


**IN THE HIGH COURT OF SOUTH AFRICA  
(WESTERN CAPE DIVISION, CAPE TOWN)**

**CASE NO:**

In the matter between:

<b>DUWAYNE ESAU</b>	First Applicant
<b>NEO MKWANE</b>	Second Applicant
<b>TAMI JACKSON</b>	Third Applicant
<b>LINDO KHUZWAYO</b>	Fourth Applicant
<b>MIKHAIL MANUEL</b>	Fifth Applicant
<b>RIAAN SALIE</b>	Sixth Applicant
<b>SCOTT ROBERTS</b>	Seventh Applicant
<b>MPIYAKHE DLAMINI</b>	Eighth Applicant
and	
<b>THE MINISTER OF CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS</b>	First Respondent
<b>THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA</b>	Second Respondent
<b>THE MINISTER OF TRADE, INDUSTRY AND COMPETITION</b>	Third Respondent
<b>THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA IN HIS CAPACITY AS THE CO-CHAIRPERSON OF THE NATIONAL CORONAVIRUS COMMAND COUNCIL</b>	Fourth Respondent
<b>THE MINISTER OF CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS IN HER CAPACITY AS THE CO-CHAIRPERSON OF THE NATIONAL CORONAVIRUS COMMAND COUNCIL</b>	Fifth Respondent
<b>THE NATIONAL CORONAVIRUS COMMAND COUNCIL</b>	Sixth Respondent

N.E. 

**THE GOVERNMENT OF THE REPUBLIC OF  
SOUTH AFRICA**

Seventh Respondent

**THE NATIONAL DISASTER MANAGEMENT  
CENTRE**

Eighth Respondent

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**CONFIRMATORY AFFIDAVIT**

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I, the undersigned –

**NEO MKWANE**


do hereby make oath and state as follows:

1. I am the second applicant in this application.
2. I am an adult male civil servant and a South African citizen. I reside at 1 Long Street, Mowbray, Cape Town.
3. The facts contained in this affidavit are, to the best of my belief, both true and correct.
4. I have read the founding affidavit of **DUWAYNE ESAU**. The contents of that affidavit are true insofar as they relate to me.
5. I have read the notice of motion and confirm that I seek the relief it sets out. I contend that the National Coronavirus Command Council is an unlawful body,

N.E

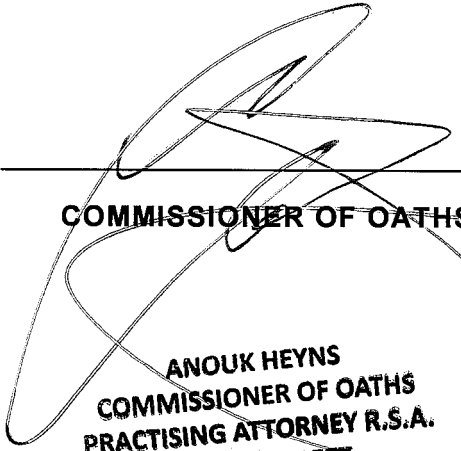


and that the Disaster Regulations and Clothing Directions are unconstitutional and invalid, and fall to be declared as such.

  
 \_\_\_\_\_  
**NEO MKWANE**

I certify that:

- I. the Deponent acknowledged to me at *Cape Town* on this the <sup>th</sup> 20 day of **MAY 2020** that:
  - A. He knows and understands the contents of this declaration;
  - B. He has no objection to taking the prescribed oath; and
  - C. He considers the prescribed oath to be binding on his conscience.
- II. the Deponent thereafter uttered the words, '*I truly affirm that the contents of this declaration are true*'.
- III. the Deponent signed this declaration in my presence at the address set out hereunder on


  
 \_\_\_\_\_  
**COMMISSIONER OF OATHS**  
**ANOUK HEYNS**  
**COMMISSIONER OF OATHS**  
**PRACTISING ATTORNEY R.S.A.**  
**2 LONG STREET**  
**CAPE TOWN**

**IN THE HIGH COURT OF SOUTH AFRICA  
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**CASE NO:**

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<b>MIKHAIL MANUEL</b>	Fifth Applicant
<b>RIAAN SALIE</b>	Sixth Applicant
<b>SCOTT ROBERTS</b>	Seventh Applicant
<b>MPIYAKHE DLAMINI</b>	Eighth Applicant
and	
<b>THE MINISTER OF CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS</b>	First Respondent
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<b>THE NATIONAL CORONAVIRUS COMMAND COUNCIL</b>	Sixth Respondent

T. J. 

**THE GOVERNMENT OF THE REPUBLIC OF  
SOUTH AFRICA**

Seventh Respondent

**THE NATIONAL DISASTER MANAGEMENT  
CENTRE**

Eighth Respondent

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**CONFIRMATORY AFFIDAVIT**

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I, the undersigned –

**TAMI JACKSON**

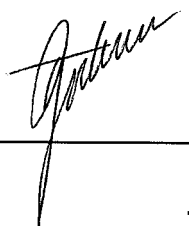
do hereby make oath and state as follows:

1. I am the third applicant in this application.
2. I am an adult female and a South African citizen employed as a media intern. I reside at 10 Rose Way, Matroosfontein, Cape Town.
3. The facts contained in this affidavit are, to the best of my belief, both true and correct.
4. I have read the founding affidavit of **DUWAYNE ESAU**. The contents of that affidavit are true insofar as they relate to me.
5. I have read the notice of motion and confirm that I seek the relief it sets out. I contend that the National Coronavirus Command Council is an unlawful body,

T.J.



and that the Disaster Regulations and Clothing Directions are unconstitutional and invalid, and fall to be declared as such.



**TAMI JACKSON**

I certify that:

- I. the Deponent acknowledged to me at *Cape Town* on this the <sup>th.</sup> 20 day of **MAY 2020** that:
  - A. She knows and understands the contents of this declaration;
  - B. She has no objection to taking the prescribed oath; and
  - C. She considers the prescribed oath to be binding on her conscience.
- II. the Deponent thereafter uttered the words, '*I truly affirm that the contents of this declaration are true*'.
- III. the Deponent signed this declaration in my presence at the address set out hereunder on



**COMMISSIONER OF OATHS**

**ANOUK HEYNS  
COMMISSIONER OF OATHS  
PRACTISING ATTORNEY R.S.A.  
2 LONG STREET  
CAPE TOWN**

**IN THE HIGH COURT OF SOUTH AFRICA  
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<b>LINDO KHUZWAYO</b>	Fourth Applicant
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<b>RIAAN SALIE</b>	Sixth Applicant
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and	
<b>THE MINISTER OF CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS</b>	First Respondent
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<b>THE NATIONAL CORONAVIRUS COMMAND COUNCIL</b>	Sixth Respondent

NPN

L.C.

**THE GOVERNMENT OF THE REPUBLIC OF  
SOUTH AFRICA**

Seventh Respondent

**THE NATIONAL DISASTER MANAGEMENT  
CENTRE**

Eighth Respondent

---

**CONFIRMATORY AFFIDAVIT**

---

I, the undersigned –

**LINDO KHUZWAYO**

do hereby make oath and state as follows:

1. I am the fourth applicant in this application.
2. I am an adult male student at the University of Cape Town and a South African citizen. I reside in Liesbeeck Gardens, 50 Durban Road, Mowbray, Cape Town.
3. The facts contained in this affidavit are, to the best of my belief, both true and correct.
4. I have read the founding affidavit of **DUWAYNE ESAU**. The contents of that affidavit are true insofar as they relate to me.
5. I have read the notice of motion and confirm that I seek the relief it sets out. I contend that the National Coronavirus Command Council is an unlawful body,

NPN

L.C.



and that the Disaster Regulations and Clothing Directions are unconstitutional and invalid, and fall to be declared as such.

