

**IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA**

Case number: 89/17

In the matter between:

**UNITED DEMOCRATIC MOVEMENT** Applicant

and

**SPEAKER OF THE NATIONAL ASSEMBLY** First Respondent

**PRESIDENT JACOB ZUMA** Second Respondent

**AFRICAN NATIONAL CONGRESS** Third Respondent

**DEMOCRATIC ALLIANCE** Fourth Respondent

**ECONOMIC FREEDOM FIGHTERS** Fifth Respondent

**INKATHA FREEDOM PARTY** Sixth Respondent

**NATIONAL FREEDOM PARTY** Seventh Respondent

**CONGRESS OF THE PEOPLE** Eighth Respondent

**FREEDOM FRONT** Ninth Respondent

**AFRICAN CHRISTIAN DEMOCRATIC PARTY** Tenth Respondent

**AFRICAN INDEPENDENT PARTY** Eleventh Respondent

**AGANG SOUTH AFRICA** Twelfth Respondent

**PAN AFRICANIST CONGRESS OF AZANIA** Thirteenth Respondent

**AFRICAN PEOPLE'S CONVENTION** Fourteenth Respondent

**COUNCIL FOR THE ADVANCEMENT  
OF THE SOUTH AFRICAN CONSTITUTION** *Amicus curiae*

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**PRACTICE NOTE OF THE  
COUNCIL FOR THE ADVANCEMENT OF  
THE SOUTH AFRICAN CONSTITUTION**

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## **NATURE OF PROCEEDINGS**

- 1 The United Democratic Movement (“UDM”) has brought an urgent application seeking to invoke this Court’s exclusive jurisdiction, alternatively for direct access.
- 2 The UDM seeks declaratory orders regarding the proper interpretation of Constitution and the National Assembly Rules; an order reviewing and setting aside the Speaker’s refusal to allow a secret ballot for a pending no confidence vote; and an order directing the Speaker to make all necessary arrangements to ensure that the National Assembly decides the pending motion of no confidence in the President by secret ballot.

## **ISSUES TO BE ARGUED**

- 3 At this stage, the issues to be argued include:
  - 3.1 whether the Constitution requires, permits, or prohibits the motion of no confidence to be decided by secret ballot;
  - 3.2 whether the National Assembly Rules permit or prohibit the vote of no confidence to be taken by secret ballot;
  - 3.3 whether the Speaker of the National Assembly acted irrationally, unlawfully and/or unconstitutionally in refusing to conduct voting on the motion of no confidence by secret ballot; and

3.4 whether the Speaker should retake the decision in light of this Court’s judgment, or whether she should be directed to make necessary arrangements to ensure that the motion of no confidence is decided by secret ballot.

## **THE RECORD**

4 It is necessary for the Court to have regard to the entire record.

## **ESTIMATED DURATION OF ORAL ARGUMENT**

5 It is estimated that one day will be required for oral argument.

6 CASAC will not require longer than half an hour for its own oral submissions.

## **SUMMARY OF CASAC’S ARGUMENT**

7 CASAC broadly supports the relief sought by the UDM.

8 CASAC will make four principal submissions:

8.1 First, Members of the National Assembly (“Members”) are caught in an invidious and precarious position between their oath of office to uphold the Constitution, and the discipline of their parties.

8.2 Second, the constitutional obligations borne by the National Assembly and its Members track the dual functions – law-making and oversight – that they perform. A motion of no confidence is within the heartland of executive oversight, and Members bear a heightened obligation not to toe

the party line. A secret ballot provides the protective conditions necessary for Members to comply with their obligations.

8.3 Third, the Speaker's distinctive obligation to act impartially, and her irreconcilable conflict of interest, requires that in this case, she be directed to conduct the vote by secret ballot.

8.4 Fourth, the experience of various foreign jurisdictions demonstrates that the relief sought requires no major innovation.

#### **AUTHORITIES ON WHICH PARTICULAR RELIANCE WILL BE PLACED**

Democratic Alliance v Speaker of the National Assembly and Others 2016 (3) SA 487 (CC)

Glenister v President of the Republic of South Africa and Others (Glenister II) 2011 (3) SA 347 (CC)

Mazibuko v Sisulu and Another 2013 (6) SA 249 (CC)

Merafong Demarcation Forum and Others v President of the Republic of South Africa and Others 2008 (5) SA 171 (CC)

Poverty Alleviation Network and Others v President of the Republic of South Africa and Others 2010 (6) BCLR 520 (CC)

United Democratic Movement v President of the Republic of South Africa and Others (African Christian Democratic Party and Others Intervening)(No2) 2003 (1) SA 495

**GEOFF BUDLENDER SC**

**Counsel for CASAC**

**Chambers, Cape Town**

