

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 2025-092790

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO

Date: 17 July 2025

LABOUR PARTY OF SOUTH AFRICA

Applicant

and

THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

First Respondent

**THE DEPUTY PRESIDENT OF THE REPUBLIC OF
SOUTH AFRICA**

Second Respondent

**NATIONAL ECONOMIC DEVELOPMENT AND
LABOUR COUNCIL**

Third Respondent

MINISTER OF FINANCE

Fourth Respondent

NATIONAL TREASURY

Fifth Respondent

SPEAKER OF THE NATIONAL ASSEMBLY

Sixth Respondent

STEVE BIKO FOUNDATION

Seventh Respondent

THABO MBEKI FOUNDATION

Eighth Respondent

CHIEF ALBERT LUTHULI FOUNDATION

Ninth Respondent

DESMOND AND LEAH TUTU LEGACY FOUNDATION

Tenth Respondent

STRATEGIC DIALOGUE GROUP

Eleventh Respondent

REASONS

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Introduction

- [1] The Labour Party seeks an urgent interim interdict to halt the National Dialogue set to commence on 15 August 2025.¹ The relief is sought pending the review of the decision² to establish the National Dialogue.
- [2] The state respondents are the first to sixth respondents, being the President, Deputy-President, NEDLAC, Treasury, the Minister of Finance and the Speaker of the National Assembly.
- [3] The seventh to eleventh respondents were admitted as intervening parties prior to the hearing. They are Foundations, built on the legacies of freedom fighters that span the

¹ The specific relief sought is:

“Pending determination of a review in Part B, the Labour Party seeks an order interdicting and restraining -

12.1 the operation and implementation of the President’s decision to convene two National Conventions and conduct a national dialogue process, including any expenditure related thereto: and/or

12.2 the Respondents and their representatives from taking any steps or incurring any expenditure to convene the National Dialogue Conference on 15 August 2025.”

² There is a dispute as to whether announcing the National Dialogue amounts to a decision and if so whether the decision was made on 10 June 2025 or in December 2024. The Court will refer to it as a decision for ease without making a finding in this regard. For reason that will become clear below the Court did not make a final determination on this issue as it will be the subject of Part B of these proceedings.

resistance movement in South Africa, including those of Nobel Laureates. The Foundations are the custodians of the National Dialogue.

- [4] The controversy which this Court has to decide is whether the requirements for an interim interdict have been met, alternatively whether the Labour Party has made out a case for the Court to exercise its powers in terms of section 172 of the Constitution.
- [5] Before addressing these requirements, the Court sets out the announcement and the progress of the National Dialogue.

Announcing the National Dialogue

- [6] The National Dialogue has been announced in stages as it unfolds. Certain events are significant. First the speech by former President Thabo Mbeki on 30 April 2024. In that speech President Mbeki highlighted several major challenges facing the country and urged that the nation come together in a national dialogue to do that seismic reflection. President Mbeki emphasised that the dialogue should be inclusive and not limited to politicians. It should be extended to civil society, business, labour and “everybody”.
- [7] Second, the post-election formation of the Government of National Unity (GNU) in May 2024. In the published Statement of Intent, the ten political parties to the GNU pledged to commit to an “all-inclusive National Dialogue process ... [that] will seek to develop a national social compact that enables the country to meet the aspirations of the National Development Plan”.
- [8] Third, a commitment by government to the process, specifically through the President’s consistent reiteration of government’s support for the National Dialogue. This can be seen from the President’s inauguration on 19 June 2024, when the President stated that he would invite all parties, civil society, labour, business and other formations to a National Dialogue. Again, at the opening of Parliament on 18 July 2024, the President confirmed the National Dialogue would involve extensive and

inclusive public participation akin to the previous events that charted the way forward for the country (like the Congress of the People and CODESA).

