

# SAHRC/SAIFAC SEMINAR ON RECENT CONSTITUTIONAL COURT DECISIONS

## In re: DOCTORS FOR LIFE CASE AND MATATIELE CASE

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### GENERAL INTRODUCTION

Constitutional law is concerned with the exercise of public power. The exercise of public power within a state takes place in a number of ways and is determined by evaluating the law making process, executive action and administrative action by the State and all its organs. In the case of the **Minister of Health & Others v Treatment Action Campaign**,<sup>1</sup> (“the TAC case”) the manner in which an organ of state implements policy, also came under scrutiny. As evidenced by most Constitutional Court cases, the consequence of South Africa’s new legal dispensation is that all exercise of public power must be viewed through the prism of the Constitution, in particular the provisions of the Bill of Rights. Cheadle and Davis sum up this principle in the following way:

**“If a modern democratic constitution concerns itself with the *locus* of power, it also concerns itself with the form in which power is exercised. Law is the medium through which power is disseminated and exercised, beginning with the constitution itself. No rule may be made except in accordance with the constitution—a democratic constitution is a rule-making machine. No public body may exercise power except in terms of an authorising rule, and no person is above the law.”<sup>2</sup>**

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<sup>1</sup> Minister of Health v Treatment Action Campaign and Others 2002 (5) SA 721 (CC); 2002 (10) BCLR 1033 (CC)

<sup>2</sup> Cheadle, Davis and Haysom: South African Constitutional Law: The Bill of Rights

Like the TAC case, both the **Doctors for Life**<sup>3</sup> case and the **Matatiele**<sup>4</sup> case are also a significant step in the evolution of South Africa's democracy and jurisprudence. They have all teased and tested the essence of South Africa's political system. In many respects, as is obvious in some dissenting judgments<sup>5</sup>, they have dared the fine lines that purport to separate the different branches of government. The ambit of judicial control over the exercise of public power has been the subject of many a constitutional case since 1994. These two cases add a particular dimension in South Africa's politico-judicial trajectory.

Constitutional litigation is the meeting point of the political contestations within any given state. It deals with who has or should have custody of public power and how such public power is exercised. In this sense, law is at the centre of contestations between the State and civil society, between various classes in society and in particular between the interests of ruling elites and those of the powerless.

Constitutional law is therefore at the centre of the nature of the state, the manner in which it functions, how it exercises power and how it manages (if at all) the ubiquitous societal contradictions, most of which extend and find expression in the very ruling classes of each state. It brings to bear the often understated tyranny of the educated elites over the majorities in their societies, the subtlety of which tends to marginalize some values and views held by majorities.

Our Constitutional Court as the highest court in the land has the colossal task of resolving the manifestations of these contradictions. In order to discover the content and subject of democracy or any political system of a given State, one must evaluate the manner in which it makes its political, administrative, legislative and executive decisions. This is the subject of constitutional litigation in most modern and liberal democratic states.

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<sup>3</sup> Doctors For Life v The Speaker of Parliament and Others, decided on 17 August 2006

<sup>4</sup> Matatiele Municipality and Others v President of the Republic of SA, decided on 18 August 2006

<sup>5</sup> See: Justice Yaccob and Justice Van der Westhuisen in Doctor's for Life case

## BRIEF POLITICAL FOUNDATIONS

It is not the subject of this presentation to deal with all the political permutations and dimensions of the two cases, save to say that they both bring to the fore the unresolved questions about the theories of the state, the imperatives of and the subtle conflicts between representative and participatory democracy. They betray the attitudes of the governing elites towards the governed and vice versa. More importantly, and because democracy is always work in progress, these cases represent stages of maturity in South Africa's democratic path. After all, we are all people of our time and material conditions. Apart from our history-based surmises, we actually know no more than some past and the present.

In 1994 South Africa joined the family of nations whose citizens enjoy human rights, protected and enshrined in a constitution. South Africa's transition ushered in a legal revolution. The Bill of Rights contained first in the Interim Constitution and later in the 1996 Constitution became central in South Africa's nascent democracy.

On 9 June 1996 South Africa adopted the African Charter on Human Rights ("the African Charter"), confirming her obligation to respect and uphold the freedoms and rights contained in the African Charter, International Covenant on Civil and Political Rights and other international instruments on human rights.