*[Signature]*

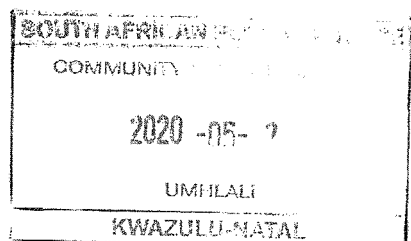
**LINDO KHUZWAYO**

I certify that:

- I. the Deponent acknowledged to me at *Umhlali* on this the *20* day of **MAY 2020** that:
  - A. He knows and understands the contents of this declaration;
  - B. He has no objection to taking the prescribed oath; and
  - C. He considers the prescribed oath to be binding on her conscience.
- II. the Deponent thereafter uttered the words, *'I truly affirm that the contents of this declaration are true'*.
- III. the Deponent signed this declaration in my presence at the address set out hereunder.

*[Signature]* 71637180

**COMMISSIONER OF OATHS**



*KIPAN*

*L.C.*

**IN THE HIGH COURT OF SOUTH AFRICA  
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<b>RIAAN SALIE</b>	Sixth Applicant
<b>SCOTT ROBERTS</b>	Seventh Applicant
<b>MPIYAKHE DLAMINI</b>	Eighth Applicant
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**THE GOVERNMENT OF THE REPUBLIC OF  
SOUTH AFRICA**

Seventh Respondent

**THE NATIONAL DISASTER MANAGEMENT  
CENTRE**

Eighth Respondent

---

**CONFIRMATORY AFFIDAVIT**

---

I, the undersigned –

**MIKHAIL MANUEL**

do hereby make oath and state as follows:

1. I am the fifth applicant in this application.
2. I am an adult male research assistant and PhD student at the University of Cape Town and a South African citizen. I reside at 1101 Marlborough Park, 13 Bath Road, Claremont, Cape Town.
3. The facts contained in this affidavit are, to the best of my belief, both true and correct.
4. I have read the founding affidavit of **DUWAYNE ESAU**. The contents of that affidavit are true insofar as they relate to me.
5. I have read the notice of motion and confirm that I seek the relief it sets out. I contend that the National Coronavirus Command Council is an unlawful body,



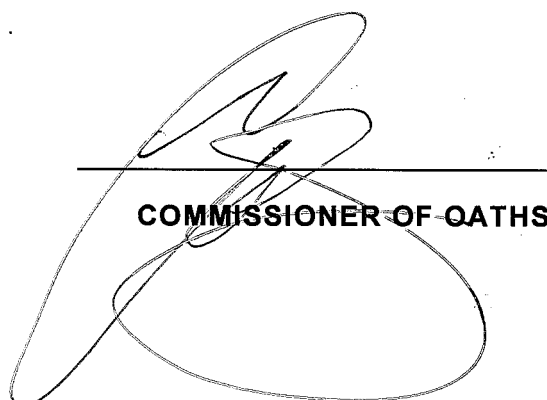
and that the Disaster Regulations and Clothing Directions are unconstitutional and invalid, and fall to be declared as such.



MIKHAIL MANUEL

I certify that:

- I. the Deponent acknowledged to me at Cape Town on this the 20<sup>th</sup> day of **MAY 2020** that:
  - A. He knows and understands the contents of this declaration;
  - B. He has no objection to taking the prescribed oath; and
  - C. He considers the prescribed oath to be binding on his conscience.
- II. the Deponent thereafter uttered the words, '*I truly affirm that the contents of this declaration are true*'.
- III. the Deponent signed this declaration in my presence at the address set out hereunder on



COMMISSIONER OF OATHS


ANOUK HEYNS  
COMMISSIONER OF OATHS  
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R S 

THE GOVERNMENT OF THE REPUBLIC OF  
SOUTH AFRICA

Seventh Respondent

THE NATIONAL DISASTER MANAGEMENT  
CENTRE

Eighth Respondent

---

**CONFIRMATORY AFFIDAVIT**

---

I, the undersigned –

**RIAAN SALIE**

do hereby make oath and state as follows:

1. I am the sixth applicant in this application.
2. I am an adult male student at the University of South Africa and a South African citizen. I reside at 23 Montpelier Avenue, Uitsig, Wellington, Western Cape.
3. The facts contained in this affidavit are, to the best of my belief, both true and correct.
4. I have read the founding affidavit of **DUWAYNE ESAU**. The contents of that affidavit are true insofar as they relate to me.
5. I have read the notice of motion and confirm that I seek the relief it sets out. I contend that the National Coronavirus Command Council is an unlawful body.

R S 

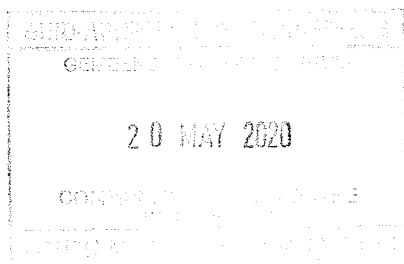
and that the Disaster Regulations and Clothing Directions are unconstitutional and invalid, and fall to be declared as such.




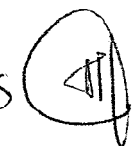
RIAAN SALIE

I certify that:

- I. the Deponent acknowledged to me at \_\_\_\_\_ on this the \_\_\_\_\_ day of **MAY 2020** that:
  - A. He knows and understands the contents of this declaration;
  - B. He has no objection to taking the prescribed oath; and
  - C. He considers the prescribed oath to be binding on his conscience.
- II. the Deponent thereafter uttered the words, '*I truly affirm that the contents of this declaration are true*'.
- III. the Deponent signed this declaration in my presence at the address set out hereunder on \_\_\_\_\_



 **COMMISSIONER OF OATHS**

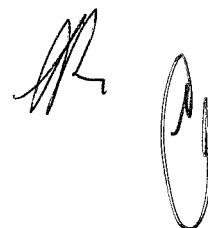
RS 

IN THE HIGH COURT OF SOUTH AFRICA  
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CASE NO: \_\_\_\_\_

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<b>TAMI JACKSON</b>	Third Applicant
<b>LINDO KHUZWAYO</b>	Fourth Applicant
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**THE NATIONAL CORONAVIRUS COMMAND COUNCIL**

Sixth Respondent

**THE GOVERNMENT OF THE REPUBLIC OF  
SOUTH AFRICA**

Seventh Respondent

**THE NATIONAL DISASTER MANAGEMENT  
CENTRE**

Eighth Respondent

---

**SUPPORTING AFFIDAVIT**


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I, the undersigned –

**SCOTT ROBERTS**

do hereby make oath and state as follows:

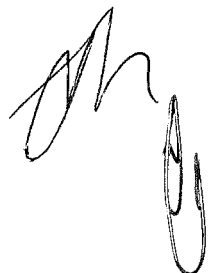
1. I am the seventh applicant in this application.
2. I am an adult male student at the University of Cape Town and a South African citizen. I reside at B4 Ventnor House, 213 Main Road, Three Anchor Bay, Cape Town.
3. The facts contained in this affidavit are, to the best of my belief, both true and correct.
4. I have read the founding affidavit of **DUWAYNE ESAU**. The contents of that affidavit are true insofar as they relate to me. For ease of reference I continue the use of the terms defined by Duwayne in this affidavit.