- [9] Then on 16 December 2024, the President announced that “we will hold a National Dialogue next year”. The President added that “since the announcement I made on the National Dialogue during my inauguration in June, we have received many representations [and] [f]urther consultation is underway ... on the form and content of the National Dialogue”.
- [10] Most recently, on 10 June 2025, in a televised address, the President confirmed the date for the first convention as 15 August 2025 and announced the names of the Eminent Persons Group to assist in advising the President and championing the National Dialogue.
- [11] In making the announcement, the President explained that it was “an initiative that has been in discussion by a number of leaders in our country and many other people for some time now”, that the “initiative” had been “gathering support”, and that, in the wake of “consultations”, there is “broad agreement that given the challenges our country is facing at the moment, we should convene the National Dialogue”. According to the announcement, the National Dialogue will be a “participatory process” that is to be guided by “an Eminent Persons Group”, appointed by the President. Moreover, an Inter-Ministerial Committee “has been established” under the Chairmanship of the second respondent (the Deputy President), which will “coordinate government’s contribution to the National Dialogue”. It was said that a Steering Committee is to be established, “comprised of representatives of various sectors of society, to set strategic priorities and coordinate implementation of the National Dialogue process”. Finally, the President said that the “Secretariat, which is responsible for day-to-day management of National Dialogue activities, will be housed at NEDLAC...”.
- [12] The first National Convention is scheduled for 15 August 2025, and is expected to set the agenda for the National Dialogue.

[13] Whilst the announcements have been made by our former President and our current President, the work and initiative comes from the Foundations.

The work done by the Foundations

[14] The Foundations explained in its papers, the context within which it was doing the work and the work done to this point.

[15] The Foundations point to some stark facts: the 2024 South African elections saw a record low voter turnout despite an increase in political parties and independent candidates, indicating declining public trust in electoral democracy. The elections also revealed growing societal divides - between rich and poor, urban and rural communities - alongside failing public services, corruption, and widespread mistrust in government. Perhaps the most striking indicator of this alienation is that only 40% of eligible voters chose to cast their ballots. According to data from the Public Affairs Research Institute (PARI), 70% of non-voters were under the age of 35, raising serious concerns about the legitimacy of democratic institutions and the mandate of Parliament.

[16] The Foundations place the National Dialogue in this context. They submit that an active citizenry should be encouraged in South Africa since we have chosen a participatory model of democracy. The success and benefits of this model depends on public participation exercised through civil society organisations, communities, and ordinary members of the public. They rely on the repeated findings by our that public participation is a critical aspect of our constitutional order that must be embraced and jealously guarded.

[17] In their capacity as custodians of the National Dialogue the Foundations convened a Preparatory Committee, a transitional coordinating structure, to lay the groundwork for South Africa's upcoming National Dialogue. Pursuant to arrangements made with representatives of the State, the Preparatory Committee evolved into what is now known as the National Dialogue Preparatory Task Team ("the PTT"). Comprising over 50 non-governmental organisations representing Foundations, governmental

organisations, community-based groups, the PTT serves as the operational mechanism responsible for developing the strategic, procedural, and logistical foundation necessary for the successful launch and execution of the Dialogue process.

- [18] The Foundations explain that the dialogue will be preceded and informed by an extensive public consultation process in localities facilitated by various sectors of society. Mechanisms will be established for citizens to contribute directly to shaping the agenda and outcomes of the National Dialogue. Bottom-up, community dialogues will be organised to ensure maximum participation and engagement across all rural and urban communities. Focused sectoral dialogues will take place covering specific governance, leadership, social and economic issues including stakeholders and experts.
- [19] The anticipated outcomes include an agreement on the critical challenges facing the nation, a shared vision of what it means to be a South African and the development of a new national ethos and common value system, a recommitment by all South Africans to our democratic order and the active participation of all citizens in the democratic process and social compact that unites all South Africans, with clear responsibilities for different stakeholders, government, business, labour, civil society, communities, and citizens. This will then lay the foundations for the next phase of the National Development Plan post-2030.
- [20] The National Dialogue will be housed by NEDLAC, using the model of the Climate Change Commission. NEDLAC will thus provide operational and administrative support to the National Dialogue structures, housing the National Dialogue Secretariat, and as a conduit for government- allocated funds and contracting of secretariat staff. The Steering Committee will provide stewardship on the support needed.
- [21] Further support for the process could be sought from the National Planning Commission and other formations that may be deemed relevant, for example, the United Nations Development Programme.