This new legal and political order changed the face of constitutional law in South Africa. It did away with Parliamentary supremacy of the apartheid legal order as derived from the Westminster system, which allowed Parliament to pass any law regardless of its encroachment upon civil liberties.

Parliamentary supremacy was replaced by the supremacy of the Constitution, reflected in the supremacy clause, which provides that:

**“This Constitution is the supreme law of the Republic, law or conduct inconsistent with it is invalid, and the duties imposed by it must be performed.”<sup>6</sup>**

The preamble of the Constitution describes South Africa’s political system. It states, *inter alia*, that:

**“...We therefore, through our freely elected representatives, adopt this Constitution as the supreme law of the Republic so as to-**

**...Lay the foundations for a democratic and open society in which government is based on the will of the people and every citizen is equally protected by law...”**

The values of the new South Africa are reflected in section 1 of the Constitution, which provides that:

**“The Republic of South Africa is one, sovereign, democratic state founded on the following values:**

- (a) Human dignity, the achievement of equality and the advancement of human rights and freedoms.**
- (b) Non-racialism and non-sexism.**
- (c) Supremacy of the Constitution and the rule of law.**
- (d) Universal adult suffrage, a national common voters’ roll, regular elections and a multi-party system of democratic government, to ensure accountability, responsiveness and openness.”<sup>7</sup>**

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<sup>6</sup> Section 2 of Act 108 1996

<sup>7</sup> Section 1 of the Constitution

The Constitution is not only concerned with the exercise of public power. However, for present purposes, the two cases are concerned with public power and how it was exercised in a law making process. The new legal dispensation has given our courts a special role in constraining public power.

The most common and primary way of exercising public power is through law-making. In order to avoid abuses of public power, the Constitution prescribes certain procedures for law making. In the *Pharmaceutical case*, the Constitutional Court stated rather emphatically that executive and legislative powers may not be exercised in an arbitrary manner.<sup>8</sup> I now deal with each of the two cases.

## **DOCTORS FOR LIFE INTERNATIONAL v THE SPEAKER OF THE NATIONAL ASSEMBLY & OTHERS**

### **Introduction**

This case was brought directly to the Constitutional Court by Doctors for Life International (“Doctors for Life”), challenging the procedure followed by the National Council of Provinces (“NCOP”) before the enactment of four health Bills. The statutes in question are the Choice on Termination of Pregnancy Amendment Act 38 of 2004 (“the CTOP Amendment Act”); the Sterilisation Amendment Act 3 of 2005; the Traditional health Practitioners Act 35 of 2004 (“the THP Act”); and the Dental Technicians Act 24 of 2004<sup>9</sup>.

The issues before the Constitutional Court were therefore procedural ones. What the case turned on was the procedural requirement(s) for the validity of legislation. The central question and one which is significant for the organs of state in this case is the real meaning of public involvement in the law making process. A rather subtle lesson for the

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<sup>8</sup> The Pharmaceutical Manufacturers’ Association of SA and Another : In re: *Ex Parte* President of the Republic of South Africa and Others 2000 (2) SA 674 (CC)

<sup>9</sup> See Judgment, page 3, para 4

organs of state concerns the steps and attitudes that amount to true public participation in the legislative process.

### **Preliminary issues considered by the Court**

The judgment is rather long for a number of reasons. Before it deals with the real essence of the challenge, it traverses various other matters related therewith. Firstly, it deals with the question of its exclusive jurisdiction over the dispute<sup>10</sup>. For present purposes I do not seek to deal in any great detail with these aspects. It suffices to state that the Court concludes that since the case concerns issues that are ‘pre-eminently ‘crucial political’ ones, it is the only court with the jurisdiction to hear such matters. It draws its conclusions from the provisions of section 167 (4) of the Constitution<sup>11</sup>. In particular, the Court concludes that:

**“...the closer the issues to be decided are to the sensitive area of separation of powers, the more likely it is that the issues will fall within section 167 (4). It follows that where a dispute will require a court to decide a crucial political question and thus intrude into the domain of Parliament, the dispute will more likely be one for the exclusive jurisdiction of this Court.”<sup>12</sup>**

It then deals with its competence to grant declaratory relief in respect of proceedings in Parliament. In this regard, the Court held that it is not competent to grant any relief in respect of a bill that has been passed by Parliament, but has not been assented to and signed by the President. The other question was whether it was competent for the Court