5. I have read the notice of motion and confirm that I seek the relief it sets out. I contend that the Command Council is an unlawful body and that the Disaster Regulations and Clothing Directions are unconstitutional and invalid, and fall to be declared as such.
6. Some of the ways in which the Disaster Regulations have impacted my life are set out below. To maintain the privacy of myself and my loved ones, I have kept the narration as brief as possible. Neither myself nor my family have any desire to be part of a media spectacle or to have our lives further scrutinised by the government. I have brought this application, and deposed to this affidavit, because I have no other means of protecting my constitutional rights other than seeking this Honourable Court's intervention.

### **The Lockdown**

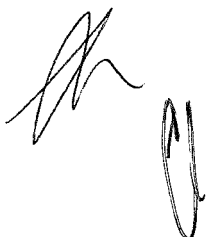
7. I live in Cape Town, as does my partner. My parents reside in Durban, KwaZulu-Natal.
8. When the President announced that a national lockdown would be implemented, I was faced with a difficult choice: whether to remain in Cape Town with my partner, or to travel to Durban to support my parents during what was going to be an uncertain and difficult time. Tough though it was, I made the decision to support my parents in Durban and left Cape Town before the lockdown came into effect.

A handwritten signature in black ink, consisting of a stylized 'M' followed by a vertical line and a small loop at the bottom.

9. Based on the information put out by the President and the COGTA Minister, we expected the lockdown to last for three weeks. Although any separation from my partner was always going to be disruptive of our lives and difficult to endure, we decided that we would make the sacrifice to allow me to support my parents. We decided that, for the three-week period, we would have to make do with virtual interactions e.g. video calls.
10. Throughout our separation we video-called each other daily, and immediately communicated if anything of significance happened. As I am sure many South Africans now understand, modern communication technology is no substitute for physical presence, particularly in the context of loving and family relationships. I missed my shared life with my partner immensely.
11. We were dismayed when it was announced that the lockdown was being extended for a further two weeks. Even more frustrating was the uncertainty: it was not clear to me when the lockdown would end, what would be required for the lockdown to end and, most pressingly, when I would be allowed to reunite with the person I love. I never expected to have to choose between being arrested and imprisoned, on the one hand, and being with my chosen partner, on the other hand.

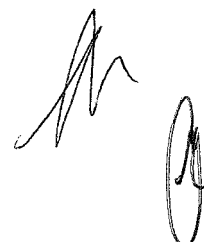
#### **Level Four**

12. For my return journey to Cape Town I borrowed a vehicle. The journey itself was a harrowing ordeal. No hotels or hostels were open, due to the restrictions in place. I did not feel safe parking my vehicle on the side of the road or in a parking

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lot. So I undertook the entire journey in one go. I went through numerous roadblocks, at which I was stopped and questioned like someone suspected of committing a crime. The vehicle I was driving was searched. The trip took me over 19 hours. At some point between Laingsburg and Worcester I almost fell asleep behind the wheel.

13. I was relieved to learn that the government planned to allow us to walk outside our homes. I was dismayed to learn that it was for a three-hour period every morning, commencing at 06h00. It does not seem to me that there is any rational basis for limiting daily exercise to a three-hour period in the morning – how does it harm the fight against Covid-19 to take a walk in the afternoon, provided we all observe the necessary hygiene standards and social-distancing protocols?
14. It is not safe to walk around in the dark. At present, as we near the winter months, the sun rises at approximately 07h30. So on most mornings I leave my home shortly after 07h30. I usually walk in the streets of Three Anchor Bay and Sea Point, or on the Sea Point promenade, which is the safest and most spacious place within five kilometres of my home. However, since Level Four began, the streets and the promenade are extremely congested and proper social distancing is impossible. This is to be expected, given that the area is very densely populated and the time period within which we can safely exercise outside of darkness is between 80 and 90 minutes.
15. The Disaster Regulations aggravate the risk of passing on or picking up the coronavirus. For mental-health reasons, physical-health reasons, or simply the

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exercise of the little bit of freedom we have been allowed, many people make use of the exercise window. However, given population densities and the five-kilometre restriction, it is not possible to maintain a safe space from everyone else who is exercising (as it would be if we were permitted the freedom to decide when to exercise and trusted with the responsibility of following health protocols). These levels of congestion increase the risk of contagion.

16. On my understanding, that is unlawful and irrational.
17. Because of the Disaster Regulations we no longer have autonomy on how to live the most basic and personal aspects of our lives or the freedom to control our own movements. Furthermore, the restrictions imposed bear no rational relationship to the objective of combating the pandemic and, indeed, in some instances increase the risk to South Africans of contracting the coronavirus. I am advised that this is unconstitutional.
18. On 16 May 2020 Dr Glenda Gray, the Chief Executive Officer and President of South Africa's Medical Research Council and an advisor to the government regarding Covid-19, is reported to have described the Disaster Regulations as *'nonsensical and unscientific'* and stated that the government's *'strategy is not based in science and is completely unmeasured. [It's] almost as if someone is sucking regulations out of their thumb and implementing rubbish'*. She also asked, in respect of the Disaster Regulations' movement restrictions: *'Where is the scientific evidence for that?'*

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19. I annex hereto, marked 'SR1', an article by the editor of the *Financial Mail* setting out Dr Gray's remarks.
20. On 18 May 2020 Dr Gray clarified her remarks in an interview with Cape Talk radio station. A summary of the interview, published by Cape Talk, is annexed hereto and marked 'SR2'. During the interview Dr Gray –
- 20.1 highlighted the importance of the lockdown in allowing time to build capacity in South Africa's health system;
  - 20.2 noted that, following the five-week lockdown, there is very little medical benefit in continuing to impose restrictions through the Alert Levels contemplated in the Disaster Regulations;
  - 20.3 opined that the Coronavirus will be with us beyond September 2020 and is likely to last '*two or three seasons*';
  - 20.4 stated that the focus at this stage of the pandemic needs to be on minimising transmission and protecting the elderly and people with co-morbidities;
  - 20.5 said that the regulations put in place by the government '*make no sense in the onward prevention of Covid infections*', adding that '*I fail to see how buying a bra, or buying a garment of clothes would cause transmission*'; and
  - 20.6 when challenged on the importance of reducing movement to reduce transmission, emphasised that reducing movement was only important insofar as it related to reducing congestion and that, for example, shopping malls are able to put in place social-distancing protocols to reduce the risk of transmission.



21. I do not cite Dr Gray's analysis to dispute the National Executive's responsibility for policy formulation or to insist on her analysis' correctness. Rather the analysis –
- 21.1 emphasises the limitation on what the government may seek to achieve by regulating under the Act, viz limiting the transmission of Covid-19 rather than controlling consumers and restricting retailers;
  - 21.2 highlights the importance of ensuring that, when constitutional rights are limited, the limitation is minimised (e.g. mandating health protocols and social-distancing rules rather than prohibiting retail) and justifiable (i.e. based on empirical evidence and sound policy); and
  - 21.3 underscores the government's transparency deficit – neither ordinary citizens nor the government's own scientists and doctors are aware of the rationale / policy basis for many of the provisions of the Disaster Regulations.
22. I respectfully urge this Honourable Court to come to the assistance of the applicants and the public at large by directing the respondents to revise the Disaster Regulations in accordance with the Constitution and the Act.



