integrity of the procurement system determines the success of diverse aspects of society—

⁷ Intervention FA, CCT 144/25 Record, Vol 15, pp 1440 to 1441, paras 75 to 76; Annexure FA4 CCT 144/25 Record, Vol 15, pp 1481 to 1488; and Intervention FA, CCT 144/25 Record, Vol 15, p1446, paras 86 to 88; Annexure FA5, CCT 144/25 Record, Vol 15, pp 1489 to 1498.

from the construction of infrastructure and the provision of healthcare to the delivery of social grants and job creation.⁸

THE CONSTITUTIONAL FRAMEWORK

- 11 The legal principles governing these proceedings are well-established.
- 12 Public participation in law-making is a constitutional imperative. South Africa's democracy is both representative and participatory. The Constitution contemplates a pluralistic democracy where continuous respect is given to the rights of all to be heard and have their views considered.⁹
- 13 The standard required for facilitating public participation is one of reasonableness. Parliament has a broad discretion to determine how to fulfil its duty to facilitate public involvement, but must act reasonably. This Court will consider what Parliament did, and whether what it did was reasonable in all the circumstances. Relevant factors include Parliament's own rules and frameworks, the nature and importance of the legislation, and whether the legislation needed to be enacted urgently.¹⁰

⁸ Intervention FA, CCT 144/25 Record, Vol 14, pp 1428 to 1429, paras 37 to 38.

⁹ *Doctors for Life* paras 115; 228 - 235; *SA Veterinary Association v Speaker of the National Assembly* [2018] ZACC 49; 2019 (3) SA 62 (CC) para 18.

¹⁰ *Doctors for Life* paras 118 - 129; *Matatiele Municipality and Others v President of the RSA and Others (No 2)* [2006] ZACC 12; 2007 (6) SA 477 (CC) para 50.

- 14 The obligation is substantive. Parliament cannot merely go through the motions of public participation. The object is both symbolic and practical: affected persons must be shown the respect due to them as concerned citizens, and legislators must have the benefit of all inputs that will enable them to produce the best possible laws.¹¹
- 15 The quality of engagement matters. The obligation to facilitate public involvement requires Parliament not merely to receive submissions, but to engage with them with an open mind. The public's submissions must be material, relevant considerations that are taken into account. A failure to consider all submissions, or to engage with them meaningfully, renders the process constitutionally deficient.¹²
- 16 Information is a prerequisite for meaningful participation. Members of the public are, as of right, co-participants in decisions that affect them. Meaningful participation requires that they have access to the same essential information that bears upon the decision to be made. If that were not so, the deliberative process would flounder.¹³

¹¹ *Merafong Demarcation Forum and Others v President of the Republic of South Africa and Others* [2008] ZACC 10; 2008 (5) SA 171 (CC) para 27; *Land Access Movement of South Africa and Others v Chairperson, National Council of Provinces and Others* [2016] ZACC 22; 2016 (5) SA 635 (CC) para 60.

¹² *Doctors for Life* para 129; *Mogale and Others v Speaker National Assembly and Others* [2022] ZACC 41; 2023 (6) SA 58 (CC) para 37.

¹³ *Corruption Watch RF NPC v Speaker National Assembly and Others* [2025] ZACC 12; 2026 (1) SA 327 (CC) para 46.

- 17 Material amendments to the draft legislation trigger a renewed duty of consultation. Where a committee introduces material amendments to a Bill after the public participation process, those amendments must be subjected to further public consultation.¹⁴ The more discrete and identifiable the affected section of the population, and the more intense the possible effect on their interests, the more reasonable it is to expect the legislature to ensure they have a reasonable opportunity to have their say.¹⁵
- 18 This Court has intervened in a number of cases where the public participation process was found to be insufficient. The following examples are instructive:
- 18.1 In *Doctors for Life*, public meetings were not held because of time pressure. This Court held the failure unreasonable, and the legislation was declared invalid.¹⁶
- 18.2 In *South African Veterinary Association*, a material change was made to a bill after public consultation. No National Assembly process took place at all, while the NCOP process was inadequate. This Court declared the legislative processes in both houses constitutionally invalid.¹⁷

¹⁴ *SA Veterinary Association* paras 24 - 32.