- [22] The Foundations explain why the National Dialogue is structured in this way. They state that if a National Dialogue in a country like South Africa is controlled by the government and systematically manipulated to serve the government's own agenda, several negative consequences can be expected, specifically, a lack of credibility, exclusion, ineffectiveness; escalation of tensions and public dissatisfaction. People may perceive it as a mere charade or a tool for propaganda rather than a genuine effort to address national issues.
- [23] The Foundations state that if the National Dialogue can be a unique opportunity to address long-standing grievances and conflicts, but when controlled by the government, it becomes a missed opportunity for sustainable peace and reconciliation.
- [24] In this context, the Foundations explain that, to ensure the success and effectiveness of a National Dialogue, it is crucial for the process to be inclusive, transparent, and genuinely focused on resolving conflicts and addressing the root causes of grievances. It should also involve independent facilitators or mediators to maintain impartiality and credibility. If the government controls the process, it becomes challenging to achieve these essential elements of a successful National Dialogue.
- [25] Having set out the stage of the National Dialogue and some of its features, the Court considers the Labour Party's challenge.

The Labour Party's challenge to the National Dialogue

- [26] The Labour Party's approach to this Court is motivated by constitutional concerns. The Labour Party asks what power does the President have to establish a National Dialogue? If its ultimate aim is to ensure public participation, create policy and make binding decisions – is that not a duplication of the functions of Parliament? And why, if it is to duplicate functions of existing constitutional mechanisms, would it be lawful to attach a R 700 million price tag for a part of this endeavour? Whilst the outcome of the National Dialogue may be laudable, absent any oversight or accountability mechanisms and without any empowering provision that permits the President to

establish the National Dialogue, the Labour Party argues that it is not lawful or constitutional. They ask this Court to halt the National Dialogue, pending an opportunity to review the President's decision in the normal course.

[27] The Labour Party relies on the Constitutional Court's assertion in *Economic Freedom Fighters v Speaker of the National Assembly; Democratic Alliance v Speaker of the National Assembly*³ that one of the crucial elements of our constitutional vision is to "make a decisive break from the unchecked abuse of State power and resources that was virtually institutionalised during the apartheid era". To achieve this goal, we adopted accountability, the rule of law and the supremacy of the Constitution as values of our constitutional democracy. The Labour Party believes that the President's announcement of the National Dialogue is at odds with these principles.

[28] The Labour Party seeks relief in the form of an interim interdict. The Labour Party has to meet all the requirements for an interim interdict. The first is proving that it has a prima facie right.

Prima facie right

[29] In evaluating whether the test for the grant of interim relief has been met, this Court is confined to take a "peek" at the case made out for review to evaluate prospects of success in due course. It is not entitled to usurp the function of the review court. The Constitutional Court in *Gordhan* emphasised that the role of the Court in determining an application for an interim interdict is circumscribed:

"An interim interdict is a temporary order that aims to protect the rights of an applicant, pending the outcome of a main application or action. It attempts to preserve or restore the status quo until a final decision relating to the rights of the parties can be made by the review court in the main application. As a result, it is not a final determination of the rights of the parties. It bears stressing that the grant of an interim interdict does not, and should not, affect the review court's decision when making its final decision and should not have an effect on the determination of the rights in the main

³ 2016 (3) SA 580 (CC) (the EFF Judgment) para 1

application. The purpose of an interdict is to provide an applicant with adequate and effective temporary relief.”⁴

[30] Essentially, this Court has to ask whether there a credible review pending, without making a final determination on the review? This requires a consideration of whether the President enjoys the power that he has exercised in deciding to hold the National Dialogue, and in particular, to convene the first National Convention; and whether the President has exercised those powers in accordance with the dictates of the Constitution; in particular, having regard to the requirements for legitimate expenditure of public monies. The complaints from the Labour Party fall into three broad themes: (i) the power (ii) the price tag and (iii) the process.

[31] Each is considered.

The power

[32] All parties accept, that the President can only act in terms of powers given by law. The dispute is whether the President has the power to announce a National Dialogue. The Labour Party submits that the President does not have the power to convene a National Dialogue. As such, their concern is that the rule of law is threatened.

[33] The state respondents and Foundation point to a cluster of rights which they say empower the President. Specifically, sections 83(c), 84(1); 85(2) and 85(2)(b). Section 83(c) provides that the President promotes the unity of the nation and that which will advance the Republic.

[34] The Labour Party accepts that section 83(c) of the Constitution creates a duty – but denies that inherent in this duty, necessarily, is the power to create a National Dialogue.