**SCOTT ROBERTS**



I certify that:

- I. the Deponent acknowledged to me at *Cape Town* on this the <sup>th</sup> 20 day of **MAY 2020** that:
- A. He knows and understands the contents of this declaration;
- B. He has no objection to taking the prescribed oath; and
- C. He considers the prescribed oath to be binding on his conscience.
- II. the Deponent thereafter uttered the words, '*I truly affirm that the contents of this declaration are true*'.
- III. the Deponent signed this declaration in my presence at the address set out hereunder on

A large, stylized handwritten signature in black ink, consisting of several loops and a long horizontal stroke, is written over a horizontal line.

**COMMISSIONER OF OATHS**

**ANOUK HEYNS  
COMMISSIONER OF OATHS  
PRACTISING ATTORNEY R.S.A.  
2 LONG STREET  
CAPE TOWN**



OPINION

**Rob Rose** Editor: Financial Mail

## ROB ROSE: Mkhize, moaning of 'unfair' criticism, fails to see how this ends

Had Mkhize taken South Africans into his confidence, more people would have understood the rationale for a continued lockdown

18 MAY 2020 - 06:00



*[Handwritten signature]*

Health minister Zweli Mkhize. Picture: Kopano Tlape/GCIS

Now it's health minister Zweli Mkhize, following the lead of trade & industry minister Ebrahim Patel, bemoaning how "unfair" it is that doctors who are part of his own advisory panel have slammed the phased lockdown as "unscientific".

Mkhize's comments came as the government's lockdown edifice, already weakened by a series of senseless rules, began to seriously crumble over the weekend. At the same time, the number of new infections rose by a record 1,160 on Sunday to reach 15,515.

On Saturday, Dr Glenda Gray, the chairperson of the ministerial advisory committee's research committee, described the phased ending to the lockdown as "nonsensical and unscientific".

Gray has serious clout: besides having led the first clinical trials for an HIV vaccine in SA, and having trained at Columbia University and Cornell University, she's also the head of the SA Medical Research Council, and has had [a stellar career](#).

"This strategy is not based in science and is completely unmeasured. [It's] almost as if someone is sucking regulations out of their thumb and implementing rubbish, quite frankly," she told News24. "In the face of a young population, we refuse to let people out. We make them exercise for three hours a day and then complain that there's congestion in this time. We punish children and kick them out of school and we deny them education. For what? Where is the scientific evidence for that?"

Rather, she said, scrap the lockdown, and prioritise non-pharmaceutical interventions, including social distancing, wearing masks and prohibiting gatherings.

It was a devastating critique — and other doctors agreed. Prof Marc Mendelson, head of infectious diseases and HIV medicine at Groote Schuur Hospital, said: "Lockdown in its current form is doing more harm than good."

#### [A fatally flawed lockdown plan](#)

As alarming fatality predictions are revised, the data shows SA's lockdown is doing more harm than good



BusinessLIVE / Andrew Lapping

Another member of the ministerial advisory committee told the Sunday Times that it's wrong to think the doctors recommended extending the lockdown: "We never had discussions on banning alcohol and cigarettes — no single scientist would have supported the cigarette ban. We don't know who's advising the government."

What was interesting was the fallout from the doctors' comments.



According to News24, those medical experts “faced a hard-nosed dressing-down from health officials” on Saturday night.

Mkhize’s director-general, Dr Anban Pillay, said that since the economic regulations weren’t part of their mandate, responsibility or expertise, “I don’t understand why they would think they needed to be speaking out about it”.

That’s frightening for two central reasons.

First, those people who are experts on the economic impact, namely the economists, have already described those rules as daft. So, now that the scientists are saying that the rules on how you wear your T-shirts have no scientific or medical value, it weakens the case for keeping the strict lockdown even more.

The second chilling aspect of Pillay’s statement is that what he appears to be saying to the scientists is, keep quiet and toe the department line. That’s an especially dangerous road because you can be sure that anyone who stifles dissent to present a façade of “unity” is up to no good.

Of course, had Mkhize taken South Africans into his confidence and revealed the models around Covid-19 (which he hasn’t done), more people would have understood the rationale for a continued lockdown. But in the absence of that, “Just trust us” doesn’t cut it.

This fallout also illustrates that while we’re in the midst of a media meltdown, the news media is still a critical institution for holding the government accountable. On this, News24 has done well: it’s been on top of the science, hasn’t fallen prey to confirmation bias on either side of the lockdown debate, and has done the thing that distinguishes journalists from social media chatter: real reporting, speaking to people who are on the frontline. Many other media outlets have done the same.

The point is, now that it’s the doctors rattling their sabres, the lockdown has reached a turning point.

With that in mind, Mkhize and President Cyril Ramaphosa would do well to read [this article in The New York Times](#) on how pandemics end.

Here’s a spoiler: a pandemic doesn’t end when a government declares it over. Rather, it ends “not because a disease has been vanquished, but because people grow tired of panic mode and learn to live with a disease”.

The article provides a fascinating exploration of what happened during history’s plagues — the Black Death, Ebola, smallpox and the Spanish flu. As Yale historian Naomi Rogers warns about Covid-19: “We may be in a moment when people are just saying: ‘That’s enough.’”



It's just that sort of inflection point that Mkhize and his boss, Ramaphosa, ought to bear in mind.

### **African excellence, mostly**

In [The New Yorker](#), the excellent Jina Moore writes how many African nations have been ahead of many Western nations in tackling the virus.

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Stay up to date with crucial updates every weekday



**BusinessLIVE** / Financial Mail

The magazine suggests that some African countries – including SA, Rwanda, Uganda and Botswana – have been better at managing the disease than the West.

“While the worst-performing countries anticipate a disease curve that looks like those in Europe or the US, the African countries where the response has been better, faster, and smarter may manage to stay ahead of it,” it says.

Which, of course, doesn't excuse the bone-headedness in some countries.

Madagascar's president, Andry Rajoelina, has been peddling his herbal tea as a “cure”, while Tanzania's president, John Magufuli, has proved to be a danger to his own citizens, refusing to release statistics of infections to the extent that nobody really believes the numbers, as [Al Jazeera reports](#).

Magufuli has even urged people to go to churches since prayers “can vanquish” the virus. The result is that Tanzanian hospitals now risk being overrun, as the [BBC reports](#).

### **New poser in school debate**

Lastly, will the kids really be all right? Even as we're debating how to open up countries, there have been disturbing reports about a “mysterious ailment” that has appeared in children who've been affected by Covid-19.

This is disturbing precisely because, as Jane Burns of the University of California San Diego told [Wired Magazine](#): “There's generalised fear and anxiety, because we told people the good news is that this virus doesn't do anything to children. And now we're saying: ‘Actually, here's a new thing.’”

So does this change the thesis?

Not really. "Among those who develop this new condition, even in its more severe form, most are doing just fine with treatment," says Wired. Most kids still have mild or undetectable conditions.

It illustrates that again, if you take a binary view of what's "wrong" and "right" in this brand-new epidemic, where the science is shifting all the time, you're making a fool of yourself. The science and the data shouldn't be an inconvenient obstacle to your preconceived opinion.

