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Our ref: Gildenhuis/  
Your ref: -

17 November 2021

**PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA**

Mr Cyril Ramaphosa  
Union Buildings, Government Avenue, Pretoria

By email: president@presidency.gov.za  
presidentrsa@presidency.gov.za  
khusela@presidency.gov.za  
malebo@presidency.gov.za  
nokukhanya@presidency.gov.za  
president@po.gov.za  
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**MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS**

Nkosazana Clarice Dlamini-Zuma  
87 Hamilton Street, Arcadia, Pretoria 0002 B

By email: info@cogta.gov.za  
MathoM@cogta.gov.za  
MandisaMB@cogta.gov.za  
PamelaS@cogta.gov.za

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Dear President Ramaphosa and Minister Dlamini-Zuma,

**SOUTH AFRICAN INSTITUTE OF RACE RELATIONS // PRESIDENCY OF THE REPUBLIC OF SOUTH AFRICA & MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS**

1. We confirm that we act on behalf of the South African Institute of Race Relations (“our client”), which has instructed us to direct this letter to you. The South African Institute of Race Relations is an advocacy organisation, founded in 1929, that advocates for individual liberty, limited government and the rule of law.

**Directors:** Johan Cilliers LLB (UP) and Douw Gerbrand Gildenhuis LLB (UP)  
**Reg No:** 2019/285201/21

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**In association with Cilliers & Associates (Mossel Bay)**

2. This letter is addressed to both the presidency and the Minister of Cooperative Governance and Traditional Affairs, being the two main role players in the decision to extend the national state of disaster as published in the Government Gazette of even date No. 45845 (Notice number: 1501).

## **BACKGROUND**

3. Our client does not intend to delve into the entire history of the promulgation and subsequent extensions of the national disaster. Our client, however, has instructed us to highlight the following points in order to provide context to its request below:
  - 3.1. The national state of disaster was initially enacted on 15 March 2020. It has subsequently been extended no fewer than seventeen separate occasions. As you are aware, it has been frequently adjusted and amended during the course of the past 20 months.
  - 3.2. At the time of writing South Africa is experiencing some of the lowest levels of COVID-19 infections as well as COVID-19 related hospitalisations. Moreover, South Africa's efforts to vaccinate its adult population steadily continue.
  - 3.3. The declared national state of disaster grants overly broad and sweeping powers to the national government that are ripe for misuse. The state of disaster is clearly designed as a *temporary* measure. It must be lifted at the earliest possible opportunity to allow the national and provincial legislatures to perform their constitutional functions, some of which the executive usurps under the state of disaster.

- 3.4. 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 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.
- 3.5. The state of disaster grants the executive the power to pass legislation that has derogated from the rights of all those who live in South Africa. The state of disaster can be extended *ad infinitum* by the Minister without a requirement of Parliamentary oversight. This has occurred, and continues to occur, which undermines our constitutional democracy, premised on a genuine separation of powers.
- 3.6. 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. While it may have been rational to have declared a state of disaster in

March 2020, much has changed since then. It is no longer rational to have the declaration in place and it should not have been extended.

#### **REQUEST FOR WRITTEN FEEDBACK**

4. Consequently, our client hereby requests written feedback to the following questions by no later than **30 November 2021**:
  - 4.1. Based on what advice, reports, evidence or considerations was the national state of disaster extended on 15 November 2021?
  - 4.2. Which reasons underlie the decision to extend the national state of disaster?
  - 4.3. How will the extension of the national state of disaster and its various regulations prevent and/or mitigate the further spread of COVID-19?
  - 4.4. Were any alternative measures to combat the spread of COVID-19 considered before the decision was taken to extend the national state of disaster? Moreover, were any less restrictive means to combat COVID-19 considered?
  - 4.5. Were the continued adverse economic consequences that accompany the national state of disaster considered when the decision to extend this and previous extensions of the state of disaster was taken?
  - 4.6. Was it considered that despite the fact that South Africa held widespread elections all over the country during the local government elections no spike in COVID-19 cases is currently being experienced?
  - 4.7. Does the national government predict a new spike in COVID-19 cases, when does it expect this to occur, and which steps are being taken to mitigate the predicted spike?
  - 4.8. Were any international examples consulted and followed in the decision to extend the national state of disaster?

5. Our client is cognisant of the fact that your office is undoubtedly inundated with correspondence, particularly during the past two years. However, our client would like to press on you the seriousness and urgency of the content of this letter and therefore requests your soonest and thorough response.
6. We look forward to hearing from you in this regard.
7. Our client's rights remain reserved.

Yours sincerely,

**CILLIERS & GILDENHUYS INC**  
PER: GERBRAND GILDENHUYS