⁴ Economic Freedom Fighters v Gordhan 2020 (6) SA 325 (CC) at para 47

- [35] The Court weighs the existing authority on section 83(c). The Constitutional Court has considered section 83(c) in the context of the President's power to pardon and grant amnesty in *Albutt*⁵ and *Azapo*.⁶
- [36] In *Albutt*, concerning the President's power to pardon in terms of 84(2)(j), the Constitutional Court held that "[i]ndeed under section 83(c) of the Constitution, the President has a duty to promote 'the unity of the nation and that which will advance the Republic.'"⁷
- [37] Froneman J wrote a concurring judgment in *Albutt*, which held that "[t]his Court has held that the democracy our Constitution demands is not merely a representative one, but is also, importantly, a participatory democracy" and that "promoting national unity is an ongoing process in terms of the Constitution." Froneman J locates the ongoing nature of promoting national unity in section 83(c) of the Constitution.
- [38] Similarly, in *Azapo* the Constitutional Court recognised that -

"Generations of children born and yet to be born will suffer the consequences of poverty, of malnutrition, of homelessness, of illiteracy and disempowerment generated and sustained by the institutions of apartheid and its manifest effects on life and living for so many. The country has neither the resources nor the skills to reverse fully these massive wrongs. It will take many years of strong commitment, sensitivity and labour to "reconstruct our society" so as to fulfil the legitimate dreams of new generations exposed to real opportunities for advancement denied to preceding generations initially by the execution of apartheid itself and for a long time after its formal demise, by its relentless consequences. The resources of the state have to be deployed imaginatively, wisely, efficiently and equitably, to facilitate the reconstruction process in a manner which best brings relief and hope to the widest sections of the community, developing for the benefit of the entire nation the latent human potential and resources of every person who has directly or indirectly been

⁵ *Albutt v Centre for the Study of Violence and Reconciliation and Others* (CCT 54/09) [2010] ZACC 4; 2010 (3) SA 293 (CC) ; 2010 (2) SACR 101 (CC) ; 2010 (5) BCLR 391 (CC) (23 February 2010)

⁶ *Azanian Peoples Organization (AZAPO) and Others v President of the Republic of South Africa and Others* (CCT17/96) [1996] ZACC 16; 1996 (8) BCLR 1015; 1996 (4) SA 672 (25 July 1996)

⁷ *Id* para 53

burdened with the heritage of the shame and the pain of our racist past.”(emphasis added)⁸

- [39] Our apex Court recognised, in both these cases, that the President is under a constitutional duty to promote national unity. *Albutt* and *Azapo* were decided when nation building focused on reconciliation. But, even with this immediate focus on reconciliation twenty years ago, the Constitutional Court knew that this would not be the end of the work to be done. How could it be? Rather, it would be an ongoing process. As the legacy burdens new generations, the duty remains and the work is to be done. The President has been mandated by the Constitution to attend to this work. It is unclear how this can be done without the power to promote nation building.
- [40] The duty of nation building is not a symbolic function. It reflects a substantive constitutional responsibility to foster cohesion and national purpose. That is clear from *Albutt* and *Azapo*. It is also a duty which falls squarely on the President’s shoulders: and “unsurprisingly, the nation pins its hopes on him to steer the country in the right direction and accelerate our journey towards a peaceful, just and prosperous destination”.⁹
- [41] The text of the Constitution mandates the President to promote national unity and the jurisprudence of the Constitutional Court has repeatedly asserted this process is ongoing and that this duty falls to the President. The Court is not, based on the text of the Constitution and the jurisprudence from the Constitutional Court, persuaded that the President is acting outside his powers.
- [42] The Court is not called on to make a final finding in this regard, and cannot do so for many reasons, including it does not have the full record and the parties’ submissions were limited to the interim relief. However, the Court is not persuaded that the

⁸ Azapo para 43

⁹ *Economic Freedom Fighters v Speaker of the National Assembly; Democratic Alliance v Speaker of the National Assembly* 2016 (3) SA 580 (CC) para 20

applicant has made out a prima facie case on this basis or that it bears strong prospects of success in the review on this ground.