¹⁵ *Matatiele II* para 68; *SA Veterinary Association* paras 43 - 44.

¹⁶ *Doctors for Life* para 194.

¹⁷ *SA Veterinary Association* paras 26 - 34.

- 18.3 In *South African Iron and Steel Institute*, the public had been given the opportunity to comment on an earlier version of a bill but not on the final version, which introduced material amendments. This Court held that when material and consequential amendments are made, the inconvenience of re-engaging the public cannot excuse a failure to do so.¹⁸
- 18.4 In *Mogale*, a compendium of deficiencies, including insufficient notice, inadequate provision of the bill to contributors, the failure to properly consider written submissions, silencing of certain speakers, and the absence of time or cost constraints that might have justified the shortcomings, collectively rendered Parliament in violation of its obligation to facilitate public participation.¹⁹
- 18.5 In *Corruption Watch*, when considering the public participation process leading to the recommendation of appointments of commissioners to the Commission for Gender Equality, Parliament failed to provide the public with sufficient information, time, or the appropriate means for substantive comment. This Court held that, individually and cumulatively, these deficiencies meant Parliament failed to fulfil its obligations.²⁰

¹⁸ *South African Iron and Steel Institute and Others v Speaker of the National Assembly and Others* [2023] ZACC 18; 2023 JDR 2331 paras 24, 28 to 49.

¹⁹ *Mogale* paras 60 to 83.

²⁰ *Corruption Watch* paras 46 to 67.

THE DEFICIENCIES IN THE PROCESS: AMABHUNGANE'S EVIDENCE

- 19 AmaBhungane's evidence demonstrates a series of failures in the public participation process, both before the National Assembly and before the NCOP. These failures are addressed below. They are not isolated incidents but form a coherent pattern of disregard for the constitutional duty to facilitate meaningful public involvement.
- 20 AmaBhungane relies on the facts set out in its founding affidavit for intervention²¹ and in its consolidated founding affidavit.²²
- 21 The Speaker's answering affidavit does not generate any genuine disputes of fact.²³ Her answer to AmaBhungane consists of legal argument²⁴ and a series of bare denials.²⁵
- 22 On the critical factual allegations - the failure of Treasury and Parliament to consider the majority of public submissions and the introduction of a materially new Chapter 4 with no further consultation - the Speaker offers only

²¹ Intervention FA, CCT 144/25 Record, Vol 14, pp 1415 to Vol 16, p 1573.

²² CFA, CCT 144/25 Record, Vol 16, pp 1576 to Vol 17, p 1689.

²³ *Wightman t/a JW Construction v Headfour (Pty) Ltd and Another* 2008 (3) SA 371 (SCA) paras 12 - 13.

²⁴ Speaker of the National Assembly Answering Affidavit (**Speaker's AA to AmaB**), CCT 144/25 Record, Vol 17, pp 1696 to 1703, paras 8 to 27.

²⁵ Speaker's AA to AmaB, CCT 144/25 Record, Vol 17, pp 1703 to 1712, paras 28 to 72.

bare denials, stating that she “stands by” the main answering affidavits filed in the Premier's and the City's applications.²⁶

- 23 The Speaker does not engage with any of the specific documentary evidence upon which amaBhungane relies: the Treasury Comment Matrices,²⁷ the meeting minutes,²⁸ the Jenkins memorandum, and the NCOP Committee's own report recording concerns about the 36% consideration rate.²⁹ The consequence is that amaBhungane's detailed evidence as set out below stands substantially uncontested.

First ground: no consultation on material amendments

- 24 A radically re-written Chapter 4 of the Bill, dealing with preferential procurement, was introduced during the National Assembly Committee process without any public consultation.³⁰

²⁶ Speaker's AA to AmaB, CCT 144/25 Record, Vol 17, p 1705, para 40; pp 1711 to 1712, paras 69 to 70.

²⁷ Intervention FA, CCT 144/25 Record, Vol 15, pp 1450 to 1451, paras 98 to 99; City of Cape Town's Founding Affidavit of Lungelo Mbandazayo (**City FA**), Comment Matrix, Annexure FA11, CCT 144/25 Record, Vol 2, p 195.