*This is a roundup of the best Covid-19 news from the web, brought to you in today's FM lockdown newsletter. To subscribe, for free, click [here](#).*

**Source:** <https://www.businesslive.co.za/fm/opinion/2020-05-18-rob-rose-mkhize-moaning-of-unfair-criticism-fails-to-see-how-this-ends/>





Home → Politics ● Local

## MAC's Dr Glenda Gray clarifies her comments about lockdown regulations

18 May 2020 9:25 AM

by [Barbara Friedman](#)

Tags: COVID-19 LockdownSA Ministerial Advisory Committee

+ More



**Gray told health dept she was referring specifically to regulations that made no sense in onward prevention of Covid infections.**

Dr Glenda Gray is a member of the government's Covid-19 ministerial advisory council (MAC) and came under fire after recent comments quoted in a recent [News24 article](#) criticising the lockdown. She talks to Refilwe Moloto about the effects of the extended lockdown, how the country should proceed and clarified her comments.

But

*"I made the point that the initial lockdown and the extended lockdown was very important in slowing down the virus, and making sure that the hospitals were ready...and the lockdown bought us time to prepare the country and medical system for infections that might come."*

*Dr Glenda Gray, CEO - SA Medical Research Council*

now the country has moved into a new phase and she says.

*"Even Health Minister, Dr Zweli Mkhize suggested over the weekend there may be very little medical benefit of the lockdown beyond what has happened."*



Today with Kieno Kammies  
09:00 - 12:00

*we renter society. We do know that the coronavirus is not going to go away at the end of September.* ”

*Dr Glenda Gray, CEO - SA Medical Research Council*

coronavirus usually lasts two or three seasons, she notes.

In

“ *Without a vaccine or anti-viral, we will have to coexist with this virus for at least 18 months.* ”

*Dr Glenda Gray, CEO - SA Medical Research Council*

“ *Even post-lockdown in other countries there is seepage of transmission back into the community once you ease lockdown.* ”

*Dr Glenda Gray, CEO - SA Medical Research Council*

addition, most people with Covid-19 are asymptomatic, she reiterates.

“ *So our job is to protect the vulnerable and the elderly and those with comorbidity.* ”

*Dr Glenda Gray, CEO - SA Medical Research Council*

“ *We need to make decisions based on who is more likely to be adversely affected by Covid-19.* ”

says.

*“ There are isolation facilities, and the question is, should those also be for The vulnerable people. ”*

*Dr Glenda Gray, CEO - SA Medical Research Council*

elderly also need to be protected when they queue for social grants, she adds.

Citizens have to be trusted and given the knowledge they need.

*“ We have to empower citizens to understand the need for distancing and also to understand how the virus is transmitted. ”*

*Dr Glenda Gray, CEO - SA Medical Research Council*

Dr

Gray clarifies media reports over the weekend of her comment criticising continuing the lockdown.

*“ My comment was on the regulations. I specifically commented on the regulations in that article. I said all regulations we promulgate or issue should be focused on preventing viral transmission and my comment was I fail to see how buying a bra or a garment of clothes would cause transmission. ”*

*Dr Glenda Gray, CEO - SA Medical Research Council*

*“ The overall goal of a regulation should be how do we get this sector open*

Today with Kieno Kammies

09:00 - 12:00



*" I clarified with the health department that I emphasised that I was referring specifically about the regulations and how they did not make sense in the onward prevention of Covid infections. "*

*Dr Glenda Gray, CEO - SA Medical Research Council*

MAC has been structured to be reactive meaning the council waits for questions and then provides advice, she explains.

*" At the meeting on Saturday night, we proposed that we become more proactive so that there is more engagement and become a more proactive committee. "*

*Dr Glenda Gray, CEO - SA Medical Research Council*

**Listen to the interview below:**



Breakfast with Retiwe Nelson

Dr Glenda Gray on effect of lockdown and the way for

00:00 / 03:03

18 May 2020 9:25 AM

by [Barbara Friedman](#)

Tags: COVID-19 LockdownSA Ministerial Advisory Committee

+ More



## **Recommended**



Today with Kieno Kammies

09:00 - 12:00

**IN THE HIGH COURT OF SOUTH AFRICA  
(WESTERN CAPE DIVISION, CAPE TOWN)**

**CASE NO:**

In the matter between:

<b>DUWAYNE ESAU</b>	First Applicant
<b>NEO MKWANE</b>	Second Applicant
<b>TAMI JACKSON</b>	Third Applicant
<b>LINDO KHUZWAYO</b>	Fourth Applicant
<b>MIKHAIL MANUEL</b>	Fifth Applicant
<b>RIAAN SALIE</b>	Sixth Applicant
<b>SCOTT ROBERTS</b>	Seventh Applicant
<b>MPIYAKHE DLAMINI</b>	Eighth Applicant

and

**THE MINISTER OF CO-OPERATIVE GOVERNANCE  
AND TRADITIONAL AFFAIRS**  
Respondent

First

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

Second Respondent

**THE MINISTER OF TRADE, INDUSTRY AND  
COMPETITION**

Third Respondent

**THE PRESIDENT OF THE REPUBLIC OF  
SOUTH AFRICA IN HIS CAPACITY AS THE  
CO-CHAIRPERSON OF THE NATIONAL  
CORONAVIRUS COMMAND COUNCIL**

Fourth Respondent

**THE MINISTER OF CO-OPERATIVE GOVERNANCE  
AND TRADITIONAL AFFAIRS IN HER CAPACITY  
AS THE CO-CHAIRPERSON OF THE NATIONAL  
CORONAVIRUS COMMAND COUNCIL**  
Respondent

Fifth

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THE NATIONAL CORONAVIRUS COMMAND COUNCIL

Sixth Respondent

THE GOVERNMENT OF THE REPUBLIC OF  
SOUTH AFRICA

Seventh Respondent

THE NATIONAL DISASTER MANAGEMENT  
CENTRE

Eighth Respondent

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**CONFIRMATORY AND SUPPORTING AFFIDAVIT OF MPIYAKHE DLAMINI**

---

I, the undersigned –

**MPIYAKHE DLAMINI**

do hereby make oath and state that:

1. I am an adult South African citizen, and the eighth applicant as cited in the founding affidavit ("FA") in this application. The facts contained in this affidavit are true and correct, and fall within my own personal knowledge unless the contrary is expressly stated, or appears from the context of what I have stated.

**Reason for this supporting affidavit**

2. I have read the FA to which this affidavit is attached. I align myself with its contents, and confirm same but I wish to do two things:

- 2.1. First, amplify certain factual averments contained in the FA; and
- 2.2. Second, complement the FA's factual matrix with additional facts.

3. I, like all other South Africans, have a family. I have a Mother, a fiancé, a three year old daughter, and three sisters, all of whom I love very much, and all of whom have been economically and emotionally devastated by the government's

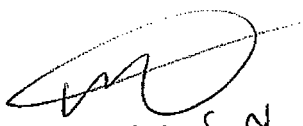
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decision to lock us down ("my family"). My father, and both of my grandparents have passed away. I have no brothers.


4. My family live in Newcastle in KwaZulu Natal ("KZN"). I usually live in Randburg, Johannesburg because I work there as a researcher. I hardly go home to KZN ("home") but – prior to the lockdown, my family often used to come to Johannesburg to visit me. These visits were especially important to me because I could see my daughter.
5. As the only employed member of my immediate family, I have to work hard to support my family. Amongst my family, I am relatively privileged. My family helped me achieve my career goals at great sacrifice to themselves, and I now help where I can, and I support them in return.

*The limitation of my willingness to share personal facts*

6. Whilst I appreciate that this Honourable Court requires facts sufficient to support the application, I do not wish to surgically itemize and dissect my personal and family life, and our respective financial situations in an affidavit because I do not wish to have my life splashed across the newspapers as I see happening so often nowadays.
7. Privacy is important to me. The integrity of my privacy is, for me, a core part of my dignity. I therefore do not wish to state more than is necessary, and I will try to balance my need for privacy with this Court's need for facts. My family have also asked me to respect their privacy in these papers to the greatest degree possible.

