

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

CASE NO: CCT 299/21

In the matter between:

RICARDO MAARMAN

Applicant

**MORE THAN EIGHT THOUSAND
EIGHT HUNDRED SOUTH AFRICANS**

Co-applicants

And

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

First Respondent

**THE SPEAKER OF
PARLIAMENT**

Second Respondent

**THE GOVERNOR OF THE SOUTH AFRICAN
RESERVE BANK**

Third Respondent

FOUNDING AFFIDAVIT

I, the undersigned,

RICARDO MAARMAN

Hereby state:

1. The facts set out within this affidavit are within my personal knowledge and expertise with reference.
2. To the best of my knowledge, all the facts deposed herein are correct.
3. In certain aspects, I have relied on documentary evidence and sworn expert statements, of which relevant portions are attached as annexures marked **RM**, whilst others are easily obtainable in the public domain.

BACKGROUND

4. During or about January 2020, the world became aware of the so-called SARS-CoV2 Virus.
5. On 15 March 2020, Dr Mmaphaka Tau, the Head of the National Disaster Management Centre in the Department of Cooperative Governance gave notice that the Covid-19 disease pandemic, allegedly caused by the SARS-CoV2 virus, was declared as a National Disaster (RM1).
6. Furthermore, on 15 March 2020, the First Respondent issued a declaration of a National State of Disaster and published the declaration in the Government Gazette of that date and on subsequent monthly extensions continued with the declaration and publications of the regulations relating to the National State of Disaster. This declaration was predicated on the claim that there was a virus called SARS-CoV2 which caused the disease Covid-19, which had allegedly erupted into a pandemic. No direct and irrefutable proof of the said virus accompanied the above declaration.
7. The abovementioned declaration resulted in the limitation of the applicants' rights and those of the entire South African population, as enshrined in the Constitution of the Republic of South Africa under the Bill of rights.
8. The Second Respondent did not call for a Parliamentary debate and vote on the matter when it was declared and did not do so for more than 18 months; yet it approved the 24 June 2020 supplementary budget, "Covid-19 budget" and

did not debate any of the subsequent extensions of the national state of disaster (RM2).

9. The Third Respondent adjusted the money supply and credit in the country by having reduced interest rates by 100 basis points amongst other measures, predicated on the existence of an alleged deadly virus SARS-Cov-2 without having provided independently verified proof of this claim which accompanied its decision, which directly and or indirectly financed the First Respondent's efforts, because of the said alleged pandemic and the National State of Disaster declaration by the First Respondent (RM3-RM8).
10. On the 27 April 2020, the applicant made a formal application through the Public Access to Information Act 2000 as per section 32(1) of the constitution, to the First Respondent, he requested the First Respondent to make available to the public all information that informed his decision to declare a National State of Disaster and thus questioned the reasonableness and justification of the declaration and subsequent limitations on the applicants' constitutional rights and brought this to the attention of the First Respondent (RM9-RM12b).
11. The notification of the declaration in the Government Gazette did not contain any accompanying direct irrefutable proof of the existence of the said virus.
12. In the official notice published in the Government Gazette, the First Respondent referred to the World Health Organisation (WHO), having declared an international pandemic.
13. The First Respondent did not provide the information as requested, for more than 18 months after the declaration and the formal legal requests made by the applicant. What would have constituted as proof of the existence of the said deadly virus, was made clear to the First Respondent, to be a physical sample of the said virus extracted from a person suspected to have died of and or to have been infected by the said virus, separated from all other substances, and cleansed from all other impurities, all of which could have obscured and impaired identification of the said virus.

14. The First Respondent published daily data on the number of suspected infections and deaths attributed to the said virus, which was not accompanied by proof of the abovementioned extractions (isolation and purification) and identification of the said virus associated with any of the published death and infection rates. No autopsy (extraction from a deceased person) and or biopsy (extraction from a living person) reports were ever made public which contained such proof. Infection and Death rates without such proof were merely conjecture and unreliable.
15. The applicant approached the Constitutional Court with an application for direct access for a court order which would have compelled the First Respondent to have provided proof of the existence of the said virus, on the 26 February 2021, **Case no: CCT 63/21**. A copy of the Constitutional Court application was sent to the First Respondent as was required; thus, he was aware of the request made to provide proof of the existence of the said virus.
16. The applicant approached the Western Cape High Court on the 27th of May 2021, he asked the court to issue an order which would have compelled the First Respondent to provide proof of the existence of the said virus, **case number: 5852/2021**.
17. The First Respondent opposed the applicant's request for proof in court and the judge dismissed the application on the basis that it was not urgent.
18. As a result of the chain of events the applicant has established, that the First Respondent did not provide proof of the existence of the said virus to the applicant or the public and did not want to do so, as was required when he limited the Bill of Rights, as in an open democratic society. This was a clear breach of section 32(1) and section 36(1) of the Constitution.
19. On the strength of these facts the applicants are now approaching this Honourable Court, based on exclusive jurisdiction and or direct access, to declare the National State of Disaster declared by the First Respondent as invalid, because he failed to provide proof of the existence of the alleged deadly virus to the applicants and to the public when he made the declaration and for

more than 18 months after several requests made and even opposed the applicant in court. Secondly to restore the rights of the applicants and to undo the harm caused by the respondents (President, Parliament and SARB) in their failure to have discharged their constitutional obligations.

20. The First Respondent made claims, which limited the Bill of Rights, which was not accompanied by reliable or irrefutable proof of its reason and justification, which should have been made available to be scrutinised by the public, questioned by Parliament, independently verified by SARB, and adjudicated by this Honourable Court.

THE PURPOSE OF THIS APPLICATION

21. This is an application based on the exclusive jurisdiction of this Honourable Court as per section 167 (4) (e) of the constitution. The First Respondent failed to have discharged his obligation to uphold, defend and protect the Constitution as the supreme law of the Republic per section 83(b) of the Constitution, in that he limited the Bill of Rights without any reasonable justification as it should have been in an open and democratic society as per sections 36(1) and 32(1) of the constitution. Therefore, he allowed his own interests and the interests of other parties to contravene the Constitution. He allegedly violated the Constitution as the President, Head of the State and Head of the National Executive which he swore to uphold defend and protect.

22. The Second Respondent has failed in its constitutional obligations to hold the President accountable as was required per sections 37(1), 42(3) and section 55(2) of the constitution. Had Parliament questioned the veracity of the claim made by the First Respondent and refused to act otherwise without such proof, the First Respondent would have had no other choice but to have produced proof or to have revoked his declaration, because without Parliament's official sanction, the First Respondent would have been unable to proceed, nor could the First Respondent have compelled Parliament, in fact Parliament had the power to remove the President if it found him to have failed in his duties as per

sections 102(2) and 89(1), then there would not have been unreasonable and unjustified limitations of the Bill of Rights.

In addition to the above, based on hindsight, it can be argued that the former Speaker of Parliament (Ms Modise) was conflicted at the time that these alleged failures occurred as she subsequently became the Minister of Defence. Refer to paragraphs 174 and 179.

23. The Third Respondent has failed in its constitutional obligations as per section 224(2) of the Constitution. It provided financial and monetary support to the declaration and its implementation of the National State of Disaster, without first having independently verified the existence of the said deadly virus upon which his actions were predicated. Had the SARB questioned the veracity of the claim made by the First Respondent and refused to act otherwise without such proof, the First Respondent would have had no other choice but to have produced proof or to have revoked his declaration, because without SARB's financial support the First Respondent would have been unable to proceed without funding, nor could the First Respondent have compelled SARB because SARB was and is independent as per section 224(2) of the constitution.

In addition to the above, the SARB's current governor (Mr EL Kganyago) was conflicted as he served as "Chairperson of the International Monetary and Financial Committee, which is the primary advisory board to the International Monetary Fund (IMF) Board of Governors, from 18 January 2018 – 17 January 2021". During this time, the Governor performed incompatible functions as a Governor of Reserve Bank and the Chairman of IMF Committee. Refer to paragraph 108 and 187.

24. Alternatively, should the Court find that this matter does not fall within the Court's exclusive jurisdiction, I request as per section 167(6)(a) of the constitution that direct access be granted in the interest of justice, no other court can hear the matter and or grant the recourse sought. This case contains extreme and exceptional circumstances, including the sensitive matter of the separation of powers principle. Due to the public interests in this matter,

demonstrated in more than eight thousand eight hundred co-applicants, the importance of the rights at stake and the fact that the Western Cape High Court found this matter to be of public interest, please refer to paragraph 48.3. This matter is in the interest of justice and if not treated as an extremely important matter, the applicant, co-applicants and millions of other South Africans will be further prejudiced by the wanton and unjustified limitation of their liberties. Furthermore, if this matter is not resolved by this Honourable Court directly and with finality, millions of South Africans could lose faith in justice and this will undermine the rule of law.

THE PARTIES AND STANDING

25. The Applicant is an adult male, **RICARDO MAARMAN**, a citizen of South Africa.

25.1. The Applicant holds a BA Degree in Politics/Philosophy and Economics obtained at the University of South Africa and an MA International Politics obtained at the University of Leicester in the UK. He specialized in the Post-Cold War World Order, International Security, Intelligence and Security and US Foreign Policy.

25.2. The Applicant brings this matter in his own interest as a citizen of the Republic of South Africa and in the public interest as provided for by sections 38(a) and 38(d) of the Constitution of the Republic of South Africa, 1996 (the Constitution).

25.3. The co-applicants are more than Eight Thousand Eight Hundred South Africans who have confirmed that this case represent their interests, confirmation of this can be made available to this Honourable Court upon request, but should be kept from the respondents due to the power of the respondents and the fear of citizens of reprisal and or intimidation (RM35). The co-applicants should also not be held liable for any costs, which shall be borne by the main applicant and this is a matter of public interest.

25.4. The Applicant and co-applicants will receive all service and correspondence with regard to this application at **JJS Manton Attorneys, Suite 716, 7th Floor, Marlborough House, 127 Fox Street, Johannesburg, Gauteng**, as the address at which the Applicant will accept service of all process in these proceedings. Service on the Applicant will also be effected electronically at the applicant's email: **rainbownation2020@yahoo.com**.

26. The First Respondent is the **PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA** ("the President") whose **Gauteng office is situated at Union Buildings Government Avenue, Pretoria** and whose full and further details are unknown to me.

26.1. The President is cited herein in his official capacity as the head of the national executive per section 83(a) of the Constitution. The Cabinet member responsible for the administration of the Disaster Management Act No 57 of 2002 (DMA) and the Regulations promulgated pursuant to the DMA are appointed by the President and report to the President.

26.2. Furthermore, the President is cited in his official capacity as the highest office in the Republic charged with upholding, defending and protecting the Constitution as the supreme law of the Republic.

26.3. Relief sought against the President is for this Honourable Court to find the said declaration of National State of Disaster to be invalid and to be set aside; voluntary resignation of the President in an orderly manner; for the President to be held personally liable for financial losses suffered by the South African people as a result of his constitutional failures; an order to compel the President to call a referendum: as vote of no confidence in all the respondents; a vote to decide on direct Presidential elections and individual candidates instead of party-lists (to remedy lack of separation and accountability between Parliament and the President) as suggested by Acting Chief Justice (Mr Zondo) and agreed by the

President under oath “*So I think it is a matter that can be discussed and one need to demonstrate its attractiveness*” (RM30 p185) and to decide upon liquidation of the SARB and reformation of the monetary system (to remedy the lack of independence of our monetary system, the current exposed risk of systems failure and to provide compensation as consequence of financial losses suffered) and costs in the event of opposition.

26.4. Service will be effected on the President electronically at the President’s email address, president@presidency.gov.za.

27. The Second Respondent is the **SPEAKER OF PARLIAMENT (“Speaker”)**

27.1. The Speaker is cited in her official capacity as the presiding officer of the Parliament, which represents the Parliament. The Constitution leaves no doubt that members of the executive, both individually and collectively are accountable to Parliament.

27.2. Relief sought against the Speaker is the voluntary resignation of the Speaker, the former Speaker and the voluntary dissolution of Parliament in an orderly manner; for the members of parliament including the former Speaker to be held personally liable for all financial losses suffered by the South African people as a result of their failure to adhere to the constitution and costs in the event of opposition.

27.3. Service will be effected on the Speaker at speaker@parliament.gov.za.

28. The Third Respondent is the **GOVERNOR OF THE RESERVE BANK OF SOUTH AFRICA** (“the Governor of the Reserve bank”) (SARB)

28.1. The Governor of the Reserve bank is cited herein in his capacity as head of the Republic’s central bank whose primary purpose is to protect and safeguard the value of the currency in the interest of balanced and sustainable economic growth in the Republic. The Reserve Bank,

headed by the Governor of the Reserve Bank is empowered by the Constitution to perform its functions independently without fear, favour or prejudice.

28.2. Relief sought against the Governor is for the governor his deputies and the entire board to resign in an orderly manner, that the board be held personally responsible for financial losses suffered as a result of their failure, that the SARB as an institution be held financially liable along with those who acted in a subordinated fashion at the direction of and in concert with the SARB to adjust the money and credit, and costs in the event of opposition.

28.3. Service upon the Governor of the Reserve Bank will be effected electronically at the Governor's email, governor@resbank.co.za.

EXCLUSIVE JURISDICTION

29. I submit that this Honourable Court has exclusive jurisdiction to hear this matter as per section 167(4)(e) of the Constitution.

30. In its previous decisions of *Economic Freedom Fighters v Speaker of the National Assembly*; *Democratic Alliance v Speaker of the National Assembly* (EFF 1) and *Economic Freedom Fighters v Speaker of the National Assembly* (CCT76/17) [2017] ZACC 47; 2018 (3) BCLR 259 (CC); 2018 (2) SA 571 (CC) (29 December 2017), this Honourable Court held that the failure of the Parliament to fulfil its constitutional obligation falls under the exclusive jurisdiction of this Court.

31. In the previous cases referred to above, the Court also held that a matter in which the President has failed to fulfil his constitutional obligations fall within the exclusive jurisdiction of this Court.

32. The First Respondent declared a national state of disaster predicated on the claim that there exist a deadly virus called SARS-Cov-2. The First Respondent

did not provide any reliable public proof for this claim which accompanied his declaration and despite several requests made over more than 18 months and in fact went to the Western Cape High Court to oppose the application to the court for such proof to have been made public.

33. Section 36. (1) *“The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors”*. This provision no doubt imposed an obligation on the First Respondent when he sought to limit the Bill of Rights, to have had a justifiable reason and to have made it known publicly as per an open democratic society.

34. Section 32. (1) *“Everyone has the right of access to— (a) any information held by the state; and (b) any information that is held by another person and that is required for the exercise or protection of any rights.”* This provision no doubt imposed an obligation on the First Respondent when he sought to limit the Bill of Rights, he should have provided proof to the applicants and the public that justified such limitations. The First Respondent was and is in breach of his Constitutional obligation in that (as mentioned above), he did not provide proof of the existence of SARS-CoV-2 virus, despite the Promotion of Access to information Act (PAIA 2000) requests made by the applicant and opposed the application made by the applicant to the Western Cape High court which demanded proof of the existence of the said virus.