²⁸ Intervention FA, CCT 144/25 Record, Vol 15, pp 1460 to 1463, paras 123 to 125; City FA, Meeting Summary and Report, Annexure FA41, CCT144/25 Record, Vol 6, pp 604 to 612.

²⁹ Intervention FA, CCT 144/25 Record, Vol 15, pp 1461 para 123.1; Report, Annexure FA21, CCT 144/25 Record, Vol 16, pp 1552 – 1568.

³⁰ Intervention FA, CCT 144/25 Record, Vol 14, pp 1432 to 1433, paras 22 to 23.

25 The Speaker admits that there was no public comment process on the new Chapter 4.³¹

26 As a result, if the new Chapter 4 contained material amendments, its introduction at the last minute, with no fresh consultation process, is fatal. This Court has held that material amendments introduced during the legislative process trigger a renewed duty of public consultation. In *SA Veterinary Association*, this Court declared the impugned provisions of the Act invalid where a committee had extended the scope of a Bill to include an affected group without any dedicated public participation process for that amendment.³²

27 It is clear that the amendments to Chapter 4 were material and substantive.

27.1 The original Chapter 4 of the Bill that was published for comment contained a single provision, which gave procuring institutions significant discretion in their use of set-asides, mandatory subcontracting, and local content requirements in their preferential procurement policies.

27.2 The replacement Chapter 4 was a substantially expanded framework, introducing pre-qualification criteria as a new

³¹ Speaker AA to AmaB, CCT 144/25 Record, Vol 17, p 1704, para 33. This is superficially admitted in the Speaker's Answering Affidavit to the City of Cape Town (**Speaker's AA to City**), CCT 144/25, Vol 7, p 677 para 84.

³² *SA Veterinary Association* paras 47 to 50.

mechanism, and a prescriptive approach to the use of set-asides, mandatory subcontracting and local content requirements in preferential procurement policies.. This was a material amendment.

27.3 The new Chapter 4 was presented to stakeholders at the meeting of 17 November 2023 - the same meeting at which Treasury acknowledged it had only considered 20% of the public submissions.³³ The new chapter was thus drafted on the basis of an incomplete consideration of public input.

28 The Speaker says that the new Chapter 4 is “conceptually similar to” the 2017 Regulations to the PPPFA, and those Regulations were subject to a public comment process before they were finalised.³⁴ However:

28.1 Parliament’s original constitutional duty to facilitate public participation in relation to legislation could never be discharged by the Minister of Finance, who made the 2017 PPPFA Regulations years before.

28.2 The content of the consultation duty in relation to the 2017 PPPFA Regulations is different. The Regulations are not original legislation. They are delegated legislative administrative action, subject to the

³³ Intervention FA, CCT 144/25 Record, Vol 15, p 1584, para 33; Meeting Report, Annexure FA12, CCT 144/25 Record, Vol 3, pp 217 and 219.

³⁴ Speaker’s AA to City, CCT 144/25 Record, Vol 7, p 679, paras 90 – 91.

notice and comment requirements of the Promotion of Administrative Justice Act 3 of 2000.³⁵

28.3 Even if it was relevant (which it is not) the Speaker put up no evidence to establish that the consultation process that preceded preparation of the 2017 PPPFA Regulations satisfied the test of reasonableness applicable to Parliament's duty to facilitate public participation.³⁶

29 The replacement of Chapter 4 with a substantially expanded preferential procurement framework was a material change that required its own public participation process. It received none. This failure is compounded by the fact that the replacement chapter was prepared against a backdrop of incomplete consideration of the submissions that had already been made.

Second ground: National Assembly failed to consider all submissions

30 Before the National Assembly, 112 written submissions were received in response to the invitation to comment. AmaBhungane's evidence demonstrates that, in respect of the majority of those submissions, there is no evidence that they were properly engaged with, and no explanation has been offered by Treasury, the NA, or the President as to why they were

³⁵ *Esau and Others v Minister of Co-Operative Governance and Traditional Affairs and Others* 2021 (3) SA 593 (SCA) paras 77 - 93.