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<sup>10</sup> Judgment, page 7, para 13

<sup>11</sup> Section 167 (4) states that: “Only the Constitutional Court may-

- (a) decide disputes between organs of state in the national or provincial sphere concerning the constitutional status, powers or functions of any of those organs of state
- (b) decide on the constitutionality of any parliamentary or provincial Bill, but may do so only in the circumstances anticipated in section 79 Or 121;
- (c) decide applications envisaged in section 80 or 122;
- (d) decide of the constitutionality of any amendment to the Constitution;
- (e) decide that Parliament or the President has failed to fulfill a constitutional obligation; or
- (f) certify a provincial constitution in terms of section 144.”

<sup>12</sup> Judgment, page 14, para 24

to grant relief in respect of an Act of Parliament that has not been brought into force. This is governed by section 80 of the Constitution, read with the provisions of section 172 (2) (a) of the Constitution dealing with the powers of the Constitutional Court to make orders concerning the constitutional validity of an Act of Parliament. In this regard, the Court held that it is competent for it to grant relief in respect of the proceedings of Parliament after the bill has been enacted into law but before it has been brought into force<sup>13</sup>.

The Court left open the question of its competence to issue a declaratory relief in respect of parliamentary proceedings before Parliament has concluded its deliberations on a bill. As a result of the contentions regarding the separation of powers, it seems to me that Justice Ngcobo felt compelled to traverse some theoretical foundations of the political system before dealing with the specific challenges before the Court. He considers the theoretical issues regarding the general right of a citizen to participate in political processes of his/her government. In particular, the eminent Justice considers comprehensively the meaning of public involvement.

He deals with the fact that public involvement means **“access to information and the facilitation of learning and understanding in order to achieve meaningful involvement by ordinary citizens.”**<sup>14</sup> It is in this context that his reasoning and ultimate ruling must be understood.

The length of the judgment is, in my view, attributable to this theoretical exposition of the issues. In essence, it is a well argued theoretical exposition. It traces the articles in various human rights instruments. In fact, as I read the section on the Conventions and the African Charter, I was reminded of Bert Rollong who had an attack of cynicism and said that **“The road to hell is paved with good Conventions.”**<sup>15</sup>

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<sup>13</sup> Judgment, page 34, para 65

<sup>14</sup> Judgment, page 72, para 131

<sup>15</sup> Bert Rollong, *The law of War and National Jurisdiction Since 1945* (Hague Academy, 1960) page 445.

## THE ISSUES CONSIDERED

The judgment then considers the essence of the challenge; whether the NCOP and the provincial legislatures have fulfilled their obligation to facilitate public involvement in their respective legislative processes in accordance with the provisions of the Constitution. At the outset, I must state that in regard to the NCOP the nub of this case is less about whether the constitutional processes were followed, and more about whether the NCOP followed the procedure it set out to follow. The real question is the fact that the NCOP set out a process that it later undermined, without fully explaining it on the papers before court<sup>16</sup>. It also appears that rather than providing the Court with a well canvassed explanation and /or documentary evidence of its contentions that the process was followed, the Respondents sought refuge in the fragile castle of the doctrine of separation of powers.

The parties agreed that sections 72 (1) (a) and 118 (1) (a)<sup>17</sup> of the Constitution require public participation in the legislative processes of the NCOP and the provincial legislatures. This suggests that the need for public involvement requires much more than lip service and a mere adoption of bare formalities. Public involvement requires genuine steps that give meaning and effect to the principle of a government of the people by the people. The subtle contradictions of this notion are better left to political theory than our courts. It is also undisputed that Parliament, excluding the NCOP, performed its function.

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<sup>16</sup> Judgment; page 85, para 154

<sup>17</sup> Section 72 (1) (a) provides: “(1) The National Council of Provinces must-  
(a) facilitate public involvement in the legislative and other processes of the Council;...”  
Section 118 (1) (a) provides: “A provincial Legislature must-  
(a) facilitate public involvement in the legislative and other processes of the legislature and its committees;..

