South African Institute of Race Relations NPC
Submission to the
Select Committee on Cooperative Governance
and Public Administration,
National Council of Provinces,
regarding the
Public Service Commission Bill of 2023 [B30B-2023]
12th September 2025

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1 Introduction

The Select Committee on Cooperative Governance and Public Administration ("the committee") in the National Council of Provinces ("the NCOP") has invited interested persons to submit public comments on the Public Service Commission Bill of 2023 [B30B-2023] ("the Bill") by 12 September 2025.

This submission is made by the South African Institute of Race Relations NPC (IRR), a non-profit organisation formed in 1929 to oppose racial discrimination and promote racial goodwill. Its current objects are to promote democracy, human rights, development, and reconciliation between the peoples of South Africa.

2 The objects of the Bill

The primary purpose of the Bill is to bypass current legislative and constitutional limits on the jurisdiction of the Public Service Commission ("the Commission") by:

- repealing and replacing the current Public Service Commission Act of 1997; and
- overlooking various provisions in the Constitution which confine the "public service" to the national and provincial spheres of government.

The objective is to give the Commission powers over local government which it currently lacks. The underlying goal is seemingly to fulfil a "directive" from President Cyril Ramaphosa – included in his State of the Nation address in 2023 – to "*move towards creating a single, harmonised public service*''.[1]

The Bill will help achieve this objective by empowering the Commission to control and direct municipal decisions on staffing at senior and other levels. This will curtail the autonomy of all municipalities. However, the impact will be particularly telling on municipalities won by opposition parties in local government elections, both past and prospective. The control thus achieved via the Commission will make it easier for the African National Congress (ANC) to create the "harmonised" public service desired by the president.

However, the strategy being pursued is inconsistent with the Constitution, which clearly limits the jurisdiction of the Commission to the national and provincial spheres of government. The Commission cannot seek to control the local sphere of government without first amending the Constitution to authorise this extension of its jurisdiction.

3 The unconstitutionality of the Bill

Under the Constitution, the "public administration" includes state entities at all three spheres of government: national, provincial and local. However, the "public service" is confined to government departments and other state entities in the national and provincial spheres. Municipalities do not form part of the public service and are responsible for their own local administrations and personnel.

In keeping with this constitutional scheme, the Commission has always dealt solely with national and provincial departments and other public entities. That this is the proper scope of its jurisdiction is also evident in the current Public Service Commission Act of 1997, which expressly states that its provisions apply solely in the national and provincial spheres. Now, however, the Bill seeks to repeal the 1997 Act and to extend the powers of the Commission to the local sphere as well. This requires that the Constitution first be amended to change the constitutional scheme and give the Commission jurisdiction over local government. Unless and until this has been done, the Bill will remain inconsistent with the Constitution and *ultra vires* the powers the constitutional text accords the Commission.

[1] Memorandum on the Objects of the Public Service Commission Bill, 2023, para. 2.4.

3.1 The ambit of the "public service"

Section 197(1) of the Constitution is a particularly important provision, for it states: "Within the public administration there is a public service for the Republic".[2] This wording makes it clear that "the public administration" is different from the "public service" – and that the public administration has a broader ambit than the public service included within it.

In the words of Parliamentary Legal Advisor Fatima Ebrahim, in a presentation made in May 2024, "'public administration' and 'public service' are not used interchangeably and therefore cannot mean the same thing".[3]

Section 195 of the Constitution deals with the "public administration". It says that the public administration must be "governed by the democratic values and principles enshrined in the Constitution", including the values and principles it goes on to list. According to this list, "a high standard of professional ethics must be promoted and maintained" within the public administration. In addition, the "efficient, economic and effective use of resources must be promoted"; "services must be provided impartially, fairly, equitably and without bias"; "people's needs must be responded to"; and "public administration must be accountable" and foster "transparency".[4]

Section 195(2) goes on to state that the principles listed in Section 195(1) "apply to administration in every sphere of government".[5] Local government is thus bound by these values and principles, as is the national government and all provincial administrations.

In a separate provision, section 196 goes on to describe the powers and functions of the "Public Service Commission". As Ms Ebrahim notes, this section does not describe the Commission as the "Public Administration Commission". Nor, as Ms Ebrahim adds, does Section 196 contain any words extending the Commission's powers to "administration in every sphere of government". Instead, section 196 includes numerous sub-sections that expressly limit the Commission's powers and functions to "the public service".