The process and price

- [43] The state respondents plead that the Labour Party have not laid the necessary factual foundation. As to the monies, the state respondents plead that the allegation of R 700 million at stake is patently false. As to the process, the state respondents plead, factually, that to the extent that the applicant relies on the fact that the First National Convention will make foundational decisions that will permanently undermine an inclusive and accountable process, they have failed to adduce any evidence that this will happen. The overwhelming uncontested evidence is that the first National Convention will set the agenda and structure for the Dialogue.
- [44] The Court considers that the executive has a wide discretion in selecting the means to achieve its constitutionally permissible objectives. Courts may not interfere with the means selected simply because they do not like them, or because there are other more appropriate means that could have been selected. But, where the decision is challenged on the grounds of rationality, courts are obliged to examine the means selected to determine whether they are rationally related to the objective sought to be achieved.
- [45] What must be stressed is that the purpose of the enquiry is to determine not whether there are other means that could have been used, but whether the means selected are rationally related to the objective sought to be achieved. And if objectively speaking they are not, they fall short of the standard demanded by the Constitution.
- [46] The Court is not empowered to ask if a National Dialogue is the best way to go about in promoting national unity. Or if the same people that have been invited to the table to do the preparatory work are the ones the Court would have chosen. Or even if it would rather spend money on a National Dialogue or on health care or some other issue.

- [47] The Court can only ask: are the means objectively linked to the goals sought to achieve.
- [48] The means employed is a National Dialogue consisting of public participation and engagement. The goal is the promotion of national unity. There is a rational link between the National Dialogue, particularly one premised on public participation, and the promotion of national unity. The link is clear and cogent.
- [49] The Labour Party has failed to meet the threshold to show irrationality, in the method employed in announcing the National Dialogue. The Court is not convinced that the Labour Party has proven a prima facie right in this regard and is doubtful as to its prospects of success at the hearing of the final relief.
- [50] As to the monies involved, the Court is not empowered to ask if this is the best use of money. That is the domain of the executive. It also weighs with the Court that the amount of R 700 million does not seem to be final. The amount was put forth by the Foundations and the state respondents indicated that that cost has already been tapered by suggestions from the President, which include cost-cutting plans such as holding some engagements on-line or making use of state venues. In addition, the state respondents pleaded that money to be spent is subject to a budget and its approval.
- [51] In these circumstances, the Court is not persuaded that the Labour Party has made out a prima facie case for purposes of an interdict. This Court does not make a final finding in this regard, but has doubts as to the prospects of success on review, which has a bearing on balance of convenience.
- [52] As the Labour Party has failed to make out a prima facie case, they have failed to meet the requirements for an interdict and they are not entitled to the relief sought. However, there are additional reasons to refuse the relief, being that they have not shown that if the relief is not granted, they will suffer irreparable harm.

Irreparable harm

- [53] The Court considers whether there is irreparable harm under the four themes presented by the Labour Party.
- [54] *First* the Labour Party contends it will suffer harm as the President is exercising a power which the Constitution does not give the President. For the same reasons the Court found that the Labour Party has not made out a prima facie case, the Court finds there is no harm to be suffered by the Labour Party. As the Labour Party has no prima facie right, it cannot suffer harm.
- [55] But assume for the purposes of considering the Labour Party's argument that the President was exercising a power he did not possess. It would be harmful to all, and a breach of the rule of law. However, it would not be irreparable. The repair lies in Part B of the Labour Party's application. If the President has overstepped his constitutional mandate, that relief can be obtained in Part B. This harm, if it exists, is not irreparable.
- [56] The *second* theme is that of an exclusionary process. Under this theme the Labour Party contends that some persons or parties have been included and others not. The Labour Party further alleges that the first National Convention, scheduled for 15 August 2025, will involve decisions regarding the agenda and structure of the National Dialogue. It claims that stakeholders, including the Labour Party, will be unable to influence or participate in these so-called "foundational decisions", and that this will "permanently undermine" an inclusive and accountable process.
- [57] The state respondents plead the following facts: the members of this group have no legal powers, government functions, or decision-making authority. They have been appointed solely to advise the President and to assist, "champion" and generate public interest and momentum around the National Dialogue. Their role is supportive and symbolic, intended to foster broad engagement. Their appointment does not render the outcome of the process as legally binding or susceptible to judicial review.