³⁶ AmaBhungane's Consolidated Replying Affidavit, CCT 144/25 Record, Vol 18, pp 1772 to 1773, paras 46 to 47.

overlooked.³⁷ Instead, Treasury made vague and unsubstantiated references to the impact of time constraints during public hearings.³⁸

- 31 In answer, the Speaker denies that Parliament had to demonstrate that it gave serious consideration to each of the submissions it received.³⁹ Implicit in this denial is an admission that not all submissions were seriously considered by Parliament.
- 32 This Court has held that Parliament's constitutional duty requires it to carefully consider and deliberate on all submissions and reports received from stakeholders during the legislative process.⁴⁰ This is especially so where Parliament had been alerted to the fact that the process was inadequate and did not resolve the serious constitutional defects identified in the submissions.⁴¹
- 33 The failure to engage with these submissions is not a minor procedural irregularity. Public submissions are material, relevant considerations that Parliament was constitutionally required to consider. Their wholesale disregard is fatal to the constitutionality of the process.⁴²

³⁷ Intervention FA, CCT 144/25, Record, Vol 15, p 1456, para 112.

³⁸ Intervention FA, CCT 144/25 Record, Vol 14, pp 1432, para 50 and pp 1433, para 54.

³⁹ Speaker's AA to AmaB, CCT 144/25 Record, Vol 17, p 1704, para 34.

⁴⁰ *Doctors for Life* 129.

⁴¹ Intervention FA, CCT 144/25 Record, Vol 15, pp 1439 to 1442, paras 72 to 78 and pp 1460 to 1464, paras 121 to 129.

⁴² *Mogale* paras 76 – 78 and 81.

Third ground: NCOP Committee failed to consider all submissions

- 34 AmaBhungane’s evidence demonstrates that the NCOP Committee failed to consider all of the public submissions made before it.⁴³
- 35 The National Treasury Comment Matrix Document prepared for the NCOP was an in-progress document. This is evident from its title, which includes the phrase “Added_BUSA_Corruption [sic]_Watch”,⁴⁴ indicating that submissions were being added as they were processed. The last two entries on the list of commentators are BUSA and Corruption Watch.⁴⁵
- 36 The list of commentators in the Comment Matrix Document includes only 30 submissions that had been analysed. Yet the NCOP Committee’s own Report dated 7 May 2024 expressly records that 33 submissions were received.⁴⁶ It follows that at least three submissions received no consideration at all.
- 37 AmaBhungane’s evidence identifies the submissions that were excluded: those from Will Power, MEC Wenger, Dear South Africa, and Eskom.⁴⁷ There is no explanation for why these submissions were overlooked. This Court has held that inaccurate and inadequate records of public participation, and the

⁴³ Intervention FA, CCT 144/25 Record, Vol 15, pp 1450 to 1451, paras 98 to 99 and pp 1464 to 1465, paras 130 to 134.

⁴⁴ Intervention FA, CCT 144/25 Record, Vol 15, pp 1464 to 1465, para 130.

⁴⁵ Intervention FA, CCT 144/25 Record, Vol 15, p 1465, para 131.

⁴⁶ Intervention FA, CCT 144/25 Record, Vol 15, p 1465, para 132.

⁴⁷ Intervention FA, CCT 144/25 Record, Vol 15, pp 1465 to 1466, paras 133 to 134.

failure to consider submissions, are indicative of a failure to fulfil the constitutional obligation.

Fourth ground: inadequate timeframes for public comment

38 The distinctive feature of the legislative process was the inadequate timeframes provided to stakeholders, as a result of the unseemly haste to pass the Bill.

39 The call for written public comments on the Bill was published on 18 August 2023,⁴⁸ with a deadline of 11 September 2023, a period of approximately three and a half weeks.⁴⁹ The first public hearings were held on 12 and 13 September 2023, the day after written comments closed.⁵⁰

40 AmaBhungane made its written submissions within this truncated timeframe. The process that followed was marked by debilitating haste at every stage.

41 The National Assembly and NCOP's engagement with stakeholders was significantly curtailed owing to self-imposed time constraints.