Under section 196(4), for example, the Commission must promote the values and principles set out in section 195 "throughout *the public service*". It must "monitor" and "evaluate" the "administration and the personnel practices of *the public service*". It must "propose measures to ensure effective and efficient performance *within the public service*". It must also "investigate the grievances of employees *in the public service*…and recommend appropriate remedies". In addition, it must "investigate adherence to applicable procedures *in the public service*".[6]

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[2] Section 197(1), Constitution of the Republic of South Africa, 1996 ("the Constitution").

[3] Ebrahim, F, Parliamentary Legal Adviser, 'CLSO Briefing on Constitutional Issues: Public Service Commission Bill', May 2024, Scope of the Bill, Slide 7.

[4] Section 195(1)(a) to (g), Constitution.

[5] Section 195(2)(a), Constitution.

[6] Section 196(4)(a) to (f), Constitution.

Other parts of section 196 repeatedly refer to the national and provincial entities to which the Commission must report, or which play an important part in the selection and removal of its 14 commissioners. Significantly, five of these 14 commissioners represent the national sphere, while the remaining nine – one for each of the nine provinces – represent the provincial sphere. No commissioners represent the local sphere, which falls outside the ambit of the Commission.

An emphasis on the national and provincial spheres permeates section 196. For example, Section 196(4)(f)(iv) requires the Commission to "advise *national and provincial organs of state* regarding personnel practices in the public service, including those relating to the recruitment, appointment, transfer, discharge and other aspects in the careers of employees in the public service". Section 196(6) requires the Commission to report "at least once a year" to "the *National Assembly* and, in respect of its activities in a province, to the *legislature of that province*". In addition, the 14 commissioners who serve on the Commission are appointed by the president either with the approval of "the *National Assembly*" (as regards five of them) or in terms of the nomination made by "*the premier*" of the relevant province (as regards the remaining nine).[7]

Commissioners may be removed from office only "on the ground of misconduct, incapacity or incompetence". In addition, a finding to that effect must be made either by "a committee of the *National Assembly*" or, in the case of a commissioner nominated by the premier of a province, by "a committee of *the legislature of that province*". Once such a finding has been made, a resolution calling for the removal of the relevant commissioner must be adopted either by the "*National Assembly*" or by the relevant "*provincial legislature*".[8]

Under section 196(13), moreover, commissioners nominated by provincial premiers are empowered to "exercise the functions of the Public Service Commission *in their provinces*, as prescribed in national legislation". Under section 197 – the section which begins by underscoring the difference between the "public administration" and the "public service" – "*provincial governments* are responsible for the recruitment, appointment, promotion, transfer and dismissal of members of the public service *in their administrations* within a framework of uniform norms and standards applying to the public service".[9]

Important too is the current Public Service Commission Act of 1997 – which the Bill seeks to repeal – which expressly states that its provisions apply solely to "the administration in *the national and provincial spheres* of government".[10] This wording is fully in line with the Constitution. Moreover, though the Constitution does not itself define the "public service", it nevertheless makes it clear – in all the provisions earlier identified – that the public service is limited to the national and provincial spheres of government.

[7] Sections 196(6), (7), Constitution.
[8] Sections 196(11), (12), Constitution.
[9] Sections 196(13), 197(4), Constitution.
[10] Section 2, Public Service Commission Act of 1997 ("the 1997 Act").

3.2 Municipal autonomy in staffing and governance

The Constitution has a different scheme for the local sphere of government. Here, the key constitutional provisions are as follows (emphasis in Section 164, below, has been supplied by the IRR):

"S151: Status of municipalities
151(2): The executive and legislative authority of a municipality is vested in its Municipal Council;
151(3): A municipality has the right to govern, on its own initiative, the local government affairs of its community, subject to national and provincial legislation, as provided for in the Constitution;
151(4): The national or provincial government may not compromise or impede a municipality's ability or right to exercise its powers or perform its functions."

"153: Developmental duties of municipalities
153(1): A municipality must…structure and manage its administration and budgeting and planning processes to give priority to the basic needs of the community and to promote the social and economic development of the community."