- [58] The Court is not persuaded that the Labour Party has shown it has been excluded. The Court considers the planned process of the National Dialogue. Its very purpose is to promote inclusion within and outside the formal governmental structures.
- [59] The Foundation in this regard submits that the very point of the dialogue is to promote inclusion within and outside the formal governmental structures. The idea of a dialogue comes from outside of government. The Labour Party is entitled to attend the dialogue, and make submissions in any form it chooses to the Secretariat of the planning committee. Factually, the Court concludes that the public participation is yet to commence and there is no indication that the Labour Party, or anyone for that matter, has been excluded from the process.
- [60] Even if the Labour Party had factually established its exclusion, it is not harm that constitutes harm cognisable of legal protection.
- [61] As for the Labour Party's exclusion from the preparatory steps. The Labour Party does not have a right which is harmed in it not being selected in the preparatory group. It does not have a legal right to have been consulted prior to the selection of the Group of Imminent Persons. While the Convention may shape the agenda and set out a framework for the Dialogue, it does not exclude the Labour Party (or any other group or individual) from participating in the process or seeking to influence its outcomes. On the contrary, the entire purpose of the National Dialogue is to be inclusive and participatory, reaching as many South Africans as possible across sectors and regions. The Foundations state categorically: The Labour Party will have every opportunity to contribute to the National Dialogue.
- [62] The *third* theme is that the National Dialogue will create a parallel process which usurps or by-passes Parliament. The Labour Party submits that undermining Parliament's role by side-lining it in favour of a replacement mechanism to receive the voice of the people, potentially setting a precedent for future bypassing of legislative oversight.

- [63] It would indeed be harmful if another body were given powers to create binding law. But there are no facts presented to this Court that the National Dialogue will do so. To assume so at this stage is sophistry. In addition, if such harm eventuates, then it also will not be irreparable. Again such decisions will be subject to review.
- [64] The Court also leans on the authority presented by the state respondents in *Esau*¹⁰ for the proposition that even once the dialogue process results in a policy position adopted by government (which has certainly not yet occurred in this case), that policy will not itself be reviewable until government has taken steps to implement it in a manner that adversely affects rights. If this were not so, the review would be an academic exercise. If a policy itself is not reviewable, that also should mean that the initiation and support of a process that may one day lead to the formulation of a policy is not susceptible to judicial review.
- [65] There is nothing on the papers to conclude that the outcomes of the National Dialogue will be authoritative, or binding. There is no indication, let alone evidence, that the National Dialogue is intended to produce binding outcomes that bypass constitutional or legal processes. If any policy proposals or recommendations that emerge from the Dialogue are to be adopted or implemented, they would have to follow the ordinary channels of constitutional authority: through the Cabinet, Parliament, or other appropriate legal mechanisms.
- [66] More fundamentally, argues the Foundations, the Labour Party has not demonstrated that it has a right to be protected from a public consultation process being perceived as influential or widely supported. The mere possibility that the National Dialogue might carry political or public weight does not give rise to an infringement of the applicant's rights, let alone an irreparable one.
- [67] In addition, even if the applicant's allegations were correct any decisions or outcomes arising from the National Dialogue could be challenged and set aside through judicial

¹⁰ *Esau v Minister of Co-operative Governance and Traditional Affairs* 2021 (3) SA 593 (SCA)

review at a later stage. If a court were to declare such outcomes invalid, they would carry no legal force or authority. In that event, the applicant's concern about the process being treated as "authoritative" would fall away entirely. This further confirms that the harm alleged is neither irreparable nor incapable of adequate redress through ordinary legal remedies.

[68] The Foundations make the following submission, even if any decision are taken by an unlawful structure – as the Labour Party submits the National Dialogue is – that does not automatically mean that the decision itself is unlawful. The decision would have to be scrutinised on its merits. The Foundations rely on the Constitutional Court's approach in *Democratic Alliance v President of the Republic of South Africa*¹¹ as authority where the court held that the invalidity of Mr Simelane's appointment does not by itself affect the validity of any of the decision taken by him while in office. This means that all decisions made by him remain challengeable on any ground other than the circumstance that his appointment was invalid.¹² The Foundations present examples that the National Dialogue may recommend the reduction of the size of Cabinet as a measure to reduce the costs of running the government. Or it may recommend the introduction of a basic income grant to end starvation and hunger. The fact that the dialogue was unlawful wouldn't necessarily mean that the government may not take these recommendations forward.

[69] The Court concludes, based on the absence of facts and the principled submissions that, the Labour Party will not suffer irreparable harm in this regard.