41.1 During the National Assembly committee hearings, the committee was only provided with a comment matrix reflecting the public submissions received, Treasury's responses to some of those

⁴⁸ Intervention FA, CCT 144/25 Record, Vol 14, pp 1431 to 1432, para 49.

⁴⁹ Intervention FA, CCT 144/25 Record, Vol 14, pp 1431 to 1432, para 49.

⁵⁰ Intervention FA, CCT 144/25 Record, Vol 14, pp 1432, para 50.

submissions, and a copy of the revised Chapter 4 a day prior to their meeting on 17 November 2023 to discuss the public submissions and stakeholders' input.⁵¹ In such a short period of time, committee members were given the impossible task of familiarising themselves with such a significant volume of work in order to engage meaningfully with Treasury and stakeholders.⁵²

41.2 Stakeholders present at the 17 November 2023 meeting were only provided with a copy of the revised Chapter 4 hours prior to the meeting, impairing their opportunity to meaningfully engage with the proposed amendments.⁵³ Those stakeholders present at the meeting were given two minutes to make submissions on highly technical revisions spanning seven pages.⁵⁴

41.3 The NCOP curtailed the opportunities for engagement it afforded stakeholders during meetings, diminishing the value of such opportunities. Stakeholders were permitted to provide supplementary submissions of a few pages, reduced to bullet points.⁵⁵

⁵¹ Intervention FA, CCT 144/25 Record, Vol 14, p 1433, para 53; CFA, CCT 144/25 Record, Vol 16, pp 1584 to 1585, paras 37 to 40.

⁵² CFA, CCT 144/25 Record, Vol 16, p 1585, para 40.

⁵³ Intervention FA, CCT 144/25 Record, Vol 14, p 1433, para 53.

⁵⁴ Intervention FA, CCT 144/25 Record, Vol 14, p 1433, para 53.

⁵⁵ Intervention FA, CCT 144/25 Record, Vol 16, pp 1437 to 1438, para 69; CFA, CCT 144/25 Record, Vol 16, p 1591, para 70.

- 42 The rushed nature of the process is corroborated by National Treasury's documents. The Comment Matrix prepared by National Treasury expressly acknowledged that, due to time constraints, a quality check of the responses to ensure alignment and correct textual errors had not been completed, and that not all comments from particular commentators had been responded to.⁵⁶
- 43 Treasury admitted that it disregarded longer submissions owing to time constraints. Before the NCOP Committee, Treasury said that it did not consider a 300-page submission by the National Research Foundation owing to time constraints. Cognisant of the importance of the submission, Treasury weakly stated that the submission would be considered to "inform the regulations going forward".⁵⁷
- 44 This candid admission by Treasury demonstrates the inadequacy of the process. If Treasury could not complete its own responses due to time pressure, it could never have given sufficient consideration to the public submissions. This was highlighted by the NCOP Committee who criticised the superficiality of Treasury's engagement with public submissions and their failure to provide meaningful responses to the submissions received.⁵⁸

⁵⁶ Intervention FA, CCT 144/25 Record, Vol 15, pp 1450 to 1451, paras 98 to 99; City FA, Annexure FA11, Comment Matrix, CCT 144/25 Record, Vol 2, p 195.

⁵⁷ CFA, CCT 144/25 Record, Vol 16, p 1593, para 78.

⁵⁸ CFA, CCT 144/25 Record, Vol 16, p 1591, para 67.

- 45 At the meeting of 17 November 2023, Treasury admitted that it had been unable to respond thoroughly to all submissions received due to time constraints. It confirmed that only approximately 20% of the written submissions had been responded to by that date.⁵⁹
- 46 During the NCOP proceedings, it was intimated that there was an urgent need to pass the Bill before the impending 2024 National Elections. Despite acknowledging that there may be differing reasons for the Committee to want to pass the Bill, the NCOP was reminded of the forthcoming elections and the fact that members of the Committee may not return under the new Parliament.⁶⁰ To ensure the timeous passage of the Bill, members were encouraged to remove contentious provisions.⁶¹
- 47 This Court has consistently held that time and cost constraints do not of themselves justify inadequate opportunities for public involvement. If the legislature cannot demonstrate that urgency was objectively necessary, truncated timelines fatally undermine the reasonableness of the process. This Court has held that a desire to finalise legislation prior to the dissolution of Parliament occasioned by national elections cannot justify such truncation.⁶²

⁵⁹ Intervention FA, CCT 144/25 Record, Vol 15, p 1584, para 33; Meeting Report, Annexure FA12, CCT 144/25 Record, Vol 3, pp 217 and 219.