"154: Municipalities in cooperative governance
154(1): The national government, and provincial governments, by legislation and other measures, must support and strengthen the capacity of municipalities to manage their own affairs, to exercise their powers and to perform their functions.
154(2): Draft national or provincial legislation that affects the status, institutions, powers or functions of local government must be published for public comment before it is introduced in Parliament or a provincial legislature, in a manner that allows organised local government, municipalities and other interested persons an opportunity to make representations with regard to the draft legislation."

"156: Powers and functions of municipalities
156(4): The national government and provincial governments must assign to a municipality, by agreement and subject to any conditions, the administration of a matter listed in Part A of Schedule 4 or Part A of Schedule 5 which necessarily relates to local government if (a) the matter would most effectively be administered locally; and (b) the municipality has the capacity to administer it.
156(5): The municipality has the right to exercise any power concerning a matter reasonably necessary for, or incidental to, the effective performance of its functions."

"160: Internal procedures
160(1): A Municipal Council
(a) makes decisions concerning the exercise of all the powers and the performance of all the functions of the municipality;
(b) may employ personnel that are necessary for the effective performance of its functions."

"164: Other matters
164: Any matter concerning local government *not dealt with in the Constitution* may be prescribed by national legislation."

These constitutional clauses make it clear that "the executive and legislative authority of a municipality is vested in its Municipal Council"[11] and that municipalities are responsible for their own staffing, budgeting and governance. As Ms Ebrahim puts it, "local government is characterised by staffing autonomy; budgetary autonomy; and limited national/provincial control".[12]

A municipality has the power to appoint, promote or dismiss employees, as part of its duty to "structure and manage its administration, and budgeting and planning processes", under Section 153(1). This is further underscored by Section 160(1), which gives "a municipal council" the capacity to "make decisions concerning the exercise of all the powers and the performance of all the functions of the municipality" – and which further empowers it to "employ personnel that are necessary for the effective performance of its functions".[13]

Particularly important here is Section 151(3), which gives a municipality "the right to govern, on its own initiative, the local government affairs of its community,…as provided for in the Constitution". Equally significant is Section 151(4), which bars the national and provincial government from "compromising or impeding a municipality's ability or right to exercise its powers or perform its functions". This prohibition is strengthened by Section 154(1), which requires the national and provincial governments to "support and strengthen the capacity of municipalities to manage their own affairs, to exercise their powers and to perform their functions".[14]

These provisions are further buttressed by Section 154(2), which requires proper consultation on any "draft national or provincial legislation that affects the status, institutions, functions or powers of local government". This consultation must take place "before [a draft bill] is introduced in Parliament or a provincial legislature, as the case may be". Such consultation is required, not only with "organised local government", but also with "municipalities" and other interested parties. Under section 164, moreover, a "matter concerning local government may be prescribed by national legislation" only if that matter is "*not dealt with in the Constitution*".[15]

3.3 Municipalities are excluded from the public service

According to Ms Ebrahim, these provisions make it clear that "the concept of the public service *excludes* local government".[16] This is confirmed, she adds, not only by the wording of the Constitution, but also by:[17]

- Section 2 of the Public Service Commission Act of 1997, which limits the application of its provisions to the national and provincial spheres of government;
- a "historical understanding", evident in all other relevant legislation since 1994, that municipalities are "not part of the public service";

[11] Section 151(2), Constitution.
[12] Ebrahim, CLSO Briefing on Constitutional Issues', slide 10.
[13] Sections 153(1), 160(1), Constitution.
[14] Section 151(3), 151(4), 154(1), Constitution.
[15] Section 154(2), 164, Constitution, emphasis supplied by the IRR.
[16] Ebrahim, 'CLSO Briefing on Constitutional Issues', Slide 6.
[17] Ibid, slides 11, 6.

- the established practices to which that historical understanding has given rise;
- the expert opinion of leading academics (such as Professors Nico Steytler and Jaap de Visser of the University of the Western Cape) that "the Constitution does not intend for local government to be part of the public service"; and
- the wording of the Bill itself, which further confirms that municipalities have never before been subject to the jurisdiction or powers of the Public Service Commission.