It was also acknowledged by the Court that

**“Parliament and the provincial legislatures have broad discretion to determine how best to fulfill their constitutional obligation to facilitate public involvement in a given case, so long as they act reasonably.”<sup>18</sup>**

It was stated by the Court that:

**“In the end, however, the duty to facilitate public involvement will often require Parliament and the provincial legislatures to provide citizens with a meaningful opportunity to be heard in the making of the laws that will govern them. Our Constitution demands so.” (emphasis added)<sup>19</sup>**

Where the parties parted ways was on the meaning of the steps taken in order to ensure public involvement. It is recorded that after the Bills had been sent to the chairperson of the NCOP, the Select Committee received briefings from the Department of Health. The Bills were then sent to the Speakers of the nine provinces, who then passed them on to their respective provincial committees of the NCOP.

The Respondents contended that the NCOP and the respective provincial portfolio committees had complied with the requirements of sections 59, 72 and 118 of the Constitution. They contended that they invited members of the public to participate either by making oral or written submissions. They also said that they advertised the fact that the relevant committees would be meeting in respect of the bills. As stated in the judgment, no evidence, documentary or otherwise was presented to support these general submissions. In fact, the NCOP could not present any evidence or record to support even its submission that it had held public meeting or invited written representations<sup>20</sup>.

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<sup>18</sup> Judgment, page 81, para 145

<sup>19</sup> Judgment, page 81, para 145

<sup>20</sup> Judgment, page 85, para 154

What is clear though is that the NCOP of its own accord had decided that it would hold public hearings in respect of each Bill. It concluded that the hearings would be held in the provinces and advised each province of such undertaking.

It emerged that in respect of the THP Bill , which was intended to introduce a new dispensation of regulating traditional health practitioners, only Mpumalanga, North West and Limpopo held hearings. This is despite the fact that at least six provinces had agreed that public hearings would be necessary in respect of this Bill. It must be said however, that most of these provinces complained that the NCOP had not given them sufficient time to hold these hearings.<sup>21</sup> The Northern Cape even conducted a hearing after it had already conferred a final mandate on its delegation. The Court therefore held that the NCOP failed to comply with its obligation to facilitate public involvement in regard to this Bill.<sup>22</sup>

In regard to the CTOP Amendment Act, which concerned another controversial issue of termination of pregnancy, the NCOP had made an undertaking to hold public hearings. The CTOP Amendment Act seeks to allow for registered nurses, other than midwives, to perform termination of pregnancies at certain public and private facilities. The NCOP made an undertaking that such public hearings would take place at provincial level. This undertaking was made by the provinces themselves. Of the four provinces that wished to hold such hearings, only Limpopo did. The other provinces complained of insufficient time given to them by the NCOP. Even when the NCOP had been advised that many of the provinces had not held public hearings, it did not conduct its own hearings. In this regard Justice Ngcobo concludes that:

**“These considerations, in my judgment, lead to the conclusion that the NCOP and the provinces failed in their duty to facilitate public involvement**

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<sup>21</sup> Gauteng argued that it had not been given enough time to study the Bill. See Judgment page 91, para 170

<sup>22</sup> Judgment, page 97, para 181

**in their legislative and other processes in relation to the CTOP Amendment Act.”<sup>23</sup>**

In regard to the Dental Technicians Amendment Act, however, the Court made the following ruling:

**“Having regard to the nature of the Bill and the views of the majority of the provinces and the NCOP on it, I am unable to conclude that the NCOP and the provinces acted unreasonably in not inviting written representations or holding public hearings on this Bill.”<sup>24</sup>**

#### THE REMEDY

Section 172 (1) of the Constitution provides, *inter alia*, that:

**“172 (1) When deciding a constitutional matter within its power, a court-**

- (a) must declare that any law or conduct that is inconsistent with the Constitution is invalid to the extent of its inconsistency, and**
- (b) may make any order that is just and equitable, including-**
  - (i) an order limiting the retrospective effect of the declaration of invalidity; and**
  - (ii) an order suspending the declaration of invalidity for any period and on any conditions, to allow the competent authority to correct the defect.”**

The Court in this case relied on the above provision. After finding that the NCOP failed to fulfill its constitutional obligation in relation to the CTOP Amendment Bill and the

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<sup>23</sup> Judgment, page 100, para 188

<sup>24</sup> Judgment, page 102, para 192

THP Bill, the Court found that such conduct was invalid. After conceding that the case was not about the substance of these Bills, the Court still concluded that they are invalid.<sup>25</sup>

The issue that remained was that of remedy. In this regard, the Court concluded that an order of invalidity that takes immediate effect will be disruptive. It therefore suspended its order of invalidity in terms of section 172 (1) (b) (ii) in order to give Parliament the opportunity to remedy the flaw in its process. The order of invalidity was suspended for 18 months.