35. Section 83. *“The President— (a) is the Head of State and head of the national executive; (b) must uphold, defend and respect the Constitution as the supreme law of the Republic;”*. This provision no doubt imposed an obligation on the First Respondent when he sought to limit the Bill of Rights, he should have acted in accordance with the constitution, as per section 36(1) and 32(1) of the constitution.

36. Section 37. (1) *“A state of emergency may be declared only in terms of an Act of Parliament, and only when— (a) the life of the nation is threatened by war,*

invasion, general insurrection, disorder, natural disaster or other public emergency; and (b) the declaration is necessary to restore peace and order.” This provision no doubt imposed an obligation on the Second Respondent when it enacted a national state of disaster, to have ensured that there existed a real threat to the life of the nation, through a debate to have tested the veracity of the claims made by the First Respondent in as far as the existence and deadliness of SARS-Cov-2 and the measures necessary to avert the alleged national threat was concerned, this was not done. National state of disaster as per the DMA Act 2002 states: *“In this Act unless the context indicates otherwise-... “disaster” means a progressive or sudden, widespread or localised natural or human-caused occurrence which- (a) causes or threatens to cause- (i) death, injury or disease”*. It is immaterial whether a state of emergency which includes natural disasters was declared or a national state of disaster, Parliament should have assessed the veracity of the threat or danger to the nation.

37. Had Parliament questioned the veracity of the claim made by the First Respondent and refused to act otherwise without such proof, the First Respondent would have had no other choice but to have produced proof or to have revoked his declaration, because without Parliament’s official sanction, the First Respondent would have been unable to proceed nor could the First Respondent have compelled Parliament, in fact Parliament had the power to remove the President if it found him to have failed in his duties as per sections 102(2) and 89(1), then there would not have been unreasonable and unjustified limitations of the Bill of Rights.

38. Section 55 (2) *“The National Assembly must provide for mechanisms— (a) to ensure that all executive organs of state in the national sphere of government are accountable to it; and (b) to maintain oversight of—”* This provision no doubt imposed an obligation on the Second Respondent to have held the First Respondent accountable when he declared a national state of disaster which resulted in the limitations of the Bill of Rights. The Second Respondent was clearly in breach of its Constitutional obligation in that the respondent failed to have held a National Assembly debate on the veracity of the alleged deadly

virus in order to have ascertained the existence thereof and to have questioned the President on the measures he imposed and continues to escalate and implement, for more than 18 months.

39. Section 42(3) “*The National Assembly is elected to represent the people and to ensure government by the people under the Constitution. It does this by choosing the President, by providing a national forum for public consideration of issues, by passing legislation and by scrutinizing and overseeing executive action.*” This provision no doubt imposed an obligation on the Second Respondent to not only have held the First Respondent accountable but to have ensured that the will and interests of the people were represented, it failed to do so by having allowed limitations to the Bill of Rights of the people without having overseen and scrutinized executive action in so far as it did not request direct and reliable proof of the existence of the SARS-Cov-2 virus.

In addition to the above, based on hindsight, it can be argued that the former Speaker of Parliament (Ms Modise) was conflicted at the time that these alleged failures occurred as she subsequently became the Minister of Defence. Refer to paragraphs 174 and 179.

40. Section 224 (2) “*The South African Reserve Bank, in pursuit of its primary object, must perform its functions independently and without fear, favour or prejudice.*” This provision no doubt imposed an obligation on the Third Respondent when the First Respondent declared a national state of disaster predicated on a claim of an alleged deadly virus. The Third Respondent should have acted independently, without fear favour or prejudice by having independently verified the claim of the existence of the alleged deadly SARS-Co-2 virus, before it instituted monetary policy adjustments predicated on it. Had the SARB questioned the veracity of the claim made by the First Respondent and refused to act otherwise without such proof, the First Respondent would have had no other choice but to have produced proof or to have revoked his declaration, because without SARB’s financial support the First Respondent would have been unable to proceed without funding, nor could the First Respondent have compelled SARB as SARB was and is

independent as per section 224(2) of the constitution, then, there would not have been unreasonable and unjustified limitations of the Bill of Rights.

In addition to the above, the SARB's current governor (Mr EL Kganyago) was conflicted as he served as "Chairperson of the International Monetary and Financial Committee, which is the primary advisory board to the International Monetary Fund (IMF) Board of Governors, from 18 January 2018 – 17 January 2021". During this time, the Governor performed incompatible functions as a Governor of Reserve Bank and the Chairman of IMF Committee. Refer to paragraph 108 and 187.

41. This case involves the sensitive area of separation of powers, in which it is alleged by the applicants that the Respondents were all charged to act independently in order to maintain the necessary separation of powers needed to act as checks and balances to prevent systemic failures and wanton abuses of power. As it shall be demonstrated in this document, the Speaker of Parliament who should have been the leader of Parliament to hold the President accountable has subsequently become a member of the President's cabinet and the Defence Minister who was charged by the President to enforce the defence aspects of the national state of disaster, is now the new Speaker of Parliament. This revolving door (within the same term in office) is further proof of the breach of the principle of separation of powers which has occurred.
42. In addition to the above, all three Respondents acted in concert to enact the "Covid-19 budget" 24 June 2020. The Supplementary budget review predicated on an unproven claim, namely the existence of a deadly virus called SARS-Cov-2.
43. The nature of the relief sought in this case is such that only this court can grant, namely amongst others a referendum which involves the exercise of constitutional powers; declaring an Act of Parliament to be invalid and declaring the declaration of National State of Disaster to be invalid. The grounds upon which such relief is sought is based upon the respondents' having failed to fulfil

their constitutional obligations and in the exercise of their constitutional powers. Any other court simply cannot grant the relief sought because it pertains to the exercise of constitutional powers, the interpretation of the constitution and the enforcement thereof.

44. The Parliament has failed to hold the President accountable in that even when the President refused or failed to have shown the cause for limiting human rights as articulated in the Bill of Rights by not having produced proof of the existence of the (isolated and purified) SARS-CoV2 virus, no action was taken to protect the Constitution and the interests of the people. Parliament approved the "Covid-19 Budget" 24 June 2020, which was aimed at diverting the fiscus (tax-payers funds and obligations) due to the said alleged viral pandemic, thus it aided the First Respondent as he acted without reasonable justification.

45. The SARB has failed to act independently, without fear or favour and in the interest of the South African economy for the benefit of the South African people. SARB in fact acted in support of and in co-ordination with the First Respondent, without having first independently verified whether the said pandemic, national state of disaster declaration, subsequent measures were predicated on an actual virus or merely just an unsubstantiated claim.

46. In light of the abovementioned, the evidence and facts laid out in this document, a clear case has been made to this Honourable Court, that it has exclusive jurisdiction over this matter.

DIRECT ACCESS

47. I submit that should this Court find that this matter does not fall within the exclusive jurisdiction of this Honourable Court, there are compelling reasons to grant direct access as per section 167 (6) (a) of the constitution.

48. The importance of this matter warrants that direct access be granted for the following reasons:

48.1. This is fundamentally a constitutional matter it involves the failure of the President, Parliament and the SARB, having failed to fulfil their constitutional obligations and in the exercise of their constitutional powers. It involves the interpretation of the constitution therefore it is in the interest of justice that this court grants direct access.

In addition, this matter involves the sensitive issue of the separation of powers principle which was breached due to the alleged conflict of interest by the former speaker of Parliament (Ms Modise) and the Governor of the Reserve Bank, Mr Kganyago. Refer paragraphs 39 and 40.

48.2. The First Respondent has demonstrated clearly his wilful disregard to comply with his constitutional obligations, according to which he should have provided reasonable justification for his act of limiting the Bill of Rights; even to a point of having opposed the matter in the Western Cape High Court. Due to his ample powers and resources, this matter could be dragged out indefinitely and justice deferred will be justice denied for the public whilst he imposes harsh restrictions unabated. It is therefore highly desirable that a direct and final decision be made by this Honourable Court. If the public does not have the confidence in the finality of litigation, the rule of law will be undermined.

48.3. Furthermore the Western Cape High Court in **case no 5852/2021** date 2021.05.27, found that this matter is indeed of public interest and that finding was accepted by the First Respondent:

“COURT : Isn’t this public interest?

MR TSEGARI (counsel for the First Respondent) : M’Lady, in as much as you have a discretion to decide, it’s a question of public interest , what is important in this matter is that the persons who deposed to the affidavit are required to deal with more pressing issues and the we’re dealing with scarce resources where we have to pull those people out of the work which are pressing in this in the rising of the infection rate.

COURT: Ja, but would it not be in a constitutional democracy?

MR TSEGARI: : I accept that, M'Lady. I accept that.” (RM13 – p86-87)

- 48.4. Furthermore there are more than eight thousand eight hundred co-applicants to this case, clear evidence for public interest.
- 48.5. This matter involves exceptional circumstances, never has there been such vast and extensive limitation been imposed, which continues and increases, involving the limitation of the Bill of Rights of the entire population of South Africa. It involves the past and continued failure of three respondents each with independent constitutional powers and obligations, simultaneously or in rapid succession.
- 48.6. The declaration of the National State of Disaster has resulted in egregious violations of the Bill of Rights which keep on increasing in frequency and boldness as the government deploys the South African National Defence Force and other law enforcement agencies.
- 48.7. A continuous, indefinite, unfettered limitation of constitutional human rights without regard for the boundaries set by the Constitution sets a precedent whereby the culture of human rights that many sacrificed their lives for, will be eroded piece by interlocking piece until nothing is left of the values that the Constitution was founded on.
- 48.8. Any argument that a violation of fundamental human rights that the Constitution of South Africa is meant to protect, should not be treated as a matter of importance deserving direct access, is unsustainable because the inclusion of the Bill of Rights in the Constitution attest to its fundamental importance.
- 48.9. The continuous closure of key sectors of the economy will cause irreversible harm to the extent that the country's economy might not be able to recover and could subject the country to debt which may lead to the loss of key state installations to repay the national debt in future.

South Africa's failing economy cannot withstand an indefinite restriction of economic activity or limited economic activity.

48.10. The protracted restrictions on economic activity continue to widen the gaping economic inequalities in South African society and any prolonging of these measures will worsen the conditions of the poor and previously disadvantaged. In South Africa, there is vast unemployment and poverty as such, the questioning of the very cause that threatens to drastically increase the already desperate circumstances must at least in the interest of justice, be thoroughly investigated.

48.11. The nature of the relief sought in this case is of such a nature that only this court can grant, namely amongst others a referendum which involves the exercise of constitutional powers, declaring an Act of Parliament to be invalid and declaring the declaration of the National State of Disaster to be invalid. The grounds upon which such relief is sought is based upon the respondents' having failed to fulfil constitutional obligations and in the exercise of their constitutional powers. Any other court simply cannot grant the relief sought because it pertains to the exercise of constitutional powers, the interpretation of the constitution and the enforcement thereof.

49. A continued violation of human rights without just cause may set a dangerous precedent wherein the state resorts to draconian measures to limit human rights as and when it sees fit without justification, reasonableness and rationality.

50. There is a swift move around the world including in countries such as Australia and France to mandate vaccination of people against well-established principles of human rights law which include freedom and security of the person; South Africa may be tempted within the next few months or even weeks to follow in the footsteps of countries that are mandating the vaccine against all tenets of human liberties, a move which may deal the final blow to South Africa's constitutionalism and culture of human freedoms.

51. It is on this basis that I humbly request this Honourable Court, in the event that it finds that this matter does not fall within this Honourable Court's exclusive jurisdiction, to grant direct access as there are compelling grounds to do so.

LEGAL PRINCIPLES

These legal principles mentioned here must be considered along with all legal principles cited throughout this document.

Chapter 2 of the Constitution

52. Chapter 2 of the Constitution is the Bill of Rights which protects inalienable human liberties and freedoms. I submit that Chapter 2 of the Constitution entrenches fundamental human rights which do not govern individuals' conduct, but safeguards individuals from abuse by the tremendous power of the state. Furthermore, these rights are not given by the state at birth but are God-given rights upon every living human person. The state headed by the President, is the custodian of these rights and freedoms.

53. Section 36 of the Constitution provides that: *"(1) The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including— (a) the nature of the right; (b) the importance of the purpose of the limitation; (c) the nature and extent of the limitation; (d) the relation between the limitation and its purpose; and (e) less restrictive means to achieve the purpose. (1) Except as provided in subsection (1) or in any other provision of the Constitution, no law may limit any right entrenched in the Bill of Rights."*

54. In order for the rights that have been and are being limited by the ongoing National State of Disaster to have been justifiably limited, the requirements of section 36 should have been satisfied. The measures imposed are far-reaching and harsh and it does not appear that the reasons given for imposing such draconian measures satisfied section 36. The measures, inter alia, limited

and continues to limit the freedom of movement, freedom of expression, freedom of association and the right to protest which limitations according to the government led by the First Respondent, were and are measures to limit infections and deaths. In an open and democratic society that South Africa's Constitutions envisions:

54.1. The first leg in justifying this limitation should have been to prove that the virus which was the reason for the limitations indeed existed. The instant the First Respondent failed to provide proof that the said virus existed, the limitation of fundamental human rights became totally unnecessary and offended the spirit and values of the Constitution entirely.

54.2. The First Respondent refused to provide proof of the existence of the said virus to the Applicants which constituted proof that the Republic was and is one based on secrecy and lack of transparency which goes against the Constitution's expression in section 36, that any limitation of rights should have been reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom. Many of the measures took away human dignity and freedoms without any reasonable justification rendered.

55. The fact that the whole world "was aware" that there was a virus or that "people were dying" yet without concrete proof (autopsies and or biopsies with the extracted isolated and purified virus) this should not have sufficed to impose measures that have literally wiped away human liberties and rendered the Bill of Rights obsolete. Only the publicly declared proof of the existence (isolated and purified) of the SARS-CoV2 virus would have been adequate justification for the First Respondent to have justified the need to have collapsed the economy and to have limited the rights in the Bill of Rights to the extent that they have been limited.

56. Openness and accountability in a democracy in the language of section 36(1) demanded that the First Respondent should have shown irrefutable proof to the Applicants of the existence of the said virus which has necessitated the removal

of human liberties, before or at the very instant of such removal of liberties. The fact that the First Respondent did not provide proof and in fact went to court to prevent proof from coming out, means that the First Respondent did not have grounds to limit the rights in the Bill of Rights which means the determination of other factors including whether there could have been less restrictive measure to achieve the purpose of the limitation falls away.

57. At the core of all human rights in the Bill of Rights is human dignity which is a principle and by itself a legal rule. The continued lockdown, restriction of movement, restriction of assemblies and mask wearing all infringe human dignity and in the absence of such proof having been provided of the existence of the said virus, such limitations on human rights were and are unreasonable and unjustifiable.

58. *“Section 39 (1)(a) and (b) provide that: When interpreting the Bill of Rights, a court, tribunal or forum- (a) must promote the values that underlie an open and democratic society Based on human dignity , equality and freedom; (b), must consider international law; and (c), may consider a foreign law”*. In this case we cite a ruling made by the Judicial Court of the District of Azores - Criminal Court of Ponta Delgada, Portugal, in Case No. 1783 / 20. 7T8PDL.L1, which ruled the PCR test to be unreliable. The PCR test was relied upon by the First Respondent when he determined infection and death rates attributed to the alleged SARS-Cov-2 virus. Refer to paragraph 144.

