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URGENT

Our ref. DJ Eloff / MAT3179

20 October 2020

Nkosazana Clarice Dlamini-Zuma

Minister of Cooperative Governance and Traditional Affairs
87 Hamilton Street
Arcadia
Pretoria
RSA
0002

By email: info@cogta.gov.za

Dear Minister Dlamini-Zuma,

**RE: DEAR SA // MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS –
EXTENSION OF THE NATIONAL STATE OF DISASTER**

1. With reference to the above mentioned as well the extension of the national state of disaster (COVID-19) published on 14 October 2020 in the Government Gazette Nr. 43808.
2. We confirm that we act on behalf of Dear SA, a registered national not-for-profit company and civil rights organisation. Our client acts in the interest of its supporters as well as in the interest of the public through active participation and advocacy.

3. This letter is directed to the Minister of Minister of Cooperative Governance and Traditional Affairs as designated in terms of section 3 of the Disaster Management Act (No. 57 of 2002).
4. The purpose of this letter is to express concern with the above-mentioned extension of the national state of disaster. Since the initial declaration of the national state of disaster, the South African landscape regarding COVID-19 has drastically changed and therefore the initiating circumstances that prompted the initial declaration have consequently largely disappeared.

BACKGROUND

5. We briefly describe the circumstances around 15 March 2020 that, in our client's view, prompted the initial national state of disaster, which have now largely disappeared or have been rendered irrelevant:
 - 5.1. At the time, the severity and infectiousness of the COVID-19 virus was mostly unclear and uncertain. Moreover, it was uncertain how the virus affected different age groups and particular health demographics.
 - 5.2. It was uncertain what the impact of measures to address the outbreak might be on lives and livelihoods.
 - 5.3. Our healthcare system's ability to effectively deal with the outbreak was unsure and time was needed to prepare for the wave of infections that was expected.
 - 5.4. South Africa's means to efficiently track and trace the spread of the disease was limited.
 - 5.5. The ability of government to communicate health and safety precautions effectively was uncertain. The magnitude of the infections of COVID-19 the South Africa was still unclear.
 - 5.6. SACEMA projected the number of deaths at 351 000 if 40% of the population became infected.
 - 5.7. The WHO estimated the mortality rate of the virus at 3.4%.

6. Since 15 March 2020 and through the experience gained during the past seven months the above listed uncertainties have been resolved and conclusively answered.
7. As you are undoubtedly aware, you declared a national state of disaster on **15 March 2020** through Notice No. 313 and published in the Government Gazette No. 43096. This state of disaster has subsequently been extended five separate times, each time for another month, as required by section 27(5)(c) of the Disaster Management Act, No. 57 of 2002 (hereafter 'the Act'). The last extension was issued through Notice No. 995 and published in Government Gazette No. 43713 on 14 September 2020.
8. At the time when the national state of disaster was declared South Africa was facing an unknown threat in the form of the COVID-19 virus.
9. The initial declaration of the national state of disaster was said to be enacted due to "*special circumstances [that] exist to warrant the declaration*" as well as due to "*the need to augment the existing measures undertaken by organs of state to deal with the pandemic*".
10. Section 27(2) of the Act authorises the making of regulations or issuing of directions or authorises the issuing of directions concerning matters listed in the regulations or directions, only to the extent that it is necessary for the purposes of:
 - 10.1. assisting and protecting the public;
 - 10.2. providing relief to the public;
 - 10.3. protecting property;
 - 10.4. preventing or combatting disruption; or
 - 10.5. dealing with the destructive and other effects of the disaster.
11. Moreover, in terms of section 27(1) of the Act, a state of disaster may only be declared if existing legislation and contingency arrangements do not adequately provide for the national executive to deal effectively with the disaster or other special circumstances warrant the declaration of the national state of disaster.

12. It follows that an extension of a national state of disaster in terms of section 27(5)(c) of the Act is subject to the same limitations and requirements listed in the empowering provision, namely section 27(1) and (2) of the Act, that allows for the declaration of the national state of disaster.

IRRATIONAL EXTENSION OF NATIONAL STATE OF DISASTER

13. Our client is of the firm view that the decision to extend the national state of disaster is not rationally connected to the purpose for which it was taken nor was it rationally connected to the empowering provision, namely section 27(1) and (2) of the Act. Our client wishes to highlight the following:

13.1. We have since the start of the pandemic gained valuable and insightful expert knowledge regarding the severity and infectiousness of the COVID-19. Our medical experts and epidemiologists have determined which groups are most at risk when contracting the virus and we have conclusively seen that the virus poses limited risks to minors. We also know that the vast majority of people are not susceptible to infection, something that was confirmed in March already by the Diamond Princess cruise ship data. The case fatality rate ("**CFR**") for children under 19 is 0%, and for adults under 50, it is less than 0.5%.¹

13.2. The lockdown measures have had a devastating impact on the South African economy. During April, May and June, when the most severe lockdown restrictions were in place, gross domestic product contracted by over 16% giving an annualised decline of -51%. By comparison, in 2009, during the global financial crisis the annualised decline was -6.1%. Prior to the fourth quarter of 2020, the worst decline in recorded South African history was in 1982 when gross domestic product declined by -8.2%. Household spending has slumped by 49.8%.² In the second quarter of 2020 alone, South Africa shed 2.2 million jobs. Economic factors have been shown to have a calculable negative consequence on health outcomes with poorer people living shorter lives. In addition, the lockdown restrictions have led directly to a negative health impact. 57% of people who needed hospital care in South Africa were apprehensive to attend hospital during lockdown. There have been drastic reductions in attendance at TB and HIV clinics as

¹ <https://ourworldindata.org/mortality-risk-covid>

² <http://www.statssa.gov.za/?p=13601>

well as Cancer diagnoses. Research shows a decline in mental health and increases in calls to suicide lines during lockdown. Excess deaths in South Africa suggest that the impact of lockdown on mortality is already being experienced.

