

- 5.4 The Preamble¹⁸ to the *DMA* is clear for what this Act is intended for. Nowhere in the *DMA* is provision made for the enactment of regulations that make the severe inroads into the personal freedoms of our people, as the current regulations do. The *DMA* is a disaster relief legislation. Its purpose is to assist the public in instances of disasters such as floods and earthquakes. It is not designed as a legislation that permits Government's untrammelled violations on rights guaranteed in the Bill of Rights.
- 5.5 The *DMA* Regulations are overly broad and fail to comply with the restrictive measures set out in Section 27(3) of the *DMA*¹⁹. Section 59(1) thereof restricts the *CoGTA Minister* to making regulations that are not inconsistent with the Act. These regulations in issue in this case purport to restrict fundamental rights which the *DMA* does not do. Therefore the regulations are indeed inconsistent with the Act.
- 5.6 We humbly submit further that the period since 15 March 2020 until now, which is almost two months, is more than sufficient for Parliament and the NCOP to have safely convened and created a medium to long term legislative solution where the people of South Africa can be allowed to have been consulted as well.
- 5.7 The current *CoGTA Minister* and her predecessors had ample time since the *DMA* came into operation 18 years ago to make Regulations in case of a national disaster which would have been properly scrutinized by legislative and public input. The sudden rapid promulgation of regulations, without the intervention of the NCOP and the public, creates

¹⁸To provide for - an integrated and co-ordinated disaster management policy that focuses on preventing or reducing the risk of disasters, mitigating the severity of disasters, emergency preparedness, rapid and effective response to disasters and post-disaster recovery; the establishment of national, provincial and municipal disaster management centres; disaster management volunteers; and matters incidental thereto; an integrated and co-ordinated disaster management policy that focuses on preventing or reducing the risk of disasters, mitigating the severity of disasters, emergency preparedness, rapid and effective response to disasters and post-disaster recovery; the establishment of national, provincial and municipal disaster management centres; disaster management volunteers; and matters incidental thereto.⁷

¹⁹Section 27(3) of the *DMA*. The powers referred to in subsection (2) may be exercised only to the extent that this is necessary for the purpose of- (a) assisting and protecting the public; (b) providing relief to the public; (c) protecting property; (d) preventing or combating disruption; or (e) dealing with the destructive and other effects of the disaster.

the impression that the Government and the Legislature were asleep all along. It appears that they suddenly woke up and made knee jerk regulations on short notice, irrationally, unreasonably and unjustifiably in what should be a democratic dispensation. The fact that the regulations, clearly, were the result of impulsive decisions is substantiated by the number of times these regulations had to be amended – sometimes only making changes to incorrectly numbered paragraphs that were not even checked properly before publication in the Gazette. These regulations were clearly not properly thought through and quickly compiled while not properly considering the impact same will have on the people and our economy as a whole.

6.

RE PARAGRAPH 3.4: LOCKDOWN FOR COVID-19

- 6.1 We submit respectfully that declaring a National State of Disaster and subsequently the Lockdown and Alert Levels due to the COVID-19 disease, was irrational.
- 6.2 The virus leading to the COVID-19 disease, SARS-Cov-2, was only recognised as a newly identified novel virus by the International Committee on Taxonomy of Viruses (ICTV) when it was formally named on/or around 11 February 2020 (3 months ago) and subsequently the World Health Organisation (WHO) named the associated disease caused by this virus as COVID-19 on that same day. I attach and refer to the official announcement of this by WHO on their official website as Annexure "F".
- 6.3 The problem created by this new naming of the virus and disease, confirming irrationality in the decision to declare a National State of Disaster due to COVID-19, is the fact that the WHO did not have a separate ICD-10 coding for this new disease at that stage and announced during March 2020 that member states like South Africa, should use the ICD-



10 codes for Influenza and Pneumonia (J12 in particular) for the interim. Find attached the published notices and explanatory notes as Annexures "G" to "J".