In addition, we also cite the OLG Stuttgart (Higher Regional Court of Stuttgart) Judgment of 16.2.2016, 12 U 63/15, when seized with a similar matter around proof of the existence of the Measles-virus, ruled that the said virus was not proven to exist. When the plaintiff relied upon the publications and methods of cell-culturing, which is the mixing of bio-chemical samples obtained from persons suspected of having the said virus with monkey-kidney and or human cells, which makes identification of the said virus unreliable due to the inability to discount the monkey-kidney and or human cells amongst other admixtures used. The First Respondent and the NICD relied upon this cell-culturing to have known the “nature” of the said virus. Refer to paragraph 138-142, 143 and 145.

59. *“Section 32(1) of the Constitution of the Republic of South Africa Act 108 of 1996 (the Constitution), provides that everyone has the right of access to records or/and information held by the state and any information held by another person and that is required for the exercise or protection of any rights”.*

The applicant’s PAIA requests to the President proved futile. RM 9 - RM12b

The President’s Constitutional Obligations and Powers

60. It was the constitutional obligation of the President to have had reasonable justification and to have provided such to the public when he decided on limitations to the Bill of Rights. This also equates to upholding, defending and protecting the Constitution.

61. *Section 83(a) and (b) of the Constitution provides that (a) the President is the Head of State and Head of the National Executive, (b) must uphold, defend and respect the Constitution as the supreme law of the Republic.* Thus the President was and is obligated to have upheld, defended and respected the Constitution as the supreme law of the Republic.

61.1. The spirit of the Constitution as voiced *inter alia* in the Preamble and sections 36(1), 92(2), 95 speaks to openness and accountability. By having refused and or failed to comply with the simple request to show a virus that the President has invoked and thus contravened the Constitution, the President betrayed his oath of office.

61.2. By having failed to account to Parliament and to the people of South Africa, he succumbed to the interests of lobbyists and interest groups in the form of vaccine manufacturers, the President has failed to protect, defend and uphold the Constitution of the Republic.

61.3. The President swore allegiance affirming faithfulness to the Republic and obedience to the Constitution, but has since the advent of the alleged virus presided over a dispensation that continues to violate human rights without justification.

62. The President has powers in terms of section 84(2)(g) to call a referendum in terms of an Act of Parliament. It will be in the interest of the Constitutional order and of the people of South Africa that the President be ordered by the Court to call a referendum to allow direct public participation.

63. The abovementioned powers does not originate with the President: *“section 84. (1) The President has the powers entrusted by the Constitution and legislation, including those necessary to perform the functions of Head of State and head of the national executive.”*

64. Furthermore to support the above: *“section 85. (1) (2) The executive authority of the Republic is vested in the President.”* This vestiture of power took place when Parliament elected the President and he subsequently solemnly made his oath of office, to be faithful to the Constitution and to the Republic as preconditions of the said vestiture.

Parliament’s Constitutional Obligations and Powers

65. It was the constitutional obligation of Parliament to have tested whether the President had such reasonable justification, which he should have provided to the public when he decided on limitations to the Bill of Rights.

66. *“Section 55(2)(a) of the Constitution confers upon Parliament the duty to ensure that executive organs of government in the national sphere are accountable to it. In terms of section 55(2)(b) Parliament must ensure that it maintains oversight over the exercise of executive authority and oversight over any organ of state.”*

67. By having failed to have held the First Respondent accountable for the draconian measures which trampled and continues to do so on constitutional human rights, Parliament failed in its constitutional duty to have held the President accountable. It would have been reasonable for Parliament to have demanded to be shown the virus, this would have confirmed its veracity.

68. By having failed to subject the declaration of a National State of Disaster and the management thereof to Parliamentary oversight, Parliament failed in its duty to hold the President accountable.

SARB's Constitutional Obligations and Powers

69. It was the constitutional obligation of the SARB to have acted independently, without fear or favour, to have assessed whether the President had such reasonable justification before it committed to monetary policy statements, decisions and measures in support of the national state of disaster. This would have thus ensured that the South African tax-payer was not unduly overburdened with sovereign or national debt and that the national economy was not unduly destabilised. To have ensured that reasonable measures were taken by the bank to avoid making such statements, decisions and measures based on false and unverified claims.

70. *“Section 223. The South African Reserve Bank is the central bank of the Republic and is regulated in terms of an Act of Parliament.”*

71. *“Section 224. (1) (2) The primary object of the South African Reserve Bank is to protect the value of the currency in the interest of balanced and sustainable economic growth in the Republic. The South African Reserve Bank, in pursuit of its primary object, must perform its functions independently and without fear, favour or prejudice,”*

72. *“Section 225. The powers and functions of the South African Reserve Bank are those customarily exercised and performed by central banks, which powers and functions must be determined by an Act of Parliament and must be exercised or performed subject to the conditions prescribed in terms of that Act.”*

73. According to the Statutes of the Bank of International Settlements of which SARB is a member:

“Article 56:

For the purposes of these Statutes:

(a) central bank means the bank or banking system in any country to which has been entrusted the duty of regulating the volume of currency and credit in that country; or, in a cross-border central banking system, the national central banks and the common central banking institution which are entrusted with such duty;”

Powers of the Constitutional Court

74. *“Section 167. (5) The Constitutional Court makes the final decision whether an Act of Parliament, a provincial Act or conduct of the President is constitutional”*

75. The Supplementary Budget review and the subsequent financial obligations and allocations were done in the form of an Act of Parliament, the Budget was specifically adjusted to accommodate government’s response to the National State of Disaster declaration, predicated upon the existence of a deadly SARS-CoV2 virus, if no direct and reliable proof which substantiated that claim was provided, then the court should declare this Supplementary Budget review invalid and to be set aside.

76. *“Section 167. (7) A constitutional matter includes any issue involving the interpretation, protection, or enforcement of the Constitution.”*

77. The Court has the authority to determine whether in the case of these constitutional failures committed by both Parliament and the Executive, whether the people should be given the right to a referendum, since the applicant is of the view such power originates in the first instance from the people, through Parliament and the Constitution. This power is not meant to be kept hidden and out of reach of the people, especially when it is the only way the will of the people (including the applicants) could be heard on a matter which threatens them. This matter is of extreme importance to the people of South Africa and is as a direct consequence of the past failures of the President and Parliament simultaneously or in rapid succession.

78. In the same vein the Court may decide whether the SARB fulfilled its Constitutional obligations or not.
79. Furthermore, with regards to the SARB and all the other respondents: *“Section 167(4) 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;”*
80. The Court is duty bound to resolve constitutional matters. In this case a simultaneous constitutional failure by the President and Parliament, which can only be resolved by referring the matter to the people and only a referendum can empower the people to make known their will. This extends to the matter of constitutional systems failure which includes the President, Parliament and the SARB, which involved a serious contravention by these respondents against the people’s Bill of Rights: *“Section 167. (3) The Constitutional Court— (a) is the highest court of the Republic; and (b) may decide— (i) constitutional matters;”*
81. The Constitutional Court has jurisdiction to determine the validity of international treaties, such as the WHO treaty, such treaties are Acts of Parliament over which this Honourable Court can decide on constitutionality thus validity. *“Section 231. (4) Any international agreement becomes law in the Republic when it is enacted into law by national legislation; but a self-executing provision of an agreement that has been approved by Parliament is law in the Republic unless it is inconsistent with the Constitution or an Act of Parliament.”*
82. The First Respondent cannot reasonably argue that invoking the WHO treaty and or the International Health Regulations, sufficed as reasonable justification for having declared a National State of Disaster predicated on the existence of the alleged deadly SARS-CoV2 virus. The only reasonable justification for a decision of such magnitude and impact on the lives of all South Africans, should have been irrefutable proof of the existence of the said alleged deadly virus. Having invoked the WHO treaty did not absolve the First Respondent’s duty to have acted in the interest of the citizens of the country and in obedience to the Constitution, otherwise, it would make a mockery of the Constitution and it

would mean that by virtue of the treaty, that WHO is the ultimate authority in South Africa able to impose rule without proof or reason, which is completely unacceptable.

Constitutional Powers of the people

83. *"PREAMBLE*

We, the people of South Africa,

Recognise the injustices of our past;

Honour those who suffered for justice and freedom in our land;

Respect those who have worked to build and develop our country; and

Believe that South Africa belongs to all who live in it, united in our diversity.

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

Heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights.

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;

Improve the quality of life of all citizens and free the potential of each person; and

Build a united and democratic South Africa able to take its rightful place as a sovereign state in the family of nations.

May God protect our people."

84. The people are the original holders of power and authority, as it is they who freely adopted the Constitution.

85. The entire Constitutional order is predicated on the will of the people and the interest of the people.

86. Section 42 of the Constitution states: "*Section 42. (3) The National Assembly is elected to represent the people and to ensure government by the people under the Constitution. It does this by choosing the President, by providing a national*

forum for public consideration of issues, by passing legislation and by scrutinizing and overseeing executive action.”

LIMITATIONS TO THE BILL OF RIGHTS SHOULD ONLY HAVE OCCURRED WHEN IT WAS REASONABLE AND JUSTIFIABLE AS IN AN OPEN DEMOCRATIC SOCIETY

87. In order for any limitation to have been reasonable and justifiable, there should have been accompanying or in extremely exceptional circumstances shortly thereafter proof to support the limitation. The proof that was required for a limitation predicated upon the claim of the “deadly SARS-CoV2 virus” should have been proof of the existence of the said virus and proof of the deadliness of the said virus (Covid-19 disease).

88. In order for such justification and reasonableness to have complied with the requirement of an open democratic society, such proof of the said virus and its supposed deadliness, should have been broadcasted widely to all and sundry in an official government notice, the Government Gazette, when the disaster was declared.

89. In order to have complied with the constitutional directive “only” the abovementioned proof should have been volunteered, any resistance to supply such proof of the said virus constituted a contravention of the constitutional obligation.

The declaration of National State of Disaster and the subsequent measures that followed:

90. GOVERNMENT GAZETTE No. 43096, 15 MARCH 2020: *“Considering the magnitude and severity of the COVID -19 outbreak which has been declared a global pandemic by the World Health Organisation (WHO) and classified as a national disaster by the Head of the National Disaster Management Centre and taking into account the need to augment the existing measures undertaken by organs of state to deal with the pandemic”.*

Based on the above Government Gazette notice, no proof was made public to substantiate the claim, of a Covid-19 pandemic which was said to be caused by the SARS-Cov-2 virus, to have proved the existence of the virus and its link to the Covid-19 disease other than citing the WHO claim. The First Respondent should have asked WHO to provide proof for its claim and he should have confirmed such proof independently and he should have made such proof public, before declaring a national state of disaster predicated upon that claim. He acted purely on an unsubstantiated claim, such action was unreasonable and unjustifiable, especially considering the magnitude of the consequences of such a declaration.

91. In the declaration, the First Respondent referred to the World Health Organisation, hence he indirectly invoked the relevant international treaty with the WHO. This treaty was originally entered into in 1947 when South Africa did not have representative government, when South Africa was under the control of the British Empire, membership to WHO was suspended in 1965 when SA was under Apartheid rule and reinstated in 1994. The International Health Regulations, state the following:

“The purpose and scope of the IHR (2005) are “to prevent, protect against, control and provide a public health response to the international spread of disease in ways that are commensurate with and restricted to public health risks, and which avoid unnecessary interference with international traffic and trade.” The IHR (2005) contain a range of innovations, including: (a) a scope not limited to any specific disease or manner of transmission, but covering “illness or medical condition, irrespective of origin or source, that presents or could present significant harm to humans”; (b) State Party obligations to develop certain minimum core public health capacities; (c) obligations on States Parties to notify WHO of events that may constitute a public health emergency of international concern according to defined criteria; (d) provisions authorizing WHO to take into consideration unofficial reports of public health events and to obtain verification from States Parties concerning such events; (e) procedures for the determination by the Director-General of a “public health emergency of

international concern” and issuance of corresponding temporary recommendations, after taking into account the views of an Emergency Committee;” (RM14 – p1).

92. GOVERNMENT GAZETTE No. 43148, 25 MARCH 2020: *“5 (1) No person who has been confirmed, as a clinical case or as a laboratory confirmed case as having contracted COVID-19, or who is suspected of having contracted COVID-19, or who has been in contact with a person who is a carrier of COVID-19 may refuse consent to – (a) submission of that person to a medical examination, including but not limited to the taking of any bodily sample by a person authorised in law to do so; (b) admission of that person to a health establishment or a quarantine or isolation site; or (c) submission of that person to mandatory prophylaxis, treatment, isolation or quarantine, or isolation in order to prevent transmission”.*

This above made provision which allowed the First Respondent the power to administer mandatory vaccinations and forced quarantine (concentration camps). Surely in the face of such power given to the First Respondent and such rights and freedoms being denied the applicants, irrefutable publicly available proof of the existence of the alleged deadly SARS-Cov-2 virus should have been provided before such measures were instituted.

93. STAATSKOERANT/GOVERNMENT GAZETTE, 16 APRIL 2020 No. 43232: *“ 7. Regulation 1A of the Regulations is hereby amended by the substitution for the definition of "lockdown" of the following definition: 'lockdown' means the restriction of movement of persons during the period for which Chapters 2,3 and 4 of these Regulations apply, namely from 23H59 on 26 March 2020, until 23H59 on 30 April 2020;". "(9)(a) Movement of children between co-holders of parental responsibilities and rights or a care-giver, as defined in section 1(1) of the Children's Act, 205 (Act No. 38 of 2005), during the lockdown period, is prohibited” “For the purposes of this Chapter, any person who contravenes (a) regulation 1B(1) (a), (b), (c), (d), (f) or 1B(4): or (b) regulations 1C (1) and 1CA, commits an offence and is, on conviction liable to a fine or to imprisonment for a period not exceeding six months or to both such fine and imprisonment.”* The First Respondent imposed unheard of restrictions on the basic rights and

freedoms of the South African people, reinforced by the threat of imprisonment, without having provided irrefutable proof of the existence of the SARS-Cov-2 virus, which according to the First Respondent justified these draconian measures, as he should have done prior to these measures being instituted.

94. The latest regulations as stated in No. 44895 GOVERNMENT GAZETTE, 25 July 2021: “33.(1) *Every person is confined to his or her place of residence from 22H00 until 04H00 daily*.”34. (2) *The wearing of a facemask is mandatory for every person when in a public place*”. This effectively placed the entire people of South Africa under house arrest, without having provided to them irrefutable proof of the SARS-Cov-2 virus, which the First Respondent cited as reason and justification.

95. Workplace draconian health and safety measures: No. 43400 GOVERNMENT GAZETTE, 4 JUNE 2020: “*This Direction does not reduce the existing obligations of the employer in terms of OHS [occupational health and safety measures] nor prevent an employer from implementing measures that are more stringent in order to prevent the spread of the virus*”. “*This Direction remains in force for as long as the declaration of a national disaster published in Government Gazette 43096 on 15 March 2020 remains in force*.” This empowered employers to restrict access to employment to the people of South Africa due to the alleged SARS-Cov-2, without having provided irrefutable proof of the existence of the said virus to the people.