  
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8. In any event, I respectfully raise the issue that it should not be required of me to lay bare the full extent of my struggles or those of my family members in order to hold my own government to account – especially, when, in my view they have had the opportunity for weeks to avoid an application such as this through the mechanism of transparency.
9. The above notwithstanding, and although I am not willing to state my job title, my qualifications, or my job history, I think it is necessary to state that I earn approximately R25 000.00 per month, which amount has to cover my expenses, and my family's expenses. It is simply insufficient on a normal month.
10. Presently, and as a direct result of the lockdown, even my job is unstable. I have no certainty as to whether I will be employed as at the end of this month. If I lose my job, my family as I describe them below will be without any support from me. I am not able to assess prospects of re-employment under the current circumstances.
11. When the lockdown was announced, I could not go home because of the restrictions on movement. I was only able to return home during the travel "grace period" allowed by government during early May 2020. I had been forced by the government into isolation, alone, without my family (whom I describe below), and away from my daughter (whom had become increasingly stressed and confused). Perhaps it sounds somewhat obvious but my time of forced separation from my family in a time of crisis has made me painfully and acutely aware of the irrevocable interconnectedness between my sense of self, my sense of dignity, and my family. Without them, I felt like a rudderless ship.

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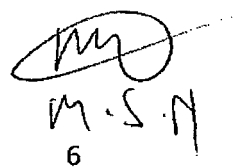
- 11.1. My Mother's name is Thembi Elizabeth Dhlamini. She is 52 years old, and unemployed;
- 11.2. My eldest sister's name is Zamantungwa Winlove Dhlamini. She is 32 years old, and unemployed;
- 11.3. My second sister's name is Nomathemba Thandi Dhlamini. She is 27 years old, and unemployed;
- 11.4. My third sister's name is Nomzamo Rebecca Dhlami. She is 25 years old, and unemployed.
- 11.5. Together, my sisters support five children, while my Mother supports one child for a total of six, all of whom are below the respective ages of eighteen years old.
- 11.6. At the forefront of my mind and heart; however, is my daughter, Nolili. She turned three years old on 30 April 2020. She wanted to know why I was not there for her birthday, and I couldn't explain it to her. I tried to tell her that it was because of a virus but I felt that my words rang hollow. Perhaps the conversation may have been easier for all involved had we had access to video conferencing, but we have all been limited to voice calls. It is the first time I have missed her birthday. Even though I am home with her now, I will never forget the day I missed her birthday, nor will I forget her voice on the phone call when she asked: "where are you, Dad?".

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12. Myself, my family, and all South Africans have been called upon to make enormous sacrifices to our fundamental rights. To me, those sacrifices are so great that they impact my dignity. No element of my emotionality, my psychology, nor my physicality has gone unaltered. It is the same for my family, and I would venture, for every citizen in South Africa. I cannot speak for others but speaking for myself, I have supported the government as much as possible in the lockdown, and I have obeyed the laws. I have done this not because of unbridled support for the government, nor because I feel like I owe loyalty to our leaders but I have done this for all South Africans as they have done it for me. It is with the citizens and residents of this country that my loyalties lie. We make sacrifices for one another. We protect one another. We help one another. Now that we are told that a virus threatens all of us, especially our most vulnerable, I believe we must put to one side our personal interests to whatever extent is lawful and justifiable. It is in this spirit that I have supported the lockdown and obeyed the law – even in its more bizarre forms.

13. However, my support for my fellow South African does not mean that I will sit by and allow the government to erode our constitutional values of transparency and accountability. If my government tells me that I must sacrifice my dignity, then it must tell me, at a minimum, who is making the decisions that require me to make the sacrifices that I am being called upon to make. And when my fellow citizens ask questions about how the Country is being governed, and when they ask for clarity about the Constitutionality of government actions, I stand with them in that call.

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14. This application, which is brought in the applicants' own interests, and in the public interest, has manifested as a direct result of government having failed to heed that call.

**The lack of transparency**

15. I initially watched the public engagements that are set out below concerning the National Coronavirus Command Council ("NCCC") with what I considered to be a healthy interest and curiosity. However, as a citizen, my interest has morphed into sincere concern.

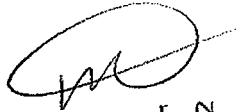
16. My concern, which is founded on two inter-related questions, is not academic.

Those questions are:

16.1. First, what, exactly, is the NCCC ("the first question"); and

16.2. Second, and more personally alarming to me, why have the respondents refused to give a public, factual, substantive, consistent and easily-accessible account of the NCCC's composition, authority, role, and functions ("the second question") notwithstanding evident public confusion on the matter?

17. The facts below form the basis for my concern.

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18. The first time I heard of the NCCC was in the President's address to the nation, a copy of which is annexed as "SA1", and dated 15 March 2020. The President stated initially ("the initial statement"):

*"Since the outbreak of this pandemic, our government's response has been led by an Inter-Ministerial Committee, chaired by the Minister of Health, Dr Zweli Mkhize. We congratulate them on the outstanding work they have done - together with their able support teams - to steer our country through this challenging and un-certain period.*

*As part of the intensification of this effort, we have decided to establish a National Command Council chaired by the President. This Command Council will include, amongst others, members of the Inter-Ministerial Committee and will meet three times a week, to coordinate all aspects of our extraordinary emergency response."*

19. Although this did not occur to me at the time, I have since noted three issues in the initial statement that were deserving of clarification, if not at the time of the initial statement, then certainly subsequent to it. These issues are:

- 19.1. First, the role of the NCCC as described was nebulous. A statement to the effect that the role of the NCCC was to "intensify" government's response to the disaster said nothing material, and did not indicate whether that role was confined to an advisory one, or whether it encompassed decision-making functions.
- 19.2. Second, the "establishment" of the NCCC was stated as a fact without any clarity as to how it was established, and upon which law, if any, it subsisted.

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19.2.1. The pertinence of this question self-evidently depends on the functions of the NCCC.

19.3. Third, there was no clear description of who, exactly, was to sit on the NCCC.

20. At the time, I had not flagged, and was therefore not concerned about this lack of clarity in the initial address. As a citizen, my attention was focused on the Covid-19 threat as I understood it then, and I trusted that government would have taken all necessary measures to ensure the lawfulness of its actions. I think it is also worth noting that, as a non-lawyer, the details of constitutional and governance particulars are somewhat inaccessible to me. I do not know if other citizens have similar experiences. Generally speaking, I trust parliament to represent me, and scrutinize the lawfulness of the government's actions. This may be another reason why no red flags appeared when I listened to the initial address by the President.

21. The following day, the tweet which I now annex as "**SA2**" appeared on the government's official news twitter account ("the tweet"). The tweet listed the following twitter handles, and associated Ministers, as being the Ministers on the NCCC:

21.1. @PresidencyZA: The Minister in the Presidency, the Honourable Jackson Mthembu.