- 6.4 On 20 April 2020 (some three weeks ago), the WHO published a guide on how COVID-19 death cases should be reported and proposed that COVID-19 should be recorded on the medical certificate of primary cause of death for ALL deceased regardless of whether the disease indeed caused, or was simply assumed to have caused, or just contributed to the death. This implies *inter alia* that even if a person would have the SARS-Cov-2 but it did not turn into COVID-19 and in fact died of another cause like heart failure or cancer, WHO advised that such a death should also be reported as a COVID-19 case. This document by WHO is attached as Annexure "K".
- 6.5 As per the latest available "*Mortality and causes of death in South Africa: Findings from death notification 2017*", which was embargoed by Statistics SA (Stats SA) for release until 26 March 2020, it is interesting to note that while COVID-19 was not yet known, that the ICD coding and specifically code J12, for Influenza and Pneumonia (which were also shared for a while by COVID-19 until 1 April 2020), resulted in underlying, immediate or contributed to the death of 42385 people during 2017 implying that on an average 3532 people died every month in South Africa due to the underlying, immediate or contributing of Influenza and Pneumonia of which statistics from previous years were similar. Extracts of this Stats SA statistical report of some relevant parts are attached as Annexure "L" where the full report will be provided to the Court at the hearing.
- 6.6 Without the availability of the full historic number of deaths for the ICD-10 codes J12 to J18 in comparison to the so called reported COVID-19 cases, it is simply not possible to have made an informed decision and any decision not taking into consideration the already known diseases which normally are reported under those same ICD-10 codes, the decision



of the *CoGTA Minister* to have declared a National State of Disaster was therefore respectfully irrational and timed incorrectly.

- 6.7 Taking into further consideration that a recently published research report by the Center for Disease Control and Prevention (CDC)²⁸, amongst others, established that the SARS-Cov-2 and Influenza A viruses can co-infect the same patient which is also possible within the science of virology where trillions of viruses and other microbes are already living inside every human body. It is interesting to note that in practice few people were historically tested for the Influenza viruses. Now, everyone is basically only tested for the SARS-Cov-2 virus and not the Influenza viruses which seem to have miraculously disappeared with the recent discovery of the SARS-Cov-2 virus. We can see no indication of how many of the cases are simply Influenza and how many are COVID-19. Logically, one will only establish the SARS-Cov-2 virus if the tests only target that virus and not the Influenza viruses. Extract of this report is attached as Annexure "M".
- 6.8 It needs to be mentioned that WHO reported on 11 March 2019 (one year ago) that the Influenza viruses are a threat to the world health and result in approximately 1 billion cases annually, 5 million among them being severe and causing 650,000 deaths annually. Had this been the criteria for a Lockdown requirement, we would need a Lockdown every year for Influenza alone, pre SARS CoV-2. Yet, this was never enacted even though the statistics for Influenza appear much worse than for COVID-19. Further: Merely having an infection of the SARS-Cov-2 virus without leading to COVID-19 is also very possible. Find attached the WHO report as Annexure "N".
- 6.9 Only a few days after the Lockdown started, namely on 2 April 2020, the NICD in South Africa which is responsible for monitoring disease outbreaks, reported in its Influenza

²⁸Wu X, Cai Y, Huang X, Yu X, Zhao L, Wang F, et al. Co-Infection with SARS-CoV-2 and influenza A virus in patient with pneumonia, China. *Emerg Infect Dis*. 2020 Jun [date cited]. <https://doi.org/10.3201/eid2606.200299>



recommendations for the diagnosis, prevention, management and public health response, that it is estimated that approximately 11,800 seasonal influenza-associated deaths occur annually (which is based on 2013 results and not the latest figures available, namely 18,837 only for underlying deaths – with 42,385 combined cases). In addition, an estimated 47,000 episodes of influenza-associated severe acute respiratory illnesses occur annually of which 22,481 (at an average of 1,873 per month) result in hospitalization. The foregoing compares to the current total of just 411 reported COVID-19 cases which deserved to have been hospitalized. I refer to the NICD report as Annexure "O" as well as the official report of the Health Minister on 4 May 2020 attached as Annexure "P".