24 June 2020, Supplementary Budget Review (RM2)

96. “*This special adjustments budget sets out government’s initial economic and fiscal response to COVID-19. It fast-tracks normal processes to provide resources to frontline services, provincial and local government, and firms and households, with a focus on the most vulnerable South Africans*” (foreword). To have adjusted the entire fiscus of a nation predicated on the existence of an alleged SARS-Cov-2 virus required that irrefutable proof of the existence of the said virus should have been made public before such measures were taken.

97. *“The pandemic is expected to lead to the sharpest global economic downturn since the Second World War and the biggest overall decline in countries’ per capita incomes in 150 years” (foreword).* A reasonable person in the position of the Respondents would have made sure that they act only on verified fact and not unsubstantiated claims, so as to not only have foreseen the harm but this would also have acted to avert it.
98. *“The pandemic has had a profound impact on South Africa. The economy is expected to contract by 7.2 per cent this year. All economic sectors have experienced a sharp downturn and small businesses in particular face extreme pressure. Millions of jobs are at risk – and millions of households are experiencing increased hardship. Tax revenue projections are down sharply” (foreword).* The Respondents should have verified the veracity of the threat attributed to SARS-Cov-2 virus, because they knew the profound impact it would have on the South African people.
99. *“South Africa’s R500 billion fiscal relief package is designed to help households and businesses to weather the short-term effects of the crisis” (foreword).* It is public knowledge that a great portion of this relief package was subsequently stolen, so not only are the South African people indebted but they have not benefited from the debt, instead the beneficiaries were corrupt government officials in the employ of the First Respondent. A relief package that would not have been necessary had the First Respondent verified WHO’s claim as he should have done, had the Second Respondent verified the First Respondent’s claim as it should have done and not had the Third Respondent verified the First Respondent’s claim as it should have done.
100. *“South Africa has begun heading into a debt spiral. Government is spending far more than it collects in revenue. As a result, debt has mushroomed. A failure to halt and reverse this pattern will harm the livelihoods of South Africans for many years to come” (foreword).* The First Respondent was well aware that its spending towards the pandemic would result in spiralling debt and aware of the negative consequences this would have on the South African people, yet it acted without irrefutable proof of the existence of SARS-

Cov-2 virus, and also refused to do so when requested by the applicant. This was and is unpardonable.

101. *“Government has prioritised saving lives, and took the difficult step of severely restricting economic activity at a time when GDP growth was already weak” (p1).* The First Respondent informed the South African people that their lives were at stake and that it would knowingly restrict economic activity, when the country was already in a weakened state, without providing irrefutable proof of the SARS-Cov-2 virus which would have been reasonable and justifiable.
102. *“Concurrently, the Reserve Bank has reduced interest rates and provided support to the bond market, while indicating it is prepared to take additional action as required” (p2).* The SARB should have independently verified the existence of the alleged SARS-Cov-2 virus, before it decided to act concurrently, it had the constitutional powers and obligation to do so.
103. *“The public finances are dangerously overstretched. Without urgent action in the 2021 budget process, a debt crisis will follow” (p2).* This is evidence that the First Respondent was well aware of the consequences of its actions to impose the lockdown after it declared a national state of disaster. Similarly, the Second Respondent ought to have held the First Respondent accountable and demanded evidence of the existence and veracity of this alleged deadly virus and by so doing, could have averted a debt crisis and protected the interest of the people.
104. *“rising public debt means that an ever-increasing share of tax revenue is transferred to bondholders” (p2).* The applicant raised concerns about the looming debt crisis in his PAIA request, once again, there was no response from the President, barring the transfer of the request to National Treasury.
105. *“The National Treasury and the Reserve Bank have coordinated fiscal and monetary policy responses” (p4).* The SARB should have acted independently, to uphold the constitutionally intended separation of powers.

106. *“Government has strengthened its working partnership with the private sector in response to the national emergency” (p4).*
107. *“The Solidarity Fund, a private-sector initiative, has augmented government’s efforts to procure medical and personal protective equipment” (p4).* The Private sector was co-opted by government and wilfully joined in. Some of them were beneficiaries of the government’s act of limiting the peoples Bill of Rights which represented a conflict of interest (e.g. essential business, producers of vaccines and other safety equipment etc.). No irrefutable proof of the existence of the SARS-Cov-2 virus was provided when these actions were taken as it should have been done.
108. *“Government intends to borrow US\$7.0 billion from multilateral finance institutions for its pandemic response. This includes a US\$1 billion loan from the New Development Bank. As a member of the International Monetary Fund (IMF), South Africa intends to borrow US\$4.2 billion through the IMF’s rapid financing instrument, which is a low interest emergency facility” (p4).* During this period, while being a chairman of IMF Committee, the Governor of SARB was also responsible for the money and credit of the country and banker to the government assisting in the national budget processes. It is apparent that when the national state of disaster was declared based on an alleged deadly SARS-Cov2 virus, the Governor performed incompatible functions, that of determining the monetary policy of the country as well as that of being the funder (Chairman of IMF Committee while IMF provided the Covid-19 financial assistance required by the country). It can be said that the Governor acted both as a referee and as a player at the same time. This was a serious conflict of interest as the nation is now indebted to the IMF. (RM33)
109. *“If debt does not stabilise, government will be unable to borrow at affordable rates. This would in turn impede the ability of firms to invest and create jobs. It would also discourage households from making long term financial commitments” (p4).* This demonstrates that the First Respondent knew full well the impact his actions would have on the South African households, yet

he failed to provide irrefutable proof of the existence of the SARS-Cov-2 virus before he decided and acted.

110. *“If this spiral is not halted and reversed, it is likely that some state-owned companies and public entities will collapse, triggering a call on guaranteed debt obligations. Failure to substantially reduce costs, address long standing governance failures, prosecute state-capture participants and undertake profound operational reforms has contributed to already unsustainable financial positions in many public-sector institutions”* (p5). This demonstrates further that the First Respondent knew the far-reaching consequences of its decisions and actions would have, on the collapse of state-owned companies, would contribute to governance failures, negatively impact on prosecution of state-capture participants. Needless to say, the First Respondent should have made sure that it had irrefutable proof of the existence of the SARS-Cov-2 virus and he should have made it public before undertaking such actions with such devastating negative impact.

111. *“In his 21 April address to the nation, the President stated that government is ‘resolved not merely to return our economy to where it was before the coronavirus, but to forge a new economy in a new global reality’ ”* (p5). This statement possibly gives an idea about the “real” intentions of the First Respondent especially when he failed to provide proof to substantiate his claim that he acted to stave off a pandemic yet failed to provide irrefutable proof of the existence of the SARS-Cov-2 virus.

112. *“Spending was adjusted by:*
Removing funds underspent due to delays caused by the lockdown from the baselines of affected departments.
Suspending allocations for capital and other departmental projects that could be delayed or rescheduled to 2021/22 or later.
Suspending allocations to programmes with a history of poor performance and/or slow spending.
Redirecting funds towards the COVID-19 response within functions, or towards government’s fiscal relief package” (p11). This is clear irrefutable proof that the

budget of 24 June 2020, was entirely predicated upon the existence of the SARS-Cov-2 virus, but no irrefutable proof was provided that would have substantiated such a predication, before the budget was enacted, as it should have been done.

Budget Speech Minister of Finance, 24 February 2021- on behalf of the First Respondent (RM15)

113. *“The damage visited upon us by Covid-19 runs deep and we share in the collective pain of many South Africans who have lost their jobs” (p1).* Here the First Respondent admitted to the pain and suffering caused by his actions in combating the supposed SARS-Cov-2 virus, but he did not offer irrefutable proof of the SARS-Cov-2 virus that would have justified his painful act on the people of South Africa, before he committed these acts.

114. *“Consequently, gross loan debt will increase from R3.95 trillion in the current fiscal year to R5.2 trillion in 2023/24. We owe a lot of people a lot of money. These include foreign investors, pension funds, local and foreign banks, unit trusts, financial corporations, insurance companies, the Public Investment Corporation and ordinary South African bondholders. We must shore up our fiscal position in order to pay back the massive obligations we have incurred over the years” (p8-9).* Here the First Respondent admitted that his act of combating the alleged pandemic placed the nation into financial bondage with foreign investors, pension funds, local and foreign banks, unit trusts, financial corporations, insurance companies, etc. Surely as the Head of State, he should have confirmed beyond reasonable doubt that there is irrefutable proof of the existence of the SARS-Cov-2 and further, he should have made it public, as required by section 36(1) and section 32(1) of the Constitution before he sold the entire people of South Africa into debt slavery.

115. *“We must advise this House that we now expect to collect R1.21 trillion in taxes during 2020/21, which is about R213 billion less than our 2020 Budget expectations. This is the largest tax shortfall on record” (p9).* The First Respondent here admitted that due to his actions this nation would incur its

greatest tax shortfall in history, surely he should have ensured that his actions were based on irrefutable proof of the existence of the SARS-Cov-2 virus, before he acted.

116. *“From 1 March 2021, companies with a primary listing offshore, including dual-listings, will be aligned to current foreign direct investment rules, which the South African Reserve Bank will oversee” (p13-14).* Here is proof of the SARB acting in concert with the First Respondent and with Parliament.

117. *“SARS, SARB and the Financial Intelligence Centre (FIC) are working jointly on combating criminal and illicit cross-border activities through an interagency working group” (p16).*

Monetary Policy statements of the SARB (the Third Respondent)

118. 19 March 2020: *“This coronavirus will negatively affect global and domestic economic growth through the first half of 2020, and potentially longer depending on steps taken to limit its spread”, “The Covid-19 outbreak will have a major health and social impact, and forecasting”, “The Chinese economy, where the virus originated, is expected to contract by 1% in the first half of 2020. Economic activity is likely to also contract in the United States and Europe as governments there take actions to contain the spread of the virus”. “Against this backdrop, the MPC decided to cut the repo rate by 100 basis points” (RM3).* A reasonable person in the position of the Respondents would not only have foreseen the harm but would also have acted to avert it. Here the Third Respondent admitted that the monetary policy decision was taken to adjust the supply of money and credit in the entire economy, predicated on the claim that there existed a deadly virus called SARS-Cov-2. SARB did not make public any irrefutable proof of the existence of the SARS-Cov-2 virus, as it should have done.

119. 23 July 2020: *“The International Financial Institutions (IFIs) continue to make available extraordinary levels of emergency financial support to respond*

to the pandemic” (RM4). Here the Third Respondent admitted that international funding was made available for what it called an extraordinary emergency. This demonstrates clearly that the SARB understood the extraordinary nature of this alleged pandemic, more reason for it to have used its ample resources and constitutional powers, to obtain independent irrefutable proof of the existence of the said virus, as required in section 224 of the constitution before it acted.

120. 17 September 2020: *“A range of other countries however continue to experience a rapid spread of the virus”, “Alongside SARB liquidity-management operations, resident investors, including banks, have increased purchases of sovereign bonds”* (RM5). These actions of the Third Respondent ensured that the First Respondent had adequate financial resources available to impose the lockdown and to fund the national state of disaster.

121. 19 November 2020: *“it has become clear that Covid-19 infections will occur in waves of higher and lower intensity, caused in large part by pandemic fatigue and lapses in safety protocols”, “the welcome development in November of successful vaccine trials”* (RM6). Here the Third Respondent made pronouncements in favour of vaccines and on the nature of the alleged pandemic, which was not substantiated in the form of irrefutable proof of the existence of the alleged deadly SARS-Cov-2 virus derived at, independently by the Third Respondent, before making such pronouncements. This amounted to egregious breaches of its obligations and powers under the constitution.

122. 21 January 2021: *“Since the November meeting of the Monetary Policy Committee (MPC), a second wave of Covid-19 infections has peaked in South Africa and in many other countries. It is expected that these waves of infection will continue until vaccine distribution is widespread and populations develop sufficient immunity to curb virus transmission. Although the virus will continue in new waves, the rollout of vaccines is expected to boost global growth prospects generally”. “Global growth, vaccine distribution, a low cost of capital and high commodity prices are supportive of growth. However, new waves of the Covid-19 virus are likely to periodically weigh on economic activity both*

globally and locally. In addition, constraints to the domestic supply of energy, weak investment and uncertainty about vaccine rollout remain serious downside risks to domestic growth” (RM7). Surely the SARB should have first confirmed the veracity of the SARS-Cov-2 virus independently before it incorporated it into policy pronouncements, decisions, and actions.

123. 25 March 2021: *“Since the January meeting of the Monetary Policy Committee (MPC), a second wave of Covid-19 infections has come and gone, with lockdown restrictions further reduced. Until vaccination is widespread and populations develop sufficient immunity to curb virus transmission, it is expected that these waves of infection will continue. As indicated by public health authorities, a third wave of virus infection is probable in coming months. Despite further expected waves, the start of vaccinations in many countries has lifted projections for global economic growth and boosted confidence significantly” (RM8). Here the Third Respondent admitted that global growth projections would be positive based on vaccinations, by virtue of that statement and the standing SARB has in the country it would have encouraged vaccinations and thus increased the profits of vaccine producers, all without having provided irrefutably proof of the said virus.*

Request for proof by Applicant

124. From the applicant directed to the First Respondent 27 April 2020: *“1. In accordance with the relevant provisions of the Promotion of Access to Information Act of 2000 (“the Act”) this is a formal legal request for information in respect of the following:*

- a. All information that formed the basis and motivation of the executive decision to declare a state of disaster and subsequently impose the lockdown effective from 26 March 2020, in particular the epidemiological mathematic model and accompanying data, reports, etc.*
- b. All information that formed the basis of the decision to extend the lockdown, for a further period of two weeks until 30 April 2020, e.g. the indicators and or measures, that necessitated the decision for the extension;*

- c. Actual figures and measures of the pandemic, in particular the death rate, the formula used in calculating the rate and what standard or evidence is used to indicate Covid-19 as the direct and immediate cause of a death;*
- d. Actual measures of infection, what is the method used to test for Covid-19, what test device is used, does the test particularly tests for Covid-19 or is it inferred and what is the reliability of the test and how was it determined.” (RM9, 9a and 9b).*

125. From the applicant directed to the First Respondent: *“06 May 2020 In accordance with the relevant provisions of the Promotion of Access to Information Act of 2000 (“the Act”) this is a formal legal request for information in respect of the following:*

- a. The complete details of the total financial obligations in respect of the Lockdown-Debt, which you have committed this country to e.g. Loans & Borrowings, et cetera.*
- b. The terms and conditions of these financial obligations, e.g. interest rates, currency, loan repayments, maturity dates, monetary and fiscal policy restraints.*
- c. The collateral used to secure these financial obligation, e.g. land and or our deposits of natural resources.*
- d. Who were these Loans & Borrowings taken out with e.g. the International Monetary Fund (IMF), etc.*
- e. Please provide a detailed plan of the intended use of these funds reconciling to the total Financial obligation (to ensure accountability).” (RM11 and 11a).*

126. From the applicant directed to the First Respondent: 25 May 2020: *“1. In accordance with the relevant provisions of the Promotion of Access to Information Act of 2000 (“the Act”) this is a formal legal request for information in respect of the following:*

- a. Please explain and make public what guidance the WHO has been giving you, in the form of transcripts, minutes and or directives, et cetera?*
- b. Please inform us who the person/s representing the WHO were that communicated with you or your representatives and if that person/s was or were vetted in terms of our national security protocols?*

- c. *Please explain and make public what standing the WHO has in our sovereign constitutional republican order, which warrants or justifies taking their guidance and which grants it any authority in or over our Republic?*
- d. *Please explain if and what measures were taken to safeguard our national security in your interactions with the WHO, as they are a foreign extraconstitutional entity?*
- e. *Please explain in what capacity did Mr Gates meet with you? Was he or is he a representative of the WHO or the United States of America (US) government, et cetera?*
- f. *If Mr Gates met with you in his capacity as a representative of WHO or US government , please release and explain the credentials Mr Gates presented?*
- g. *Was Mr Gates vetted in terms of our national security protocols?*
- h. *Please release the transcript/s of your meeting/s with Mr Gates with respect to COVID 19?” (RM10 and 10a).*

127. From the applicant directed to the First Respondent: 15 May 2020: “1. *In accordance with the relevant provisions of the Promotion of Access to Information Act of 2000 (“the Act”) this is a formal legal request for information in respect of the following:*

- a. *Can you reassure the nation that those who were involved in developing these tracking and surveillance systems/mechanisms were vetted in terms of the relevant national security protocols?*
- b. *Can you also reassure the nation that the tracking and surveillance processes and or mechanisms have also been audited or vetted to ensure maintenance of national security protocols?*
- c. *Can you reassure the nation that their biological, locational and identity data, is not shared with foreign Intelligence Services or any foreign entities ?.*
- d. *Can you reassure the nation that the abovementioned data will not be used for other than tracking Covid-19 cases and that you will or have instructed for an independent review to be done to ensure this is the case?*
- e. *Can you reassure the nation that this tracking and surveillance protocol will be lifted in its entirety when the current state of disaster is over and that the data will be destroyed and not be used for any other purpose without obtaining*

individual consent from each person whose data is being so handled? (RM12, 12a and 12b).