The Bill nevertheless seeks to give the Commission various new powers over municipalities. This is inconsistent with the constitutional provisions earlier described. It is particularly at odds with section 164 of the Constitution, which states that: "Any matter concerning local government *not dealt with in the Constitution* may be prescribed by national legislation." Since the Constitution expressly sets out the powers and functions of the Public Service Commission – as well as the powers and functions of municipalities – these are not unregulated matters that can be dealt with via the Bill.

On the contrary, since the Constitution excludes municipalities from the Commission's jurisdiction, the Bill cannot purport to give the Commission such jurisdiction. If this is to be done, the first essential step is to amend the Constitution so as to extend the mandate of the Public Service Commission to the local government sphere.

3. 4 Unconstitutional provisions in the Bill

Given the short time period allowed for public consultation, this submission highlights only some of the Bill's provisions that conflict with the Constitution and are thus invalid. (Underlining has been used to show the wording that the Bill proposes to introduce.)

The preamble

According to the preamble to the Bill, "<u>the Constitution provides that the powers and functions of the Commission are…to give directions aimed at ensuring that personnel procedures relating to recruitment, transfers, promotions and dismissals comply with the values and principles set out in section 195 of the Constitution</u>".

However, this wording is inconsistent with section 195 of the Constitution, which sets out "the basic values and principles governing public administration". As earlier noted, these "values and principles" include "a high standard of professional ethics", the "efficient" and "effective use of resources", the "impartial" and "equitable" provision of services; a focus on "responding to people's needs", and a need for "accountab[ility]" and "transparency".[18]

These values and principles also include the "cultivat[ion] of "good human-resource management and career-development practices to maximise human potential".[19] However, this broad statement of relevant values and principles does not include "<u>personnel procedures</u>" regarding "<u>recruitment, transfers, promotions and dismissals</u>", as proposed by the Bill. In addition, though local government must comply with the values and principles set out in Section 195(1) – including "good human-resource management" – the Constitution

[18] Section 195(1), Constitution.
[19] Section 195(1), Constitution.

expressly gives the task of ensuring compliance with these values and principles to municipal councils, not the Public Service Commission.

This is further buttressed by section 160 of the Constitution, which empowers a municipal council to "employ personnel that are necessary for the effective performance of its functions" and otherwise "make decisions concerning the exercise of all the powers and the performance of all the functions of the municipality". Here, the Constitution expressly allocates responsibility for the personnel decisions of municipalities to their municipal councils, not the Public Service Commission.

The preamble:
The preamble to the Bill also states that "the Constitution provides that the powers and functions of the Commission are…to exercise or perform the additional powers or functions prescribed by an Act of Parliament".

However, any such Act of Parliament must, of course, be consistent with the Constitution – and the Constitution excludes local government from the public service and hence from the jurisdiction of the Commission. In addition, section 164 of the Constitution, as earlier noted, expressly states that national legislation may prescribe matters concerning local government only where those matters are "not dealt with in the Constitution".

Section 2, Application of the Act: "The provisions of this Act apply in relation to the administration of the public service and public administration."

The Public Service Commission cannot deal with matters that the Constitution allocates to municipalities, unless the Constitution is first amended to authorise this.

Section 15, Obstruction of Commission, (1): "No person may hinder or obstruct the Commission in the exercise of its powers and the performance of its functions under the Constitution, this Act, the Public Service Act or any law relating to local government or any public entity".

However, the Public Service Commission has no powers over local government under the Constitution. Hence, the Commission cannot lawfully assert such powers under this Bill, which contradicts the Constitution and is thus invalid. (Section 15(2) of the Bill, which set out relevant penalties for hindrance or obstruction, is unconstitutional in the same way.)

Section 18, Finances and Accountability, (1)(c): "The Commission may at a management fee, and without compromising the independence and role of the Commission, provide advice, conduct investigations into personnel and public administration management practices in municipalities and public entities or any department or render specific services as prescribed."

The Constitution does not empower the Public Service Commission to "conduct investigations into personnel and public administration management practices in municipalities". This clause is thus inconsistent with the Constitution and invalid.

Section 22, Transitional provisions, (*3)(f*): "The implementation of the Commission mandate in relation to municipalities and public entities is suspended for a period of 12 calendar months from the date of coming into effect of this Act."
(3)(g): "The implementation of the Commission mandate in relation to municipalities and public entities must be executed on a progressive scale, which period may not exceed three years from the period contemplated in paragraph *(f)*, subject to availability of resources."

