



## Doctors for Life International v. Speaker of the National Assembly, et al.

[2006] ZACC 11; 2006 (12) BCLR 1399 (CC); 2006 (6) SA 416 (CC)

**Country:** South Africa

**Region:** Africa

**Year:** 2006

**Court:** Constitutional Court

**Health Topics:** Sexual and reproductive health

### Facts

The applicant challenged the validity of four draft bills relating to health rights. One bill allowed registered nurses to perform abortions at certain public and private facilities.

The applicant alleged that the National Council of Provinces (NCOP) and the provincial legislatures failed to fulfill their respective obligations under sections 72(1)(a) and 118(1)(a) of the Constitution to facilitate public involvement in the legislative process. The applicant alleged that NCOP had failed to invite written submissions from the public and conduct public hearings on the bills. At the time of the application, three of the bills had already been enacted. The applicant applied directly to the court, arguing that no other court had jurisdiction in this matter, seeking a declaration that the four bills were invalid.

[Adapted from INTERIGHTS summary, with permission]

### Decision and Reasoning

The Court declared two of the statutes invalid, including the statute related to abortion, holding that the NCOP failed to comply with its obligation to facilitate public involvement on the bill as required by section 72(1)(a) of the Constitution. The Court reasoned that while NCOP had decided that hearings should be held in the provinces on the bill, only one province had actually held a hearing.

On the procedural issues, the Court held that:

(1) The Court had exclusive jurisdiction over the dispute under section 167(4)(e) of the Constitution, because the challenge required a court to intervene in the legislative process. This could only be done by the Court, which is the highest court on constitutional matters.

(2) The Court is competent to consider a challenge to a bill that has been signed into law and before it has been brought into operation. After a bill has been passed by Parliament but while it is under consideration by the President, it may only be considered by the Court at the request of the President. On this basis, the Court was not competent to consider the Sterilisation Amendment Act, which was still in Bill form when the proceedings were launched, but was competent to consider the Traditional Health Practitioners Act (THPA), the Choice on Termination of Pregnancy Amendment Act (CTPAA) and the Dental Technicians Amendment Act (DTAA), which had by that time already been enacted.

The dissent would have upheld the abortion law, reasoning that the Constitution does not require public involvement as a condition of the validity of legislation. The failure of the NCOP and most of the provinces to facilitate public involvement in relation to these bills thus did not invalidate them.

[Adapted from INTERIGHTS summary, with permission]

### Decision Excerpts

"On the record, I am satisfied that of the provincial legislatures, only Limpopo and the Western Cape held public hearings or invited written submissions in respect of the CTOP Amendment Bill. It is true that the applicant was permitted to make a submission to the KwaZulu-Natal legislature. However, the applicant

contacted the Chairperson of the Health Committee on its own initiative, and no other members of the public were invited or given an opportunity to make submissions. Moreover, it is clear that both the NCOP and a majority of the provinces considered that it was necessary to conduct public hearings, or at least invite written submissions, in relation to the CTOP Amendment Bill. In these circumstances, KwaZulu-Natal cannot be said to have acted reasonably in facilitating public participation in relation to the CTOP Amendment Bill. In the event, it did not comply with its duty to facilitate public involvement in relation to this Bill." Para. 186.

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