⁶⁰ CFA, CCT 144/25 Record, Vol 16, p 1592, para 72; Meeting Report, CFA Annexure CFA4A, CCT 144/25 Record, Vol 17, p 1647.

⁶¹ CFA, CCT 144/25 Record, Vol 16, p 1592, para 72; Meeting Report, CFA Annexure CFA4A, CCT 144/25 Record, Vol 17, p 1647.

⁶² *Land Access Movement of South Africa* paras 66 and 70.

48 This was not a Bill required to deal with an urgent national emergency. The Act was not treated with any special expedition as it moved through the legislative process. There was no objective basis justifying a truncated timetable.

CUMULATIVE EFFECT

49 This Court assesses the reasonableness of the public participation process by looking at the process as a whole. AmaBhungane submits that, viewed cumulatively, the deficiencies set out above leave no doubt that Parliament failed to fulfil its constitutional obligation to facilitate meaningful public involvement.

50 In *Mogale*, this Court held that deficiencies of the kind at issue here - taken collectively - indicated that Parliament had failed to fulfil its obligation, and declared the impugned Act invalid.⁶³ In *Corruption Watch*, this Court reaffirmed that the obligation to facilitate public involvement is substantive, and that inadequate information, insufficient time, and restricted mechanisms for participation collectively undermine the constitutional standard.

51 The present case is at least as egregious. The Act in question concerns public procurement - a matter of the most acute public interest - and the deficiencies are not peripheral but go to the heart of the process. AmaBhungane

⁶³ *Mogale* paras 81 - 83.

respectfully submits that the conclusion is inescapable: Parliament failed to comply with its constitutional obligations under sections 59(1)(a) and 72(1)(a) of the Constitution.

REMEDY

- 52 Should this Court find that Parliament failed to fulfil its obligation to facilitate public involvement, it is obliged by section 172(1)(a) of the Constitution to declare that the conduct of Parliament is inconsistent with the Constitution and therefore invalid. Because both the content of legislation and the process by which it is made must conform to the Constitution, such a declaration renders the resulting legislation invalid.
- 53 The Act has not yet been brought into operation. There is accordingly no need to ameliorate the effect of the declaration of invalidity by means of a just and equitable order suspending the declaration under section 172(1)(b) of the Constitution. Should Parliament wish to proceed with the legislation, it may do so subject to complying with its obligation to facilitate public involvement.⁶⁴
- 54 This Court has granted declaratory relief in respect of Acts of Parliament that have been signed by the President but not yet brought into force. Section 172(2)(a), which empowers this Court to declare Acts of Parliament invalid,

⁶⁴ *SA Iron and Steel Institute* para 50.

does not distinguish between Acts that have been brought into force and those that have not.⁶⁵

- 55 AmaBhungane further submits that the invalidity goes to the Act as a whole. The first challenge, the failure to consider all public submissions, implicates the entire legislative process and is not confined to any discrete or severable part of the Act. The second challenge, the failure to conduct public participation on Chapter 4, concerns a central and integral part of the Act that is not discrete or severable.⁶⁶

CONCLUSION

- 56 The evidence demonstrates that Parliament failed to comply with its constitutional obligations to facilitate public involvement in the legislative process leading to the enactment of the Public Procurement Act 28 of 2024. AmaBhungane's evidence, drawn from its direct, first-hand participation in the process, complements the first applicants' cases and demonstrates the particular impact of Parliament's failures on civil society.
- 57 AmaBhungane accordingly supports the relief sought by the first applicants in each of the two matters and prays for an order in terms of the notices of motion.

⁶⁵ *Doctors for Life* paras 62–65.

⁶⁶ *SA Veterinary Association* paras 47 - 50.

NICK FERREIRA

DEBORAH MUTEMWA

Chambers, Sandton

Date: 27 February 2026