The Public Service Commission has no "mandate in relation to municipalities" under the Constitution and the Bill cannot contradict the Constitution by purporting to give it such a mandate. Both sub-sections 22(3)(f) and (3)(g) are thus unconstitutional and invalid. (The same problem applies to section 23(2)(b), dealing with the commencement of the Bill, which is equally unconstitutional and invalid.)

Schedule 2, Laws repealed or amended: "Act 32 of 2000, The Local Government Municipal Systems Act, 2000, The insertion of the following section [Section 68A] after section 68…"

The Public Service Commission has no jurisdiction over municipalities under the Constitution. Hence, the Bill's attempt to give the Commission such powers by inserting the proposed section 68A into the Local Government Municipal Systems Act of 2000 is unconstitutional and invalid.

The Memorandum on the Objects of the Public Service Commission Bill, 2023 also seeks to brush over and obscure the unconstitutionality of the Bill. This is particularly evident in Clauses 1.8 and 1.9:

Clause 1.8: The mandate of the Commission will be implemented within the public service and public administration to include municipalities, their entities, national and provincial departments and public entities.

Clause 1.9: "The extension of the implementation of the Commission mandate to local government and public entities accords with the Constitution…"

Once again, the Public Service Commission has no mandate under the Constitution to deal with local government and the Bill cannot purport to give it this. Its attempt to do so is inconsistent with the Constitution and invalid. This explains why Ms Ebrahim earlier proposed that the Portfolio Committee on Justice and Constitutional Development in the National Assembly should rather "explore the desirability of a constitutional amendment". This, as she pointed out, would "require a separate legislative process in terms of Section 74(3) of the Constitution [and a] 2/3rd majority".[20]

Why Ms Ebrahim's legal advice has been ignored is also apparent. The ANC, which won only 40% of the national vote in the 2024 general election, cannot muster the necessary two-thirds

[20] Ebrahim, 'CLSO Briefing on Constitutional Issues', Slide 17.

majority to amend the Constitution. The organisation is thus trying to achieve the same result by means of ordinary legislation passed by a simple majority. This stratagem is in conflict with the Constitution.

3.5 Parliament's obligation to uphold the Constitution

The National Assembly has ignored the clear unconstitutionality of the Bill, as well as Ms Ebrahim's advice that a constitutional amendment should instead be explored. That the National Assembly proceeded to adopt an unconstitutional measure has put it in breach of Section 2 of the Constitution, which states: "The Constitution is the supreme law of the Republic, law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled."[21]

The National Council of Provinces and its select committees are equally bound to uphold the Constitution at all times. Hence, the Select Committee on Cooperative Governance and Public Administration cannot lawfully proceed to enact a Bill which is clearly in conflict with the Constitution and should never have been adopted by the National Assembly.

4 The constitutional need for proper public consultation

The founding values of the Constitution require "openness" and "responsiveness" on the part of the government, while Chapter Ten states that "the public must be encouraged to participate in policy-making".[22] In addition, both houses of Parliament are obliged to "facilitate public involvement in the[ir] legislative…processes" under sections 59 and 72 of the Constitution.[23]

The constitutional need for proper public consultation is a vital aspect of South Africa's democracy, as the Constitutional Court has repeatedly reaffirmed in judgments spanning two decades. These rulings include *Matatiele Municipality and others* v *President of the Republic of South Africa and others*, *Doctors for Life International* v *Speaker of the National Assembly and others*, *Land Access Movement of South Africa and others* v *Chairperson of the National Council of Provinces and others*, and *Mogale and others* v *Speaker of the National Assembly and others*.[24]

In August 2025, moreover, in a unanimous ruling handed down in *Corruption Watch (RF) NPC* v *Speaker of the National Assembly and others*, the Constitutional Court reiterated the importance of proper public participation, saying: "The right of members of the public to participate meaningfully in democratic governance is a hallmark of our constitutional democracy. Public involvement in the legislative and other processes of all three spheres of government is not merely a fashionable accessory; it is a thread woven into the fabric of our democracy."[25]

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[21] Section 2, Constitution.
[22] Sections 1(d), 195(1)(e), Constitution of the Republic of South Africa, 1996 ("Constitution").
[23] Sections 59(1), 72(1), Constitution.
[24] (CCT73/05A) [2006] ZACC 12; 2007 (1) BCLR 47 (CC); 2006 (6) SA 416 (CC); [2016] ZACC 22; [2023] ZACC 14.
[25] *Corruption Watch (RF) NPC* v *Speaker of the National Assembly and others*, [2025] ZACC 15, para. 1.