While there is some controversy about suspending orders of invalidity, given its perceived prejudice to the victorious litigant, it is clear that in this case it was just and equitable to suspend the order of invalidity. It is the only order that settles the matter without disrupting governance.

#### THE STATE'S OBLIGATIONS IN TERMS OF THE JUDGMENT

There are hard lessons for organs of state in this judgment. Firstly, it makes a serious clarion call to them to do more than pay lip service to constitutionally enshrined rights and obligations. Various comments by Justice Ngcobo signal the impatience of the highest court with both the arrogance of power and/or shortcuts when dealing with matters of the public.

It is a warning that half-hearted efforts in respect of public involvement in legislative processes amount to postponing the inevitable, in that the Constitutional Court will declare invalid any process that is short of real and meaningful contribution of the people. Organs of state must take seriously the issues of involving the public in law making. It is not sufficient to simply comply meaninglessly with mere formalities. This constitutionally enshrined right is compromised when those in the state machinery or any other branch of government take the citizens for granted.

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<sup>25</sup> Judgment, page 111, para 212

## IMPLICATIONS FOR CIVIL SOCIETY

There is already a climate in the country which appears to be a backlash against some of the values accompanying the new constitutional system. There is also a climate in which certain interest groups are skeptical about certain bills that Government seeks to introduce. All these matters demonstrate the need for civil society to engage fully with legislative processes unfolding in the country. For those who for some reason wish to revolt against some values in the Constitution, there is a lesson. These values, they bemoan, were ‘smuggled’ or ‘negotiated’ into the Constitution while some of them were still caught in the euphoria of the sudden demise of the apartheid system. While they may chose chosen to bask in the glory of ‘defeating the enemy’, they ought to have participated fully in the debates of the time.

In regard to those bills and policies that are on the horizon, and appear to threaten any constitutionally enshrined right, the solution is simply three words: engage, engage and engage.

Sometimes it is not as a result of an evil motive that those within the organs of state overlook the role of the public. Sometimes it is simply a question of their own views about the process, sometimes ineptitude, sometimes time constraints and in rare cases arrogance of power.

It is not always because ill-motives that decision-makers in politics make mistakes, but sometimes it is due to the fact that political decisions do not always involve a choice between good and bad, for if that was the case life would be simpler. At times, they are faced with a choice between equally competent options and they have to select one. It is when those in society engage fearlessly that better alternatives of both policy and process begin to emerge.

## THE ISSUES RAISED IN THE DISSENTING JUDGMENTS

Justice Yacoob, with Justice Van der Westhuisen concurring, wrote dissenting judgments in which they questioned the reasoning and ruling of the majority judgment. While Justice Sachs wrote a separate judgment, he concurs with the majority judgment. I do not wish to deal with his judgment.

It is the reasoning of Justice Yacoob and Van der Westhuisen that requires some mention. For present purposes the most interesting comment by Justice Yacoob is to be found where he deals with “The obligation to facilitate public involvement”. In this regard he states as follows:

**“I must clarify the nature of the enquiry before us. We are concerned neither with the merits or demerits of participatory or representative democracies, nor with what in our view would be the ideal balance between participation and representation in our democracy. This Court must determine what the Constitution requires. Equally this case has nothing to do with the views of the members of this Court in relation to whether public involvement is necessary in a democracy, that public participation would lead to better legislation, that it would be unfair to pass legislation without public hearings or that it is desirable for the public to be given an opportunity to be consulted. I may have answered all these questions in the affirmative but all we must decide is what our Constitution requires in relation to public involvement. It is true that the Constitution must be interpreted in relation to the international context but the words of the Constitution must not be lost sight of within that context.”<sup>26</sup>**

There is no need to get into the details of this reasoning, save to say that it represents a particular school of thought within the judiciary. But Justice Yacoob does get into some specifics about what he contends is an incorrect interpretation of the provisions of the Constitution. He states that:

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<sup>26</sup> Judgment, page 154, para 269