128. The applicant approached the Constitutional Court on the 26 February 2021 with an application for direct access for an order which would have compelled the First Respondent to provide proof of the existence of the said virus, **Case no: CCT 63/21**. To comply with court rules, court papers was served on the First Respondent.

129. The applicant approached the Western Cape High Court on the 27th of May 2021, asked the court to issue an order to compel the First Respondent to provide proof of the existence of the said virus, **case number: 5852/2021**. The First Respondent received the court papers and sent representation to court to oppose the applicant's request for proof via the court.

Proof of the existence of SARS-COV2 virus should have constituted the only reasonable justification

130. The First Respondent declared a national state of disaster on the grounds of a national health emergency allegedly due to the outbreak of the SARS-CoV2 virus which was claimed to have been the cause of the deadly Covid-19 disease.

130.1. It follows that if it can be proven that the First Respondent did not make public, in an official notice, reliable proof for the existence of the virus after more than 18 months after limiting the Bill of rights, then the First Respondent has acted for more than 18 months without reasonable justification as per an open democratic society, which constituted and constitutes a breach of his constitutional obligations.

130.2. It follows that if it can be proven that the First Respondent refused to and or actively wilfully resisted repeated requests for and or in fact did not volunteer any proof of the existence of the said virus, then the First Respondent has breached his constitutional obligations.

Proof of the existence of the SARS-CoV2 virus was not made public by the First Respondent, more than 18 months after the declaration of national state of disaster.

131. The Western Cape High Court **case number: 5852/2021** ruled that Prof. A. Puren, the then Acting executive director (who also serves as a technical manager for quality assurance) of the NICD's (National Institute for Communicable Diseases) sworn testimony was accepted in court as if it was from the First Respondent, when the applicant on the 27th of May 2021 approached the court to order the First Respondent to show proof of the existence of the said virus.

"RULING:

It appears that the respondents failed to file the answering or opposing papers as ordered by the Order dated 21 April 2021. It is also evident that it's common cause between the parties that the papers were served within the ordered time. As I said, or indicated to the counsel on behalf of the applicant, orders and rules are not there to be used as technical tools. They are there to facilitate smooth running of matters. It's highly important that matters should be fully ventilated. It's also not encouraged that parties should litigate in an ambush way. I am not convinced that I should not condone the late filing of the answering affidavits and I am convinced that the respondents are properly before this court. Consequently, the respondents can proceed and address this court pertaining to urgency" (RM13 – p60).

"COURT : *But now that you are addressing that, isn't there scientific proof to that effect, scientists?*

MR SIBANDA (applicants counsel): *That is what we are asking the respondents to show us the scientific proof that there is a virus called themselves COV 2. That is the science that we are asking for, Your Ladyship and that is the urgency" (RM13 – p34).*

“MR TSEGARI ADDRESS (First Respondent’s counsel): This is what he is essentially requesting here. This is what he say. The applicant is saying what is essence he’s requesting the Court is the access to information, on his own version. That the Court will find at his own paragraph 132. If I may just take the Court there? I t’s at page 32, M’Lady of the founding affidavit.” (RM13 – p73)

*“COURT : ... show me. Show me that there is a virus
MR TSEGARI: That’s the information.” (RM13 – p73).*

132. The First Respondent opposed the application which was a request for proof of the existence of the said virus, thus he refused to show his reasonable justification to the applicant and the public after more than 12 months of limiting their Bill of Rights. The court ruled in favour of the First Respondent, to not make such proof publicly known, on the basis that the request was not urgent according to the court.

Judgement: by acting judge Nziweni, AJ

“My ruling is as follows: The applicant did not make a case for urgency. Consequently, the matter is struck off the roll. The applicant has another course, which the applicant, if he wishes, can take. That is my ruling” (RM16).

133. The abovementioned facts confirm irrefutably that the applicant requested proof of the existence of the said virus, because it was not made public, that the First Respondent opposed the application and that the court ruled that based on urgency the requested information would not be made public at that date through the court.

The First Respondent did not provide any proof of the existence of the SARS-CoV2 virus which was and is at the heart of his claim of a national state of disaster.

134. In the answering affidavit in the Western Cape High Court **case number: 5852/2021** Prof. Puren alluded to the NICD having knowledge of the nature of

the said virus, but he did not state that they had proof of the existence of the SARS-CoV2 virus.

“Protocols for isolating and culturing of “physical virus” are now well established. There are many clear review manuscripts to support this statement. It is not done routinely for diagnosis, as it will be impractical and will not be conducive to patient management.

The nature of the SARS-CoV2 has been established not only through RT-PCR in sequencing but also in electron microscopy. I can confirm that this has been achieved by the NICD where I carry out my principal duties” (RM17 – p29).

135. The cell culturing that Prof Puren referred to, was and is the mixing of a sample taken from a person suspected of having been infected with the said virus, with other human and or animal cells (monkey-kidney cells) and then waiting for a reaction of these substances together. Prof Puren did not refer to a proven isolated and purified sample of the said virus, which should have been used as a standard when he attributed the properties and reactions in culture to the said virus, therefor his reference to culturing is unreliable and invalid, to provide irrefutable proof of the said virus.

136. The “RT-PCR in sequencing” Prof Puren relied upon, was and is a genetic/nucleic acid (chemical) test, Puren did not refer to a proven isolated and purified sample of the said virus from which the genetic reference specific to the said virus was extracted from, without such the sequencing he referred to was and is invalid, such a genetic sequence reference can only be relied upon if it was obtained in the first instance from a physically isolated and purified sample of the said virus, any mixing with other biological or chemical substances would make such genetic sequencing unreliable.

137. Electron microscopy is a technique used to identify the said virus through imagery or viewing, Puren did not refer to a proven isolated and purified sample of the said virus as a unique standard of identification, without a physical isolated and purified sample of the said virus which would have formed the

basis or reference for such identification, electron microscopy was and is invalid and unreliable.

The NICD claims concerning the SARS-CoV2 virus to be found on their website (RM18)

138. The importance of the claim by the NICD in terms of the intended applications based on their claim: *“The NICD isolation and culturing capacity of SARS-CoV2 from covid-19 patients, developed in last few weeks, will greatly contribute to enhancing the South African capacity in the development of diagnostics, vaccines, molecular epidemiology, and clinico-pathological studies.”*

139. *“Figure 1 . Tissue culture flask with green monkey kidney cells used to isolate SARS-CoV2 from covid-19 patients.”*

Here we see they mixed or infused or infected samples from confirmed covid-19 patients (confirmed using PCR test) with green monkey kidney cells. As per Puren’s explanation above.

140. *“Dr Jacqueline Weyer and Prof Janusz Paweska (BSL3, SVP CEZPD NICD-NHLS) monitoring SARS-CoV2 growth in cell **culture** by microscopic observation of cytopathic effects caused by a replicating virus.”*

Here we see they observed for a reaction from the abovementioned mixture. NICD did not refer to a proven isolated and purified sample of the said virus as their reference point as did Puren, it is illogical/ inconceivable to have attributed a reaction in mixture to the replicating virus without discounting the effects of the monkey kidney cells.

141. *“Eye to eye with an invisible enemy through electron microscope lenses. Virus particle of SARS-CoV2 with a ‘crown’ of peplomers, characteristic for the Coronavirus genus. Cultured isolate (SVPL 97/20) from a South African covid-19 patient (Electron microscope photo: Dr Monica Birkhead, SVP CEZPD).”*

Here we see they confirmed with an electron microscope, viewing the abovementioned mixture. They compared the image to the notion of the

Coronavirus genus (meaning the supposed general species called coronavirus), without making any reference to a previously observed isolated and purified sample of SARS-CoV2 virus.

142. Please note that the NICD made the above claims on or about the 23 May 2020, more than a year before we asked for proof of the said virus in the Western Cape High Court, the NICD Acting executive director (who also serves as a technical manager for quality assurance) provided written sworn testimony on behalf of the First Respondent and their claim was not offered as the proof we required, thus in fact they admitted that their claim did not constitute reliable proof of the said virus.

The First Respondent/NICD claim did not constitute proof of the existence of the SARS-CoV2 virus:

143. According to the sworn statement of our expert witness Dr. S. Qureshi, a leading scientist, with PhD in chemistry and more than 30 years' experience, thoroughly refuted the claims made by the First Respondent (Prof. Puren):

143.1. *"The virus isolate is a mixture or soup of known or unknown ingredients, while the isolated virus is a pure virus free from known or unknown ingredients"* (RM19 – para 21). Thus, culturing was and is unreliable as a tool to identify and therefor prove SARS-Cov-2 because it is impossible to discount the known and unknown ingredients in this mixture, which is said to be other than the virus.

143.2. *"[T]he respondent failed to provide any evidence of the existence or availability of the isolated and purified virus (SARS-Cov-2)"* (RM19 – para 22). Prof. Puren never mentions that there was a pure sample of the virus free from known and unknown ingredients somewhere which he relied upon as standard of identification.

143.3. The statement *"Protocols for isolation and culturing of "physical virus" are well established" is in correct. "Such protocols are to obtain "virus*

isolate”, i.e. a mixture, soup, junk with known or unknown ingredients not for “isolated virus” specimen” (RM19 – para 23).

143.4. *“Because the isolated and purified physical virus is not available, a scientifically valid PCR test and or electron microscopy for a virus specific cannot be conducted. For such purposes, a purified and isolated physical sample of the virus is required” (RM19 – para 24).*

143.5. With regards to the PCR sequencing and its use of nucleic acid, *“Nucleic acids link specific to the virus (SARS-CoV2) needs to be established First before using the nucleic acid as a marker of the virus. However, this has not been done, and cannot be done, because to establish the marker, a purified isolated and well-characterised virus specimen is needed, which is not available” (RM19 – para 26).*

144. **The Judicial Court of the District of Azores** - Criminal Court of Ponta Delgada, Portugal, in **Case No. 1783 / 20. 7T8PDL.L1**, ruled the PCR test to be unreliable (RM20 – p32-33):

“Any diagnostic test must be interpreted in the context of the actual possibility of the disease, which existed before its realization. For Covid-19, this decision to perform the test depends on the previous assessment of the existence of symptoms, previous medical history of Covid 19 or presence of antibodies, any potential exposure to this disease and no likelihood of another possible diagnosis.”

“One of the potential reasons for presenting positive results may lie in the prolonged shedding of viral RNA, which is known to extend for weeks after recovery, in those who were previously exposed to SARS-CoV-2. However, and more relevantly, there is no scientific data to suggest that low levels of viral RNA by RT-PCR equate to infection, unless the presence of infectious viral particles have been confirmed by a laboratory.

In summary, Covid-19 tests that show false positives are increasingly likely,...

“Thus, with so many scientific doubts, expressed by experts in the field, which are the ones that matter here, as to the reliability of such tests, ignoring the parameters of their performance and there being no diagnosis made by a doctor, in the sense of existence of infection and risk, it would never be possible for this court to determine that C ... was a carrier of SARS-CoV-2 virus, even if A., B ... and D ... had high-risk exposure”

145. **The OLG Stuttgart (Higher Regional Court of Stuttgart)** Judgment of 16.2.2016, **12 U 63/15**, when seized with a similar matter, around proof of the existence of the Measles-virus ruled in favour of the defendant, that the said virus was not proven to exist, a matter similar to the one put before this Honourable Court.

145.1. *“The defendant, a biologist, is of the opinion - contrary to the unanimous opinion in science – that measles is not caused by viruses, that there is not and cannot be a measles virus”(RM22 para 2)*

145.2. *“The plaintiff, at that time still a student and now a physician, submitted several publications to the defendant in a letter dated January 31, 2012 (Annex K 4) which, in his opinion, proved the existence of the measles virus beyond doubt and requested payment of the prize money. The defendant rejected this request because the measles virus had not been proven”(RM22 para 6)*

145.3. *“The defendant is interested in showing that “the idea that measles is caused by a virus” is part of an advertising campaign supported by the German government and the WHO for the benefit of the pharmaceutical industry, based on the irrefutable certainty of the non-existence of the measles virus (“since we know that the measles virus does not exist and, knowing biology and medicine, cannot exist...”). Therefore, “untruths”*

are claimed, "... thus violating the dignity of people ..." "and on this basis the vaccinations harm the physical integrity and the right to life ..." (RM22 para 74)

145.4. "The prize money will be paid if a scientific publication is submitted in which the existence of the measles virus is not only claimed but also proven and in which, among other things, its diameter is determined" (RM 22 para 3), furthermore "The prize money will not be paid if the determination of the diameter of the measles virus is only models or drawing such as ..." (RM22 – para 4).

145.5. "As a result, the appeal, insofar as it is admissible, is successful in any case, because the criterion of the offer to prove the existence of the measles virus by "a scientific publication" was not fulfilled by the plaintiff" (RM22 para 122)

145.6. "The defendant submitted at first instance that (RM22 para 19) "The phenomena presented as measles viruses were in fact cellular transport vesicles (vesicles)". (RM22 para 20).