In the *New Clicks* case in the Constitutional Court, Mr Justice Albie Sachs noted that there were many ways in which public participation could be facilitated. He added: "What matters is that…a reasonable opportunity is offered to members of the public and all interested parties *to know about the issues* and to *have an adequate say*". This passage was quoted with approval in *Doctors for Life*, the *Land Access* case, and the *Mogale* judgment in 2023.[26]

4.1 The need for an accurate socio-economic impact report

The best way to ensure that the public *know about the issues* and can then *have an adequate say* is to provide them with a comprehensive and objective report on the likely socio-economic impact of a bill. This is also what the government's own policy requires.

According to the government's *Guidelines for the Socio-Economic Impact Assessment System (SEIAS)* – which were developed by the Department of Planning, Monitoring, and Evaluation in May 2015 and took effect in September that year – all new legislation in South Africa is supposed to be subjected to a comprehensive "socio-economic impact assessment" before it is adopted. The aim of the SEIA system is to ensure that "the full costs of regulations and especially the impact on the economy" are fully understood before new rules are introduced.[27]

As the *Guidelines* state, the SEIA system must be applied at various stages in the policy process. Once new legislation has been proposed, "an initial assessment" must be conducted to identify different "options for addressing the problem" and making "a rough evaluation" of their respective costs and benefits. Thereafter, "appropriate consultation" is needed, along with "a continual review of the impact assessment as the proposals evolve".[28]

A "final impact assessment" must then be developed that "provides a detailed evaluation of the likely effects of the [proposed law] in terms of implementation and compliance costs as well as the anticipated outcome". When a bill is published "for public comment and consultation with stakeholders", this final assessment must be attached to it.[29]

4.2 The need to comply with the National Policy Development Framework

The government's *National Policy Development Framework* ("the *Framework*") also puts great emphasis on "encourag[ing] the public…to participate in policy making".[30] The *Framework* was approved by the Cabinet in December 2020 and is intended to help give effect to the *National Development Plan: Vision 2030*. It seeks to improve policy development by "ensuring meaningful participation" and "inculcating a culture of evidence-based policy making".[31]

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[26] Section 59(1), Constitution of the Republic of South Africa, 1996; *Minister for Health and another* v *New Clicks South Africa (Pty) Ltd and others*, [2005] ZACC 14, at para 630, emphasis supplied by the IRR; *Doctors for Life*, at para 145; *Land Access* judgment, at para 59; *Mogale* judgment, at para. 34.

[27] Department of Planning, Monitoring and Evaluation, 'Socio-Economic Impact Assessment System (SEIAS), Revised Impact Assessment: National Health Insurance Bill', 26 June 2019 (2019 SEIAS Assessment); *SEIAS Guidelines*, p. 3, May 2015.

[28] *SEIAS Guidelines* p. 7.

[29] *SEIAS Guidelines*, p. 11.

[30] Ibid, p. 19.

[31] National Policy Development Framework, 2020, p. 3.

Towards this end, the *Framework* lists some of the key requirements for proper public participation. "Consultation with stakeholders should commence as early as possible," it says. All relevant stakeholders should be identified, including "those who will benefit when [existing] problems are addressed" and "those who will bear the cost of implementation of the proposed intervention". In addition, policy-makers must identify and counter all "barriers to active participation" and ensure that "consultation is infused in all aspects of the policy-making cycle".[32]

According to the *Framework*, policy-makers must consider different policy options and give adequate thought to "which policy solutions would best achieve the public policy objective". They must also "inform and engage stakeholders" on "the nature and magnitude of a policy issue", along with its likely "impacts and risks". All assessments made by policy-makers must be "informed by the best available evidence, data, and knowledge".[33]