[70] The *fourth* theme of harm is that monies will be spent on an unlawful endeavour. The Labour Party argues that the spending on this amounts to unlawful expenditure of public funds that could otherwise be allocated to pressing needs like housing,

¹¹ *Democratic Alliance v President of South Africa and Others* (CCT 122/11) [2012] ZACC 24; 2012 (12) BCLR 1297 (CC); 2013 (1) SA 248 (CC) (5 October 2012)

¹² *DA v President of RSA* para 93

education, or healthcare. In addition, the Labour Party is concerned that once the monies are spent – that cannot be undone.

[71] The Labour Party rejects assurance from the state parties that all monies will be spent in terms of the PFMA and will be lawful. They rely on authorities that state it is not enough for the state to say it will do good and for those assurances to be accepted. In *President of the Republic of South Africa and Others v M & G Media Ltd*¹³ the Supreme Court of Appeal (SCA) made the point that, in the South Africa of the past “courts were regularly confronted with laws that precluded them from going behind the conclusions and opinions formed by public officials”,¹⁴ mainly because the statutes in question “entrusted to the repository of the power the sole and exclusive function of determining whether in its opinion the pre-requisite fact, or state of affairs, existed prior to the exercise of the power”.¹⁵ This is not the case any longer: public officials cannot assert conclusions in the “expectation that their conclusions put an end to the matter”.¹⁶ It is not a sufficient defence for public officials to state their conclusions without providing an evidential basis for their assertions, and if assertions seem to have simply been constructed, they can be “summarily discounted”.¹⁷

[72] The Labour Party is correct. If those monies are spent, they cannot be clawed back. They will be spent on services rendered – accommodation, travel, catering etc. The Labour Party is also correct that this case is different to *OUTA*,¹⁸ in *OUTA* the public could be comforted that if the final determination was to review the Minister’s decision they could claim back the monies. That option does not exist in this case. If the money is being unlawfully spent by government – they will not be recoverable.

¹³ *President of the Republic of South Africa and Others v M & G Media Ltd* 2011 (2) SA 1 (SCA)

¹⁴ At para 18

¹⁵ At para 18, by reference to *South African Defence and Aid Fund and Another v Minister of Justice* 1967 (1) SA 31 (C) at 35A – B)

¹⁶ 135 At para 19

¹⁷ 136 At para 46

¹⁸ *National Treasury v Opposition to Urban Tolling Alliance* 2012 (6) SA 223 (CC)

- [73] The difficulty is that monies being spent by the state is not inherently harmful. It is only when it is being done unlawfully that there is a legally cognisable harm. There has been no basis presented to the Court on which it can be contended that there is a breach of the PFMA or that expenditure breaches any other Treasury Regulation. No evidence has been presented that the state respondents have spent, or will spend, public funds unlawfully.
- [74] In any event, the state respondents have expressly confirmed facts that make clear no rights, whether of the applicant or the public, have been infringed as no final budget has been approved for the National Dialogue, which means that the applicant's concerns about proposed figures reported in the media are wholly misplaced and cannot be relied on for purposes of seeking relief.
- [75] The state respondents argue that if a member of the public could claim legal prejudice simply because a policy initiative had not yet been accompanied by an approved budget, it would paralyse the functioning of government. On that approach, no policy or other government process could ever be initiated unless and until a final budget had already been approved. This would pull the cart before the horse. In reality, it is precisely because such processes are at an early stage that their announcement and early planning precede, and inform, budgetary approval if required.
- [76] For these reasons the Court has considered the various types of harm pleaded by the Labour Party. The Court is not persuaded that the Labour Party has proven harm or that such harm is irreparable.
- [77] There is accordingly no well-grounded apprehension of irreparable harm.
- [78] This finding is sufficient to dismiss the application, however, the Court is also not satisfied that the Labour Party has shown the balance of convenience favours the granting of relief.