145.7. "The defendant submits in support of the appeal" (RM22 para 27), "Ultimately, the decision of the Regional Court was also incorrect, since the expert - contrary to the judgment - did not say that control experiments had been carried out, on the basis of which it could be ruled out that not only cellular artifacts had been found in the studies". (RM22 para 30)

145.8. "The appeal is inadmissible in part. Insofar as it is admissible, it is also successful because, in any case, the criterion of the offer to prove the existence of the measles virus by "a scientific publication" was not fulfilled by the plaintiff." (RM22 para 39)

145.9. "The appeal is inadmissible in part." (RM22 para 41) "The defendant's appeal was filed in due form and time and was also admissibly

substantiated with regard to the claim for payment of the awarded amount of EUR 100,000 plus interest and costs. However, with regard to the awarded claim for reimbursement of pre-trial attorney's fees for the defendant's assertion of the submission of the cease-and-desist declaration, the appeal is inadmissible, as it was not properly substantiated in this respect.” (RM22 para 42)

146. Public access to information requests were made to more than one hundred laboratories around the world none of which could confirm that it is or ever was or knows who ever was in the possession of such a physical isolated and purified sample of the said virus (RM 24, 25 and 26). Here in this document, we refer to some of these, the others are publicly available. Refer (RM 23) for the website address.

Here is evidence provided in the form of a sworn statement by Ms. Massey: *“I am trained and have worked professionally in the past as a biostatistician, with a Master’s degree in biostatistics from the Dalla Lana School of Public Health, University of Toronto, Ontario, Canada.” (RM23)*

“In May of 2020, I began submitting freedom of information requests to Canadian health And science institutions, asking for all studies/reports in the possession/custody/control of each institution that describe the isolation/purification of the alleged "COVID-19 virus", also referred to as “SARS-COV-2”, directly from a sample taken from a diseased human, where the patient sample was not first combined with any other source of genetic material.” (RM23)

“I clarified in my requests that I was using the word "isolation" or “purification” in the every-day sense: the act of separating the alleged virus from everything else in a patient sample, and that I was not requesting records where "isolation of SARS-COV-2" refers instead to the culturing of something, or the performance of an amplification test (i.e. a PCR test), or the sequencing of something. Most of my requests did not specify any particular method of purification.” (RM23)

“I also clarified that my requests were not limited to records that were authored by the institution in question, or limited to records that pertain to work done by the institution in question.” (RM23)

“In each request, I asked that if any records held by the institution in question matched my description of requested records, but were currently available to the public elsewhere, that the institution provide enough information about each publicly available record so that I may identify and access each one with certainty.” (RM23)

“In many of my requests, I also clarified that I was not requesting private patient records, or records that describe the replication of an alleged virus without host cells.” (RM23)

“After the first alleged “variant” was announced in December of 2020, many of my requests also specified that they applied to any alleged “variants” as well as to the original alleged virus.” (RM23)

“I submitted 2 separate requests to the Public Health Agency of Canada. The first request was as stated above. The 2nd request was specifically in regards to purification of the alleged “UK variant”, also known as “the alpha variant” or “B.1.1.7”.” (RM23)

“I also submitted requests to 3 police services.” (RM23)

“Of the remaining 20 Canadian institutions, all 20 stated that they have no such records. These include Health Canada (responsible for authorizing “COVID-19” clinical trials, diagnostic tests, “vaccines” and therapeutics), the National Research Council, Ontario’s Ministry of Health, Public Health Ontario (responsible for providing scientific and technical advice to clients working in government, public health, health care, and related sectors) and all 5 Canadian institutions whose researchers claim to have “isolated” the alleged COVID-19 virus: the Vaccine and Infectious Disease Organization-International Vaccine

Centre (VIDO-InterVac) at University of Saskatchewan, University of Toronto, McMaster University, Mount Sinai Hospital in Toronto and Sunnybrook Health Sciences Centre in Toronto.” (RM23)

“The 10 other Canadian institutions that stated they have no responsive records are: City of Toronto, Peterborough Public Health, Region of Durham Health Department, Region of Peel, Ontario, Grey Bruce Health Services, Grey Bruce Health Unit, Hastings Prince Edward Public Health and the 3 police service corporations.” (RM23)

“I have been provided apparent responses from 66 additional institutions in approximately 20 countries. In most cases I was provided the original, un-redacted communications, and redacted the name of the request-submitter myself, in order to protect their identity. In every instance the institution failed to provide or cite even 1 record describing purification of the alleged virus from a patient sample, or proof of its alleged existence” (RM23)

147. The inventor of the Polymerase Chain Reaction (PCR) method Dr K. Mullis, stated publicly on numerous occasions that the method is not suited to determine the nature of viruses and to the diagnosing of disease. Dr Mullis, died shortly before the pandemic but there are those who are alive who knew him well, who have provided us with sworn statements to the veracity of these statements attributed to him.

148. Dr. Kary Mullis: *“I don’t think you can misuse PCR. The interpretation of the results. If they could find this virus in you at all, the PCR, if you do it well it you find almost anything in anybody, it almost makes you believe in the Buddhist notion that everything is contained in everything else. If you can amplify one single molecule up to something you can really measure, which PCR can do, there is very few molecules that you don’t have at least one of them in your body. That could be thought of as misuse; to claim that it is meaningful.” (RM27)*

149. Dr. Kary Mullis: *“PCR is just a process that’s used to make a whole lot of something out of something. It doesn’t tell you that you are sick or that the thing you ended up with really was going to hurt you or anything like that.”* (RM27)

150. According to the sworn statements provided by our expert witness Dr D. Rasnick (who holds a PhD – Chemistry and was a friend of Dr K. Mullis since at least before 1997 confirmed the abovementioned statements made by Dr. K Mullis in a meeting on AIDS in Colombia, South America): *“Kary and I met through our mutual friend Peter Duesberg, a professor at the University of California at Berkeley. In 1997, Peter, Kary, and I were invited to a meeting on AIDS in Colombia, South America. Kary explained why his truly amazing invention PCR cannot detect viruses in people or diagnose infections. Sadly, Kary Mullis died in August 2019. That’s why I’m making this report instead of my friend”.* (RM28)

150.1.1. *“Before PCR can be done on the RNA of a coronavirus, a process that is error-prone must first convert the RNA into DNA. By their very nature, the short synthetic sequences of the DNA used to initiate each cycle of the PCR test cannot be guaranteed to distinguish between virus and non-virus. This alone makes PCR tests highly suspect”.* (RM28)

150.1.2. *“However, these practical limitations were not the reason Kary opposed the PCR tests. He simply could not accept equating a string of RNA or DNA with actual virus”* (RM28)

150.1.3. According to Dr Rasnick, *“using PCR to identify a virus is like conjuring up from a pile of bricks how a building looked before it was demolished”.* (RM28)

151. Dr Rasnick states that evidence does not exist for the alleged COVID-19 pandemic and its putative causative agent SARS-CoV-2.

- 151.1. *“An alleged new disease must show characteristic symptoms that readily distinguishes it from other well-recognized diseases. According to the CDC a seasonal flu and COVID-19 have the same symptoms” (RM28)*
- 151.2. *“The US Centers for Disease Control admitted in its Dec. 1, 2020 update that “no quantified virus isolates” were available to validate PCR testing”.(RM28)*
152. Dr. Corbett an expert providing supporting testimony in the form of a sworn statement in support of the applicants:
- 152.1. *“I gained the following qualifications: my UK professional nursing registration with the UK’s Nursing and Midwifery Council (NMC) in 1986 (Registered Nurse); a MSc Nursing for research on interventions enhancing patients’ respiratory health (King’s College London, University of London) in 1989; and in 2002, a PhD Social Sciences on people’s experiences of medical diagnostic testing via public reception of biomedical knowledge (London South Bank University)(1,2). I was also a qualified Lecturer/Practice Educator for the health professions recorded with the UK’s NMC after gaining a Post-graduate Certificate of Education for the Health Professions in 1997 (University of Greenwich) (1,2). I have held posts as lecturer, senior lecturer, senior research fellow and post-doctoral research fellow in nursing, health sciences and public health at major UK university schools of both Nursing and Medicine (1,2). I have led and co-led, as principal and co-investigator, fifteen research projects between 1987-2020 (1,2).*
- I have presented academic papers at international conferences on the caveats in medical screening and diagnostic testing (1) and published academic papers in peer-reviewed journals on the caveats in medical screening and diagnostic testing, which include for example: Science, Technology & Human Values, Health Sciences Reports, Critical Public Health and Practising Midwife (1).*

My scientific interest in this case stems from my extensive clinical and health science research career (2) based on my doctoral and post-doctoral research on the topic of patients' experiences of medical screening and diagnostic testing (1). This includes the known technical caveats of medical diagnostics. My doctoral research included patients' experiences of HIV / AIDS medical diagnostic tests specifically: Antibody Tests, T Cell Tests and the Polymerase Chain Reaction (PCR)(3)." (RM29)

152.2. *"The Reverse Transcription-Polymerase Chain Reaction (RT-PCR) is the laboratory method now globally used to identify 'SARS-CoV-2', which is only an in silico modelled genetic sequence [computer generated genetic sequence] (4, 5) - not a proven transmissible virus emanating from outside (exogenous to) human cells"* (RM29). This means that the genetic sequence that the PCR test is looking for was generated by a computer and not obtained from a previously isolated and purified sample of the SARS-Cov-2 virus.

152.3. *"The PCR methodology as used to detect 'SARS-CoV-2' and so diagnose Covid-19 is thus misapplied. It was never invented as a diagnostic as discussed publicly by its inventor Dr Kary Mullis PhD for which he was awarded a Nobel Prize. A peer reviewed paper by over 20 international scientists has detailed the fatal flaws in the intrinsic design of this method in terms of test sensitivity / specificity resulting from the flawed design of the probes / primers resulting in inaccurate diagnosis"* (RM29).

152.4. *"The PCR has only ever been emergency licensed as a diagnostic tool through fast-tracked licensure globally: it is only a laboratory method for manufacturing genetic material; it has no medical gold standard to underwrite its use as a diagnostic medical test (6); and it has never been subject to the requisite randomised control trials to determine efficacy within each national jurisdiction globally (7). The PCR was never intended for medical diagnostic purposes as described in the*

manufacturers' published disclaimers. The Nobel laureate-winning inventor of the PCR - Dr Kary Mullis PhD - publicly warned against its use as a diagnostic medical test. Before the Covid19 era, it was reported that patients routinely receive different PCR test results, varying between different laboratories (2); all of which can depend upon the use of different numbers of test cycles" (RM29).

152.5. *"The use of the PCR to falsely diagnose 'SARS-CoV-2' is based on studies claiming that 'SARS-CoV-2' is a unique virus whose origin is external (exogenous) to human cells. All of these studies have never adequately proven the material existence of such a virus via three methods applied concurrently within one true experiment: i) electron microscopy showing a field of uniform virions; ii) isolation (meaning 'purification' not just identification via PCR); and iii) causation of the collection of non-specific generic symptoms now renamed 'Covid-19'; all using the criteria known as the Koch Postulates" (RM29).*

152.6. *"[T]he literature details how 'SARS-CoV-2' has never been isolated (purified) as an exogenous virus which fulfils the disease-causation criteria laid down in the Koch's Postulates (8) via three methods all applied concurrently within one experiment: 1) electron microscopy showing a field of uniform virions; 2) isolation (meaning purification not just identification by PCR); and 3) the causation of the non-specific generic symptoms called 'Covid-19' using the criteria stipulated via the Koch Postulates" (RM29).*

153. The First Respondent did not provide proof of the existence of an isolated and purified sample of the said virus.

154. The First Respondent should have provided proof of the existence of an isolated and purified sample of the said virus, extracted from suspected infected human body/s and then he should have provided proof through controlled experiments an infection of a healthy person or organism with the said virus only (isolated and purified) and then he should have

provided proof that this produced the said specific symptoms linked to the disease (Covid-19) which the First Respondent claimed was caused by the said virus. The First Respondent fell way short of even the first hurdle.

155. The First Respondent should have done the above before limiting the Bill of Rights.

First Respondent's failure to uphold his constitutional duties

156. The First Respondent declared a national state of disaster predicated upon the existence of a supposed deadly virus called SARS-Cov-2, imposed a lockdown which greatly limited the applicants Bill of Rights, he imposed fiscal policy adjustments, he diverted national revenue and incurred national debt which was all predicated on the existence of the deadly virus called SARS-Cov-2.
157. The First Respondent was repeatedly requested to provide proof of the existence of the said virus, by the applicants for more than 18 months and the First Respondent did not volunteer or accede to the requests but instead opposed the request in the Western Cape High Court.
158. Hence, the First Respondent did not provide reasonable justification when he limited the Bill of Rights of the applicants for more than 18 months, as he should have done, the Constitution says "***only***", which means that he should have only limited the Bill of Rights after he provided proof of the existence of the said virus and he should have made such proof available to the applicants and the public when he limited the Bill of Rights. The First Respondent opposed an application in court by the applicant for the proof to have been made public, which was again a contravention of the Constitutional obligations of the First Respondent.

CONSTITUTIONAL CHECKS AND BALANCES FAILED – SYSTEMIC FAILURE

Competing interests and divided loyalties in the Presidency – Party Vs People

159. Testimony by current President of South Africa (Mr. Ramaphosa), the First Respondent under oath at the State Capture Commission on the 29 April 2021: 21. *“PRESIDENT RAMAPHOSA: Our political system as granted by our Constitution is that of a party system under where representatives that are elected by our people vote to represent their party. That is our system, they do not go and represent themselves and their jacket”* (RM30 – p75).

The above is clear evidence from the President, that the elected officials are there to represent their party and not the people. This is a clear breach of Section 42(3) of the Constitution which states: *“The National Assembly is elected to represent the people and to ensure government by the people under the Constitution. It does this by choosing the President, by providing a national forum for public consideration of issues, by passing legislation and by scrutinizing and overseeing executive action.”*

Parliament failed to represent the interests of the people and did not ask for irrefutable proof of the existence of the said deadly virus as they should have done.

160. *“PRESIDENT RAMAPHOSA: ...But political parties by their nature have what you could call a herd mentality so like cattle they move together as a herd”* (RM30 – p83). Here the President made the observation that politicians from political parties act under herd-mentality, which explains why they did not question the actions of their party-members and or leader, which explains why the ANC-led Parliament never questioned the ANC-President who is also the President of the Republic, when they were obligated to do so as parliamentarians, when he declared a national state of disaster without having provided accompanying irrefutable proof of the existence of the SARS-Cov-2 virus.

161. *“PRESIDENT RAMAPHOSA: We have had in our history two situations where we have had Presidents removed or recalled rather not removed but recalled by their own party”* (RM30 – p87-88). Here the President cited the power of political parties to remove Presidents because of the party based system, a feat the people of South Africa have never accomplished thus demonstrating the utter lack of power the people have and the fact that party loyalty even from the leader is of more consequence, hence it is in the interest of justice for the people that this Honourable Court should adjudicate on this matter.

162. *“CHAIRPERSON: We think some of you are held hostage, are captured.*

MR RAMAPHOSA: Yes sir.

CHAIRPERSON: Not all of you, but some do not have the will.