In addition, policy-makers must be willing to adjust their proposals in the light of the evidence provided. As the *Framework* stresses, "*policy-makers must not impose their preconceived ideas…and pre-empt the outcome of the policy consultation process*."[34] This in turn means that "policy-makers need to be willing to be persuaded and acknowledge the input of stakeholders with a view to creating a win-win policy outcome". They must avoid any impression that "the consultation process is staged, managed, cosmetic, token and a mere compliance issue". Instead, they must "strive to produce an outcome based on bargaining, negotiation, and compromise".[35]

Policy-makers, the *Framework* adds, must also provide adequate feedback to those who have submitted comments. Such feedback must include "rational reasons" as to why "submissions and comments…were not consolidated into the final policy document". In addition, policy-makers must "report in the SEIAS (final impact assessment: consultation section) on the results of their early engagement with stakeholders". They must explain "what stakeholders viewed as possible solutions, benefits, and costs and how these influenced the selection of the proposed policy solution".[36]

4.3 Little regard for these obligations

These important instructions to policy-makers have been disregarded in relation to the Bill. According to the Memorandum on the Objects of the Bill, a "socio-economic impact assessment was completed to provide a basis for the justification of the Bill" (and to explain why the Secretariat for which the Bill also provides would improve the Commission's autonomy and independence").[37]

[32] Ibid, pp. 19 – 20.
[33] Ibid, p. 20.
[34] Ibid, emphasis supplied by the IRR.
[35] Ibid.
[36] Ibid.
[37] Memorandum on the Objects of the Public Service Commission Bill, para. 6.1.

However, this SEIA report was not attached to the Bill when the Select Committee invited public comment on its provisions. Hence, the public has been left in the dark regarding the key provisions of the Bill and the ways in which its wording breaches the Constitution. This failure to append the SEIA report to the Bill has undermined the public's right to "know about the issues" and then to "have an adequate say". The *Framework*'s directions as to what must be included in a SEIA report have likewise been ignored. This is a major procedural deficit – and it further confirms the unconstitutionality of the Bill.

In addition, the Constitution expressly states that proper public consultation is particularly important when proposed amendments to the powers of functions of municipalities are in issue. Under Section 154(2) of the Constitution, as earlier noted: "Draft national or provincial legislation that affects the status, institutions, powers or functions of local government must be published for public comment before it is introduced in Parliament or a provincial legislature, in a manner that allows organised local government, municipalities and other interested persons an opportunity to make representations with regard to the draft legislation."[38]

Not enough has been done to fulfil this important obligation. The Memorandum on the Objects of the Bill claims that the Bill was "published in a manner that allowed organised local government such as SALGA, municipalities and other interested persons an opportunity to make representations" regarding the Bill. It also claims that "their representations were considered and included in the Bill".[39] Yet the City of Cape Town has "placed on record that no such consultation took place with it prior to publication of the Bill".[40] In addition, the City of Cape Town's well-founded concerns regarding the unconstitutionality of the Bill – in its attempts to extend the mandate of the Public Service Commission to the local sphere of government – have been ignored, not "included in the Bill".

Ms Ebrahim's warnings about the unconstitutionality of the Bill have also been brushed aside. So too has her recommendation that "the desirability" of starting with the necessary constitutional amendments should be considered. This further underscores the National Assembly's "tick-box" approach to public consultation and its apparent disdain for the "evidence-based policy-making" the government's own *Framework* for policy-makers seeks to ensure. The NCOP now seems intent on treating the need for proper public consultation with a similar disdain.

5 The way forward

The Bill is inconsistent with the Constitution in all the ways earlier outlined, as Ms Ebrahim has confirmed. The National Assembly should not have adopted it, for its obligation is to uphold the Constitution at all times – not brush aside its provisions. The National Assembly also failed adequately to comply with its obligation, under section 59(1) of the Constitution, to "facilitate public involvement" in the adoption of the Bill.

[38] Section 154(1), Constitution.

[39] Memorandum on the Objects of the Public Service Commission Bill, para. 6.2.

[40] Office of the Executive Mayor, City of Cape Town, email to the Director-General of the Public Service Commission, 10 July 2023.

The National Council of Provinces is now at risk of infringing the Constitution in the same ways. The Bill is fatally flawed both in its content and as regards the procedures used in its adoption. It is unconstitutional on both substantive and procedural grounds – and it must now be abandoned.

South African Institute of Race Relations NPC **12 September 2025**