- 6.10 Notwithstanding various reports relating to the allegation that SARS-Cov-2 was a newly created virus, it is unfounded and baseless to assume that this new virus was not already in existence for many Influenza seasons over many years and therefore might already have been included in ICD-10 code reporting under respiratory illnesses under the J grouping. In history, the Influenza virus which was responsible for the 1918 Spanish Flu pandemic was not known at that stage and only discovered during 1930's. The *CoGTA Minister* is relying on unconfirmed and incomplete data to try and justify the Lockdown. In this context I attach an article by the Medscape Online Magazine as Annexure "Q".
- 6.11 It is important to note that the NICD has declared that for the 2020 Influenza Season – which we have entered now – that, notwithstanding the computed 3,532 deaths per month due to Influenza, that they do not propose any public health response to that threat. This compares to the current COVID-19 combined underlying, immediate or contributing 138 deaths since 26 March 2020, i.e. less than 70 deaths per month. The suspicion that COVID-19 as a newly discovered disease with almost identical symptoms as Flu and clearly less devastating results compared to actual WHO statistics relating to Influenza and Pneumonia (ICD-10 Code J), could evolve in the mass extermination of the people is



simply irrational and based on absolutely no scientific proof. Therefore, the continuation of the Lockdown for that reason is, respectfully, unwarranted and irrational.

- 6.12 As an example we humbly submit further that it would have, in fact, make far more sense if the **CoGTA Minister** declared a National State of Disaster in order to curb the extremely high disease and fatality rates relating to both liquor and tobacco. Find attached as Annexures "R" to "V" where the statistics involving liquor and tobacco related diseases and deaths have reached actual pandemic proportions.
- 6.13 We are further taking into consideration the decisions of countries like Sweden, for example, not to engage in a Lockdown and to rather concentrate on protecting the elderly and other citizens more susceptible to disease, and to leave nature to run its course by way of natural immunisation. This stance bears fruit when compared to statistics of other countries. Statistics support that it could turn out that whether having a Lockdown or not does not make much difference to limiting COVID-19. Find attached a publication by CNBC dated 22 April 2020 as confirmation as Annexure "W".
- 6.14 Knowing that the symptoms of COVID-19 and the Flu are similar, I would like to remain in control over my own health and body and wish to rely on my natural immune system to again protect me just like it has been doing for the past 43 years, saving me from trillions of invasive viruses and microbes. I believe further that it is the constitutional right of both our members and myself to choose whether we wish Government to make decisions on our behalf about our own bodies and health.
- 6.15 NICD already advocates that all health workers must be vaccinated this Flu season which we find unconstitutional in the highest degree and not in accordance with either the **LRA**, nor the Constitution. Those who wish to be vaccinated against this virus decide so out of their own free will; much in the way that our members and I may wish to rely on natural immunisation instead.



- 6.16 With us entering the normal Influenza season, I foresee chaos where people will start believing that they have COVID-19 while in fact they have an Influenza infection while it is possible that they will not even be tested for such, and notwithstanding the possibility that one can be infected by both the SARS-Cov-2 and Influenza virus.
- 6.17 I have also noted, that in a country like South Africa where the crime rate is one of the highest in the world that the requirement that everyone must wear masks of sorts, covering both mouth and nose (which in itself has not been proven to prevent people from becoming infected or to prevent infection of others) might become a further crisis where criminals will walk our streets with their faces covered and the possibility of identifying them would be reduced to almost zero.
- 6.19 On April 30, Stats SA released its report "*Behavioural and health impacts of the COVID-19 pandemic in South Africa*" in which it confirmed that since the lockdown period for South Africa, starting on 27 March 2020, more than half (60.1%) of respondents who participated in the online survey reported that they were very concerned or extremely concerned about the impact of COVID-19 on their own health. However, as far as the economy was concerned, roughly 50% more, namely 93.2% of the respondents were very concerned or extremely concerned about the possible economic collapse of the country due to the COVID-19 Lockdown. This report is attached as Annexure "X".
- 6.20 Although this latest survey does not reflect the demographics of South Africa, mainly because most of the poor fellow citizens don't have the extensive access to the Internet to participate in such survey, as we know from the approximately 2,000 complaints LFN has handled since the beginning of Lockdown: more than 95% of which were from our black citizens. Thus we have sufficient proof that this Lockdown is simply devastating to the poor and I refer the Court respectfully to the previously mentioned testimonies in Annexure "B" again.
- 

6.21 From everything mentioned *supra*, it should be clear that the reasons provided for the Lockdown are based on wrong or unproven information and for that reason alone the measures imposed are irrational.

