



PARLIAMENT
OF THE REPUBLIC OF SOUTH AFRICA

NATIONAL COUNCIL OF PROVINCES

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The Concerned Group of Civil Society Organisations and Individuals

Per: Tsukudu Moroeng

Email: tsukudu@lrc.org.za

Dear Mr Moroeng

Concerns regarding the Public Procurement Bill and Public Participation

1. Thank you for your letter regarding the above matter. You need not have any reservations about writing to us, obviously. That is your right. It's part of public participation. And we welcome it.
2. Of course, we recognise that you are a formidable, very technically competent set of stakeholders, and we appreciate your contribution to the Bill so far.
3. Your letter was discussed at length in our meeting of Tuesday, 26 April 2024, at which some of you were present. This letter is meant to complement that discussion. The discussion took place shortly after 10:00 for about 70 minutes, I think. You can, if you want, watch the relevant proceedings of the committee meeting on YouTube. (The link is <https://www.youtube.com/watch?v=THmD--5W8fg>)
4. Attached to this letter is the Legal Services Unit's overview from Adv Frank Jenkins on the issues on public participation and some constitutional issues. This letter has to be read in conjunction with Adv Jenkins' overview.
5. We cannot comment on the public participation process in the Standing Committee of Finance (SCoF). None of us was present at their meetings. So, I wasn't commenting on the SCoF process specifically in saying something like there were "flaws in the National Assembly's public participation process". I was trying to refer generally to the Bill being tabled in the NA towards the end of the 6th term of Parliament and if it had come earlier there may be time for more public participation. But Adv Jenkins was present in all the SCoF meetings – and I refer you to his comments. He does not find the public participation process to be flawed. Normally, civil society stakeholders complain that Parliament does

not carry out its oversight and legislative roles effectively. SCoF made changes to the Bill. That is its right.

6. In respect of the constitutional matters you raise, Adv Jenkins did respond to this at the end of the meeting which considered the report on the engagements between stakeholders and National Treasury (NT) between 8 and 10 April. He took this further at the 26 April meeting. We do not see the need for a workshop on constitutional issues. Nor does he. As already pointed out in the Committee, as MPs, we are not constitutional experts, and we rely on Parliament's Legal Services Unit to assist us in that regard. It is their responsibility to ensure that amendments a committee makes to a Bill are constitutionally sound. As it is, this bill is regarded as constitutionally sound by NT's lawyers, the State Law Advisor and Parliaments Legal Services Unit. However, ultimately, it's for a court to decide on this matter. And it seems that one or other party is likely to take the Bill to court.
7. There have been several amendments made to the Bill in the SeCOF process. Many of these flow from the submissions made by you and other stakeholders.
8. The Committee believes that there are definite financial implications to this bill and has expressed its concerns to NT, as we will in our report to Parliament too.
9. We have reservations about the extent to which this Bill provides for regulations by the Minister. But we understand the practical and other reasons for this as explained by NT. Importantly, these regulations have to be gazetted for public comment and are also required to be tabled in Parliament. Moreover, as you well know, regulations that go beyond the framework of an Act are illegal and can be contested in a court.
10. We have the fullest regard for Nedlac and the negotiations and other processes that take place there. It helps if Bills have been processed through Nedlac because they usually come with a degree of consensus or at least a sense of what the differences are between the parties. While Nedlac plays a very important role, it is Parliament, as you well know, that ultimately decides on Bills, taking into account what was decided during the Nedlac process.
11. Our processing of this Bill has followed the usual process, except that we have given far more attention to it than to other Bills, and we asked for a further process of consultation between yourselves and NT. As usual, we receive a briefing on the bill; then have public hearings where we engage with your submissions; then comes NT's response to your submissions, after which you reply to what NT says and then we engage with both yourselves and NT. We had the further process of your engagements with NT between 8 and 10 April, and


when the report was brought to Parliament, we had further engagements with yourselves and NT. It is usually after having heard the stakeholders and NT – all sides - that the committee begins to shape its views. Which is exactly what we have been doing since the committee stage began on this Bill. And you are free to attend meetings or catch up on its proceedings through YouTube. Moreover, our views will be expressed in the amendments that are being processed. If all goes well, we will have processed the amendments by Thursday or Friday this week. We hope to send you the Bill with the amendments by Friday evening for you to send your comments by noon on Monday (6 May 2024). We know that some of you will argue it is too brief a period for you to comment. I'm afraid that's the best we can do. Some of you have been engaging with this Bill over several years, including when it was first gazetted for comment and in the Nedlac process and since, including through the SCoF process. As you might know, we are not obliged in terms of Parliament's rules and norms on processing legislation to take further comments from you beyond the engagements we have already had with you, subject to the standard of reasonableness. We will consider your responses to the amendments at our meeting of 7 May. Some of you want to overhaul the entire bill, we understand, but we are not in support of that. So, we would strongly recommend that you send your comments on the amendments in a brief, precise form and if you want to offer any alternative wording, kindly do so. Ultimately, it is for Parliament, not NT, to decide on these amendments and that is exactly what will happen.

12. Should you want to see the amendments as we process them, you're welcome to contact our Acting Secretary, Estelle Grunewald, at egrunewald@parliament.gov.za and she'll forward you the Bill.
13. We do not understand what you mean when you suggest that you have not engaged directly with the Committee and only with NT. We DID engage directly with you during the public hearings and the response of NT to your submissions, and also when NT presented the report on its 8-10 April engagements with you.
14. We are not sure either how the Committee is meant to come to its views before we complete the consultation process set out in paragraph 11. Oh, we certainly have our views – very decisive ones, as anybody following the proceedings of our recent meetings will know. And you will see them in the amendments to the Bill and in our report to Parliament.
15. We are clear that further consideration needs to be given to this Bill and in our report to Parliament, we will refer to this bill as a “first phase” Bill and are to recommend that within a reasonable period – possibly two years - the Bill be reviewed, including through a Nedlac process, and any appropriate amendments, preferably that are consensually agreed, be brought to Parliament.

16. While we have to take your views seriously, you also have to respect Parliament, and we have to guard against “co-governing” by civil society organisations, as some seem to teether towards wanting to do. We are not suggesting that you are collectively seeking to do this, but you have to accept that Parliament has the final say on a Bill, even if its committees err at times.
17. Of course, while you hold to the views you do, you are not the only stakeholders, as you know. Other stakeholders have very different views, and we have to take into account their views too, as we have done.
18. Our Committee takes you seriously and has applied its mind to your submissions. In fact, since 2019 this is the Bill that we have spent the longest hours on. According to our committee secretary, Nkululeko Mangweni, we have spent 31 hours on the Bill so far. We have allocated another 14 hours on the Bill until 7 May, though it doesn’t seem to me, given where we’re at, that we will need all that time. In case you’re unaware, unlike in the National Assembly, where the members that serve in the Finance and Appropriations committees are different, in the NCOP, because of the limited number of MPs, the same members serve in both committees. And we have also had to and have to process Bills in the Appropriations Committee. In short, the time spent so far and the time still to be spent this Bill until 7 May in itself says much. More than any other words in this reply.

Once again, we thank you for your letter and wish you well.

Yours sincerely



Yunus Carrim MP
Chairperson: Select Committee on Finance
NCOP