Balance of convenience

- [79] The parties disagree as to the application of the principle in *OUTA*.¹⁹ In *OUTA* the Constitutional Court held that it is only the clearest of cases that the court can interdict the exercise of legislative powers.
- [80] The Labour Party submits that *OUTA* only applies when the focus of the review is the exercise of legislative powers. The state respondents and Foundation accept this, but argue that the principle must apply even more so when constitutional powers are being exercised.
- [81] The argument is attractive and the Court is persuaded by it. Particularly as this Court has accepted, for purposes of establishing a prima facie right, that the President is engaging in an exercise of his powers under the cluster of rights in sections 83- 85.
- [82] The Court therefore accepts that the *OUTA* standard applies and the Court has to determine whether this is one of the clearest of cases.
- [83] The Labour Party submits that the balance of convenience favours the granting of interim relief, thus halting the National Dialogue temporarily as the harm to the public interest from potential unlawful executive action outweighs the inconvenience of pausing the process for judicial review.
- [84] The state respondents submit that as the Labour Party has failed to establish a right, it can have no claim for inconvenience. The inconvenience to be suffered by the state respondents is what has been termed separation of powers harm – which means the inability of the executive to comply with its constitutional duties.
- [85] The Court then weighs the balance. The Court has found the Labour Party does not suffer harm and that the state respondents suffer the harm of being able to execute on its decisions and harm to the separation of powers principle. Added to this scale, is the Court's finding that the Labour Party's case does not bear strong prospects of success in the review proceedings.

¹⁹ National Treasury v Opposition to Urban Tolling Alliance 2012 (6) SA 223 (CC)

[86] The Court concludes that the Labour Party has not proven that the balance of convenience favours the granting of an interim interdict.

No alternative remedy

[87] The Foundations submit that the Labour Party has several alternative remedies. It can attend the dialogue and raise complaints. It can write to Parliament to raise its concerns, as an opposition party it has remedies inside Parliament. Third it can write to the President. As these have not been argued to be unavailable or insufficient, they are *ex facie*, available and effective. The state respondents similarly submit there are alternative remedies available to the Labour Party.

[88] The Court is not persuaded that these alternative remedies are effective for the relief sought by the Labour Party. However, based on the findings in relation to irreparable harm and balance of convenience, this finding does not alter the outcome.

Urgency

[89] The respondents dispute that this matter is urgent. They contend that the Labour Party could obtain substantial redress in due course and that the Labour Party has failed to plead facts that give rise to urgency. The Labour Party is criticised for waiting until the June 2025 announcement – when the National Dialogue has been in the news for years.

[90] The difficulty with this criticism is that there is no single genesis for the National Dialogue. It is not a singular event with a clear starting point, but rather a process with multiple contributing factors and stages involving various sectors of society. It is intended to unfold in phases, from local consultations to national gatherings. The announcement by the President on 10 June 2025 was the first moment the inchoate idea of having a National Dialogue was given any content at all. The criticism that the Labour Party ought to have approached the Court earlier is rejected. It is also clear, when one has regard to the chronology of the filing of papers in this matter that the Labour Party treated this matter with the commensurate urgency.

[91] In addition, it is not clear what relief the Labour Party would be able to obtain in due course. If it was so that the President was exercising powers he did not have, duplicating the work of Parliament and excluding sectors of society, and spending more than R 700 million on such an unlawful endeavour – there would be no recourse that would undo that harm. Whilst the Court ultimately rejected these findings – they were sufficiently to show the Labour Party would not be able to obtain redress in due course. In these circumstances the matter is urgent.

Section 172

[92] There is some dispute on the papers as to whether the Labour Party has relied on section 172 in its papers. Assuming such a case has been made, the Court declines to exercise its section 172 jurisdiction for the reasons the Court held that the Labour Party's *prima facie* rights are weak.

Costs

[93] The Labour Party asserted constitutional rights. They litigated in the public interest. The litigation was not vexatious or frivolous, it was motivated by a concern of constitutional compliance. The State Respondents accept that the application “concerns a matter of significant public importance. It affects a wide range of stakeholders and raises issues of national interest”. In such circumstances, premised on the *Biowatch* principle, there should be no order as to costs.

Order

[94] The Court orders:

1. The application is urgent.
2. The application is dismissed.
3. No order as to costs.



I de Vos
Acting Judge of the High Court

Delivered: This judgment is handed down electronically by uploading it to the electronic file of this matter on CaseLines. As a courtesy gesture, it will be e-mailed to the parties/their legal representatives.

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The first to sixth respondents:	K Pillay SC M Dafel
Instructed by:	State Attorney
The seventh to eleventh respondents:	T Ngcukaitobi SC I Kealotswe-Matlou
Instructed by:	Cliffe Dekker Hofmeyr Inc
Date of hearing:	9 July 2025
Date of judgment:	17 July 2025