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- 21.2. @HealthZA: The Minister of Health, the Honourable Zweli Mkhize.
- 21.3. @DIRCO\_ZA: The Minister of International relations and cooperation, The Honourable Naledi Pandor.
- 21.4. @SANDFCorpEvents: The Minister of Defence and Military Veterans, the Honourable Nosiviwe Mapisa-Nqakula.
- 21.5. @HigherEduGovZA: The Minister of Higher Education, Science and Technology, the Honourable Blade Ndzimande;
- 21.6. @dsigovza: I googled this portfolio, and found that this portfolio was amalgamated with the portfolio of Higher Education and Training. The relevant Minister is therefore the same as the portfolio dealt with in 22.5 above: the Honourable Blade Ndzimane.
- 21.7. @The\_DHS; The Minister of Human Settlements, the Honourable Minister Lindiwe Sisulu.
- 21.8. @DWS\_RS: I googled this portfolio, and found that this portfolio was amalgamated with the portfolio of Human Settlements. The relevant Minister is therefore the same as the Minister in the Portfolio dealt with in 21.7 above: the Honourable Minister Lindiwe Sisulu.

- 21.9. @NationalCoGTA: The Minister of Cooperative governance and traditional affairs, the Honourable Nkosazana Dlamini-Zuma.
- 21.10. @SAPoliceService: The Minister of Police, the Honourable Bheki Cele.
- 21.11. @Tourism\_gov\_za: The Minister of Tourism, the Honourable Nkhensani Kubayi-Ngubane.
- 21.12. @Dotransport: The Minister of Transport, the Honourable Fikile Mbalula.
- 21.13. @DOJCD\_ZA: The Minister of Justice and Correctional Services, the Honourable Ronand Lamola.
- 21.14. @thedpsa: The Minister of Public Service and Administration, the Honourable Senzo Mchunu.
- 21.15. @the\_dti: The Minister of Trade and Industry, the Honourable Ebrahim Patel.
- 21.16. @The\_DSD: The Minister of Social Development, the Honourable Lindiwe Sisulu.
- 21.17. @deptoflabour: The Minister of Employment and Labour, the Honourable Thulas Nxesi.

21.18. @environmentza: The Minister of Environment, Forestries, and Fisheries, the Honourable Barbara Creecy.

21.19. @ArtsCultureSA: The Minister of Sports, Arts and Culture, the Honourable Nathi Mthethwa.

22. On an initial glance of the tweet, it appeared that there were nineteen Ministers but upon closer scrutiny, and having had regard to the President's amalgamation of several portfolios, my understanding is that there are, in effect only seventeen Ministers on the NCCCC.

23. For context, the President's full cabinet consists of 28 Ministers. Some Ministers that appear to be excluded from the NCCC are the Ministers of:

- 23.1. Small business development;
- 23.2. State security;
- 23.3. Public enterprises;
- 23.4. Communications;
- 23.5. Home affairs;
- 23.6. Finance;
- 23.7. Mineral resource and energy;
- 23.8. Basic education;
- 23.9. Agriculture, land reform, and rural development; and
- 23.10. Women, youth and personal disabilities.

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24. I note that, to date, and in assessing whether or not to litigate this issue, I searched comprehensively for any official government source that could clarify how many Ministers sit on the NCCC. All that I have managed to find to date is this tweet.

25. On 24 March 2020, nine days after the state of disaster was declared, the President again addressed us, and stated that the NCCC had taken the decision to enforce a "lockdown". A copy of this second address is annexed as "SA3". The President's express words were:

*"We have learnt a great deal from the experiences of other countries.*

*Those countries that have acted swiftly and dramatically have been far more effective in controlling the spread of the disease.*

*As a consequence, the National Coronavirus Command Council has decided to enforce a nation-wide lockdown for 21 days with effect from midnight on Thursday 26 March. This is a decisive measure to save millions of South Africans from infection and save the lives of hundreds of thousands of people."*

26. On 9 April 2020, sixteen days after the announcement of the establishment of the NCCC, the President again addressed the nation to inform us that the decision had been made to extend the lockdown. This second address is annexed as "SA4". In this address we were again told that the NCCC had taken a decision. This time that decision was to extend the lockdown. The President's express words were:

*I have to ask you to make even greater sacrifices so that our country may survive this crisis and so that tens of thousands of lives may be saved.*

*After careful consideration of the available evidence, the National Coronavirus Command Council has decided to extend the nation-wide lockdown by a further two weeks beyond the initial 21 days.*


*This means that most of the existing lockdown measures will remain in force until the end of April.*

27. The first direct questions about the NCCC appeared on the same day that the lockdown regulations were extended, on 16 April 2020. These questions found a voice in an article in the Business Day ("the article") which I read, and which I annex as "SA5". My understanding of the article was that it raised the following questions ("the questions"):

- 27.1. What was the NCCC's role?
- 27.2. If the NCCC was taking decisions, on what lawful basis was it doing so?
- 27.3. Of whom, precisely, was the NCCC comprised?

28. This article appeared 31 days after we first heard of the "establishment" of the NCCC.

29. On 20 April 2020, four days after the questions had been publicly raised, the Minister of Cooperative Governance and traditional Affairs, Minister Dlamini-Zuma ("the Minister") made a presentation to the President, and the Cabinet regarding, amongst other issues, Covid-19, and the nation's preparedness to migrate to a "risk-adjusted" lockdown that would be based on an alert-level

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system. ("the presentation"). This presentation, which is annexed to the FA as "FA3", provides that:

29.1. "Levels of alert for each province and district will be determined by the National Command Council at each meeting, upon a recommendation from the Minister of Health, the Minister of Trade, Industry and Competition and the Minister of Cooperative Governance and Traditional Affairs"; and

29.2. Proceeds to again clarify the position in a diagram on page 21. The diagram states that the "National Command Council determines level of each alert for each province and district".

30. On or around 23 April, it appears that a policy document was developed and titled **"Risk Adjusted Strategy for Economic Activity"**. This document appears on the legal portal, My Lexis Nexis<sup>1</sup>, where it displays an upload date of 23 April 2020. The document is in itself undated. I attach this document as **"SA6"**. I highlight the following quotations from the presentation that concern the powers of the NCCC:

30.1. "Restrictions on economic activity need to be adapted to epidemiological trends, and may need to be relaxed and tightened in different periods. An alert system should be created with clearly defined levels of restriction that can be imposed by the National Command Council as necessary." (page 3)

<sup>1</sup> [https://www.lexisnexis.co.za/\\_data/assets/pdf\\_file/0006/763881/Risk-Adjusted-Strategy-for-Economic-Activity-23-April-2020.pdf](https://www.lexisnexis.co.za/_data/assets/pdf_file/0006/763881/Risk-Adjusted-Strategy-for-Economic-Activity-23-April-2020.pdf).




- 30.2. "Levels of alert (1-5) will be determined by the National Command Council at each meeting, upon a recommendation from the Minister of Health and the Minister of Trade and Industry. A single national alert level may be determined, or an alert level may be determined for each province." (page 19)
- 30.3. "A decision about whether to institute a lower alert level should be made by the National Command Council based on evidence gathered during this week about the spread of the virus." (page 26)
31. Self-evidently, this presentation is replete with references to the decision-making powers of the NCCC.
32. On 23 April 2020, the President once again addressed the nation, and echoed the position adopted in the presentations above regarding the NCCC's determination of "alert levels". The President's express words appear from a copy of the speech annexed as "SA7", and are quoted below:

*"The National Coronavirus Command Council will determine the alert level based on an assessment of the infection rate and the capacity of our health system to provide care to those who need it.*

*We have undertaken a detailed exercise to classify the different parts of the economy according to the risk of transmission in that sector, the expected impact of the lockdown, the economic contribution of the sector and the effect on livelihoods.*

*The relevant Ministers will provide a detailed briefing on the classification of industries and how each is affected at each level.*

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*We will give all industry bodies an opportunity to consider these details and, should they wish, to make submissions before new regulations are gazetted.*

*The National Coronavirus Command Council met earlier today and determined that the national coronavirus alert level will be lowered from level 5 to level 4 with effect from Friday the 1st of May."*

33. So, at this juncture, thirty-nine days after the "establishment" of the NCCC, there was one consistent piece of information about the NCCC, which information was sourced in both the President's speeches, and in official government policy presentations: **That information was clear to me: the NCCC was taking decisions.**

34. I then saw a letter, dated 27 April 2020, addressed to the President and the Minister, which raised similar questions to those raised in the article. This letter, which is annexed as "**SA8**", came forty-two days after we had first been told about the "establishment" of the NCCC.