7.

RE PARAGRAPH 3.5: GATHERINGS

- 7.1 This paragraph refers to gatherings specifically for the purpose of protesting against the Government which is a basic fundamental right of all citizens. This adds to the concern as to why the regulations made by the *CoGTA Minister* was designed in a way to preclude public objection.
- 7.2 On Thursday, 16 April 2020, the German Constitutional Court confirmed that German citizens continue to have the right to hold political protests if they adhere to social distancing rules in place to slow the spread of COVID-19. That country's apex Court ruled *inter alia* that health concerns linked to the coronavirus pandemic were no grounds for a general ban on demonstrations. That Court found that the local authorities had incorrectly assumed that the provision by the Hesse state government to fight the coronavirus includes a general ban on gatherings of more than two people who don't live in the same household. It found that it has therefore violated the constitutional right to assembly. This Court case will be presented to the Court at the hearing, if required.²¹ (1 BvR 828/20)
- 7.3 We therefore respectfully submit that it is essential for the people of South Africa to be heard during this Lockdown. Yet, we are being unlawfully gagged by the *DMA* Regulations. Government must be forced to account for the violation of our freedom to gather and our

²¹ BVerfG, Beschluss der 1. Kammer des Ersten Senats vom 15. April 2020 - 1 BvR 828/20 -, Rn. (1-19)

freedom of expression. We maintain our right to peaceful protest under this, our democracy.

- 7.4 Most importantly, we are still entitled to gather in accordance with the requirements of the *Gatherings Act*. The regulations are, however, in conflict with the *Gatherings Act*. The DMA Regulations cannot supersede an Act of Parliament that has been properly enacted, with the involvement of Parliament and input from the public. The *Old and New Regulations* offend against existing legislation. These Regulations are therefore unlawful and are irrational and unjustifiable in our constitutional democracy.

8.

RE PARAGRAPS 3.6 & 3.7: INTERNATIONAL HEALTH REGULATIONS AND STATE OF EMERGENCY

- 8.1 The *IHRA* was enacted to allow for the implementation in South Africa of the International Health Regulations, adopted by the World Health Assembly (WHA) of WHO, and for matters related therewith. The International Health Regulations constitute the most important source of international law on public health and is binding on signatory countries.
- 8.2 As a member of WHO, South Africa is bound by the International Health Regulations. The *IHRA* are incorporated into South African law through national legislation such as this Act. The purpose of the *IHRA* is to prevent the international spread of disease and to enhance national, regional and global public health security.
- 8.3 A state of emergency has various checks and balances to prevent an abuse of powers by the State. Section 37 sets out sufficient processes in which the State of Emergency can be implemented, yet protecting the Bill of Rights as far as possible. In addition, South Africa



is a signatory to the International Covenant on Civil and Political Rights and had a State of Emergency been declared, as it seems the **CoGTA Minister** is currently imitating, a Human Rights Committee set up by the United Nations would be required to monitor how the State of Emergency is implemented. In essence, this Committee is a watchdog to ensure that emergency measures are as least restrictive as possible.

- 8.4 Our Government circumvented its obligations arising from this international instrument by clothing its violations of the constitutional rights of the people of South Africa, by naming its harsh measures as a 'National State of Disaster'. In this manner there is no oversight at all over Government's actions. This has allowed for the abuse of power as has been seen on the news and social media, by police and members of the military. These abuses have been recklessly overlooked by Government.

9.

RE PARAGRAPH 3.8 TO 3.10: ESSENTIAL SERVICES

- 9.1 The CCMA has published an extensive document describing in detail how the ESC operates which document is attached as Annexure "Y".
- 9.2 We humbly submit that the ESC has been established to identify essential services and have made extensive studies to declare certain services as essential or not. Consequently, it is our conviction that the **CoGTA Minister** acted *ultra vires* by identifying essential services without relying on the ESC. The ESC is the established body to identify essential services in the country and as such, we submit, would have been the procedurally correct party to consult. We are unaware that the **CoGTA Minister** consulted with the ESC in preparing any of the aforementioned regulations.
- 