MR RAMAPHOSA: Yes sir.

CHAIRPERSON: Some have the will but there is no, they do not have the means, but some of you are captured. Okay.

MR RAMAPHOSA: That is the noting part” (RM30 – p144). Here the President admitted under oath that his government possess officials that are held hostage or captured by interests and influences other than that of the people of South Africa. This admission on its own warrants investigation by this Honourable Court, as the applicants allege that the national state of disaster was declared without accompanying irrefutable proof of the existence of the SARS-Cov-2 virus, which amounted to an unsubstantiated claim made by this self-confessed government populated by captured representatives.

163. *“PRESIDENT RAMAPHOSA: Well we have spoken about this practice of the usage of money and the usage of compromising comrades through money, vote buying, yes even wining and dining and just spreading money around. And when it comes to distorting our membership system which former President speaks about here steps have been taken to – to streamline our membership systems so that it is not made subject to manipulation or to being hijacked by those who may want to just buy a membership for others or pay*

membership for others” (RM30 – p159). Here the President admitted under oath that the ANC which was and is the ruling party that dominates simultaneously the Presidency and Parliament, have been deeply compromised by corruption, thus compromising Parliament, SARB and the Presidency, hence further supporting the applicants’ allegation that these branches of government have been compromised in their ability to act purely in the interests of the people, the constitution and with reasonable justification. The applicant alleges that under these circumstances it is not inconceivable for a national state of disaster to have been declared based on an alleged SARS-Cov-2 virus without accompanying irrefutable proof by the First Respondent, without having been questioned by the Second Respondent and funded without independent verification by the Third Respondent.

164. *“PRESIDENT RAMAPHOSA: Well, in our country the state or the concept of state capture, really, it is wrapped up with corruption and it gained prominence as we were observing how certain interests positioned themselves to have control over, you know, state institutions in relation to the appointment of people to them, in relation to the resources of those institutions, and also how they had ensconce to themselves with political leaders who they sought to, as it appeared, to want to influence and what we got to hear was how it manifested itself in the form of whisperings by those people about dispensing patronage, dispensing positions, appropriating government contracts in various state institutions as well.”*

“And as it [e]volved, we started seeing how even that concept of black economic empowerment was being undermined and in fact eroded because they tendered also to monopolise and appropriate onto themselves nearly as many contracts as possible in the most lucrative ones that pushed out your black economic players who by deemed of our own policies as government we should have been placing more emphasis on because they were previously disempowered and we needed to empower them. So the capture was multifaceted and was so effective in that it was all pervasive” (RM30 – p164-165).

In the above, the President details how corruption of a political party can ensure that corrupt party officials attain positions of power within the state, power which they then in turn wield not with the public interest or reasonable justification but for the furtherance of corrupt ends. Corrupt officials cannot reasonably justify their usage of state resources and state power. It is for this reason that the applicants are of the view that any reasonable person acting in the interest of the people (and unencumbered by any influences of corruption that is pervasive in government) would have gone an extra mile to protect the rights of the people and demanded irrefutable proof of the said deadly virus especially considering the grave negative impact the declaration of the national state of disaster has had in the country.

165. *“CHAIRPERSON: Well, let me ask you this – let me raise this issue with you, Mr President. The current electoral [system] that we have does not give the people, the voters the right to choose or elect their President, that is the President of the country. It allows each political party that is taking part in elections to put up its own candidate and the voters have – or the voters know that if I vote for this party this will be the – this candidate or their candidate will be the President. Now I cannot remember whether there is a requirement legally that each party must indicate who its presidential candidate is at the time of campaigning or not, probably it can change, I am not sure, but basically the voters cannot – do not elect the President, they vote for a party and effectively the majority party in parliament after the elections will get their own candidate to be voted as a President. Now what do you say to the proposition that that system puts at least some voters in a predicament if the party that they would like to vote for and that they love puts up a candidate that they consider to be unsuitable to be president because they cannot say I am voting for the party but not for this person. If they vote for the party, they are taken to have voted for that candidate and yet they know they do not want this candidate because they do not think the candidate is suitable but that is the system, as it stands. What would you say to the proposition that consideration should be given to changing that part of the system at least to enable the president of the country to be voted directly by the voters so that the system would be, if I want to vote for this party but I do not want their candidate because I think they have made*

a wrong choice but I see somebody else who is a good candidate, I can vote for that person, I am not tied to this either party that I like or nothing. So, in other words, you give the power to the people to that extent. Obviously each party could still say so and so is our candidate, presidential candidate, but when you come to the actual voting, a vote for the party is not necessarily a vote for that candidate, you can vote separately and in that way the president of the country comes directly from being voted by the people and in a way parties are encouraged to put up candidates that are suitable because if they put up candidates that might not be suitable, the voters might not vote for them. Have you got some view on that?

“PRESIDENT RAMAPHOSA: Lots of views, Chairperson. Lots and lots of views. It is a proposition that is quite complex and obviously requires a lot of time and maybe it goes to the origins of the constitutional construct because when we started off – and maybe it was a problem of learning from so many constitutions around the world that we ended up wanting to craft a different path and in crafting a different path, we opted for the Westminster type of system but which is not, you know, full Westminster process because with Westminster, it is party-based..”

“Now I suppose what you are saying is based on the ability of the populace to either recall in one form, shape or other and they would only be able to recall through another vote, another national vote, I presume, without being seen as being negative. We have been able to do that through internal party processes where unfortunately, we have had to do President Zuma being recalled.. So I think it is a matter that can be discussed and one need to demonstrate its attractiveness.”

“CHAIRPERSON: Ja.” (RM30 – p180-185)

In the above, the Deputy Chief Justice Zondo, raised concerns about our electoral system, that it favours the political parties and that it disempowers the will of the people, in particular that it can lead to a situation where undesirable individuals who have gained dominance over the party even through corrupt means, could become President and even if the people later regret it, they can't remove him, in between national elections. The President stated under oath

that it is a matter that should be discussed and the only way the will of the people can be made known on the matter, is through a referendum.

The Beneficiaries of the National State of Disaster

166. The President was and is a beneficiary of the “lockdown”, the national state of disaster declaration gave him dictatorial and absolute powers over the entire nation, unheard of in the history of this country, one has to look back to the colonial and Apartheid days to find an equivalent. He also continued receiving his full remuneration.
167. The pharmaceutical industry was and is a beneficiary due to the vaccine roll-outs and the looming vaccine mandates to be imposed on the people (as witnessed in other countries and also imposed by some employers here in South Africa), they also benefit due to Parliament and the President having diverted tax-payers funds to purchase vaccines and to establish a fund for adverse effects and injuries as a result of the vaccine-roll-outs thus saving the vaccine-producers from having to fund such, also absolving them from all liability as relates their vaccines.
168. The WHO benefits from the declaration because it is in conformance with its declaration of international health concern and to establish WHO as supreme authority over all national efforts relating to the public health management of the disaster.
169. Those large businesses whose business have not been fatally impacted by the restrictions and who have access to relatively cheap credit as a result of the relaxation in interest rates could now strengthen their market-share in the face of small businesses in their respective industry unable to survive.

170. In general all those economic activity and actors who were and are declared as essential, and thus allowed more or less to continue unabated.
171. The Ministerial Advisory Committee of the Minister of Health was and is replete with advisors who were and are linked to the Bill and Melinda Gates Foundation, WHO and the Pharmaceutical industry. Both the WHO and the pharmaceutical industry benefit from a declaration of national state of disaster (as mentioned above). It is public knowledge the Bill and Melinda Gates Foundation is heavily invested in the pharmaceutical industry and major funder of the WHO. The most prominent and public figure of which is Prof. Salim Abdool Karim former chairman of the MAC (Ministerial Advisory Committee) who was chairman when the disaster was declared and served for one year and current advisor to the WHO.
172. The ministry of health is directly subordinate to the President and is an appointee of the President, so too is the minister of COGTA.
173. The previous health minister who raised concerns about the vaccine producers was removed by the President, under an accusation of corruption. It is not clear whether the accusation of corruption levelled against the previous health minister was as a result of him having publicly raised concerns about the pharmaceutical companies.
174. The former Speaker of Parliament who presided over the declaration of national state of disaster (Ms Modise) is now the minister of Defence reporting directly to the First Respondent and the former minister of defence who commanded the Army as part of the “lockdown” measures is now Speaker of Parliament.
175. The banking sector regulated and controlled by the SARB benefited from an increase in government debt, the banking sector was declared essential services thus allowing it more or less to operate throughout.

The relaxation of reserve ratios allowed banks to create even more money in the form of loans and an increase in defaults in loans saw bank repossessions sky-rocket. The IMF benefited due to an increase in government debt.

176. The members of parliament received their full remuneration unlike many South Africans who partially or completely lost their incomes.

There is no separation between the President and Parliament

177. Testimony under oath at state capture commission by the former Speaker of Parliament Ms. Modise: *“MS MODISE: Chair if you look at the powers of committees no committee actually has an excuse for not asking pointed questions, for not investigating, for not calling for witnesses, for not summoning people. The House has further powers which enable members to ask questions, to call for snap debates, to call for motions and to actually pointedly put the executive on the spot”* (RM31 – p16-17).

This demonstrates without any doubt that the Speaker who presided over Parliament when the national state of disaster was declared, was fully aware of her responsibilities and powers to question the validity (in this case) of the national state of disaster declaration made by the First Respondent, e.g. they should have asked for irrefutable proof of the existence of the alleged SARS-Cov-2 virus. There can therefore be no excuse for why this was not done.

178. *“MS MODISE: I agree that within the powers and responsibilities of Parliament, any matter could have been investigated”* (RM31- p86). Once again, the former Speaker of Parliament (Ms Modise) admitted that, Parliament has powers to investigate any matter including (in this case), the existence of the claimed SARS-Cov-2 virus and the declaration of the national state of disaster. There can therefore be no excuse for why this was not done.

179. *“MS MODISE: You might find that members, one, want to become cabinet ministers and therefore do not ask unnecessary questions”* (RM31 – p30).

This is in contravention of Section 42(3) of the constitution which states: *“The National Assembly is elected to represent the people and to ensure government by the people under the Constitution. It does this by choosing the President, by providing a national forum for public consideration of issues, by passing legislation and by scrutinizing and overseeing executive action.”* It also contravenes section 55(2) of the constitution which states: *“The National Assembly must provide for mechanisms— (a) to ensure that all executive organs of state in the national sphere of government are accountable to it; and (b) to maintain oversight of”.*

It can be argued that the former Speaker of Parliament (Ms Modise) who presided over the declaration of national state of disaster, elected not to ask “unnecessary questions” to hold the President to account and did not ask for irrefutable proof of the existence of the SARS-Cov-2 virus amongst others and therefore was rewarded or personally benefited in that she was subsequently promoted to minister serving in the President’s cabinet, charged with the defence of the nation (Minister of Defence).

180. If Parliament questioned the veracity of the claim made by the First Respondent and refused to act otherwise without such proof, the First Respondent would have had no other choice but to have produced proof or to have revoked their declaration, because without Parliament’s official sanction, the First Respondent would have been unable to proceed nor could the First Respondent have compelled Parliament. In fact Parliament had the power to remove the President if it found him to have failed in his duties as per sections 102(2) and 89(1) of the constitution, then there would not have been unreasonable and unjustified limitations of the Bill of Rights.

181. *“MS MODISE: This parliament of ours is one of the few that you depend on somebody else when you are dealing with legislation to draft for you. Give them those skills so that in fact they can get by and be able to argue their ways*

out because sometimes the legal fundis come, they sway your attention this way, no, that is unconstitutional, you need to be able to create this person to be able to stand with or without legal advice. They must be able to say that.” (RM31 – p138). Here is an admission that Parliament was not and possibly are not the sole authors of legislation. That there are other influences upon legislation, which were not elected by the people which do sway legislative decisions. This is proof of a compromised legislature, which further explains the lack of accountability of the President particularly as it pertained to the national state of disaster predicated on the alleged SARS-Cov-2 virus for which no irrefutable proof was provided, which constituted a breach of sections 32(1), 36 (1), 37(1), 42 (3) and 55(2) of the constitution.

182. Ms. Modise has been succeeded as Speaker of Parliament by the Former Minister of Defence, Ms. Modise is now the new Minister of Defence, what could be seen as a straight swap between the Presidency and the Parliament.

183. Testimony by Former Speaker of Parliament under oath at the State Capture Commission on the 18 May 2021: *“MS MBETE: The first Parliament after the 1994 elections had the task to discuss the constitution in its capacity as the constitutional assembly to finalise the constitution making process which had started at the World Trade Centre and produced the interim constitution. A schedule form of 34 constitutional principles was the basis on which the final constitution was to be judged by the Constitutional Court. Constitutional Principle Number 6 made provision for the three separate arms of the state which are the legislature, the judiciary and the executive and I quote: “There shall be a separation of powers between the legislature, executive and judiciary with appropriate checks and balances to ensure accountability, responsiveness and openness.”* (RM32 – p170)

“The political culture has since evolved which has given the executive what in my view are unequal powers that meditate against the principle of separation in relation to the other arms in as far as procurement of finances from the National Fiscus or work of each arm is concerned.” (RM32 – p170)

“Correcting the imbalance which is referred to above would go a long way in improving Parliament’s Oversight work in general and broadly the capacity of every public representative” (RM32 – p172).

Here another former Speaker Ms. Mbete, laments the imbalance of power, in her view between the President and Parliament, which mitigates against the separation of powers principle and she agrees with the applicants that it is an imbalance that should be corrected. A referendum is the only way the will of the people can be made known on the matter.

184. Former Speaker of Parliament *“MS MBETE: Of whatever fears they might have for themselves, for political careers, you know, but that is always a consideration in a parliamentary setup because, remember, you are not elected by people, you are elected by the party” (RM32 – p192).* Here Ms. Mbete reiterated an assertion made by the President and the former Speaker Ms. Modise, about the problem of confused and mistaken loyalties created by the party-based system. Members of parliament are torn between personal interests, party loyalty and lastly the will of the people, which is the weakest element as per Deputy Chief Justice Zondo’s assessment quoted above. This is in contravention of the constitution. Section 42(3) *“The National Assembly is elected to represent the people and to ensure government by the people under the Constitution. It does this by choosing the President, by providing a national forum for public consideration of issues, by passing legislation and by scrutinizing and overseeing executive action.”*

185. *“MS MBETE: Chairperson it is not a point on which I can express you know violently strong views but I do not see that there is any problem with the current system we have. We have had that system since Frene Ginwala our first Speaker we decided this is our system and it has worked very well. Because also Chairperson every MP from every party comes from a political party space that is why actually Parliament itself makes specific arrangements for them to satisfy that particular role of the reality of them having come from competition between political parties and that competition in the elections*

results in the people that get – the number of people that get elected and they end up being the MP's. So that we must now pretend that this one person – I mean the very President themselves are President of their party.” (RM32 – p228-229).