**“Public involvement in the legislative process is not mentioned at all as an essential principle of the Constitution. It has been suggested that the phrase “to ensure accountability, responsiveness and openness” entrenches some public involvement element. I do not agree. The phrase simply signifies the broad objective of having a universal franchise, national voters’ roll, regular elections and a multi-part system of democracy. The phrase certainly does not add any public participation component or public involvement element....”<sup>27</sup>**

In concluding his judgment Justice Yacoob makes the following comment:

**“The Constitution does not require the section 72 (1) (a) or section 118 (1) (a) public involvement provision to be complied with as a pre-requisite to any legislation being validly passed. To infer a requirement of this kind when it is not expressly provided for is to impermissibly undermine the legislature and the right to vote.”<sup>28</sup>**

As difficult as it may be to agree with Justice Yacoob, his reasoning requires some discussion. It is not the subject of this paper to consider the theoretical issues implied in this dissenting judgment. I mention the above simply because these utterances reflect a particular thinking within the judiciary and perhaps in society. I make no comment about the soundness of the reasoning in these judgments. Not only because they have no effect, but also because it is not the purpose of this paper to deal with them.

## **MATATIELE MUNICIPALITY & OTHERS v PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA & OTHERS**

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<sup>27</sup> Judgment, page 157, para 275

<sup>28</sup> Judgment, page 197, para 339

This case concerns constitutional amendments and the corresponding obligation of a provincial legislature to consult with the people who would be affected by the re-drawing of provincial boundaries.

Parliament adopted the Twelfth Amendment to the Constitution, the effect of which was that the provincial boundaries would no longer follow magisterial districts, but would be determined on the basis of municipal areas. This change would, *inter alia*, transfer the area known as Matatiele Local Municipality into the Eastern Cape province. This is the subject of the constitutional challenge in this case.

While the challenge was substantive, the Court felt that there were procedural issues that arose from the manner in which the amendment was adopted. In particular, the main issue was whether the part of the Twelfth Amendment which concerns the province of KwaZulu-Natal was adopted in accordance with the provisions of the Constitution.

The challenge was opposed by the President of the Republic of South Africa together with other respondents.

The relevant section of the Constitution regarding constitutional amendments is section 74 (3) which provide:

**“(3) Any other provision of the Constitution may be amended by a Bill passed-**

- (a) by the National Assembly, with a supporting vote of at least two thirds of its members; and**
- (b) also by the National Council of Provinces, with a supporting vote of at least six provinces, if the amendment-**
  - (i) relates to a matter that affects the Council;**

- (ii) alters provincial boundaries, powers, functions or institutions; or
- (iii) amends a provision that deals specifically with a provincial matter

.....

- (8) If a Bill referred to in subsection (3) (b), or any part of the Bill, concerns only a specific province or provinces, the National Council of Provinces may not pass the Bill or the relevant part unless it has been approved by the legislature or legislatures of the province or provinces concerned.”<sup>29</sup>

There was no dispute about the applicability of the above section. It was also held by the court that section 74 (8) is applicable.<sup>30</sup> The same was said of section 118.

The court then considered whether the provincial legislatures of both Eastern Cape and KwaZulu-Natal complied with their constitutional duty to facilitate public involvement in terms of section 118 (1) (a). It was held that the province of the Eastern Cape complied with its duty to facilitate public involvement in regard to the constitutional amendment. The Court based this on the fact that the province of the Eastern Cape did hold public hearings in the affected areas.<sup>31</sup>

The province of KwaZulu-Natal had stated that there was a need for public hearings in regard to this amendment. However, the provincial legislature failed to hold such public hearings. As a result, the Court concluded that the KwaZulu-Natal legislature acted unreasonably in failing to hold public hearings or invite written representations. The Court held that this was in violation of section 118 (1) (a) of the Constitution.<sup>32</sup>

## REMEDY

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<sup>29</sup> Section 74 of the Constitution  
<sup>30</sup> Judgment, page 12, para 23  
<sup>31</sup> Judgment, page 37, para 73  
<sup>32</sup> Judgment, page 41, para 84

In this regard as well the Court relied on section 172 of the Constitution. It declared the amendment to be inconsistent with the Constitution. The Twelfth Amendment was declared invalid.

The order of invalidity was suspended for a period of eighteen months to give the KwaZulu-Natal legislature the opportunity to remedy the defect.

## CONCLUSION

The lessons for both the State and civil society are the same as those stated for the Doctors For Life International case.