35. By 3 May 2020, questions about the NCCC had broken news nationally. As I recall, these questions were, amongst others, on the front page of the Sunday Times, and the Sunday Independent. Over the next two to three days, the questions were also being canvassed on television and radio stations nationwide, on platforms such as eNCA, and Talk Radio 702. I did not document the details of these broadcast events. I do not annex clips of the press coverage for fear of over-burdening the papers. I will, however, make copies of same available to the Court on the day of the hearing should it be called for.

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36. The letter and the subsequent media and public spotlight on the issue seemed to me to have triggered a significant shift in the government's communication around the NCCC. The government's versions about the NCCC, as I read them, only confused me more. I found no clarity in any of government's responses.

37. The first indication of this shift was the government's response to the letter, which came on 4 May 2020, went viral, and which I annex as "**SA9**" ("the response"). On my reading, the response:

37.1. Did not expressly deny that the NCCC had or continued to take decisions.

37.2. The nub of the explanation put forward in the response was that the NCCC was a "*coordinating body just like other cabinet structures*". That did not answer the question about what, exactly, the NCCC was "established" to do, although it appeared to allude to an argument that the NCCC was not a decision-making structure. That was unhelpful, especially in light of what was at that point forty-nine days of Presidential and government communications to opposite effect.

37.3. Gave no clarity about the NCCC in general, avoiding even simple factual questions such which Ministers comprise the NCCC. As I indicated earlier, my research on the NCCC has indicated that it comprises seventeen Ministers, not nineteen. It is extraordinary that the government appeared not to be alert to this discrepancy.

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38. Personally, this was the first time I had seen an explanation about the NCCC being a "*coordinating body*". However, what struck me most when I read the response was what appeared to be obfuscatory tactics, failure to answer specific questions posed, and a failure to explain contradictory versions provided to us to date about the NCCC.

39. As a citizen, who is not a lawyer, the whole matter seemed to me to be very simple:

39.1. The government had been asked simple questions about the NCCC.

39.2. Those questions had attracted national and international media attention.

39.3. The government should have answered those questions, with clarity and transparency, which would have included addressing what appeared to be contradictory and mutually destructive versions about the powers and functions of the NCCC.

40. I could not understand why the government was not answering the questions raised. It was making me angry. It was not – and is still not – clear to me how I can be expected to stomach a decimation of my fundamental rights, and those of my family when I do not know who is asking these immense sacrifices of us.

41. On the same date, the President wrote a letter to the nation as part of his *"from the desk of the President"* series. This letter is annexed as **"SA10"**. The President's exact words appear as follows:

*"There has been much public comment on government's decision to extend the prohibition on the sale of tobacco products into level 4. A decision like this is bound to be controversial but it is wrong to suggest Ministers or a President doing and saying whatever they want on this matter."*

*On 23 April, I announced that cigarette sales would be permitted during level 4. This was based on the view of the [NCCC], and which was contained in the draft framework that was published for consultation."*

*After careful consideration and discussion, the NCCC reconsidered its position on tobacco."*

*As a result, the regulations ratified by Cabinet and announced by Minister Nkosazana Dlamini-Zuma on 29 April 2020 extended the prohibition."*

42. This letter confused me further.
43. First, the wording of the paragraphs as quoted is vague. The way that I read it raised concerns of an intentional effort to circumvent the broad questions about the powers and functions of the NCCC, and the more specific question of who, exactly, took the decisions pertaining to the ban on tobacco. Only the President can now clarify this.
44. The letter is also confusing for a second reason: The last paragraph of the letter does not make sense for reasons raised in a further correspondence sent to the Presidency, and dated 8 May 2020, and which I annex as **"SA11"**. This further correspondence was a reply to the response. In dealing with the last paragraph, the reply points out that:

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*"Regulations do not need to be ratified by the Cabinet. That is not how the DMA works. The DMA empowers Minister Dlamini Zuma to make regulations in consultation with the relevant cabinet Ministers. There is no ratification requirement.*

*To the extent that the President may have meant to suggest that the NCCC's decision to maintain the ban on tobacco had been ratified by cabinet, that likewise does not appear to make sense for the following reasons:*

*If the NCCC is a properly established, constituted and authorized body, it would not need to seek ratification of its decisions.*

*To the extent that the NCCC is not properly established, constituted and authorized, it is our opinion that any "decision" it has taken or will take is unlawful, and it is doubtful that Cabinet is empowered to ratify an unlawful decision by an unlawful body."*

45. I am not a lawyer, and I cannot deal with the accuracy of the quoted portion of the reply but I can attest to the fact that, as a citizen, it seemed to me at the time that there were significant questions that needed to be answered by the government, and which were not being answered. Instead of answers, and clarification, it seemed to me that the information coming from government was becoming more contradictory by the day.

46. I hoped that the President would address these burning and unanswered questions in his address to the nation on 13 May 2020. To my dismay, he said nothing of the NCCC, nor of the specific constitutional questions that had been asked about the NCCC. It seems to me that the more citizens have knocked on the Presidency's door asking for clear answers, the mightier the weight of the door has become.

  
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***Urgency timeline***

47. I was following the exchange between the presidency and the citizens who had written the letters annexed above. I was not taking any action because the letters gave me the impression that others were dealing with the issue, and I did not want to duplicate matters or add to the dialogue at that stage.

48. When, on Friday 16 May 2020, I heard that the correspondence had ceased between the presidency and the citizens, the applicants and I started talking amongst ourselves. By that evening, we had decided that we wanted to take the NCCC matter further legally.

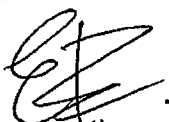
49. The matter of my signature of this affidavit is not without complexities. At the time of signature, I was at home in an informal settlement, and, due to having to make special transport arrangements, it was not logistically possible to perfectly coordinate my signature of this affidavit with the signature of the FA. At the time of having signed this affidavit, I had read the final draft of the FA and I can confirm its contents. To the extent that the final FA as formally deposed to differs in substance from the final draft FA which I read, and to the extent that I sign this affidavit prior to the signature of that FA, I confirm that I will depose to another affidavit dealing with discrepancies, if any. If there are no discrepancies, there will be no need to depose to further affidavits.

**WHEREFORE** I pray for an order in terms of the notice of motion to which this affidavit is attached.

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22

**Deponent: MPIYAKHE DLAMINI**

The Deponent has acknowledged that the Deponent knows and understands the contents of this affidavit, which was signed and sworn to or solemnly affirmed before me at on 20 May 2020 and at Newcastle the regulations contained in Government Notice No. R1258 of 21 July 1972, as amended, and Government Notice No. R1648 of 19 August 1977, as amended, having been complied with.



Commissioner of oaths


Full names:

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