

**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA**

**CASE NO: 1357 /2021**

IN THE MATTER BETWEEN:

**HOLA BON RENAISSANCE FOUNDATION**

**1<sup>ST</sup> APPLICANT**

**AND**

**PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA**

**1<sup>ST</sup> RESPONDENT**

**MINISTER COOPERATIVE GOVERNANCE AND**

**TRADITIONAL AFFAIRS**

**2<sup>ND</sup> RESPONDENT**

**MINISTER OF HEALTH**

**3<sup>RD</sup> RESPONDENT**

**MINISTER OF FINANCE**

**4<sup>H</sup> RESPONDENT**

**SOUTH AFRICAN MEDICAL RESEARCH COUNCIL**

**5<sup>TH</sup> RESPONDENT**

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***AFFIDAVIT***

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I, the undersigned,

Bontshitswe Preddy Mothopeng Msieleng

Do hereby make oath and state –

1. I am a chairperson of Hola Bon Renaissance Foundation, the African Empowerment and defender of the human race, herein shall be referred to as HBRF. I am duly authorized by the board to Institute this application and to depose to this affidavit on behalf.
2. The facts set out in this affidavit are within my personal knowledge and are to the best of my knowledge, true and correct, unless appears otherwise from the context.
3. The detailed objectives of the applicant are set out in the constitution which is attached to my affidavit in the application as **(Annexure 1 Constitution).....**

## **A) PARTIES**

### **A1) HBRF**

4. Since its inception Hola Bon Renaissance (HBR) Foundation “The African Empowerment” in 2004, it has been a Non-Profit Organization and also non Political aligned/affiliated organization, which aims to address and encourage the communities’ transformation by creating a community that is skilled, self-sustained with a central economic opportunity.
5. HBR Foundation is a voluntary association which is essentially defined by its constitution. Voluntary associations derive their character from their constitutions. (Wilken v Brebner & others 1935 AD 175 at 90). The constitution of the voluntary association will as a rule be construed benevolently and not narrow or restrictively the object is to empower and not to dis-empower the voluntary association from functioning efficiently and effectively (Deutsche Evangelische Kirche zu Pretoria v Hoepner 1911 TDP 218 at 232)

## **A2) PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA**

6. **The 1<sup>st</sup> Respondent** – is the Head of State and head of the national executive; with powers and duties as enshrined in the constitution chapter 5 (The first responded shall be referred to as the State and/or the President for the purpose of this application )

## **A3) PRESIDENT CABINET has twenty eight (28) Ministers including**

7. 2<sup>nd</sup> to the fourth respondents on this application who are Ministers are :

**7.1 COOPERATIVE GOVERNANCE TRADITIONAL AFFAIRS (COGTA) – the 2<sup>nd</sup> Respondent** :Ministry established and derived its mandate from supreme law of the Republic, the constitution of the Republic of South African, and Ministered by Dr Nkosazana Dlamini Zuma as a member of cabinet and is appointed and report directly to the President ,

**7.2 MINISTER OF HEALTH – the 3<sup>rd</sup> Respondent** :Ministry established and derived its mandate from supreme law of the Republic, the constitution of the Republic of South African, and Ministered by Dr Zweli Mkhize as a member of cabinet and is appointed and report directly to the President

**7.3 MINISTER OF FINANCE - the 4<sup>th</sup> Respondent** :Ministry established and derived its mandate from supreme law of the Republic, the constitution of the Republic of South African, and Ministered by Mr Tito Mboweni as a member of cabinet and is appointed and report directly to the President

#### **A4) SOUTH AFRICAN MEDICAL RESEARCH COUNCIL**

**8. the 5<sup>th</sup> Respondent – the mandate of the South African Medical Research Council in Terms of MRC Act 58,1991(as amended)** is to improve the lives of South Africans, this needs to be realized through research, development and technology transfer

#### **B) NATIONAL DISASTER MANAGEMENT**

9. The Department of Cooperative Governance is responsible for disaster management in South Africa. The Disaster Management Act 57, 2002 was promulgated in 2003. The National Disaster Management Centre with functional disaster-management centres and advisory forums were established in eight provinces. The National Disaster-Management Advisory Forum was recognized by the United Nations (UN) as the national platform for reducing disaster risk.
10. South Africa has also made significant progress in respect of the implementation of the Hyogo Framework for Action – a global blueprint which aims to substantially reduce disaster losses by 2015.
11. Through the NDMC, the Department of Cooperative Governance registered unit standards for levels three to seven with the South African Qualifications Authority for a national certificate in disaster risk management. The department also developed regulations for recruiting and using disaster management volunteers

#### **B1a) Section 9 - National Disaster Management Centre**

12. The objective of the National Centre is to promote an integrated and co-ordinated system of disaster management, with special emphasis on prevention and mitigating by national, provincial and municipal organs of state, statutory functionaries. Other role-players involved in disaster management and communities.

**B1b) Section 15 - General powers and duties of National Centre**

13. The National Centre must, subject to other provisions of this Act, do all that is necessary to achieve its objective as set out in section 9, and. for this purpose-
- (a) must specialise in issues concerning disasters and disaster management;
  - (b) must monitor whether organs of state and statutory functionaries comply with this Act and the national disaster management framework and must monitor progress with post-disaster recovery and rehabilitation;
  - (c) must act as a repository of. and conduit for, information concerning disasters, impending disasters and disaster management;
  - (d) may act as an advisory and consultative body on issues concerning disasters and disaster management 1.0-
    - (i) organs of state and statutory functionaries;
    - (ii) the private sector and non-governmental organisations;
    - (iii) communities and individuals; and
    - (iv) other governments and institutions in southern Africa:
  - (e) must make recommendations regarding the funding of disaster management

and initiate and facilitate efforts to make such funding available;

(f), must make recommendations to any relevant organ of state or statutory  
functionary-

- (i) on draft legislation affecting this Act, the national disaster management
- (ii) on the alignment of national, provincial or municipal legislation with this
- (iii) in the event of a national disaster, on whether a national state of disaster  
should be declared in terms of Section 27

#### **B1c) Section 23 - Classification and recording of disasters**

14. When a disastrous event occurs or threatens to occur. the National Centre must, for the purpose of the proper application of this Act, determine whether the event should be regarded as a disaster in terms of this Act, and if so. the National Centre must immediately-

- (a) assess the magnitude and severity or potential magnitude and severity of the disaster
- (b) classify the disaster as a local, provincial or national disaster in accordance with subsection 4, 5 and 6
- (c) record the prescribed particulars concerning the disaster in the prescribed register

15. When assessing the magnitude and severity or potential magnitude and severity of Disaster the National Centre -

- (a) Must consider any information and recommendations concerning the disaster

received from a provincial or municipal disaster management center in terms of section 35 or 49

(b) may enlist the assistance of an independent assessor to evaluate the disaster on site.

16. The National Centre may reclassify a disaster classified in terms of subsection (l)(b) as a local, provincial or national disaster at any time after consultation with the relevant provincial or municipal disaster management centres, if the magnitude and severity or potential magnitude and severity of the disaster is greater or lesser than the initial assessment.

### **C) SUMMARY HISTORY OF THE CONSTITUTION OF THE REPUBLIC OF SA**

(Extracted from the Constitutional Court website:

17. The notion of a bill of rights for South Africa can be traced back to an ANC document in the early 1920s. The Freedom Charter of 1955 carried the idea forward. In the following decades the idea of an entrenched bill of rights received support from liberal academics and judges. The question of who would enforce it, was, however, left open. This issue was debated at a conference organised by the Constitutional
18. Committee of the ANC in 1991. What emerged was a commitment to a Constitutional Court in a hybrid continental form, such as that of Germany: able to hear cases by direct access, as well as by referral and on appeal. South Africa's first non-racial election takes place on 27 April. The PAC also agrees to participate at the last minute.
19. In 1994, the judiciary was overwhelmingly white (and male) and therefore limited in its legitimacy and its capacity to draw on the sense of justice of all

communities and both sexes. It was agreed that a new court, more representative of South Africa's diverse population, should be established to protect the Constitution and the fundamental human rights it entrenches.

20. South Africa did in fact have a constitution before the interim Constitution of 1994 and the final Constitution of 1996 (see history of the Constitution). **But that "tricameral" constitution - which created separate parliaments for whites, coloureds and Indians but denied blacks a say in government -** was not supreme. It was subject to the whims of parliament - in this case, an unrepresentative one
21. This election produces 400 leaders in the National Assembly and 90 in the Senate. In terms of Section 68(1) of the interim Constitution, a joint sitting of these bodies forms the Constitutional Assembly, which is established on 9 May. Nelson Mandela is inaugurated as democratic South Africa's first president on 10 May.
22. The Constitutional Assembly has to work within particular parameters. These are the requirement of a two-thirds majority for the adoption of the text, compliance with 34 constitutional principles agreed to in the interim Constitution, and the adoption of a new constitution within two years.
23. In June the constitutional committee is established. This becomes the premier multiparty negotiating body in the Constitutional Assembly. It was led by Ramaphosa and Meyer. In September six theme committees are established to receive and collate the views of all parties on the substance of the Constitution.
24. In an advertising campaign is launched to elicit public views on what should be in the Constitution. On 19 September the first consolidated draft of the new Constitution is produced. A month later the first refined working draft is published. But by there are 68 outstanding issues that need to be settled.



25. Concern mounts that the Constitutional Assembly might not be able to finish its work by 8 May 1996 - the deadline. But at the beginning of April, the Arniston Multilateral is held and the parties resolve their differences. **Later in the month, the channel between Ramaphosa and Meyer is reinstated to find solutions.**
26. **By 22 April several sticking points remain: the death penalty, the lockout clause, the property clause, the appointment of judges and the attorney-general, language, local government, the question of proportional representation and the bar against members of parliament crossing the floor.** On 23 April the draft is tabled without key outstanding issues being resolved. Two days later, negotiators table 298 amendments - but most are of a technical rather than substantial nature.
27. On 8 May, after a two-year process, the final text is adopted and on 1 July the Constitutional Court's certification hearing begins. But on 6 September the Court finds that the text does not comply with the constitutional principles and refuses to certify it.
28. The text is amended; in October it is adopted by the Constitutional Assembly and sent to the Constitutional Court again. On 18 November the Court's second hearing begins and on 4 December it certifies the final text. Nelson Mandela signs the Constitution into law in Sharpeville, in Vereeniging, on 10 December, which is international Human Rights Day.
29. Constitutions protect democracy by separating state power into three arms. The legislature (parliament, the provincial legislatures and local councils) makes the laws and monitors the executive; the executive (the president, deputy president and ministers) makes policy, proposes laws and implements laws passed by the legislature; and the judiciary tries cases and administers justice
30. The supreme status of the Constitution is set out early in the text. Section 2 of Chapter 1 - which deals with founding provisions - is a crucial one. It is entitled

"Supremacy of Constitution" and says: "This Constitution is the supreme law of the Republic; law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled."

31. This means any law that violates the Constitution, or any conduct that conflicts with it, can be challenged and struck down by the courts.

## D) INTRODUCTION

32. On the 13 February 2020 the President delivered State of Nation Address, and he said I Quote:

33. *“ In 1994, we chose the path of negotiation, compromise and peaceful settlement, instead of hatred and revenge.*

34. *Our history and contemporary experience has taught us that if we are to achieve what we set out to do, we must focus on what unites instead of divides.*

35. *The greatest strength of our constitutional democracy, and the reason it has endured, is because we have been able to forge broad-based coalitions and social compacts, be they with business, labour, special interest groups or wider civil society.*

36. *Achieving consensus and building social compacts is a not demonstration of weakness. It is the very essence of who we are.*

37. *That is why over the past two years we have been hard at work seeking to forge and build consensus around our economic recovery plan.*

38. *In his inaugural address on the 10th of May 1994, President Nelson Mandela said:*

39. *“Today we enter into a covenant that we shall build a society in which all South Africans, both black and white, will be able to walk tall, without fear in their hearts, assured of their inalienable right to human dignity.*

40. *This government remains irrevocably committed to upholding that covenant.” Unquote (See Annexure 2 SONA)*

41. On the 17 February 2020, covered by BBC on Coronavirus: A Cameroon student on how he recovered, (see the annexure 3 – reports on Cameroon student)

42. On the 26 February 2020, the **fourth respondent** tabled his budget Speech and he said quote “ A sound macroeconomic framework always lays the foundation for growth.
43. *Budgets are complex, but the numbers are simple. The numbers show that we have work to do.*
44. *For 2020/21, revenue is projected to be R1.58 trillion, or 29.2 per cent of GDP. Expenditure is projected at R1.95 trillion, or 36 per cent of GDP.*
45. *This means a consolidated budget deficit of R370.5 billion, or 6.8 per cent of GDP in 2020/21.*
46. *2020 Budget Speech Gross national debt is projected to be R3.56 trillion, or 65.6 per cent of GDP by the end of 2020/21” unquote (See Annexure4 - Budget Speech 2020)*
47. On the 5 March 2020, the first case of Covid19 is reported in South Africa
48. On the 8<sup>th</sup> March 2020, covered by News24, Coronavirus: All the fuss is irritating, says doctor who diagnosed first SA case of Covid19 in the country, Dr Robyn Reed (See annexure 5 – DR diagnosed 1<sup>st</sup> victim)
49. On the 11 March 2020, Cabinet met and deliberated on the Covid19 and following matters: (See Annexure 6 – Cabinet Discussion on Covid)
- a) Issues in the environment
- b) The economy of the country is on technical recession, with this lock down the country will be on permanent recession for 21 days resulting to increased poverty and health issues in the country ( To list a few)
50. On the 15 March 2020 in the government Gazatte Vol 657 No: 43096 (see Annexure 7 –Classification ), the Head of National Disaster management Dr Mmaphaka Tau stated that after assessing the potential magnitude and

severity of the COVID -19 pandemic in the country, hereby give notice that on 15 March 2020, in terms of section 23(1)(b) of the Disaster Management Act, 2002 (Act No. 57 of 2002) (the Act), classified the COVID -19 pandemic as a national disaster.

51. On the 15 March 2020 the second respondent declared a national state of disaster and she state “ Considering the magnitude and severity of the COVID -19 outbreak which has been declared a global pandemic by the World Health Organization (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 in the government Gazatte Vol 657 No: 43096 **(see Annexure 7 – Consider reasons to Declare Disaster)**
52. On the 17 March 2020 the Minister declares on government Gazatte No: 43107 regulations issued in terms of section 27(2) 0 of the Disaster Management Act, 2002 **(see annexure 8 – Declaration )**
53. On the 19 March 2020, there was a statement of the Inter Ministers Committee on the Gazetted Regulations on the state of disaster Hon. Dr Nkosazana Dlamini Zuma Minister of Cooperative Governance and Traditional Affairs **(See Annexure 9 –Minister COGTA statement )**
54. The State declared the national disaster - On the 23 March 2020, the first respondent: Escalation of measures to combat Coronavirus COVID-19 pandemic and called for a lock down **(See annexure 10 President on Covid escalation)**
55. On the 24 March 2020, Minister of Higher Education, Science and Innovation update statement following first respondent addressing the nation on the government response to COVID19, Minister Blade Nzimande stated Qoute: “Seventy Six (76) students are at the Ranch, having been evacuated from

Wuhan. They've all been tested and found to be negative. They are doing their final tests this weekend, where after they will be reunited with their families" unquote. **(see Annexure11 – Minister DHET on Students)**

56. On the 25 March 2020, the third respondent confirms total of 554 cases of Coronavirus COVID-19 and his report there were still on death due to this disease and therefore that did not warrant any serious harm to the South Africans by Covid-19 **(See Annexure 12 Minister Health Lessons )**
57. On the 26 March 2020 HBRF approach the court to interdict the first respondent in announcing the lockdown **( see annexure 13 – HBR Application to interdict)**
58. On the 30 March 202 the Constitutional Court dismissed the application on grounds that it had no prospect of success **(see annexure 14 Con Court Dismissal HBR)**
59. There after the respondents proceeded with unconstitutional declarations of regulations in a form of disaster management regulation and lock down
60. The regulations violated the rights of South Africans, in terms all forms that includes work, education, Jobs, Security, health and movement, religion etc...
61. On 21 April 2020 the first respondent wrote a letter where he stated the outbreak of the Covid 19 continue to increase with reported cases across the Republic of South Africa. As a result, in terms of the same sections referred to in the previous letter to employ an additional 73180 members for the SANDF consisting of the regular force, reserve force and auxiliary force. He also gave

the expected expenditure which was around R4,590,393,940.00 (four billion, five hundred ninety million, three hundred ninety three thousand rand, nine hundred and forty rand)

62. On the 27 April 2020, 217 Cuban medical team arrives in SA to bolster fight against virus and third respondent asks China for doctors, since Cuba had send its medical staff to South Africa
63. In Malawi, The Court ruled to declare lock down unconstitutional in the mater Esther Kathumba & Others v. The President & Others - 29 April 2020 - Perfected **(See Annexure 59 )**
64. On the 13 May 2020 an article on the moneyweb stated that the economic transformation is on a perpetual go slow and coronavirus may bring it to a screening halt, warns B-BBEE Commissioner **(See annexure 15 Statement Of BBEE Commision )**.
65. On the 15 May the State is taken to court in a matter between Khoza and others vs Defense Minister and other Case No:21512/2020 The judgment of Judge Frabicius was in favor of the Khoza and others since the South Africans and other nations in the country were experienced abuse and harassment from the State during Lockdown **(see the annexure 16 Judgment of Frabicius)**
66. On 28 April 2020, the State is condemned by SA Human Rights Commission for its conduct since religions in the country were experienced abuse and harassment from the State during lockdown **(see the annexure 17 – SAHRC statement)**
67. The court should further note that first respondent in numerous speeches where he acknowledges the inequality that existent in the Country and that has been continuously exposed by COVID19 epidemic. The Statistics of South Africa has released a report indicating the inequalities that are experienced in South Africa, and how the poor are suffering **(See Annexure 91)**

68. The first respondent on the 13 May 2020 announced “ As of today, the R200 billion Covid-19 Loan Guarantee Scheme, which is guaranteed by the government, has begun to process applications from small and medium-sized businesses. At the beginning of this month, government paid out an additional R5 billion to social grant recipients to assist poor households at a time when other sources of income have been disrupted. We have opened applications for the special Covid-19 grant of R350 a month for unemployed South Africans who receive no other form of assistance from government. By the close of business today, some 3 million South Africans had already applied for this assistance”.**(see the attached Annexure 87)**
69. On the 30 May 2020 the State is taken to court in a matter between Agriforum vs Minister of Tourism and others Case No: 21399/2020, the judgment of Judge Kollapen favored the State to save lives and address the social relief the country needed **(see the annexure 18 –Judgement of Judge Kollapen )**
70. On the 11 June 2020, the first respondent announces council to reform SA's state-owned enterprises and appoint **(see the annexure 19 – SOE Council)**, On the 17 June 2020, HBRF writes to the Minister of Social Development request for SASSA and the Department to Settle unpaid amounts to Unemployed “Covid19 SRD” **(see the annexure 20 –letter to Minister Social Development)**
71. On the 18 June 2020, HBRF writes to the Minister of Employment and labour Requesting For UIF and the Department to settle unpaid amounts to workers “Covid19 Ters” **(see the annexure 21 letter to Minister Labour)**

72. On the 19 June 2020, HBRF writes to the Minister of Small Business Development Requesting For SEFA/SEDA and the Department to settle unpaid amounts to workers “Covid19 SMME” **(see the annexure 22 – letter to Minister -SBD)**
73. On the 19 June 2020, HBRF writes to the Minister of Arts, Sports and Culture Requesting the Department to settle unpaid amounts to workers “Covid19 DSAC” **(see the annexure 23 – letter to Minister Arts)**
74. On the 22 June 2020, HBRF writes to the Minister Justice and Correctional services, requesting for the Department to clear criminal records and refund victims subjected to the unconstitutional Lockdown” **(see the annexure 24- letter to Minister Justice)**
75. On the 22 June 2020, the African Court Responses to the HBRF Application to review the 30 march 2020 Constitutional Court judgment, and clarity state that the is no declaration for individuals and NGO to submit application to the court **(see Annexure 25 African Court )**
76. On the 26 June 2020 the second respondent is taken to Court in a matter between Liberty Fighter Network and others vs Minister of Cooperative Governance and Traditional Affairs
77. On the 26 June 2020 HBRF joined the application of Liberty Fighter Network Case No 21542/2020 as an Amicus curiae
78. On the 28 June 2020 from media release covered by CGTN, WHO warns 'Influenza threat is persistent and it's real' **(See the attached 26 Who reports on Influenza )**
79. During the Lockdown , the 1<sup>st</sup> respondent addressed a meeting of cabinet on a virtual platform , and said that “ We aim to find ways of briefing it up even after lockdown has passed, and even though some have been saying that lockdown will end on 16 April 2020, I have never mentioned which year, and then he laughs”. See the **(Attached Link no1 : refer to index of links )**



80. On the 1 July 2020, New flu strain found in China, WHO warns 'the worst is yet to come' **(See the attached 27 Reports on new flue )**
81. On the 1<sup>st</sup> July 2020 HBRF Request for lifestyle Audit of World Health Organisation (WHO) and that WHO must withdrawal its involvement in sustaining lockdowns **(See Annexure 67 A – HBRF Letter to WHO)** and the Response letter from Who which only refers HBRF to their website **(See annexure 67 B)**
82. On the 2 July 2020 the judgment of the above matter and the Judgment of Judge Davis favored applicants, and declared the lockdown unconstitutional **(See the annexure 29 Judgement of Judge Davis)**
83. On the 10 July 2020 the State lodge a for Leave to Appeal application **(see the annexure30 State Leave to Appeal)**
84. On the 22 July 2020, HBRF writes to the fourth respondent requesting restructuring and prioritizing of one billion dollar loan received from New Development Bank **(see the annexure 31 – Letter to Minister Finance)** to date no response .
85. On 22 July 2020 the HBR Foundation writes to Minister Stella Ndabeni to Pay faster the R350 of the unemployed, Request for the Department And Postbank to Implement 4ir & Digitize transferring of funds to the unemployed "Covid19 Srd" **(See The Attached 32 Letter to Minister of Communication)** to date no Response
86. On the 31 July 2020, the the first respondent addresses Inaugural National Covid-19 Conference **(see annexure 33 -Covid-19 Conference)**

87. The HBRF acts in the interests of those without resources and means to litigate in their own names, and are people who are typically marginalized and disproportional affected by unconstitutional lockdown regulation
88. On the 3 August 2020 HBR Approached the Constitutional court in an urgent application and seeking direct access, CCT case no:152/2020 ,and on the 12 the constitutional court dismissed refusing direct access **(See Annexure 54 – Court Order CT152/2020)** ,
89. HBR Approached the High Court in Pretoria in case no 38800/2020, the matter was strike of the roll, due non adherence with court rules, which was later withdrawn
90. On the 12 September 2020 HBRF approached the high court in due to typo error on the notice of motion, which confused the court date, the matter was strike of the roll
100. On 17 September 2020, HBRF application on urgency at the Johannesburg High Court, and the urgency was denied on the grounds that our Court papers exceeded the maximum papers required for Urgency and that they qualify for a Special motion.
101. During the Month of September 2020, Testing and vaccination of Covid19 at Bara Clinic by the UK scientists , and HBRF raise the matter with President of the Republic and as well as with the Premiere Makhura on their Social Media **(See Annexure 96 – President Social Media )**
102. World health organization refuses claims that Africa is the testing grounds for Vaccine by the Director General **(See the attached link No 30: refer to index of links )**
103. WHO top team visited Serbia, the President announces that children will be vaccinated and there were a riot and the people asked WHO team to leave.

104. On the 13<sup>rd</sup> October 2020, the Minister of Health request that every death suspected to be covid19 , should be subjected to post mortem **(See the Annexure 75 Minister of Health on Post mortem )**
105. During the Cause of January prior to lock down and during lock down , the 1<sup>st</sup> respondent has been strengthening his corrupt relationship with Mr Bill Gates of United State of America, With discussion on the lockdown and on how to roll out Covid19 vaccine and many more on South Africa people **(See the attached link No 3: refer to index of links )**
106. ON the 4 August 2020 The the third respondent confirms that children Sickness are deadly than COVID 19 and announces that Infection rates are its lowest in the country **(see attached link No 4: refer to index of links )**
107. On the 5<sup>th</sup> August 2020 A top delegation form World health Organization arrives in South Africa, WHO will be deploying 43 experts from various fields to support the COVID-19 outbreak response management. The first 17 health expects will arrive today and include key expertise in epidemiology, surveillance, case management, infection, prevention and control, procurement, as well as community mobilization and health education
108. On the 28 October A group of Scientiest in South Africa's says COVID lockdown may have created 'herd immunity' see the **(Annexure 71, 72 and 73) and** On 24 December 2020, UK bans South African, due to reported on allegation of new Strains of Covid19 from South Africa **(see Annexure 77)**
109. On the 28 December 2020 the first respondent issue a directive of procuring vaccine for the 10% of the population of the country and furthermore assures that People will die and will not see 20201 **(See the annexure 88)**

110. On 29 December 2020 World Health Organization confirms that they are growing COvid19 in South Africa . (see the attached link No 5: <https://youtu.be/Tlp7ZEEZ-JWM> )
111. On December Carter Branche - broadcast on a national tv a documentary of Dr Tabane who saved lives of critical Health patient and the study he conducted (See Annexure 81 ) and (see the link for the documentary No 6: ..... [https://youtu.be/OGIt\\_4Stm9k](https://youtu.be/OGIt_4Stm9k) . )
112. on the 1st January 2020, Baragranath Hospital declared no patients were admitted at ICU , while the country reported a rise in Death due to Covid19 resulted in 418 death nationally and 66 Death in Gauteng (see the annexure 83 Bara ICU)
113. On the 4<sup>th</sup> January 2020 the Speaker of parliament circulate a letter, Urgent reconvening of parliament in terms of Rule130(1) and 130(3)(b) and request for am adhoc for the urgent establishment of an adhoc committee to oversee the vaccine roll out plan (See annexure 70 A and B)
114. HBRF had brought an application at the High Court in Johannesburg against the first and second respondent, due to the new developments in 2021, HBRF submitted intention to Amend of motion , it was opposed by the respondent attorney stating its a new application (See Annexure 84A and 84 B), which led the HBRF withdrawing the Application (See Annexure 85) to pursue a new application .

## E) JURISDICTION AND STANDING

115. This Honorable Court has jurisdiction in respect of this action by virtue of:
  - a) The application is in terms Chapter 8, Section 169 (1) (a) and (c) of the Constitution and
  - b) It is brought in the interests of justice that an hear this matter directly and urgently and

c) May the court that the application is in terms of Chapter 8, Section 172 (1) (a) and (b) of the Constitution

d) To consider its inherent power as prescribed in Chapter 8, Section 173 of the Constitution

e) in terms of the Supreme Court Act, 1959 (Act 59 of 1959); and read with terms of rules the uniform rules of the Court including Rule 6(12) of the uniform rules of the Court

116. HBR has standing to bring and does bring this application:

a) This Honorable Court has jurisdiction in respect of this action by virtue of Section 169 (1) (a) of the Constitution

b) In terms of Section 33(1) of the Constitution of the Republic of South Africa (the Constitution) provides that 'everyone has the right to administrative action that is lawful, reasonable and procedurally fair

c) In the interest of justice

## **F) THE ISSUES TO BE DETERMINED**

117. Whether or not the decisions of the first and second respondents to implement lockdown in terms of section 27(2) of National Disaster Management Act are irrational, unlawful and unconstitutional and stand to be reviewed and set aside;

118. Whether directions should be given by this Court to the first and second respondents pertaining to the reconsideration of their decisions in terms of section 8(1)(c)(i) of PAJA;

119. The duties imposed on, and factors to be considered by, the first and second respondents in making their decisions in terms of section 27(2) of National Disaster Management Act are irrational, unlawful and unconstitutional.

120. The place of Disaster Management Act in the overall legislative scheme;
121. Whether or not the Disaster Management Act decisions were taken in a procedural fair manner;
121. What the implications are for a decision to lock down the country in terms of Disaster Management Act
123. Whether the respondents took into account the interests of local communities in terms of the bill of rights, including the right to dignity;
124. Whether or not the respondents failed to apply the precautionary principle and the vulnerable ecosystems principle in Disaster Management Act;
125. Whether the first and fourth respondent decision to procure and/or source 10% of the population vaccine was irrational, unjustifiable and unconstitutional
126. Whether the decision of the first and third respondent to play low the African Solution to Covid19 offered by Africa, from the Republic of Madagascar in a form of a herb was irrational, unjustifiable and unconstitutional
127. whether the first and second respondent decision to gazette and classify Covid19 a national disaster was not rationally connected to the means taken to combat COVID19 "coronavirus" and whether the respondent adhered to the Disaster Management Act chapter 6 (4)
128. Whether the first and second respondent decision to implement lockdown regulations-driven response to the Coronavirus and/or COVID19 pandemic versus any other pandemic including TB, Influenza, SARS CO to list a few,
129. Whether the first and second respondent decision about how to combat Coronavirus and/or COVID19, should have considered reasonable threshold that includes its hazard assessment and impact assessment which leads to its decision to declare a national disaster.

130. whether the respondents failed to provide the reasonable threshold from its vulnerability assessment which is lead to its decision to declare a national disaster.
131. The rationality review which ask a narrow question :
- a) Is there a rational connection between the government's objectives and the means chosen to achieve them ?
  - b) Whether the rationality was about whether a decision is right or wrong.
  - c) Whether It follows that this case the question is much narrower, is there a rational connection between the whether the first and second respondent objectives.
  - d) Whether the court a quo's answer is an emphatic 'NO' or an arrogant "Yes".
132. Whether the respondents have obligation when making regulations in terms of Disaster Management Act, to ensure that the means taken to combat coronavirus and/or COVID19 are rationally connected to the purpose it seeks to achieve,
133. Whether respondent's decision affected the limitation of rights by regulations are reasonable, justifiable and there is no proportionality between State objective and the limitation of the rights.
134. Whether the approach of saving lives of critical Covid19 patients as illustrated and proven by Dr Taban was reasonable and practical or the respondents decision to vaccine South Africans is correct
135. Whether the respondent's decision to lockdown the country and implement regulations that reduce the number of employees working health and Social institution who were required to assist the public was not a contributor to the rising death in the country

136. Under Rule 53(1)(a) of the Uniform Rules of Court, the respondents are called upon to show cause why the aforementioned decisions should not be reviewed and corrected or set aside.
137. Under Rule 53(1)(b) of the Uniform Rules of Court, the first to second respondents are whether required to dispatch to this Honourable Court the record of the proceedings sought to be reviewed and set aside (including all plans, correspondence, reports, memoranda, documents, evidence and other information which were before the respondents at the time when the decisions in question were made), together with such reasons as they are by law required to give or desire to make, and to notify the applicants that they have done so. Gross violation of the Constitution of the Republic of South Africa, 1996, Chapter 1, Preamble
- a) Gross violation of the Constitution Chapter 1, Section 1, 2 and 3 of the Founding Provision,
  - b) President's oath or/and affirmative of office as per Section 95 of the Constitution
  - c) State failure to a reasonable test for Justifications
  - d) Court's to conduct a rights limitations analysis
  - e) The State failure to test the exercise of power against the accepted objective to preserve human life, uphold the rights to dignity, limit the economic downfall, to report truly in the spread of infection and against other means.
138. HBRF interest, the public interest and in the interest of justice arise from HBR primary objective:
- a) To uplift the spirit of African renaissance
  - b) To empower the youth in Africa
  - c) Instill discipline and Morality
  - d) Transform the image of Africa to the world.



- e) To act as agents of change not only in South Africa but the Southern African Region and ultimately the continent as a whole

## **G) RELIEF SOUGHT**

139. The applicant seeks the honorable court to grant relief in the following:

### **PART A:**

- a) That the non-compliance to the Uniform Court Rules and Practice Directives regarding the forms, time period be condoned and any other procedural referred to the Rule 6 of the Uniform Rules of the Court("The Rules") and that this application is being heard on a semi- urgent basis in terms of the provision of Rule 6(12) of the Rules
- b) Interdict the respondents from procuring and/ or Sourcing and/or paying and/or obtaining Covid19 Vaccine
- c) Interdict the respondents from implementing and/ or deploying and/ or vaccinating any human being in the Republic of South Africa
- d) Withdrawal of Visa and/or withdrawal of work permit of WHO (World Health Organization) delegation in the Republic of South Africa

- e) Declaring the sourcing and/or procurement of COVID19 vaccine for the 10%(percent) of the South African population is irrational, unlawful and unconstitutional
- f) Declaring that the classification Coronavirus and/or COVID19 as the national disaster in terms of National Disaster Management Act 57 of 2002 is irrational, unlawful and unconstitutional.
- g) Declaring that the Disaster Management regulations of Coronavirus lockdown from level five (5) to level one (1), issued in terms of section 27(2) of National Disaster Management Act are irrational, unlawful and unconstitutional.
- h) Declare to set aside the Disaster Management regulations of Coronavirus lockdown from level five (5) to level one (1), issued in terms of section 27(2) of National Disaster Management Act, which violates sections 12 (1), 15(1), 21(1), 23(1), 27 and 28 of the Constitution of the Republic of South Africa Act 108 of 1996.
- i) Directing the first to second respondents to review, adjust, align and update the threshold that classifies a National disaster within the National Disaster Management Act.
- j) Directing the first to second respondents to classify, priorities and categorizes all national disaster under the South African material condition and context

- k) Declaring that the respondent has failed to consider the limitation of their imposed regulation on the rights guaranteed in the Bill of Rights of the constitution
- l) Declaring that the Coronavirus and/or COVID19 is a health-related matter and not a disaster in its nature, within the definition and meaning in terms of the National Disaster Management Act.
- m) Declaring the establishment of an independent committee made up of panel of experts both in in the country and international to compile and validate a country and a global report on Covid19, and be tabled before the executive, legislature and the nation
- n) That the order be with effect from delivery of judgment shall not retrospectively
- o) Directing that this application be referred to oral evidence in an open court on any point cannot be decided on papers alternatively be referred to trial, if material disputes arises on papers.
- p) No relief is sought against the 5th Respondent
- q) Costs of Suit; and
- r) Further or alternative relief.

**PART B: TAKE NOTICE FURTHER THAT -**

140. Under Rule 53(1)(a) of the Uniform Rules of Court, the respondents are called upon to show cause why the aforementioned decisions should not be reviewed and corrected or set aside.

141. Under Rule 53(1)(b) of the Uniform Rules of Court, the first to second respondents are required, within 15 days after receipt hereof, to dispatch to the Registrar of this Honourable Court the record of the proceedings sought to be reviewed and set aside (including all plans, correspondence, reports, memoranda, documents, evidence and other information which were before the respondents at the time when the decisions in question were made), together with such reasons as they are by law required to give or desire to make, and to notify the applicants that they have done so.

142. Within 10 days of receipt of the record from the Registrar, the applicants may, by delivery of a notice and accompanying affidavit, amend, add to or vary the terms of their notice of motion and supplement their founding affidavit in terms of Rule 53(4) of the Uniform Rules of Court;

4. If any of the respondents intend to oppose the application, they are required, under Rule 53(5):

(a) within 15 days after the receipt of this notice of motion or any amendment thereof, to deliver notice to the applicants that they intend to oppose and, in such notice, to appoint an address within fifteen kilometres of the office of the Registrar

at which they will accept notice and service of all process in these proceedings;  
and

(b) within 30 days after the expiry of the time referred to in Rule 53(4), to deliver any affidavit they may desire in answer to allegations made by the applicants.

## **H) INTERESTS OF JUSTICE**

143. Insofar as it may be held that these submissions above, that these constitutional issues are incorrect, it is submitted that in terms of the provisions of Rule 30 (2)(a) of the uniform rules of the Court. Furthermore submitted in terms of Section 7(1), and/or Section 8 (1), and/or Section 10, and/or Section 11, and/or Section 12, and/or Section 14, and/or Section 15, and/or Section 17, and/or Section 18, and/or Section 21, and/or Section 22, and/or Section 23, and/or Section 24, and/or Section 25, and/or Section 27, and/or Section 28 and/or Section 29(1)b and/or Section 31, and/or Section 34, and/or Section 36 and/or Section 167(6)(a), and/or Section 195(1)(2) and/or Section 196 (2)(3) and/or Section 197(1) and/or Section 217(1) and/or, of the constitution the matter should nevertheless be considered. There are several arguable points of law which are to be considered – each of significant public interest.
144. Hence HBRF request in the interest of justice, the proper interpretation of these provisions having regard to the important constitutional rights of access to justice in case of a default judgment and/or invalid court application and/or erroneously application and/or no local standi, sought orders is a matter of considerable public importance, particularly to litigant, Businesses, Civil Society, the poor people and all South Africans, and public generally.
145. For this honorable court to consider this application in terms of Section 167(7) of the constitution

146. HBR request the court to interpret the constitution, Section 12(1)(d) and (e) of the constitution guarantee everyone the right not to be tortured in anyway, not to be punished in a cruel, inhuman or degrading way
147. HBRF brings to the court attention that State worth 1,5 trillion (one billion four hundred million) budget in 2020/2021, including additional loans of received from the New Development Bank, African Development Bank and IMF, and the Emergency/ Strategic Reserve Funds which makes the State the biggest and financial resourced in the Country, hence there legal entities are afraid to challenge it and or assist HBRF in this application.
148. If HBRF as a non-profit organization had to continue a legal battle against State following normal legal avenues, noting that HBR will have to do legal consultation resulting to letter of demands and then approaching the High Court, and then the Appeal Court and following all legal processes to eventually get to the constitutional court at some point HBRF will have to give in and/or drown in legal costs due to lack of finance.
149. For HBRF has approached various institution and legal sector seeking assistance, due to the complexity of the matter law firms could not run it on Probono, and that most law firm are facing liquidation and could not assist,
150. Hence HBRF seek this court to finally bring closure to the matter that does not only affect HBRF but the South African and international society at large residing and doing business with the country and while the people of this country as suffering.

151. South Africa is a democratic government, its public administration and it is based on the principle of accountability, responsiveness and openness
152. HBRF approaches the honorable court in terms of Section 7 and section 9 of chapter 2 of the constitution, the bill of Rights which is the cornerstone of democracy, enshrines the rights of all people and affirms its decision values of human dignity, equality and freedom which must be respected, protected, promoted and fulfilled by the State and all Organs of State.
153. According to the general transformative trajectory of the Constitution in which the principle of equality finds center place. This was eloquently and poignantly described by the Constitutional court in the following extract from the matter of Minister of Justice and Others vs SA restructuring and Insolvency Practitioners association and others 2016 (4) vSA 349 as follows- *“Throughout the many, many years of the struggle for freedom, the greatest dream of South Africa’s oppressed majority was attainment of equality. By that I mean remedial, restitutionary or substantive equality, not just formal equality, This court held: Person belonging to certain categories have suffered considerable unfair discriminations in the past. It is insufficient for the Constitutional merely to ensure . through the bill of rights, that statutory provisions which have caused such unfair discrimination frequently has ongoing negative consequences, the continuation of which is not halted immediately when the initial causes thereof are eliminated and unless remedied, may continue for a substantial time and even indefinitely, like justice equality and education delayed is justice equality and education denied”*.
154. May this honorable Court grant us access for this court to pronouncing and clarify the remedial, restitutionary or substantive equality
155. HBRF approach this honorable court in term of Standard set by International law: African Charter on Human and Peoples' Rights 1981", Article 3(1) and (2) : It for this reasons of why HBRF approaches to the Court and request to be

treated equal before the law and that HBRF rights to receive equal protection of the law as enshrined in the African Charter on Human and Peoples' Rights 1981" and furthermore Article 17(1)(2)(3 in term of the right to education ,

156. HBRF seeks the court to consider its application basing on the International documents relevant in the context of section 39(1)b of the constitution, such as :

- a) Universal declaration of human right of 1948,
- b) the international convention on civil and political rights of 1976( a treaty which South Africa has ratified an which is thus part of South African Law),
- c) United nation against torture and other cruel , inhuman or degrading treatment or punishment of 1984 which is now referred to as the Prevention and combating torture of persons Act 13of 2013 (torture act)

157. In terms of Section 7(2) of the constitution the State also have a duty to respect, protect, promote and fulfill these rights, **see Glenister v President of the republic of South Africa and others 2011(3) SA 347 (CC) AT Para 184** and that these duties must be discharged in accordance with the standard set by international laws

158. While Section 172 provides that the court must declare any law or conduct that is inconsistency with the constitution to be invalid to the extent of its inconsistency and make an order that is just and equitable, **See Freedom fighters v the Speaker of the National Assembly and Another 2018(2) Sa (CC) Para210 to 211 State:** *"a Court remedial power is not limited to declarations of invalidity, it is much wider. Without any restriction of conditions, section 172(1)(b) empowers courts to make any order that is just and equitable.... The powers to grant a just and equitable order is so wide and flexible that it allows courts to formulate an order that des not follow prayers in the notice of Motion or some order pleading"*



159. The Rights for many South Africans s have been violated and infringed and hence the applicant the constitutional court to furthermore consider section 38 of the constitution, for the court is entitled to grant appropriate relief which may include a declaration right, see **Fose v Minister of Safety and security 1997(3) SA 786 (CC) at paragraph 69 states** “ *Given the historical context in which interim constitution was adopted extensively violation of fundamental rights which preceded it, I have no doubt that this court has a particular duty to ensure that within the bounds of the constitution, effective relief can be granted for the infringement of any of the rights entrenched in it. In our context an appropriate remedy must mean an effective remedy, for without effective remedies for breach, the values and underlying and the rights entrenched in the constitution cannot be properly upheld or enhanced. Particularly in a country so few have the means to enforce their rights through the courts, it is essential that on those occasions where the legal process does establish an that an infringement of an entrenched rights had occurred, that it be effectively vindicated. The courts have a particular responsibility in this regards and are obliged to forge new tools and shapes innovative remedies, if needs be, to achieve this goal.*”

#### **I) SEMI URGENCY OF THE MATTER**

160. HBRF bring this application in term of urgency in the following:
- a) In the interest of justice
  - b) That the non-compliance to the Uniform Court Rules and Practice Directives regarding the forms, time period be condoned and any other procedural referred to the Rule 6 of the Uniform Rules of the Court(“The Rules”) and that this application is being heard on a semi- urgent basis in terms of the provision of Rule 6(12) of the Rules

c) The relief sought is for the review and setting aside in terms of the Promotion of Administrative Justice Act 3 of 2000 ("PAJA") of the decisions of the first and second respondents to classify COVID19 a national Disaster.

d) in the public interest

e) Point 161 to 182 justify the urgency

161 To the review and setting aside the respondents decisions and as per our sought order from the court on the following reasons: (162 -

162. HBRF sought what the Malawi court applied prior to the President of Malawi implement lockdown refer to the matter in the High Court Of Malawi Lilongwe District Registry, case no: 22 OF 2020, in a matter Esther Kathumba & Others v. The President & Others - 29 April 2020 order by Judge Kenyatta Nyirenda (See Annexure 054 -37)

163 With Malawi court order ( **see annexure 59** ) having to suspend lockdown it resulting in fewer deaths (235) and lower infection rate of 9027 while in South Africa with all the restriction we have seen an increase in death and infections

164, The state has killed people of South Africa in the name of Covid19, while people have been starve to death, denied food in our hospitals such as Shonisani Lethole, 35, died at Tembisa Hospital after being admitted with breathing difficulties. He was tested for Covid-19, but died without receiving his results. His family is appalled by the alleged mistreatment at the hospital and have questioned why the results took so long, He even reported the situation to the Minister of Health (**See Attached annexure 56**)

165 The StatsSA report on inequality indicates that those who are suffering from majority of chronic illness do not have access to health systems

166 HBRF sought the court to consider Inequality Trends in South Africa ( **Annexure 91) - Statistics South Africa, 2019**) With main emphasis on Point 4.4 -

INEQUALITY IN THE SOCIAL DOMAIN, Figure 4.4.19 illustrates the inequalities that exists between males and females:

- a) While approximately one out of every four males with a chronic illness reported having access to medical aid, only one out of every five females had similar medical aid coverage.
- b) Females with a chronic illness had a fairly stable level of access to medical aid coverage decreasing from 20,0% in 2009 to 18,8% in 2017 (a 1,2 percentage points difference).
- c) Meanwhile, the trend for males with chronic illnesses that had access to medical aid started at 25,8% in 2009, which then increased to a peak of 28,6% in 2012, but then decreased to 26,0% by 201
- d) According to Figure 4.4.18, whites had the highest proportion of individuals who had a chronic illness and access to medical aid, with proportions ranging between a low of 70,4% (in 2010) and a peak of 77,4% (in 2013) over the period 2009 to 2017.
- e) Meanwhile, black Africans, colored's and Indians/Asians who reported having a chronic illness had significantly lower levels of access to medical aid relative to whites.
- f) Approximately two out of ten colored's and one out of ten black Africans with a chronic illness were covered by medical aid.
- g) Between 2009 and 2017, there has not been much change in medical aid coverage rates for individuals with chronic illnesses by population group, except for Indians/Asians who saw an increase from 33,1% in 2009 to 41,1% in 2017 (a 8,0 percentage points increase).

167 With the Country on 99% self-recovery rate from Covid19, and with the professional assistance of the likes Dr Dr Taban who is a specialist on critical patience with covid19 and have successfully produced a report there should no

fertility in the Country and no need for restriction other than health related initiatives....(See annexure 81)

168. HBRF sought the court to consider Mortality and causes of death in South Africa: (Annexure 92) StatsSA : Release October 2020) in particular the 4.4 - Natural and non-natural causes of death, Due to the high levels of violence and deaths attributed to accidents, natural and non-natural underlying causes of death are treated as separate groups. Non- natural causes of death comprise all deaths that were not attributable, or may not have been attributable to natural causes . The table indicate the in 2017 , natural causes were 385380 while non natural causes were 51164

a) As for the report of Stats SA in the report indication that natural death amount to 385380 per year, meaning per day on average people who die of natural death are 1070 nationally , while the death due to Covid19 are now standing at 33579 , meaning per day on average people who die due to Covid19 are 111 nationally, there the death of natural supersede that Covid 19 death, this is a clearly indicates that the restriction that are bottling up service delivery will increase the fertility rate of natural death

169. HBRF sought the court to consider National Poverty Lines (Annexure 94 STATISTICAL RELEASE) 2019:

a) Food poverty line – R561 (in April 2019 prices) per person per month. This refers to the amount of money that an individual will need to afford the minimum required daily energy intake. This is also commonly referred to as the “extreme” poverty line; Lower-bound poverty line – R810 (in April 2019 prices) per person per month.

b) This refers to the food poverty line plus the average amount derived from non-food items of households whose total expenditure is equal to the food poverty line; and Upper-bound poverty line – R1 227 (in April 2019 prices) per person per month.

c) This refers to the food poverty line plus the average amount derived from non-food items of households whose food expenditure is equal to the food poverty line.

170. The state grant of R350 is below leaving standards as per the Stats SA report which indicates that a person to survive on food per month requires R561

171 HBRF sought the court to consider Service delivery during lockdown complaints and grievance handled by **PSC ( Annexure 66) PUBLIC SERVICE COMMISSION QUARTERLY BULLETIN VOLUME 12)** in terms of - Non payment of government suppliers:

a) In line with its constitutional mandate, the PSC quarterly monitors the non- payment of invoices of suppliers within the stipulated 30-day period as required by the Public Finance Management Act.

b) While there are pockets of improvement, several departments have repeatedly defaulted on this requirement.

c) With the arrival of the COVID-19 pandemic many Small, Medium and Micro Enterprises (SMMEs), who were already struggling to keep businesses afloat, found their operations being put under further pressures due to the non-payment of Invoices by Government.

d) The PSC remains highly concerned about the continued failure by some departments to put effective systems in place to ensure

172. The fourth respondent has not paid SMME for services rendered since 2019 as per the report of PSC indication that they are owed Billion, with the current situation of Covid19, where Employees of the State are at home it has increase the period of non payment to SMME

173. On Service Delivery : Already the report indicate that the State is failing to provide good adequate health service at its full capacity. The Covid19 regulations are requesting reduction of workers at work place e.g. 25-50% to be

at work, that puts a serious strain in the hospitals that is operating with a minimum workforce resulting poor health assistance and increase of loss of life and furthermore an infringement to the bill of rights in particular gainful employment...

174. HBRF sought the court to furthermore consider National Planning commission identified nine key challenges facing South Africa (NPC, 2012), namely:

- a. Too few people work;
- b. The quality of school education for black people is poor;
- c. Infrastructure is poorly located, inadequate and under-maintained;
- d. Spatial divides hobble inclusive development;
- e. The economy is unsustainably resource intensive;
- f. The public health system cannot meet demand or sustain quality;
- g. Public services are uneven and often of poor quality;
- h. Corruption levels are high; and
- i. South Africa remains a divided country.

175. To the review and setting aside the decision of the respondents to declare to procure vaccine for the 10% of the population,

176. While noting that 94-99% (ninety four to ninety nine ) of the COVID19 infected patients have self-healed and that all those have underlined health condition they can be treated, as per Dr Taban practical experimental in saving lives of COVID19 patients, hence there is no disaster from the pandemic, however it is casedemic but State actions are a disaster to its nation .

177. The relief is before the court in the special allocation

178. The first and second respondents have undermined their constitutional obligation, inquest for selfish interest to control the country's finances, people and resources without any accountability and for them to obtain wealth through their families and cronies
179. For the existing lockdown is warrants an exceptional circumstance hence we seek the court to grant a special motion
180. The State decision to implement and continue to enforce lockdown has to violate the following Bill Of Rights : Section 7(1), and/or Section 8 (1), and/or Section 10, and/or Section 11, and/or Section 12, and/or Section 14, and/or Section 15, and/or Section 17, and/or Section 18, and/or Section 21, and/or Section 22, and/or Section 23, and/or Section 24, and/or Section 25, and/or Section 27, and/or Section 28 and/or Section 29(1)b and/or Section 31, and/or Section 34, and/or Section 36
181. The State actions are a disaster to its people and not the pandemic COVID19, however the State uses the Pandemic as an excuse to destroy and infringe South Africans rights.
182. The State has introduced measures which are not rationally and are unconstitutional
183. The respondents have violated Section 39 of the constitution which says “when interpreting the Bill of rights , a court , tribunal or forum must promote the values that underlie an open and democratic society based on human dignity, equality and freedom”
184. The respondents are advancing a vaccine for COVID19, irrespective that 99% of all those tested have self-healed, an indication that COVID19 is not a priority and not a disaster when it comes to the people of South African and its environment

185. With death toll at 30000 (thirty thousand) in a population of 58 Million (fifty eight million) over a period 10 month its means that 100 people die nationally due to illness associated with Covid19, and that is not a reasonable facts to declare lockdown
186. With death toll at 30000 (thirty thousand) in a population of 58 Million (fifty eight million) over a period of 10 months , with 286 municipalities means that one person in every three municipality dies due to Covid19 related illnesses per day, that is not a reasonable facts to declare lockdown
187. While there are proven facts that Dr Taban has been operating and healing critical illness with Covid19 patient without any casualties, he has conducted operations which are prohibited by WHO, and in all his acts, he has resulted in saving lives of which the country needs, that is not a reasonable facts to declare lockdown
188. The disaster management regulation and /or lockdown has introduced "tricameral" constitution - which created separate decision making where SOE's are monitored, where the poor dies because of poverty, where all non-government are becoming unemployed and faces insolvency, where the is injustice for 99.999% of Country population and has to suffer in the interest of saving 0.001% which are people who are suffer from critical underline health conditions
189. The respondents are continually failing to intervene and save the lives of all South Africans and delays with providing any relief needed by the people and institutions of this country.
190. HBRF notes that all South Africans are facing depression, death and/or poverty this excludes the 1,3 million employed by the State, whether be Ministers, Members of Cabinet, Parliament, Legislature, Council Courts, and/or in all spheres of government including the SOE's



181. Our Constitution is the most important or supreme law on the land. No other law may conflict with it, nor may the government do anything that violates it.
181. So HBRF and the people of South Africa recognized the injustice, inequality and violation of our human rights brought by the respondents through its decision to unconstitutional lockdown the country. and all the struggle and developmental gains of the freedom charter from 1955 up until early this year have reversed by the State.
182. The Court President , Justice Arther Chaskalson , said *“the constitution failed in several respects to satisfy the conditions thrashed out in multiparty talks. But he said the instance of non-compliance should present no significant obstacle o the formation of text that met the requirements”*

#### **J) THE CONSTITUTIONAL MATTER RAISED IN THE DECISION**

183. Granting the me leave to approach this court in the interest of justice in terms of constitutional court chapter 8, section 169(a) and (b) of the constitution on the following grounds:
- a. Gross violation of the Constitution of the Republic of South Africa, 1996, Sections 172 (1)(b) provides that when deciding a constitutional matter within its power, a court— *“may make any order that is just and equitable, including—*
- (i) *an order limiting the retrospective effect of the declaration of invalidity; and (ii) an order suspending the declaration of invalidity for any period and on any conditions, to allow the competent authority to correct the defect.”*
- (ii) In *Mvumvu v Minister for Transport* [2011] ZACC 1; 2011 (2) SA 473 (CC); 2011 (5) BCLR 488 (CC) at para 44 Jafta J held: *“In terms of the*

*doctrine of objective constitutional invalidity, unless ordered otherwise by the court the invalidity operates retrospectively to the date on which the Constitution came into force. But if the legislation in question was enacted after that date, as was the present Act, the retrospective operation of invalidity goes back to the date on which the legislation came into force*

- b. Gross violation of the Constitution of the Republic of South Africa, 1996, Chapter 10, Public Service, Section 197 (1) Within public administration there is a public service for the Republic that have not been loyal in executing the lawful policies of the government of the day
- c. Gross violation of the Constitution of the Republic of South Africa, 1996, Chapter 13, Finance Section 217 (1) When an organ of state in the national, provincial or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective, where Unfairness, no transparency and no equitable has been the operandi of the day.
- d. Violation of Republic of South Africa Constitution, undermining the various Acts governing our country as outlined in the affidavit and deviating from its constitutional obligation, and corrupt practice within the Administrative and refusing to carry executive mandate.
- e. In terms of the chapter 2, Section 7 of the Constitution, Bill of Rights (1) and (2) has been violated by a State organ
- f. In terms of Chapter 2, Section 3 Citizen

- (i) Section 3 of the Constitution provides: “(1) There is a common South African citizenship. (2) All citizens are— (a) equally entitled to the rights, privileges and benefits of citizenship; and (b) equally subject to the duties and responsibilities of citizenship. (3) National legislation must provide for the acquisition, loss and restoration of citizenship
- g. Enforcement of the constitution of chapter 2, Section 8 the Application, and enforcement of laws governing the country.
- h. Infringement of Bill of Rights Chapter 2 , Section 7, Rights
- i. An Infringement in the constitution In terms of the Chapter 2, Section 10 of the Constitution , Human Dignity, this right of South African who relied to State for their dignity to be respected and protected has been violated, exploitation, degraded and undermined in its people, Violation of Bill of Rights Chapter 2, Sections 10, Human Dignity
  - i) Section 10 provides that “[e]veryone has inherent dignity and the right to have their dignity respected and protected”.
- j. Violation of Bill of Rights Chapter 2, Sections 21, Freedom of Movement and Resistance
- k. Infringement of Bill of Rights Chapter 2, Sections 22, Freedom of Trade, Occupation and Profession
- l. Violation Bill of Rights Chapter 2, Sections 27 Health Care, Food Water and Social Security, by the State (see annexure 6), nothing that not every South African has access to the Internet
- m. Violation Bill of Rights Chapter 2, Sections 28 Children, that includes child head household, to basic nutrition, shelter, basic health care services and social services;

- n. The executive implementing a lock down is in violation the constitution, and therefore the court to remind that Chapter 5 Section 101, Executive Decision be applicable
- i) The Abuse of power by the State, deviating from the constitution, Chapter 5, section 84 Powers and function of the President
- k) To Prohibit the respondents from making unconstitutional decisions with intentional consequences to the nation
- l) Prohibit the respondents from continually implementing actions of which lives of South Africans and other nationals in the country may be ruin or/and harmed
- m) An Infringement in the constitution by denying, withholding and refusing this basic right of Education to thousands of our youth, women people from historically disadvantaged by the STATE, where State Schools are closed and Private Schools are open, a violation on Chapter 2, Section 29 (1)(b) of the Constitution
- n) The respondents have denied to comply with constitutional right as enshrined in the Constitution, Chapter 2, Section 32 (a) Access to information irrespective of displaying the reasons and the National Disaster Management report which declared Covid19 a disaster
- o. In the interest of justice
- p. In the Public Interest
- q. Violation of Constitution of the Republic of South Africa, 1996 - Chapter 10: Public Administration
- r. Violation of section 195. Basic values and principles governing public administration

- s. The application is in terms of Section 167(7) of the constitution
  - t. Gross violation of Sections 1(a), Republic South Africa
    - (i) Section 1(a) provides: *“The Republic of South Africa is one, sovereign, democratic state founded on the following values: (a) Human dignity, the achievement of equality and the advancement of human rights and freedoms . . .”* 123 Chaskalson “Human Dignity as a Foundational Value of our Constitutional Order” (2000) 16 SAJHR 193 at 204
  - u. Violation of Disaster Management Act Chapter 6(1) and (4)
184. Chaskalson, extra-crucially, makes this point thus: “As an abstract value, common to the core values of our Constitution, dignity informs the content of all the concrete rights and plays a role in the balancing process necessary to bring different rights and values into harmony.”
185. Haysom captures the need for the protection of freedom of association thus: *“These are a wide range of reasons why freedom of association is so highly prized, vigorously protected and widely acclaimed as a cornerstone of a democratic society. These reasons belong to one or other of two perspectives: a perspective which emphasises the need to associate in order to realise fully one’s humanity – to interact, combine, make common purpose and enjoy life with other persons sharing one’s cultural, personal, political or economic interests. The second perspective emphasises the necessity to a functioning democracy of such a freedom, for a proper and coherent expression and interplay of collective interests. Both perspectives are, however, grounded on the same understanding that a person alone is an atomised, powerless, lonely being without a foundation for developing an identity or the capacity to influence or change his or her physical environment or social world.”*
186. **And in Makwanyane O’Regan J said:** *“The importance of dignity as a founding value of the new Constitution cannot be overemphasised. Recognising a right to dignity is an acknowledgement of the intrinsic worth of human beings: human beings are entitled to be treated as worthy of respect and concern. This right therefore is the*

*foundation of many of the other rights that are specifically entrenched in [the Bill of Rights].”*

**K) INTERNATIONAL LAW:**

187. HBRF request the court to also consider that South Africa is also member of the thee African States members of the Organization of African Unity, parties to the present convention entitled "African Charter on Human and Peoples' Rights", Adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev3, 21 I.L.M. 58 (1982), entered into force 21 October 1986 which the preamble state that :
188. Considering the Charter of the Organization of African Unity, which stipulates that
- a) "freedom, equality, justice and dignity are essential objectives for the achievement of the legitimate aspirations of the African peoples";
  - b) Reaffirming the pledge they solemnly made in Article 2 of the said Charter to eradicate all forms of colonialism from Africa, to coordinate and intensify their cooperation and efforts to achieve a better life for the peoples of Africa and to promote international cooperation having due regard to the Charter of the United Nations.
  - c) and the Universal Declaration of Human Rights;
189. Taking into consideration the virtues of their historical tradition and the values of African civilization which should inspire and characterize their reflection on the concept of human and peoples' rights;
190. HBRF approach this Honorable court on the following grounds as enshrined in the African Charter on Human and Peoples' Rights:

a) In term of Article 3(1) and (2) : It for the above reasons of why HBR approaches to the constitutional Court and request to be treated equal before the law and that HBR rights to receive equal protection of the law ".

b) In terms of Article 7: HBRF has the right to have the matter heard. This comprises: (a) the right to an appeal to competent national organs against acts of violating its fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force of which HBR right was violated to be heard.

c) With regards to Article 13: Due to STATE failure to carry and execute its mandate resulted in every citizen not having the right of equal access to the public service of his country.

d) In terms of Article 16: Violation of human rights has resulted in majority South Africa who are retrenched, unemployed, who seek education, poor of the poorest, no prospect of gainful employment , entrepreneurs spirit damned, religion people faith demised, etc.. that South Africans do not have the right to enjoy the best attainable state of physical and mental health.

e) The HBR approach the this honorable court in term of Article 17(1)(2)(3 ) in term of the right to education.

f) In term of Article 22 - the right to economic, social and cultural development has seized due to State focus on investing funds intended to uplift the economy and address social and cultural development which is a the violation by the State, whether the President was informed and/or not , collided with and/or not it is for the court to establish that Section 167(7) of the constitution

## PART XX: LEGAL SUBMISSIONS

### L) UPHOLDING THE CONSTITUTION

191. The first respondent has committed that there will not be any load shedding during lockdown and we are experiencing load shedding every day therefore the State lied to its people .
192. The Respondents have proven that is not reliable, unethical behavior;
193. The respondents are arrogant and careless about the economy, its people, its land and the constitution of the Republic
194. The Respondents have brought a disaster to the nations, they regulations are meant to bring harm, death and poverty to the people and not to save the lives of South Africans
195. The Respondents are exploiting this COVID19 circumstance hence country finds the State Owned Enterprise's (SOE) reporting to a Presidential State Owned Council in short our SOE's report to the likes of Sanlam, AngloGold Ashanti, Thebe investment, MISTRA to list a few
196. The respondents has engaged in activities that creates a national disaster to South African,
197. Since the country is in lock down it experience a deepening violation of the Bill of Rights
198. The respondents has taken over the legislative responsibilities which is unconstitutional.



## M) UNCONSTITUTIONAL AND LIMITATION OF THE FUNDAMENTAL RIGHTS

199. HBRF respectfully submit that It is important to states that in the present case, a limitations analysis of national disaster, classification and regulations on the following legal principles:

a) State is (was) required to show that there is a rational connection between classification, national disaster and the limitation of the rights and the analysis requires an inquiry into the proportionality of the limitation in relation to the harm caused.

b) I am of the view that it is tried law that, various forms of the proportionality test have been adopted by courts, and they all are designed to ensure that a limitation does not unduly restrict a fundamental right. The test involves a balancing exercise between the rights of an individual and the rights of a community.

c) In order for the State to declare a national disaster to pass the proportionality test it must therefore be the least intrusive way to limit the right, and must be narrowly drawn so as to not enable officials decision making not to infringe the right disproportionately.

d) The requirement that the law limiting the right must nevertheless be “reasonably justifiable in a democratic society” in effect limits the limitation

e) Based on the idea that there is an objective understanding of a democratic society and that State Decision either be Disaster management regulations or lockdown in a democratic society must adhere to the principles of proportionality and equality, it is inconceivable that the regulations could be considered to be “reasonably justifiable in a democratic society.

f) The Rationality test is the measure taken to receive a certain objective must be rationally connected to the objective and the State must show how it fulfill the rationality test.

g) the measure taken by the State had a negative impact and infringed on the Bill of rights and way of live of the people

h) the State failed to justify and satisfy the limitation of human right in its action, as per the constitution Chapter 2 Bill of Rights Section 36  
Limitation of rights

i) State failure to a reasonable test for Justifications

j) Court's to conduct a rights limitations analysis

k) The State failure to test the exercise of power against the accepted objective to preserve human live, uphold the rights to dignity, limit the economic downfall, to report truly and correctly the spread of infection and against other means.

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*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.*

*2. 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*

200. *HBRF* Note that that the formulation and application of the rationality test, should be as follows:

(a) Testing the objective of the decision;

(b) Testing whether the exercise of power is reasonably capable of accomplishing the purpose it sets out to achieve;

(c) Testing whether the purpose that is sought to be achieved is a legitimate government purpose and whether the means used to achieve this purpose is rationally connected to the latter;

(d) Separating rationality from arbitrariness, the latter concerning itself with the absence of reasons or justification;

(e) Testing whether the exercise of power is substantively and procedurally rational;

(f) Testing whether the procedural exercise of power and the purpose sought to be achieved by such exercise is rational;

(g) Testing whether the decision maker has taken into account all relevant information consistent with the purpose of the power.

201. The test for justification being only one of a number of factors that must be balanced to assess whether a limitation is in fact reasonable and justifiable in an open and democratic society

## N) INJUSTICE, AND DISCRIMINATION OF THE SOUTH AFRICANS

202 On the 24 May 2020 first respondent made an announcement and stated (**see annexure 34 –President announcement 24 May 2020**) that:

- a) There are 11,000 (eleven thousand) active corona virus in the country
- b) Of these 842 (eight hundred and forty two) are in hospital and 128 (one hundred and twenty eight) of these in intensive care
- c) Noting that 10,158 (ten thousand one hundred and fifty eight) are on self-quarantine on mild infection of corona Virus, 100% probability of self-healing
- d) As of today, we have conducted 580000 corona virus test and more than 12 million screening
- e) With a population of 57 million active people, the report of the president clearly indicates that the State is not in a disaster, and therefore the
- f) The first respondents further stated that until there is a vaccine available to all, the coronavirus and/or Covid19 will continue

203. The respondents has not explained or qualify the reasons of why less than 20% of 0,001% of the 57 million South Africans which are present people affected by COVID19 due to underline health conditions and old age, should be the grounds to lockdown all South Africans and declare a national disaster

204. Furthermore that while 80% of 0.001% of the 57 million South Africans which further represent people affected by Covid 19 have self-healed through staying at home meaning self-quarantine, without any vaccine or any medicine and that should be the grounds to lock down South Africa.

205. The State has taken a decision which led to Majority of South Africans being declared insolvent and the poor becoming poor of the poorest . Refer to Minister of Justice and others vs SA restructuring and insolvency practitioners association and Others 2016 (4) SA 349 as follows: *“Throughout the many, many years of the Struggle for freedom, the greatest dream of South African’s Oppressed majority was attainment of equality. By that I mean remedial restitutionary or substantive equality, not just Formal equality. Promoting itself on the content of this equality, this court held Persons belonging to certain categories have suffered considerable unfair discriminating in the past. It is insufficient for the constitution merely to ensure , through its bill of rights, that statutory provisions which have caused such unfair discrimination frequently has ongoing negative consequences, the continuation of which is not halted immediately when the initial causes thereof are eliminated and unless remedies, may continue for a substantial time and even indefinitely. Like justice equality delayed is equality denied”.*
206. The majority of South Africans are on lockdown and their violation of Bill of Rights in the name of national disaster management
207. The respondents relied on a classification of a COVID19 that was baseless, unreliable and had no truth in it. Furthermore, it opted to even implement Disaster management regulations that were not practiced anywhere in the world, which were hard for South Africans and which were a violation of the constitutional rights of all South Africans, as per the President Statement in the Parliament on the 18 June 2020.
208. The respondents has not explained or qualify the reasons of why less than 20% of 0,001% of the 57 million South Africans which are present people affected by COVID19 due to underline health conditions and old age, should be the grounds to lockdown all South Africans and declare a national disaster
209. Furthermore that while 80% of 0.001% of the 57 million South Africans which further represent people affected by Covid 19 has self-healed through a stay home self-quarantine, without any vaccine or any medicine and that should be the grounds to lock down South Africa.

210. May the court also apply the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000

211. The respondents has taken a decision which led to Majority of South Africans being declared insolvent and the poor becoming poor of the poorest

212. Refer to Minister of Justice and others vs SA restructuring and insolvency practitioners association and Others 2016 (4) SA 349 as follows:

*"Throughout the many, many years of the Struggle for freedom, the greatest dream of South African's Oppressed majority was attainment of equality. By that I mean remedial restitutionary or substantive equality, not just Formal equality. Promoting itself on the content of this equality, this court held Persons belonging to certain categories have suffered considerable unfair discriminating in the past. It is insufficient for the constitution merely to ensure , through its bill of rights, that statutory provisions which have caused such unfair discrimination frequently has ongoing negative consequences, the continuation of which is not halted immediately when the initial causes thereof are eliminated and unless remedies, may continue for a substantial time and even indefinitely. Like justice equality delayed is equality denied".*

213. The majority of South Africans are on lockdown and their violation of Bill of Rights in the name of national disaster management. Furthermore State used South Africa as attesting ground for vaccine **see the Link No 7 :**

<https://www.youtube.com/watch?v=vSDI5qpbBKs>

214. The Stats SA report indicate that since the President term of office, South African has drop to devastating level and it has been on recession ever since Ramaphosa took over as President **(see the Stats SA economic Report Annexure 65 )**

215. The Public Service Commission report indicate that the President administration has failed the public and South Africans, where majority South Africans businesses are not paid since 2019 under the leadership of the President

## O) PRESIDENT ANNOUNCEMENT ON 24 MAY 2020

216. Refer to point 202 for the below argument
217. The court to dismiss the notion of vaccine is need for the country while not even 0.001% (zero point zero, zero one ) of the population of the country is infected with Covid 19.

### i) HOTSPOTS COVID19 VS TB

218. Furthermore the President stated that the areas will be declared coronavirus hotspot, and said” Hot spot is defined as an area that has more than 5 infected people per every 100,000 people, or where new infections are increasing at a fast pace.
219. While the State and the President seen no threat to the World Health Organisation (WHO) statistics give an estimated incidence of 301,000 cases of active Tuberculosis in 2018. This is a rate of 520 per 100,000 population. **(See Annexure 35 Who Rates of TB)**
220. The President has defined the threshold which qualified that the country is not in national Disaster, and that the initial Classification of a national disaster with its assessment report does not warranted any lockdown and/or declaration of the disaster management regulations.
221. the State must not do as it will and seek the court to bring order ( See In Hoffman v South Africa Airways 2001(1) SA the court held that appropriate relief *in terms of section 38 must be construed purposely and in the light of Section 172(1)(b) which empowers a court in constitutional matters to make any order that is just and equitable. Such the court held that, ‘appropriate relief must be fair and just in the circumstances of the particular case. ‘Appropriateness imports ‘the element of justice and fairness’*)

222. what tools were used to classify the Hot Spot and how did such tools find a difference between Cold, Flu, Covid19 and any other like symptoms that the first and second respondent

## **P) ON CLASSIFICATION OF THE NATIONAL DISASTER**

223. Taking into account of following definitions:

- a) An Epidemic is a disease that affects a large number of people within a community
- b) A pandemic is an Epidemic that's spread over multiple countries or Continent
- c) Endemic is something that belongs to a particular people or country
- d) An outbreak is a greater than anticipated increase in the number of endemic cases. It can be also single case in a new area. If it's not quickly controlled; an outbreak can become an epidemic
- e) Disaster is a calamitous event, especially one occurring suddenly and causing great loss of life, damage, or hardship, as a flood, airplane crash
- f) Casedemic is an overemphasis on the amount of positive results of those infected, who may not even be contagious or have an infective viral load

224. It is apposite to state that,

- a) an Epidemic is a disease that affects a large number of people within a community.
- b) A pandemic is an Epidemic that's spread over multiple countries or Continent.



c) An outbreak is a greater than anticipated increase in the number of endemic cases. It can be also single case in a new area. If it's not quickly controlled; an outbreak can become an epidemic.

225. South Africa over past decades has experience various Edemic, Epidemic and pandemic Such as Cholera, Small pox, HIV/Aids, SARS, Listoriosis, Severe Acute Respiratory Syndrome (SARS), Rift Valey fever Turbelance ,Epedemic Malaria, Ebola and etc....
226. On the above the State has not differentiate between Covid19 and all the above and why it is perceived Covid 19 as a National disaster, Therefore HBRF request the court to order the 2nd respondent in her response to adhere to Disaster Management Act , Chapter 6 (4) and/or (a) and/or (b) and/or (c) and/or (d) and /or (e) and/or (f)
227. Instead of the state to put measures to control few single cases of the outbreak, it resulted blowing the matter out of proposition by declaring the National disaster, clearly the State has no classification of what constitute a national disaster
228. The respondents have not provided a rationality for any disease or virus including what constitute a disaster, a national disaster and how it categories such disaster in a form of an health related attack and a form of a virus
229. Instead of the respondents to put measures to control few single cases of the outbreak, it resulted blowing the matter out of proposition by declaring the National disaster, clearly the State has no classification of what constitute a national disaster

230. The respondents has failed to make it public of its Covid19 assessment, and therefore denying the public the reasons which lead to declaring a state of national disaster ultimately to Lockdown.
231. The responded has failed to build a database that qualify the corona virus family including Covid17 and that of Covid19 to be regarded as a disaster in terms The Disaster Management Act 57, 2002, Section 23, B1c) - Classification and recording of disasters
232. With the WHO announcing Influenza as a pandemic **(see annexure 36 – Announcement on Influenza )** and the national Disaster centre has not classify it as a disaster
233. In terms of the Section 33 (1) od the constitution, The State has failed to make it public the of its assessment, and therefore denying the public the reasons which lead to declaring a state of national disaster ultimately to Lockdown
234. On the week of the 20 March 2020, South Africa had not reported any death due to outbreak as it indication on the Government website [www.gov.za](http://www.gov.za), the latest information from the National Institute for Communicable Diseases (NICD), The State report indicates on the COVID19 were as follows: zero death, 554 positive cases, and 14957 negative cases. **(See annexure 37 - NICD)**

235. The respondents has made a finding of fact based on no evidence or that is otherwise unreasonable in light of all the evidence to properly classify the pandemic Covid 19 as a national disaster.
- 236 The decision of national disaster management created panic, fear and unfair treatments resulting unconstitutional and unlawful decisions resulting in the violation of all South Africans.
237. In assessing the situation, the respondents failed to take into account other factors of death as referred to Causes of Death worldwide (**see Annexure 38 World Causes of Death** ) of which the actual data can be found at <https://ourworldindata.org> , which indicates and rates all Causes of death through the world on a daily report, The State based its decision entirely or predominantly on irrelevant factors. With South Africa Causes of Death covered by Stats SA (**See Annexure 39 - SA Causes of Death** )
238. In the course of death it indicates that Corona Virus kills 70000 worldwide during 2017, then the epidemic was not an outbreak, the state failed to classify it as a treat and its capabilities to get 0.001% of the population of the country infected (**as per annexure 40 Death comparison with Corona 2017**).
239. The respondents have failed to produce the reasons and report which forms basis of the declaration of national disaster as requested by **Chapter 6(4) of the Disaster management Act**

240. The respondents failed to provide the reasonable threshold for its Hazard assessment which is lead to its decision to declare a national disaster see judgment *National Director of Public Prosecutions v Botha NO and Another CCT280/18* ( see judgments paragraph (34). in respect of section 50(1)(a) of POCA from this Court requires that once the threshold of establishing that the property is an instrumentality of an offence has been met, a court is required to carry )...
241. The respondents failed to provide the reasonable threshold from its vulnerability assessment which is lead to its decision to declare a national disaster (see judgment *Competition Commission of South Africa v Media 24 (Pty) Limited CCT90/18* (See Judgments paragraph ( 53) “Judge Davis JP, in the introductory paragraph of the Competition Appeal Court judgment, places great emphasis on the fact that this matter is the first of its kind. As a result, in interpreting the Competition Act’s prohibition of predatory pricing, this Court must establish how the prohibition aligns with, and fulfills, the imperatives of the Constitution. Competition matters impact on the interests of the public, especially considering South Africa’s evolving and transforming market economy. The need to provide the country with free and fair guidelines for an equitable competitive market is crucial, and something that this Court is qualified to do”.)
242. The respondents intentionally and/or unintentionally by error or failed to establish a reasonable threshold from its Impact assessment for it to declare a national disaster, the determination of the threshold apply in order to make decision. ( see judgment of *Booyesen v Minister of Safety and Security CCT25/17* , Para 46. *Jurisdiction is a threshold requirement, and for this Court’s jurisdiction to be engaged, the pleadings must demonstrate why the matter is either a constitutional issue or an arguable point of law of general...*)
243. The court may order the capacitation of the State and disaster risk assessments and its policies, process, procedure and tools, resources and

human capacity in order to ensure that the Country is better positioned to assess the any risk with potential magnitude and severity in real time. There is no double that the organ of State is not capacitated to on classification of risks and/or national disaster (*See judgment 1. SASSA v Minister of Social Development CCT 48/1 .Para (26).. Honest nor complete. With regard to SAPO's incapacity to provide the cash payment service, SASSA's affidavit did not tell the Court why SAPO, which was also an organ of state, was not capacitated instead*).

244. The Head disaster Management has failed to classify the Tuberculosis and any other Corona Virus except COVID19 as a national Disaster.
245. The daily statistics that are reported in South Africa about COVID19, provides no different between people tested for any flu, TB or any other illness and that of COVID19, with the Testing laboratory having a backlog. The death that are reported are due to COVID19 which the State claims without a laboratory report, the State enjoys to threaten South Africans in order to govern itself as it pleases.
246. Tuberculosis is a serious public health issue in South Africa. About 450,000 people develop the disease every year, and 270,000 of those are also living with HIV. TB is South Africa's leading cause of death. About 89,000 people die from it every year; that's ten people every hour and the standard to declare a national disaster is lowered for Covid 19. **(See annexure 41 TB concerns)**
247. The respondents has failed to make it public of its Covid19 assessment, and therefore denying the public the reasons which lead to declaring a state of national disaster ultimately to Lockdown.

## Q) PARLIAMENT VIRTUAL SITTING

248. Parliament held a virtual sitting on the 18 June 2020 in line with Covid19 regulations , (See the Attached Link no 8: refer to index of links :

- a) A question was asked by the EFF leader Mr Malema to the President of the Republic of South Africa and HBRF quote “Mr President Do you have any Scientific evidence of how many people are going to die out of the pandemic, or we are just going as usual without knowing what are the expected infections and expected death within a particular period of time, have you be given an advise as to within a particular period we can expect that SA will lose so many lives” unquote .
- b) The First respondent response HBRF quote: We have been advised by top Scientist in our country and we have benchmarked what we are doing here against what is happening in other parts of the world. Many parts of the world did not do what we did, our lockdown was hard we will concede that, we went on even to restrict things that many other countries did not restrict like alcohol, like cigarettes, buying and selling of a number of items, but we know in time we were not going to be able to keep to the lockdown forever.” unquote

249. The first respondent did not refer to the assessment report of the national disaster center and its classification which should be guiding South Africa.

250. There were no reasons for classification other than other countries, were on lockdown.

251. The first respondent have also declared that measures taken were self made and not like in other countries, meaning the impact South Africa was expecting was greater and deadly more than any country, or it means that the President does as he will.
252. Hence the first respondent was able to Stop Cigarettes and Alcohol while other countries who implements lockdown did not implement such measures while they lead with the death toll
253. The first respondent failed to provide the reasonable threshold for its Hazard assessment which is lead to its decision to declare a national disaster. The State further failed to provide the reasonable threshold from its vulnerability assessment which is lead to its decision to declare a national disaster.
254. The Classification of Covid 19 as a the national disaster and all Lockdown regulations proclamation in terms of the Disaster Management Act No. 57 of 2002, had (have) a significant impact, affecting fundamental rights of South African citizens. Particularly;
- a) Infringement of Bill of Rights Chapter 2 , Section 7, Rights
  - b) Violation of Bill of Rights Chapter 2, Sections 10, Human Dignity
  - c) Violation of Bill of Rights Chapter 2, Sections 21,
  - d) Freedom of Movement and Resistance
  - e) Infringement of Bill of Rights Chapter 2, Sections 22, Freedom of Trade, Occupation and Profession
  - f) Violation Bill of Rights Chapter 2, Sections 27 Health Care, Food Water and Social Security

g) Violation Bill of Rights Chapter 2, Sections 28 Children, that includes child head household, to basic nutrition, shelter, basic health care services and social services;

h) Infringement of the Bill of rights Chapter 1, Section 1

i) Violation of the Constitution in particular the preamble

255. The respondent discriminated by forcing South Africans to communicate with it over the internet platform nothing that not every South African has access to the Internet during lockdown, while South African we forced to Stay at home and not every South African has an income to buy data.

256. Lockdown regulations sought to combat the spread of coronavirus and/or COVID19 amongst South African citizens, but its regulations are not rationally connected to the means taken by the Executive, secondly other regulations infringed the fundamental rights mentioned in paragraph above and they are not justified and reasonable as envisaged in section 36(1) of the Constitution

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In terms of Section 36. of the Constitution:

(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.
- (2) 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.

## R) HEALTH & DEATH COVID19 RELATED

### i) Guidelines of Death by Covid 19 –

257. on 30 May 2020 respondents confirmed that at least 1930 death cases due to Covid 19, we would like to bring to the country the guidelines of World Health Organization. The State report has created panic in the country on death related to Covid 19, as if it is only confirmed deaths, while the World Health Organization guidelines recoding medical certificate of cause of Death it states “ COVID-19 should be recorded on the medical certificate of cause of death for ALL decedents where the disease caused, or is **assumed** to have caused, or contributed to death” . (see **Point 3 of Annexure 55 Guidelines\_Cause\_of\_Death\_COVID-19**) - International Guidelines For Certification And Classification (Coding) Of Covid-19 As Cause Of Death) and
- a) only in 5 August 2020 the State will be testing and validating if death is due to COVID19 – [see link NO :9 https://www.youtube.com/watch?v=ms2vSMQmQS0](https://www.youtube.com/watch?v=ms2vSMQmQS0)
- b) the third respondent has killed the people of South Africa in the name of Covid19, while people have been starve to death and denied food in our hospitals a typical example is that of **Shonisani Lethole**, 35, died at Tembisa Hospital after being admitted with breathing difficulties. He was tested for Covid-19, but died without receiving his results. His family is appalled by the alleged mistreatment at the hospital and have questioned why the results took so long (**See annexure 56- Covid-19\_ 'Why did he not eat for 48 hours)**
- c) The respondents has treated South Africans not equal, as for its ambassador the late Zinzi Mandela who it was reported that she had contracted Covid19 but when she died the State awaited for validation test from the family and in the absent of such report she was buried with the dignity, unlike in South Africa

the poor people would be treated unfairly and would not even see their deceased family members whom is claimed they were killed by Covid19, as the funeral undertaker will bury them without the presence of the family as a Covid19 regulations and their coffin would be covered with plastic

## **ii) Lessons learned by the Minister of Health on COVID19 –**

258. The media coverage 30 April 2020, where This is the opinion of the third respondent, who joined a panel of experts from the World Health Organization (WHO) in reflecting on how countries in Africa are dealing with the worldwide pandemic. On a question of the relative low infection rates against that of the international world, The third respondent said I quote “ *several factors could have contributed, including an overall younger population that could probably handle the virus better, and the fact that Africa was among the last continents to have recorded a first case and thus had the opportunity to respond faster*”, unquote

a) Validation of testing in questionable, for a schools in Soweto have tested all their children are still waiting for the results today yet every day the State announces recovery and infections

## **iii) Unexplained Death by National Organization of Rare Disorders –**

359. this organization has reported Sudden Unexplained Death in Childhood (SUDC) is the sudden death of a child 12 months of age or older that remains unexplained after a thorough case investigation, including performance of a complete autopsy, examination of the death scene, and review of the clinical history. Amongst other reports and However, due to the lack of standardizations of death investigations, consideration of undiagnosed cases of cardiac to list a few and yet State has taken the easier route to assume all death to be due to Covid19.

260. The National Organisation of rare disorder has since 2015 identified multiple of death and still no National Disaster was declared by the State. There has been a public outcry where family are forced to bury their deceased who died on

unrelated Covid 19 death, that they are death certificate state Covid 19 death to increase the daily death statistics in the country.

#### **iv) Covid19 vs TB, SARS, HIV/AIDS, Influenza –**

261. This Month the WHO has declared this period is an era of another Pandemic which is Influenza, of which it has cost lives during winter seasons, and the State has ignored that Pandemic at the expense of Covid 19 and any other illnesses, which is another pandemic which is a serious virus, and TB, SARS, Malaria, HIV/Aids are serious virus that are of a serious danger to any person irrespective of their medical condition, while Covid 19 is dangerous for people with underline health condition and/or weak immune system, but mild symptoms do not need vaccine but require quarantine of 10 days to self heal particularly from people who do not suffer any underline health condition.

262. The responded has been screening and testing for Covid 19, while the symptoms of Covid19 is closely linked to the Flu, and cold, and the State must prove to court of the Stats that they are not of cold and Flu **(See Annexure0 57- Covid Difference) ,**

#### **iv) Mortality rate –**

263. The State has deferred its constitutional obligation of controlling a national disaster which is experienced everyday as reported by statistic, the infant mortality rate in South Africa from 2008 to 2018. In 2018, the infant mortality rate in South Africa was at about 28.5 deaths per 1,000 live births. Kindly find the attached annexure of Minister of health **Click here Link 10 : <https://www.youtube.com/watch?v=hUcVrdwWmjg>**

#### **v) Death comparison**

264. Statistics SA has provided data which indicates that the number of death per year in South African has not grown beyond the average death, and secondly that the impact of Covid 19 has been exaggerated the first respondent action of closing and reducing Staff and personnel at Hospitals , Clinics and the Social workers has

led to more death, in fact comparison of death from previous years suggest that there has not been much change to this year reported **(See Annexure 69)**

#### **vi) Death due to Covid 19**

265. Minister Mkhize on the 03 August 2020, gazatted that any person who is assumed might have died due to COVID19, a post mortem must be done **(See the annexure 75 Port mortem)**, the third respondent should provide post mortem reports, signed by the family members and a qualified personell who issued it.
266. The third respondent to prove and provide supporting evidance of its claims that all death had or were as a results of COVID19 as from March 2020 to date in relation to all death reported as Covid19 Deaths

#### **S) STATE ACKNOWLEDGES COVID 19 IS NOT A THREAT**

267. The third respondent acknowledges that Children illness are more dangerous than COVID19 See Link **No 11:**

<https://www.youtube.com/watch?v=hUcVrdwWmjg>

268. Kindly find the attached annexure of third respondent See Link **No 12:** :  
<https://www.youtube.com/watch?v=hUcVrdwWmjg>

269. See the attached acknowledgement of UK – **See Link No 13:**  
<https://www.facebook.com/sirenety/videos/3922141877812934>

270. Kindly find the attached link on the German Enquiry into Covid 19

**See Link No 14::** <https://youtu.be/E1wbgrhr2Bw>

271. Based on the idea that there is an objective understanding of a democratic society and that State Decision either be Disaster management regulations or lockdown in a democratic society must adhere to the principles of proportionality and equality, it is inconceivable that the regulations could be considered to be

“reasonably justifiable in a democratic society. Hence the State has used the torture on its people See **Link No 15: <https://www.youtube.com/watch?v=mgEvCgSnZso>**

## **T) DECLARATION OF THE NATIONAL STATE OF DISASTER**

272. The respondents relied on a classification of a COVID19 that was baseless, unreliable and had no truth in it. Furthermore it opted to even implement Disaster management regulations that were not practiced anywhere in the world, which were hard for South Africans and which were a violation of the constitutional rights of all South Africans, as per the President Statement in the Parliament on the 18 June 2020
273. The declaration has no assessment report and or reasons of the findings for its recommendation for a national disaster, hence HBRF request the 2nd respondent in her response to adhere to Disaster Management Act , Chapter 6 (4) and/or (a) and/or (b) and/or (c) and/or (d) and /or (e) and/or (f)
274. The government Gazatte Vol 657 No: 43096 **(see Annexure 7 - Declaration)** it has 4 (four) empty pages, which were supposed to be been clarifying the nation of the findings of the head of the National Disaster management as justifiable reasons and an error of law .
275. The respondents failed to provide reasons of the action they are taking in terms of section 33(2) of the constitution, and there for the decision that it is basing its facts on are unknown to the public
276. In the interest of justice HBRF request the court to nullify the decision for a lock down that is otherwise unreasonable in light of all the evidence.
277. All that followed resulted in violation the bill of rights in terms of Section 7 and read with Section6 up section 30 of the chapter 2 of the constitution,

278. The violation various aspects of the of the constitutions through lockdown regulations has impacted negative to the wellbeing and broad harm to the citizen of the country
279. In the Public Interest the State has violated and threatened the constitution in the following areas:
- a. The executive implementing a lock down is in violation the constitution, and therefore the court to remind that Chapter 5 Section 101, Executive Decision be applicable
  - b. The Abuse of power by the State, deviating from the constitution, Chapter 5, section 84 Powers and function of the President
  - c. Infringement of Bill of Rights Chapter 2 , Section 7, Rights
  - d. Violation of Bill of Rights Chapter 2, Sections 10, Human Dignity
  - e. Violation of Bill of Rights Chapter 2, Sections 21, Freedom of Movement and Resistance
  - f. Infringement of Bill of Rights Chapter 2, Sections 22, Freedom of Trade, Occupation and Profession
  - g. Violation Bill of Rights Chapter 2, Sections 27 Health Care, Food Water and Social Security, by the State (see annexure 6), nothing that not every South African has access to the Internet
  - h. Violation Bill of Rights Chapter 2, Sections 28 Children, that includes child head household, to basic nutrition, shelter, basic health care services and social services;
  - i. Infringement to Bill Of Rights Chapter 2, Section State of emergency
  - j. To Prohibit the State , President and Ministers from making unconstitutional decisions with unintentional consequences to the nation
  - k. Prohibit the State, President and Ministers from continually and mistakenly implementing actions of which lives of South Africans and other nationals in the country may be ruin or/and harmed

## **U. STATE FAILURE ON COVID 19 SOCIAL RELIEF (The OBJECTIVE TO SAVE LIVES )**

280. The respondents failure to carry its constitutional obligation in terms of all Covid 19 SOCIAL RELIEF meaning the State failed to rationally be objective to saving lives :

- a) **Social Relief on SASSA** - We have experience where the State would commit and change its mind such as when the State announced the R350 to be paid to unemployed and still today majority have not paid, HBRF on the 17 June 2020 wrote a letter of demand to the Minister of Social Development this is after it identified that 16 million South Africans as per the Stats SA are unemployed , and only 1.3 Million were paid for one monthly. In the letter we request the Department to provide appeals process within 48 Hours See **(the Annexure 20 Letter of Demand to SASSA)**. The Department on the 20 June 2020 issued a media statement SASSA working on appeal system for R350 grant applicants - 85 eight five days into lock down, this is a caring State to save lives from poverty **(See Annexure 45- SASSA working on appeal system for R350 grant applicant)**
  
- b) **Social Relief on UIF** – Because there are more than 750000(seven hundred and fifty thousand employees who have not received their salary since lockdown was declared HBRF has intervened **(see Annexure 21Letter of Demand UIF)** and see the UIF respond **(See Annexure 46- Letter UIF RESPONSE to HBR)**, on the 22 July HBRF wrote to the Minister of Communication after it saw longs queues of the poor of the poorest waiting at Post office to get their R350 rands **(See Annexure 47)**

- c) **Social Relief on Small business**- with SMME we have yet to see and find an SMME that has been funded, while land lord are everyday evicting SMME due to assistance from the State **(See Annexure 22 Letter of Demand Small Business)** and the Report of unaccounted funds from the Department (see Annexure 99)
- d) **Social Relief of Sports, Arts** - majority of actors, film producers and athletes have not receive a cent from the grant since lockdown and this sector is hard hit by the unconstitutional lockdown **(see Annexure 23 Letter of Demand DSAC)**
- e) **Social Relief on Transport Sector** – when Lockdown was declared the Taxi industry worked with the State to transport essential Services and people to hospitals and kept the industry growing. On the 22 June 2020 Taxis who assisted the State during lockdown had to strike in order for the State to get attention of it **(See the annexure 47 lockdown taxi strike to Minister Transport )** while the State gives R200bn (two hundred Billion) to banks without any conditions that are aimed to improve the poor of the poorest including their partners who in this case were the Taxi operators. Noting the regulation state that taxi cannot have 16 passengers (seating together) while in a funeral 50 people can seat together.
- f) **Department of Justice role during Lock Down** - The department of Justice is the only department that was making an income during the lockdown, with this unconstitutional regulations, due fines paid by South Africans who were trying to their daily basic living survival, while the other people are having criminal records due to this unconstitutional lockdown regulation, which has created a criminal record against obedient and discipline South Africans, with companies retrenching Like Mass Mart, Edcor, Telkom, SABC, Samancor, Sibanye-Stillwater, Glencore, Aspin , 90% of SMME and NGO to list a few the record will make it even more difficult for South Africans to obtain prospect of



employment. ( **See the Annexure 24 Letter of Demand HBR vs Department of Justice and SAPS**) name of national disaster management.

- g) **Department of Public Enterprise** is the only department that did not provide any relief of what so kind during Lockdown, instead it was using its State owned entity called Eskom to cut off electricity particularly in the rural municipalities during lockdown endangering more people to exposure of COVID 19 and any other related viruses and poverty (**See annexure 63**) ) and thereof response from Eskom (**Annexure 68** )
- h) National Treasury is has failed to comply with the Public Services Commission report in paying SMME , however it decided to allocate all funds and loans to Covid19 related expenditure, declaring small business and its staff to eat, bath and feed their families a Covid 19 for breakfast, lunch and diner as they stay at home (**See annexure 66** ),
- i) The respondent R500 billion Covid19 grant break-down is a clear indication that the respondent approach to Covid19 has nothing to do with addressing the disaster but everything to do with business and depopulation ( **see annexure Annexure 95** )

#### **V) STATE FINANCE WRONGFULLY ALLOCATED:**

- 281. The fourth respondent has announced budget for 2020/21, revenue is projected to be R1.58 trillion, or 29.2 per cent of GDP. (**See Annexure 3**)
- 282. Expenditure is projected at R1.95 trillion, or 36 per cent of GDP. This means a consolidated budget deficit of R370.5 billion, or 6.8 per cent of GDP in 2020/21. By the 2020 Budget Speech Gross national debt is projected to be R3.56 trillion, or 65.6 per cent of GDP by the end of 2020/21

283. The Fourth respondent, has said nothing about the Strategic Reserves funds, which are funds that are awaiting any disaster the country may find themselves, may the fourth respondents provide a report on the Strategic Reserves Funds in the following :
- a) amounts of the Strategic Reserve funds for the past 10 years
  - b) why are they not being used during a disaster-management
  - c) if used how , by who ,when and why?
284. With fourth respondent have not committed and/or indicated on how, where, when and by who the below funds have been used and/or allocated and/or committed , furthermore in real time monitoring and reporting including the R500 Billion announced by the 1<sup>st</sup> respondent :
- a) \$4.2 billion from International Monetary Fund,
  - b) \$1 billion from the New Development Bank and
  - c) from the African Development Bank,
  - d) and various donations from China and other Countries on COVID19
  - e) With of the national debt of R 3.56 trillion.
  - f) with a budget for 2020/2021 of R 1.59 Trillion
  - g) with provision of National, Provincial and municipal Disaster management funds
  - h) The Strategic Revenue fund
285. May the fourth Respondent provide a reports and any supporting documents on the above point 284.

286. In a period of less than a year, the country has been able to raise funds as pointed out in point 284, The question HBRF is asking :
- a) is where are the funds committed to and
  - b) who are the beneficiaries ,
  - c) what was the fourth respondent response to the HBRF letter to the Minister requesting reallocate the loans **(See Annexure 31 Minister Of Finance)**
287. On the 2020 the Public Service Commission released a damning report indicating that The State owed majority of Small Medium Micro Enterprise (SMME) and that they have not been paid and are owed more billions by the State for more than a year **(See Annexure 48 Public Service Commission report)**, with all funds and resources listed on point 263 the country is still in depression and recession
288. Instead of the third respondent ensuring that the Service providers who are SMME are paid to enable them to survive during this time it decides to reroute its spending and commitment on COVID19 marketing, equipment's and media, undermining its constitutional obligation as per section 17 of the constitution
289. Auditor General report released a report indicating challenges and monetary accountability of municipalities, our concern is that the fourth respondent has failed to prioritise the Distressed Municipalities, who some had to be cut off electricity due to no sufficient funds and commitment from the State **(see the Attached 49 Auditor General report)**

290. BBEE Commission report indicates that inequalities in terms of transformation and the state has neglected its constitutional obligation for COVID19 programme
291. The respondents are exploiting this circumstance hence we find the our SOE's reporting to a Presidential State Owned Enterprise Council in short our SOE's report to the likes of Sanlam, AngloGold Ashanti, MTN, Thebe investment, MISTRA to list a few
292. The Decisions of the respondents is irrational and unjustified to carry the decision of execute the role of the legislature and
293. While saving the majority of South Africans from poverty they experience every day of this lockdown, avoided the declaring all South Africans insolvent and drowning the economy in to recession, liquidating business and the markets, finally preserving and promoting the Bill of rights resulting to building this great nation called South Africa.
294. The respondents has been selective on approaching the covid19 pandemic from other deadly pandemic whether unknown and/or unknown that South Africa has had to experience in the past century, as for Covid19 there is no need to borrow \$1bn (one billion dollars) for a vaccine from the New Development Bank **(Annexure 50 NDB)** New Development Bank approves US\$1BN loan for SA ), while Majority of those infected are with mild symptoms which self healing during quarantine
295. Our Lovable respondents has committed that there will not be any load shedding during lockdown and we are experiencing load shedding every day.

296. The respondents are not reliable, unethical behavior; it is arrogant and careless about the economy, its people, its land and the constitution of the Republic
297. The Respondents exploits this circumstance hence we find the our SOE's reporting to a Presidential State Owned E Council in short our SOE's report to the likes of Sanlam,AngloGold Ashanti, MTN, Thebe investment, MISTRA to list a few
298. The third respondents has been engaged in activities that creates a national disaster to South African, Since the country is in lock down it experience a deepening violation of the Bill of Rights :
- a) During Lockdown South African Revenue Services(SARS) has been debiting the poor South Africans what's is owed to it using third party to execute, it does this with full knowledge that South Africans are broke and their savings can only be used to buy food and not to fight legal battles (**See the attached annexure 60**) and SARS response to HBR Foundation (**See Annexure 61**), this takes place when the is an order from the High Court WPD FLEETMAS CC Applicant and COMMISSIONER: SOUTH AFRICAN REVENUE SERVICES Case no: 31339/2020, Judge D S FOURIE, J: Judgement ORDER states “ The first respondent's notice dated 22 June 2020 to appoint the second respondent as a third party in terms of the provisions of section 179 of the Tax Administration Act No 28 of 2011 , is declared unlawful and therefore also null and void ”(**See attached annexure 62**)
- b) During Lockdown Eskom has been freezing bank accounts of municipality that owes it, resulting to the poor people suffering even worse and experiencing high level of poverty ( **See annexure 63** ) and Eskom response to HBRF ( **See annexure 68**)

## **W) STATES REPORTS RELEASED During COVID 19**

299. The Auditor General of South African reaffirms what HBRF has been saying in terms of non accountability, that South Africans have suffered during the lockdown see the attached (Annexure054- 9 AG Covid19 First special report on the financial management of government's Covid-19 initiatives)
300. The Report from Stats SA which also reaffirm what HBRF initial application to constitutional court foundation affidavit have warned the courts and the State of what is ought to experience and that the ordinary South Africans suffer the most, Real gross domestic product (measured by production) decreased by a record 51,0% in the second quarter of 2020 owing to the impact of the COVID-19 lockdown restrictions since the end of March 2020. (See Annexure054- 10)
301. The Report of the Public Services Commission highlights the incompetence of the first respondents as the chief executive of the State , and that business have suffered under his leadership with non payment from the State before Covid19 (See annexure054- 11)
302. The third respondent using South African Revenue Services to depend poverty and frustration amongst South Africans, it has ordered SARS to recover what is owed by ordinary South Africans, and this happen during lock down, where South Africans irrespective of the Disaster Management regulations
303. HBRF take in to account the Malawi High court order , which has saved the people of Malawi during Covid 19 lockdown crises, and the order reaffirmed what we always said, and South African Courts awaited for South Africans to suffer before it intervene, and failure to act now, poverty and depression is killing the people more than Covid19
304. HBRF sought what the Malawi court applied prior to the President of Malawi implement lockdown refer to the matter in the High Court Of Malawi Lilongwe

District Registry, case no: 22 OF 2020, in a matter Esther Kathumba & Others  
v. The President & Others - 29 April 2020 order by Judge Kenyatta Nyirenda

#### **X) INTERNATIONAL ACKNOWLEDGES INCORRECT REPORTING on COVID19**

305. The respondents has failed to provide how it classifications of any diseases, The State has failed to convince the court of why Covid 19 was classified as a national disaster. The State has not classified correctly covid19 and against TB, Influenza, Malaria, SARS etc...
306. The respondents has not provide reasonable facts, have not made the assessment publicly or its ground for the declaration of a national disaster and reasons for the Declaration of the National Disaster Management. From inception of the breakout of the Covid19, they did not conduct a scan and assessing the risk.
307. The respondents took a decision based on hearsay of the Media and opted to violate the bill of Rights of South Africans through an unconstitutional lockdown See the attached acknowledgement of UK – **See Link No 16:**

**<https://www.facebook.com/sirenety/videos/3922141877812934>**

#### **Y) STATE ACKNOWLEDGES COVID 19 IS NOT A THREAT**

308. The state acknowledges that Children illness are more dangerous than COVID19

click and See Link No 17: **<https://www.youtube.com/watch?v=hUcVrdwWmjg>**

309. see *Bengwenyama Minerals Pty Ltd v Genorah Resources (Pty) Ltd* 2011(4)SA 133(CC) *the Constitutional court Stressed the rule of law underpinnings behind section 172. the rule of law is entrenched in section 1(c) of the constitution which provides that it is a foundational value of our constitution and our society. The rule of law concern behind a declaration of invalidity of law or conduct, was dealt with as follows in the said judgment at paragraph 85 — I don't think that it is wise to attempt to laydown inflexible rules in determining a just and equitable remedy following upon a declaration of unlawful administrative action. The rule must never to relinquished but the circumstance of each case must be examined in order to determine whether the factual certainty requires some amelioration of legality, if so to which extent* ||
310. Instead of the respondents to utilize the alternative relief, the State use that period to continue bringing more harm to South Africa with this appeal to keep the status quo of non-accountability, poverty, increase of illiteracy and retrenchments in the economy, hence we request the court to dismiss the appeal with costs
311. Respondents failed to give measures used to combat COVID19 or any other pandemic that have strike the Republic.
312. the need to argument the existing measures undertaken by organs of to deal with the pandemic. The recognition of special circumstances warranting such declaration. ( See In *Hoffman v South Africa Airways* 2001(1) SA the court held that appropriate relief in terms of section 38 must be construed purposely and in the light of Section 172(1)(b) which empowers a court in constitutional matters to make any order that is just and equitable. Such the court held that, „ appropriate relief must be fair and just in the circumstances of the particular case. Appropriateness imports „the element of justice and fairness“ )
- 313 The South African Medical Research council released a report indication the main causes of Death in South Africa during this lockdown of which it is not Covid19 **(See Annexure 86 )**



- 314 The third respondent has also confirmed that Covid19 is not deadly more than children illnesses, Kindly find the attached statement of Minister of Health Click here : [click and See Link No 18:](#)

<https://www.youtube.com/watch?v=hUcVrdwWmjg>

## **Z) SA COVID 19 Vaccine :**

315. Since lockdown **first respondent has always** announce and inform the nation of a need for vaccines and testing for vaccine in every Address to the Nation on Covid19
316. On the third respondent has shared the same sentiments and announces of a vaccine for the people of South Africa.
317. While the world was up in arms when the British Medical descendant who were calling for the testing of COVID 19 to be in South Africa , the State has supported for a vaccine that is not needed because majority of South African are self-healing during guaranteed.
318. On 01 June 2020 the HBRF get to be aware that there are trails of testing taking place in Soweto, the testing has long started where poor people are being given R350 only to test on a vaccine which has not even been proven in South Africa medical institution. The Vaccine test (ChAd0x1 nCov-19 za phi) is conducted by UK Dr Andrew Pollard ( **See Annexure 51- Covid19 Vaccine Testing in Soweto**) .The process is unguided and unmonitored by the state, was operating at Baragwaneth Nurses Home, 2nd floor ,Soweto,

Johannesburg, South Africa, on 23 June 2020 another Scientist are on COVID19 vaccine test (Ox1Cov-19 Vaccine VIDA-Trial)

319. HBRF also raised the issue with the Premier of Gauteng and the first respondent with no success on their Social Media platform
320. The Deployed (World Health Organisation) WHO is the African Manager DR Matshidiso Moeti. came out to support the on SABC news calling that Africa be the testing ground for a COVID19 vaccines of which is unconstitutional and endangering the South Africans ,
321. while WHO Director general Tedros Ghebreyesus said “ Africa can’t and won’t be a testing ground for any vaccine on the 6April 202 on **(See annexure 52 WHO refuses for Africa to be Testing ground)**
322. The Respondents must shared the report, meetings and findings that was led by Cuba medical team which resulted to the decline on the Covid19 cases in South Africa,
323. The respondents must provide report and meetings with China, an why China has never opted or vaccinated its population while it is where this Covid19 pandamic started ,
324. The first and third respondent provide any other vaccines and or medical treatment which was bought by the State either locally and/or internationally which was researched, developed and tested in less than 3 years of existence
325. The first and third respondent provide any other vaccines and or medical treatment which was bought by the State either locally and/or internationally which was researched, developed and tested which has never underwent our SABS and any other Medical Safety Standards in the past 5 years and it was offered to the general public of South Africa

326. The third respondent has confirmed that WHO also provided leadership and technical support to the Presidency and the National Department of Health in the successful organization of Presidential Health Summit and He further that “ Stated that 16 team members have now arrived in the country and when the team is complete there will be 43. Those that are already with us have begun an orientation period to ensure there is optimal alignment of programmes. The work of battling a pandemic does not begin and end and therefore we will be encouraging fluidity and agility and welcome the fact that they will be looking at our situation with fresh eyes and may be able to identify blindspots or offer a perspective we might not have considered.

i) There is a broad range of expertise in this team including:

a) Surveillance and streamlining of epidemiological systems

b) WHO global COVID-19 response guidelines;

c) Case management,

d) Expertise in Communications and Stakeholder engagement to increased community buy-in of public health measures.

327. the first respondent finally confirms that South Africa and many other nations have shown that it is possible, through multi-sectoral collaboration, to slow down the rate of infection and rebuild livelihoods after the initial devastation. And yet the first and second respond invite a top delegation from WHO, for what reason ?

328. With UK which has been running test and/or vaccinating South Africans on Covid 19 in Johannesburg under the knowledge of the first respondent, now the UK is declaring South Africa a treat which indicates that South Africa is has a varaance of Covid19 after it used it as a testing grounds for vaccine under the

hospice of the First Respondent (**See Annexure 77 UK ban SA the attached**  
**)**

329. WHO - has confirm that they are growing the Virus in South Africa, this is after South Africa was in a decline, through the hospice of the first respondent see click and See Link No 19 <https://youtu.be/Tlp7ZEZ-JWM>
330. While Madagascar has offered South Africa a Covid 19 herb , which it is beloved it is more safer that any vaccine , the First and third respondent have opted to support for vaccination of the population
331. Locally or the use of exiting medicine, whereby there are other medical supply which may have an effect to address and cure Covid19 patient such as the ivermectin, and on whether the first and third respondent have addressed
332. The Russians have also developed they own Vaccine , with South Africa being a member of the BRICS , the respondent has failed to follow procurement process which calls all the bidders and/or providers of vaccines while applying the Public Finance Management Act , which is the same process for Nuclear power station of which the the country suffer electricity generation and is embarking on the fair and transparent process which involves locally and international
333. If there has been any process of tender or supply from the first respondent on vaccine that has been followed and may the first respondent provide any report, publications and process followed , with is with reference to the procurement of building of Nuclear Power plant, we seek the court to also take into the account the matter of Minister of Energy and others vs EARTH LIFE AFRICA and Others case Case No: 19529\_2015 (**see annexure 97**)
334. Dr Taban has produced a study on why patience with underline health condition are dying infected with COVID 19 19 are dying and how he has been rescuing and saving lives with any vaccination (**see Annexure 81**)

## AA) PRESIDENT RAMAPHOSA VIOLATION OF THE CONSTITUTION

- 335. The first respondent was amongst people who were responsible for the formulation of the South African Constitution, that was the basis of our democracy
- 336. Today South Africa witness the first respondent violating his oath of office
- 337. He has lied to South Africans and destroyed millions of lives through classifying Covid19 a disaster and lockdown the country on a non-disaster
- 338. the first respondent has created an operandi that promoted Covid19 as pandemic in South Africa while in South Africa a casedemic , where the country lockdown on cases of people infected who were self-healing and not causalities or hospitalized cases
- 339. South Africa has been on a 99.99% immunity and 99.99% recovery from day one ,South Africa has never has full capacity in hospitals
- 340. The First respondent has captured the State in particular all SOE to report into his office and illegal structures
- 341 the first respondent has been captured by the international business man
- 342 The first respondent consolidated and centralized the National, provincial and municipality funds into his National Command COVID19 Council, of which we as a country we experience corruption at the highest leve and deepening poverty and job losses
- 343. The respondents oversee that Eskom to stop service delivery of municipalities
- 344. The respondents oversee that SARS furthermore take the South African last cents in their accounts
- 345. The reports of the Auditor general indicates that the respondents has created a conducive environment for corruption to strive

346. The Stats SA report indicate that since the first respondent term of office, South African has drop to devastating level

347. The Public Service Commission report indicate that the first respondent administration has failed the public and South Africans , where majority South Africans businesses are not paid since 2019 under the leadership of the repondents

348. We bring to the court attention that the first respondent has violated in terms of the following :

a) Gross violation of the Constitution of the Republic of South Africa, 1996, Chapter 1, Preamble

b) Gross violation of the Constitution Chapter 1, Section1, 2 and 3 of the Founding Provision,

c) Bring to court attention the President intentional or unintentional violation oath or affirmative of office as per Section 95 of the Constitution when he was sworn in and said — I solemnly and sincerely promise that I will always—

i. promote all that will advance the Republic, and oppose all that may harm it;

ii. protect and promote the rights of all South Africansll

d). In the interest of Justice

e). The President implementing a lock down is in violation the constitution, and therefore remind the court of Chapter 5 Section101, Executive Decision be applicable

f) The Abuse of power by the President , deviating from the constitution, Chapter 5, section 84 Powers and function of the President

g) Infringement of Bill of Rights Chapter 2 , Section 7, Rights

- h). Violation of Bill of Rights Chapter 2, Sections 10, Human Dignity
- i) Violation of Bill of Rights Chapter 2, Sections 21, Freedom of Movement and Resistance
- j). Infringement of Bill of Rights Chapter 2, Sections 22, Freedom of Trade, Occupation and Profession
- k) Violation Bill of Rights Chapter 2, Sections 27 Health Care, Food Water and Social Security, by the State **(see annexure 6)**, nothing that not every South African has access to the Internet
- l) Violation Bill of Rights Chapter 2, Sections 28 Children, that includes child head household, to basic nutrition, shelter, basic health care services and social services;
- m). Infringement to Bill Of Rights Chapter 2, Section State of emergency
- n) To Prohibit the President from continuous making unconstitutional decisions and
- O). Prohibit the President from mistakenly implementing actions of which lives of South Africans and other nationals in the country may continue to be ruin or/and harmed

#### **AB) GERMAN APPOINTS AN EXTRA PARLIAMENTARY ENQUIRY**

349. Kindly find the attached link on the German Enquiry into Covid 19

click and See Link No 20 : <https://youtu.be/E1wbgrhr2Bw>

#### **AC) INTERNATIONAL UPRISE AGAINST LOCKDOWNS**

350. The following are the countries that where the people have upraised against the lock down, a Covid19 system operates in as a Universal Franchise, the is an international up rise and protest against it , in countries such as :

a) India, Russia, Serbia, Israel, Spain, Ireland, Brazil, Australia, USA, Colombia, Germany, UK, France ,Chile ,Europe, Lebanon ,USA-Califonia, Chigago and Michigan to list a few

351. This is because these lockdowns are not used to save lives but to control the people and governments,

352. The State must declare if wants what is happening throughout the country, of which is a matter of hours if not seconds just before South Africa get to be on flames

#### **AD) GLOBAL REPORTS AND/OR FINDINGS**

353. The 1<sup>st</sup> Respondent has a cordial corrupt relationship with an international Business tycoon “Mr Bill Gates” who happened to be a founder of the Gates Foundation, which is advocating for depopulation throughout the worldwide, a violation of our Bill of rights in South Africa

354. in 2015, Mr bill Gates spoke about a virus that is coming and he then indicated that the virus will be a pandemic in its nature, and furthermore indicated how the pandemic would look like, which is the Covid19 Logo (See the Following Bill Gate Links Link 30 : )

355. Mr Gates is now major funder of the World health organization , this is after United State of America pooled out its funding for the WHO, the gate Foundation has funded WHO with \$3.68 billion

356. The Foundation has pledged up to \$100 million for the global response to Covid19 on February 2020



357. Mr Gates has furthermore indicated his interest in the medical and/or pharmaceutical industry, where he indicate that he has been working on developing a solutions for pandemic
358. on the 17 February 2020, Mr Gates was speaking at the annual meeting of an American Scientific society in Seattle Washington, amid growing concerns about the CoronaVirus outbreak when he warned that coronavirus epidemic could overwhelm the health services of Africa and trigger a pandemic which may lead to 10 million death in the continent
359. Mr Gates furthermore address the gathering, and makes a profound statement of what we are seeing today, he said we will see arise of infections of Covid 19 in the Southern hemisphere of Africa's (click and See Link No 21: )
360. Mr Bill gates confirms that he is being engaging with the first respondent on the Covid19 and that there is working relationship between the two.
361. the first respondent has also confirmed his involvement with Mr Gates on the issue of Covid19 on his social media. I quote “ ***the Gate Foundation has supported our health needs for years. They have offered assistance with innovative mass based testing kids and research. I spoke to Bill Gates and he commended the swift and decisive action South Africa has taken.***”
362. Mr Gates and the first Respondent met on several occasion, even just prior to declaration of the lock down, as soon as Mr Gates left the country, the first and second responded instituted and declared state of Disaster management “Lockdown” ( click and See Link No 22:
363. we Ask the Court that may the first respondent provide what was the meeting about, the minutes of the meeting and furthermore the intentions that of Mr Gates and/or
364. Was there any commitment made by the South African towards Gates and if any what were those commitments and/if not what were the alternatives

365. During Lock down in South Africa, there were COVID19 Vaccination taking place in South Africa , in Soweto, today we are informed that there is a new wave a variant of Covid19 and the respondent should indicate what action they took :

a) why is that that vaccine test ( ChAd0x1 nCov-19\_Za\_Phi) were conducted at Bara nurses home in Soweto by the UK scientist

b) referring to point 339 was the testing authorized and by who between the first respondent and the third respondent? furthermore were all the victims or volunteers quarantine for inspections and if not why and if yes what were the test reports

366. On the 10 January 2020, at 8pm (**See Annexure 89**), the 1<sup>st</sup> respondent address the nation on the implementation of vaccine and that some vaccine will be sourced from Covax,

a) Who is Covax - Is one of the three pillars of the Access to Covid 19 tools(ACT) Accelerator, which was launched in April by the World health Organisation (WHO), The European Commission and France response to this pandemic. Bringing together governments, global health organization, manufactures, scientific , private Sector, Civil Society and philanthropy, with the aim of providing innovative and equitable access to Covid19 diagnostics, treatment and vaccines” as per the Website

**b) The respondents have violated Disaster Management Act, Chapter 6 (1) and (4)**

c) Why is the 1<sup>st</sup> Respondent implementing strategy of the vaccine is as per the Rockefeller action plan 2020 (word for word) , the first respondent should respond to:

i) whether the respondent has unduly benefited

ii) whether the State is captured in any formation

iii) On who are South African Companies and or entities that are member of COVAX

iv) whether Mr Gates and in associates companies are member of COVAX

v) if the respondent may confirm in an affidavit that they have no other associations and/or international banking account of which may have received any funds from member companies and/or entities directly and indirectly associated with Covax and /or WHO (World health Organisation)

367 May the court consider to the following documentaries and reports:

a) The President of Tanzania exposes lies on Covid19 and Bans World health organization -click and See Link No 23:

<https://www.facebook.com/groups/210315356863512/permalink/253960582498989>

b) Documentary explaining Casedemic vs Epedemic click and See Link No 24 -

<https://twitter.com/i/status/1289505453529944065> or <https://youtu.be/0uIA8u05Z-Q>

c) Documentary of State torture on its people COVID19click and See Link No 25 -

<https://youtu.be/mgEvCgSnZso>

d) Documentary of Global trend of Corruption using Covid19 click and See Link No

26 -<https://davidicke.com/2020/09/16/how-they-pulled-off-the-pandemic-animated-film-explanation-by-david-icke/>

e) A presentation about Vaccines and why Sub Sahara is of importance by Dr Gold (click and See Link No 27: )

368. Countries on the up rise [click and See Link No 28](#) - <https://youtu.be/qELgab6xm0Y>

369. The following are additional document for information

- (a) The history of biological warfare **(See Annexure 78)**
- (b) The Rockefeller action plan 2020 **( See Annexure 79 )**
- (c) Taking-Back-Control-a-Resetting-of-Americas-Response-to-Covid **(Annexure 80)**
- (d) Spars Pandemic 2025-2028 **(See Annexure 98 )**

370. Dr Taban Study Observational study of therapeutic bronchoscopy in critical hypoxaemic ventilated patients with COVID-19 at Mediclinic SA **(See annexure 81)** and summary about Dr Taban [click and See Link No 29: https://youtu.be/OGIt\\_4Stm9k](#)

## **AE) IN CONCLUSION**

371. A proactive State and a caring State that want to save lives would have done a proper national disaster assessment and the State would have opted to identify and focus on the minority of South Africans who are the vulnerable people to COVID 19 and like related viruses, those are people with underlying health conditions and the elderly with weak immune systems.

372. The State would have and can still develop some Covid19 free Zone where the minority who cannot afford to stay home or are living in risky environment which would danger their lives , the State would have been provided safe place and

caring in order to save lives from COVID 19 and/or any other virus attack during this period,

373. While saving the majority of South Africans from poverty they experience every day of this lockdown, avoided the declaring all South Africans insolvent and drowning the economy in to recession, liquidating business and the markets, finally preserving and promoting the Bill of rights resulting to building this great nation called South Africa.
374. The State has been selective on approaching the covid19 pandemic from other deadly pandemic whether unknown and/or unknown that South Africa has had to experience in the past century, as for Covid19 there is no need to borrow \$1bn (one billion dollars) for a vaccine from the New Development Bank (Annexure 13 New Development Bank approves US\$1BN loan for SA ), while Majority of those infected are with mild symptoms which self healing during quarantine,
375. There is no prospect of success and no other court in the republic and internationally may grant the state to appeal and there is no urgency on its application but the State has a constitutional obligation of which its urgency of rehabilitating, reviving and transforming the lives of all South Africans that are experiencing a disaster brought by the State:
376. In Mahomed and Another v The republic of South Africa and others 2001(3) SA 893 (CC) paragraph 69 where Chaskalson P Referred to the United State decision in Olmstead et al v United State and Qoutes the words of Justice Brandies as follows: “ *in a government of laws, existence of the government will be*

*imperiled if it fails to observe the law scrupulously... Government is the potent, omnipresent teacher. For good or for ill, it teaches the whole people by its example.... If the government becomes a lawbreaker, it breeds contempt for the law; it invites every man to become a law unto himself; it invites anarchy"*

377. May the Honorable court take into account all the hardship and frustration and/or including irrecoverable damages incurred by the South Africans in the form of:

- a. Damaged reputation in society
- b. Damaged reputation and credibility to the nation
- c. Irrecoverable damage from Companies
- d. Loss of financial Income from person to entities and families
- e. Loss Interests that could have been generated and earned
- f. Emotional Stress enjoyed during this process and period
- g. and physical stress underwent during the period
- h. Family frustration and stress absorb resulting to separations and disorder
- i. and personal frustrations and stress incurred
- j. Employee, Scholars and Students frustration and stress
- k. Decline in South Africans Moral
- l. Retrenchment Staff due to no business and no payment
- m. High experience of court cases from CCMA and court cases
- n. Unintentionally and unplanned Disaster management and
- o. Unintentionally and unplanned lockdown
- p. Irrecoverable damage of the lives of ordinary people
- q. Irrecoverable damage to those who depends on the State
- r. Irrecoverable damage to international community that has relations with this Country
- s. Irrecoverable damage of international community that has Bi-Literal with the Country
- t. Damaged to our South African brand

u. Finally the fruitless expenditure exercise taken during this period

378. In the view of the foregoing, I respectfully submit that it is in the interest of justice for this Honorable Court to grant the applicant direct access to the court.
379. Furthermore to grant me the relief I seek as that will :
380. Our application raises important constitutional issues dealing with the lawfulness and infringement on our Constitutions
381. There is a reasonable prospect that this honorable Court may come to a conclusion that will be of the interest of people, which defend, embrace and enhance the work of the chapter 9 institutions, acknowledge the findings and executive the recommendation of such institution without favor and/or fear.
382. This honorable court may deliver a strong statement for those who abuse State resources and/or who captured the state and/or who are corrupt and/or who embark to use the State for self-enrichment.
383. This Honorable Court may reemphasis the mandate of State institution and the importance thereof such as the mandate of Services Seta and its constitutional obligation
384. There has been arrogance and abuse of State power, which undermines the very stakeholders the State has to serve, and it is for this honorable Court to institutionalize and embrace the spirit Batho Pele Principle
385. It is in the interest of this court that our youth be skilled, development and empowered to be employable, They should never to be denied access to

education or their education be put on hold while there is budget allocated intended for them

386. Furthermore it is in the interest of this court that Business should not be blocked from executing their Constitutional rights,
387. Any intentionally misrepresentation to Parliament, to Stakeholders or to any of State Institutions and/or to the public for more must never be taken lightly, as a serious offence and this court decision must be of same accord
388. The court may consider that State funds for programmes are committed for years and not spend, and while there are immediate challenges in the country, challenges of high level unemployment, poverty, unskilled youth, crime and lack of education. furthermore that in the Annual report of State entity like Services Seta 2019/2020 it has commitment of R3.9 billion (three billion nine hundred ) while it received a budget of R1,5 billion (one billion and five hundred million) on average, this commitment are contracts which have not been given the go ahead to start from Service providers mainly SMME's by Services Seta
389. In giving out a verdict this honorable court should consider more than 36 million thirty six million thousand youth are unemployed and are still awaiting to be beneficiary for the State
390. The very funds that government has put in place to try combat and alleviate poverty has been intentionally withhold and rerouted to be invested rather than to be enjoyed by the beneficiary, while some youth are child headed family and



majority are from the poor of the poorest communities, hence delays in payment of Social relief to the intended beneficiaries

391. In giving out a ruling this honorable court should consider more than millions of Small Medium Micro enterprise ( SMME), Corporates, Businesses ,Community Based Organization(CBO), Non Profit Organization (NPO) and Non-government Organization (NGO) are declared insolvent because of the Action of the State
- 392 The economic market of the country is on permanent recession which means for furthermore delays in this lockdown might create a state of emergency
393. During this lockdown we have seen close allies of the State officials benefiting in the procurement of COVID19 PPE and related activities
394. It is in the interest of this court that SMME are to rely on the decision of this court in term of the Procurement, and how it must be governed and spending of such, the SMME are dying and closing because of nonpayment and /or delayed payment which in return, it increases the level of unemployment in the country due to business closure and retrenchments.
395. It is for this honorable court to act in the interest of those who cannot afford legal representation in their day to day business and is such this matter where an example of the benefits of democracy and constitution

396. There has been an existing norm that takes place in the country before COVID19, and still exist during the lockdown where State and/or its institution would not spend the allocated budget on service delivery matters as mandated. But would rather declare it as a commitment in the annual report with the view of continue to investing in order to generate significant interest and with officials standing to benefit from interest, this court may call resolve such act to be that of treason to the State, parliament or/and may declare it an act of sabotage to people, democracy and the constitution.
- 397 The court may exploit the issue of whether the executive has been earning salaries and the State officials has been receiving remuneration every year without fail for executing which mandate and/or constitutional and/or administrative obligation
- 398 May the Honorable court take into account all the hardship and frustration and/or including irrecoverable damages incurred by the applicant
399. May the Honorable grant reparation for the breach of human rights is a fundamental principle of international law. Reparations render justice by removing or minimizing the consequences of the wrongful act and by preventing and deterring violations
400. May this Honorable court grant the applicants restitution claim, as an act of ending any ongoing violations and restoring the al victims, to the greatest extent possible,.

- 401 May this Honorable court grant the applicants claim of compensation as a monetary award to redress a violation due to there is no other way to undo the effects of a violation through other measures such as restitution or rehabilitation.
- 402 May this Honorable court furthermore grant the applicants pecuniary / material damage Claim as a refer to the financial loss of the victim, including any expenses incurred and any special or consequential damages, as a result of the violation.
- 403 May this Honorable court furthermore grant the applicants Non-Pecuniary/moral damage: compensate for the loss in dignity and reputation of the applicants, as well as mental and emotional harm. An award of non-pecuniary damages should be intended to compensate for this suffering, including the psychological harm, anguish, grief, sadness, distress, fear, frustration, anxiety, inconvenience, humiliation, and reputational harm caused by the violation
404. May this Honorable court furthermore grant the applicants a satisfaction claim hereby refers to reparations awards that concede and acknowledge that the harm occurred. They aim to end continuing abuses, and to restore the dignity and reputation of the all South Africans in particular the unemployed, the youth and people from previously disadvantaged areas and groupings.
- 405 Finally ,may the Honorable Court consider to grant an order that of Guarantees of Non-Repetition which seeks to prevent the commission of similar human rights and constitutional violations, whether against the same or multiple victims and/or any south Africans
406. May the court grant also for the declaratory order in favor of the applicant, see Rail Commuter action group v Transnet Ltd t/a Metrorail 2005(2)SA 359
407. May this court decision also ensure the state protect and enhance our constitution and democracy , refer to the decision of the constitutional court in Mohamed and Another v The republic of South Africa and Other s2001(3) SA 893 (CC) para 67 where Chaskalson P referred to the United States decision in

Olmstead et al v United State and quoted the words of justice Brandies as follow's:" *in a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously... Government is the potent omnipresent teacher. for good or for ill, it teaches the whole people by its example...if the government becomes a lawbreaker, it breeds contempt for the law; it invites everyman to become a law unto himself; it invites anarchy.*"

408. The Constitutional democracy has been depended, which makes South African, a Blessed Nation and unique in its approach to finding solutions that are pest for its people and the land, when it declared new path on National elections refer to Judgment of New Nation movement NPC and Others vs President RSA and Other Case CCT 110/19 **(See Annexure 53 Con Court Judgment NEW Nation Movement vs President )**
409. Wherefore I humbly pray for an order as set out in our affidavit of **Hola Bon Renaissance Foundation** will be used in support
410. All responded who oppose the relief herein, jointly and severally the one paying the other to be absolved, are to pay the costs of suit on an attorney and own client scale, including the costs of six counsels
411. Any and all costs incurred by the any responded in the course of these proceedings, but which were in fact paid by another responded or any public entity on behalf of the responded or either and/or any of the responded, will be repaid to that responded or entity by the responded in their personal capacity
412. Justice delayed is Justice Denied

DATED AT PRETORIA ON THIS 14th DAY OF January 2021.



BOUTSHITSWE PREDDY MOTHOPENG MSIELELE

Applicant's Representative

Hola Bon Renaissance Foundation

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2ND FLOOR, MARSHALLTOWN

JOHANNESBURG

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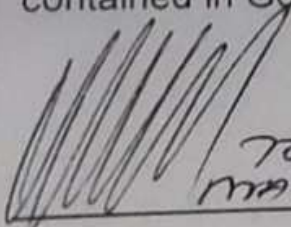
EMAIL: INFO@HBRFOUNDATION.ORG.ZA

EMAIL: HBRFOUNDATION@GMAIL.COM

REF NO: UNLOCK2021/25

I CERTIFY that this Affidavit was SIGNED and SWORN to before me at

PRETORIA on this the 14 of 01 2021, after the Representative declared that he is familiar with the contents of this affidavit, and regards the prescribed oath as binding on his/her conscience and has no objection against taking the said prescribed oath. There has been compliance with the requirements of the Regulations contained in Government Gazette R1258 dated 21 July 1972 (as amended)



706869  
makanzise

COMMISSIONER OF OATHS

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