- 13.3. Seven months has granted our healthcare system the opportunity to prepare for peak infections. Treatment has improved enormously in that time with many new techniques reducing the mortality rate. Moreover, the peak of the so-called COVID-19 wave passed months ago. As in other countries, most field hospitals and temporary facilities providing additional beds for infected people proved to be unnecessary and have been closed, undoubtedly because the wave has passed. It is irrational to suggest, in the context of these facts, that the healthcare system is still being prepared for a peak.
- 13.4. Through community healthcare workers and stringent screening requirements, South Africa has developed the means to efficiently track and trace the spread of the disease. Approximately 4.5 million COVID-19 tests have been conducted, making South Africa one of the world leaders in tracking the virus.
- 13.5. South Africans have been effectively educated on proper sanitising and the steps that should be taken when a person suspects that they may have contracted the virus. There is a relatively high level of compliance with recommendations and a low level of law enforcement required. Curfews have been shortened, the deployment of law enforcement reduced. The lowering of the lockdown stringency levels has not resulted in any material increase in mortality or infections.
- 13.6. The peak of the COVID-19 wave passed in August and we now have clear data for public health experts to track and predict future infections. At the time of writing this letter, South Africa has had an average of approximately 50 000 active cases of COVID-19 over the course of the past week, which is considerably lower than the peak of 173 590 active cases experienced on 20 July 2020. At the peak, South Africa was recording approximately 300 deaths *per day*. In the five days running up to the extension of the disaster, NICD figures showed that only 51 COVID-19 deaths occurred across the whole country, for an average of around 10 deaths per day. Influenza kills approximately 23 South Africans per day. TB kills more than 300 South Africans per day, AIDS another 300 South Africans per day.

- 13.7. SACEMA abandoned its model soon after it was published and has advised that the model was not intended as a tool for decision-making. That model's replacement, the National Institutes for Communicable Diseases' "Epi Model" has not been updated since June and also appears to have been abandoned. When last updated, it forecast 40,000 deaths by the end of November. The Epi Model's performance against reality is being tracked³ and it has proven to be wildly inaccurate. The Actuarial Society of South Africa's model has been slashed from its original projections and the lower estimate is now 27,000 deaths. PANDA – Pandemics and Data and Analytics, whose model is updated regularly, estimates 20,000 deaths by the end of the year and plots real world data against the prediction which suggests this number to be accurate.⁴
- 13.8. The WHO recently published a paper by world famous epidemiologist John Ioannidis which estimates the Infection Fatality Rate of the virus is less than 0.2%.⁵
- 13.9. The number of recorded Covid-19 deaths has been far lower than expected and currently totals just over 18 000 deaths.
14. As is evident from the above synopsis, South Africa is no longer faced with the uncertainties that it was confronted with when the initial state of disaster was enacted and declared. Consequently, the circumstances that prompted the declaration have disappeared and therefore the underlying motivation for the national state of disaster has as well. There is also patently no requirement to augment existing measures and the State has reduced such measures over time with no material impact on infections or mortality.
15. The motivation for the state of disaster references the life of the nation being threatened by COVID-19, a natural disaster. Amongst the steps implemented were steps to restore and maintain peace and order, including the deployment of the National Defence Force and the imposition of curfews. In its implementation, the state of disaster is a state of emergency by a

³ See page 3 of the document at <https://app.powerbi.com/view?r=eyJrIjoimGVjYjVhZGJyMjMzMzhjMy00OWRkLWJINWItNmM0Zi0NjhiNTIklwidCI6IjkZWywNTBILTExMDUtdNk1ZC1iNzUzLWRhOGRIZTc5MGVmNyJ9.>

⁴ See page 2 of the document at <https://app.powerbi.com/view?r=eyJrIjoimGVjYjVhZGJyMjMzMzhjMy00OWRkLWJINWItNmM0Zi0NjhiNTIklwidCI6IjkZWywNTBILTExMDUtdNk1ZC1iNzUzLWRhOGRIZTc5MGVmNyJ9.>

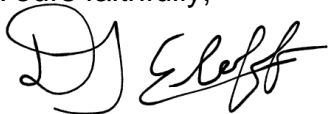
⁵ Bulletin of the World Health Organization, John P A Ioannidis, Infection fatality rate of COVID-19 inferred from seroprevalence data, page 9.

different name. In terms of Section 37 of the Constitution, a state of emergency may only be maintained for 90 days before its extension must be approved by Parliament. No such parliamentary approval has been obtained for the latest extension.

REQUEST

16. In light of the above, our client believes that the extension published on 14 October 2020 is irrational, unlawful, unreasonable, and therefore reviewable. Our client therefore requests the following:
 - 16.1. To be provided with written reasons why the national state of disaster was extended;
 - 16.2. To be provided with the documents and supporting documents, expert reports, evidence and data which supports the decision to extend the national state of disaster;
 - 16.3. That the national state of disaster be terminated in terms of section 27(5)(b) of the Act with immediate effect; and
 - 16.4. An undertaking that there will be no further extensions of the current state of disaster.
17. Our client requests your urgent response by close of business **30 October 2020**. Should our client not receive a response by the above-mentioned date, it will be compelled to approach the High Court for appropriate relief.
18. Our client wishes to remind you of the obligation placed on organs of state and particularly members of cabinet to respond to correspondence directed to it which obligation is further accentuated by the constitutional nature of the central topic of this letter.

Yours faithfully,



HURTER SPIES INC

Per. Daniël Eloff

CC: Deputy Ministry of Cooperative Governance and Traditional Affairs - Local Government

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