Here again Ms. Mbete makes the point that parliament does not hold the President accountable because of the power the President wields being President of the party and the country simultaneously. She attributes this problem to our electoral system, as they all did (President and Former Speaker Ms. Modise). This is in contravention of the constitution. Section 42(3) *“The National Assembly is elected to represent the people and to ensure government by the people under the Constitution. It does this by choosing the President, by providing a national forum for public consideration of issues, by passing legislation and by scrutinizing and overseeing executive action.”* It also contravenes section 55(2) of the constitution which states: *“The National Assembly must provide for mechanisms— (a) to ensure that all executive organs of state in the national sphere of government are accountable to it; and (b) to maintain oversight of”.*

186. The members of parliament received their full remuneration unlike many South Africans who partially or completely lost their incomes.

Conflict of Interest & lack of separation or independence between the President (Treasury) and the SARB - Co-ordinated Economic Manipulation

187. The SARB's current governor (Mr EL Kganyago) served as *“Chairperson of the International Monetary and Financial Committee, which is the primary advisory board to the International Monetary Fund (IMF) Board of Governors, from 18 January 2018 – 17 January 2021”.* RM33

This represents a conflict of interests between the bank and the IMF (a beneficiary of the national state of disaster). During this period, while being a chairman of IMF Committee, the Governor of SARB was also responsible for the money and credit of the country and banker to the government. It is apparent that when the national state of disaster was declared based on an

alleged deadly SARS-Cov2 virus, the Governor performed incompatible functions, that of determining the monetary policy of the country and party to the national budget processes as well as that of being the funder (Chairman of IMF Committee while IMF provided the Covid-19 financial assistance required by the country). It can be said that the Governor acted both as a referee and as a player at the same time. This was a serious conflict of interest as the nation is now indebted to the IMF.

This conflict of interest is indefensible because SARB did not independently verify the veracity and validity of the claim, of an alleged SARS-Cov-2 virus, as it should have done, as per section 224(2) of the constitution, before our nation was plunged into debt bondage to IMF. If the SARB questioned the veracity of the claim made by the First Respondent and refused to act otherwise without such proof the First Respondent would have had no other choice but to have produced proof or to have revoked their declaration, because without SARB's financial support the First Respondent would have been unable to proceed without funding, nor could the First Respondent have compelled SARB because SARB was and is independent as per section 224 of the constitution and then there would have been no need for the IMF debt.

188. One of the deputy governors (Mr K. Naidoo) "Headed the Budget Office at the National Treasury in South Africa from 2006 to 2010". This represents a conflict of interests between the Executive branch of government and the bank. (RM33)

189. 24 June 2020 Budget Review by the Ministry of Finance which is subordinate to President and approved by the National Assembly: *"Government has prioritised saving lives, and took the difficult step of severely restricting economic activity at a time when GDP growth was already weak."* *"Concurrently, the Reserve Bank has reduced interest rates and provided support to the bond market, while indicating it is prepared to take additional action as required."* Here the finance minister who was and is a subordinate and acting on behalf of the First Respondent, made it clear that the First

Respondent and the Third Respondent were co-ordinating their efforts around this unproven SARS-Cov-2 viral pandemic.

190. Budget Speech Minister of Finance, 24 February 2021, approved by the National Assembly: *“From 1 March 2021, companies with a primary listing offshore, including dual-listings, will be aligned to current foreign direct investment rules, which the South African Reserve Bank will oversee.”* *“SARS, SARB and the Financial Intelligence Centre (FIC) are working jointly on combating criminal and illicit cross-border activities through an interagency working group.”* It is apparent from this statement that the lines between the First Respondent and SARB are blurred which mitigates against the separation of powers principle.
191. Monetary Policy statements of the SARB: 19 March 2020: *“This coronavirus will negatively affect global and domestic economic growth through the first half of 2020, and potentially longer depending on steps taken to limit its spread”, “The Covid-19 outbreak will have a major health and social impact, and forecasting”, “The Chinese economy, where the virus originated, is expected to contract by 1% in the first half of 2020. Economic activity is likely to also contract in the United States and Europe as governments there take actions to contain the spread of the virus”. “Against this backdrop, the MPC decided to cut the repo rate by 100 basis points”.* This is an admission by SARB that it used Covid-19 which was allegedly caused by SARS-Cov-2 as overriding factor in its monetary policy adjustments, all the more reason that it should have independently verified the existence of SARS-Cov-2, before it based its actions on Covid-19. SARB had ample resources and power under the constitution to have done so.
192. 17 September 2020: *“A range of other countries however continue to experience a rapid spread of the virus”, “Alongside SARB liquidity-management operations, resident investors, including banks, have increased purchases of sovereign bonds”.* This is an admission by SARB that it was part of various actions by investors and banks, to purchase sovereign bonds, meaning to

borrow to the First Respondent, thereby it financed his efforts and indebteded the South African people.

193. 19 November 2020: *“it has become clear that Covid-19 infections will occur in waves of higher and lower intensity, caused in large part by pandemic fatigue and lapses in safety protocols”, “the welcome development in November of successful vaccine trials”*. Here the SARB made a statement in support of the vaccines which supposedly was produced to combat SARS-Cov-2, the SARB should have verified independently the existence of the SARS-Cov-2 virus before it made statements in support of vaccines related to SARS-Cov-2.

194. 21 January 2021: *“Since the November meeting of the Monetary Policy Committee (MPC), a second wave of Covid-19 infections has peaked in South Africa and in many other countries. It is expected that these waves of infection will continue until vaccine distribution is widespread and populations develop sufficient immunity to curb virus transmission. Although the virus will continue in new waves, the rollout of vaccines is expected to boost global growth prospects generally”. “Global growth, vaccine distribution, a low cost of capital and high commodity prices are supportive of growth. However, new waves of the Covid-19 virus are likely to periodically weigh on economic activity both globally and locally. In addition, constraints to the domestic supply of energy, weak investment and uncertainty about vaccine rollout remain serious downside risks to domestic growth”*. SARB should have verified independently the existence of the SARS-Cov-2 virus before it made the above pronouncements.

195. 25 March 2021: *“Since the January meeting of the Monetary Policy Committee (MPC), a second wave of Covid-19 infections has come and gone, with lockdown restrictions further reduced. Until vaccination is widespread and populations develop sufficient immunity to curb virus transmission, it is expected that these waves of infection will continue. As indicated by public health authorities, a third wave of virus infection is probable in coming months. Despite further expected waves, the start of vaccinations in many countries has*

lifted projections for global economic growth and boosted confidence significantly". SARB should have verified independently the existence of the SARS-Cov-2 virus before it made the above pronouncements.

196. One of the directors (Mr Z Hoosen) is "former Managing Director of Microsoft South Africa". This represents a conflict of interests between the bank and Bill & Melinda Gates (a beneficiary of the national state of disaster). (RM33)

197. The private shareholders of the SARB include the commercial banks, which were beneficiaries of the SARB's monetary policy actions due to "Covid-19". This represents a conflict of interests between the bank and the private banks (a beneficiary of the national state of disaster). (RM34)

Clear constitutional systemic failure

198. It is clear that the President limited the Bill of Rights without having provided reasonable justification as he should have done, that the SARB coordinated its constitutional powers to aid the President financially without first having independently verified the claim of the said virus as it should have done and that Parliament failed to keep the President accountable as was expected by the Constitution. In fact Parliament aided the President by having passed the adjusted "COVID-19" budget.

199. It is clear that the separation of powers and the checks and balances, intended by the Constitution, for the protection of the people from abuses of power, failed.

RECOURSE – RELIEF SOUGHT

200. Declaring that this application falls within the exclusive jurisdiction of this Court in that it alleges the failure of the respondents to discharge their constitutional obligations as per section 167(4)(e) of the Constitution.
201. Alternatively, should the Court adjudicate that this application does not fall within its exclusive jurisdiction, the Constitutional Court should grant the Applicants direct access as per section 167(6)(a) of the Constitution, due to the importance of the matter, the interest of justice, it is a Constitutional matter, it involves the interpretation of the Constitution, the exceptional circumstances, due to the nature of the recourse sought and the Western Cape High court found it to be of public interest.
202. Declaring that the First Respondent did not provide reliable proof of the existence of the SARS-COV2 virus, to the public, for more than 18 months as reasonable justification for him having declared a national state of disaster, in accordance with an open democratic society, as he should have done in terms of sections 36(1) and 32(1) of the Constitution.
203. Declaring the conduct of the First Respondent to be invalid and inconsistent with the Constitution insofar as he limited and continues to limit rights in the Bill of Rights without having produced the isolated and purified SARS-COV2 virus in order to have justified such limitations in terms of sections 36(1) and 32(1) of the Constitution.
204. Declaring that, in addition to having violated sections 36(1) and 32(1) of the Constitution, the First Respondent's conduct set out in paragraph 3 above violated section 83(b) of the Constitution.
205. Declaring the conduct of the First Respondent set out in paragraph 3 to have been unreasonable and irrational insofar as him having instituted measures to restrict Constitutional Rights without having provided

justification that passed constitutional muster (i.e. he should have provided proof of the existence of the isolated and purified SARS-COV 2 virus).

206. Declaring that the Second Respondent failed in its duty to have instituted all processes and mechanisms in place in order to have held the First Respondent accountable to his oath of office, to protect, defend and uphold the Constitution when he declared a national state of disaster without Parliamentary oversight as it should have been done as per section 55(2) of the Constitution.
207. Declaring that the Second Respondent failed in its duty to have instituted all processes and mechanisms in place in order to have held the First Respondent accountable when the First Respondent refused and or failed to have produced the isolated and purified, SARS-COV-2 virus.
208. Declaring that the Second Respondents' failures stated at paragraphs 7 and 8 above violated sections 37(1), 42(3), 48 and 55(2) read with sections 1(a), 1(c) and 1(d) of the Constitution.
209. Declaring that the Second Respondent in particular Ms Modise, former Speaker of Parliament, was conflicted when the Second Respondent failed in its duties as per paragraph 7, 8 and 9 above.
210. Declaring that the Third Respondent, as independent and sole authority under the Constitution over the money and credit of the nation, failed to have independently verified and provided public proof of such, the validity and justification of the declaration made by the First Respondent (i.e. should have independently verified the existence of an isolated and purified SARS-COV-2 virus) before it effectively directly and or indirectly financed the implementation of such declaration with the tax-payer ultimately responsible for the financial obligations incurred, as he should have done as per section 224(2) of the Constitution.

211. Declaring that the Third Respondent failed to have independently verified the validity of the declaration of national state of disaster before it made adjustments to the nations monetary policy, as it should have done, which in turn had negative consequences on the people of South Africa.
212. Declaring that the Third Respondent was conflicted (a conflict of interest existed), in particular Mr Kganyago when he participated in the measures which incurred financial obligations on the people of South Africa as per paragraph 11 above.
213. Directing the First, Second and Third Respondents to accede to the request of the Applicants to voluntarily resign and dissolve themselves in an orderly manner, because these harms occurred under their direct and personal supervision and authority.
214. Directing the Third Respondent to compensate and to set up such measures in order to do so in an orderly fashion, all South Africans who have suffered financial losses as a result of the declared national disaster.
215. Directing and declaring the national state of disaster declaration and the lockdown measures declared and implemented by the First Respondent's conduct set out in paragraph 3, to be invalid and set aside, because he acted without any reasonable justification as he should have done in an open democratic society.
216. Directing that the Supplementary Budget Review of 24 June 2020 in which fiscal policy was adjusted specifically for "COVID-19", to be invalid and set aside. Directing that national debt and financial obligations incurred by the Respondents on behalf of the people of South Africa, relating to "Covid-19" to be invalid and set aside.

217. Directing and declaring that the First and Second Respondents be held liable in their personal capacities for any or all financial losses suffered by the people as a result of the commissions and omissions of the Respondents. And that the Third Respondent be held liable in his representative as well as in his personal capacity for any or all financial losses suffered by the people as a result of the commissions and omissions of the Respondent.
218. Directing the First Respondent to call a referendum for the people to decide on:
- 218.1.1. A vote of no confidence in all the Respondents;
 - 218.1.2. Liquidation of the SARB to cover all financial losses suffered as a consequence of its actions and failures to act in accordance with its constitutional obligations.
 - 218.1.3. To decide on a metal-based currency and the abolition of interest, to prevent future unjustified and harmful manipulation of our national money and credit systems.
 - 218.1.4. To decide on direct Presidential elections and individual candidates in our electoral system as opposed to a party based system, which has caused conflicts of interests and rendered separation of powers and checks and balances ineffective.
219. Directing and compelling the Respondents if they oppose this application to pay the costs jointly and severally, such costs to include the costs of two counsel.
220. Further and/or alternative relief.

Importance of a Referendum

- 221. A referendum is the only way through which the will of the people can be expressed in between elections and the only way the will of the people can be expressed on particular issues of national importance.
- 222. The Constitution is derived from the will of the people, its purpose is to protect the rights of the people and to advance the will of the people.
- 223. The people are the primary and original holders of all power derived from the Constitution including the referendum powers vested in the President.
- 224. These referendum powers cannot be vested in the President and is not vested in the President absolutely it is conditional on faithfulness to the Constitution, the interests of and the will of the people.
- 225. The Court has the jurisdiction to decide upon the interpretation of the Constitution and the exercise of Constitutional power, as it relates to directing or ordering the President to call a referendum.
- 226. If the Court orders the President to call a referendum, no prejudice is suffered by any of the respondents, because they all are invested with power sourced from the will of the people and they should not seek to hold such office unwilling to know or respond to the will of the people.

Practicality of the recourse

- 227. Changing the office-bearers and retaining the system, cannot correct systemic failure.
- 228. Systemic failure cannot be addressed by the same people and structures that caused it in the first place.

229. The Constitutional Court cannot correct such systemic failures, that would be judicial over-reach, but it has the authority and right to order the President to refer the matter to the people through the only means available for such, a referendum.

Orderliness of the recourse

230. The Court is well within its rights to order notice periods.
231. The Court could similarly order the conformance to set procedures and controls.
232. The Court could order transitional periods.
233. All the above measures would ensure that the recourse order or directed would happen in an orderly manner.

Significance of the application

234. A juxtaposition of the respondents' constitutional responsibilities and powers against their actions in their respective capacities in respect of the declaration of the national state of disaster warrants an order in favour of this application.
235. This matter calls on the Court to make a decision that vindicates the rights of individuals that goes against a global order that has seen human liberties all over the world being violated, and maintains that because no concrete proof of the existence of the SARS-COV 2 virus accompanied the national state of disaster declaration, the limitation of rights was and is unjustifiable and drastically failed to satisfy the requirements of sections 32(1), 36(1) and 37(1) of the Constitution.
236. Such an order or direction would set a precedent that would allow the people the power and right to act in future under similar circumstances,

which would be a necessary Constitutional check and balance, the current set of circumstances are unlikely to occur frequently and lightly, the apex Court by ordering it now would in future be able to regulate the orderly usage of this new found power and right of the people.

Due to the a foregoing, I respectfully pray for an Order in terms of the Notice of Motion prefixed hereto.

D E P O N E N T
RICARDO MAARMAN

I CERTIFY that the deponent has acknowledged that he knows and understands the contents of this affidavit which was signed and sworn to before me at _____ on this the _____ day of _____ 2021.

COMMISSIONER OF OATHS
FULL NAMES:
BUSINESS ADDRESS:
DESIGNATION: