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TO: THE REGISTRAR OF THE ABOVE COUR
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AND
TO: **APPLICANT'S ATTORNEYS**
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RECEIVED: BY:

DATE:

TIME:

APPLICANT'S ATTORNEYS

I, the undersigned

PHINDILE BALENI

do hereby make oath and state that:

1. I am the Director-General in the Presidency and the Secretary of Cabinet. In my capacity as the Director-General of the Presidency, I am duly authorised to depose to this affidavit on behalf of the First Respondent ("the President") and to oppose this application.
2. The facts described herein fall within my personal knowledge unless I state otherwise or the context of what I say makes it clear that they do not. I confirm that those facts are both true and correct to the best of my knowledge and belief.
3. I also rely on reports submitted to me by officials within the Presidency, and in particular those officials who have direct knowledge of the facts and circumstances that form the subject matter of this application.
4. Insofar as I deal with matters of law, I do so on the strength of legal advice, which I believe to be well founded.
5. I have read the Notice of Motion lodged by the Applicant, as well as the founding affidavit and annexures of Mr **PHILLIPUS ROEDOLF SWANEPOEL**. The purpose of this affidavit is to respond thereto.


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6. To the extent that I do not specifically deal with any allegation in the Founding Affidavit, I must be taken to have denied such allegation and to have placed it in issue.
7. I also wish to make the point at the outset that I have read the response of the Third Respondent to this application. In the interest of not burdening this Court with the same submissions, I make common cause with the preliminary points raised therein and with the general tenor of the content thereof.

PRELIMINARY POINTS

8. There are preliminary points that I am advised should be brought to the attention of this Honourable Court, as they are pertinent to whether the Applicant is entitled to the relief sought in these proceedings.
9. The first point *in limine* relates to the legal standing of the Applicant, who its members are, whether the members of the Applicant are aware of these proceedings, and other matters arising from the Applicant's constitution.
10. I am advised that it is prudent to foreshadow the legal debate that will be raised at the hearing of this application. The core of that debate questions whether this application presents a dispute that requires the attention of this Court.

11. Lastly, the Applicant's application is replete with bald allegations that are not supported by facts. They amount to inadmissible opinion. I will demonstrate below the numerous instances where this has occurred. An application will be made at the hearing of this matter for these allegations to be struck out.

FIRST POINT IN LIMINE: LOCUS STANDI

12. Firstly, the Applicant alleges that it is a duly constituted voluntary association with its own legal personality. Notwithstanding this the Applicant has not provided any proof in support of its status as a legal entity, nor has it provided evidence that the Applicant has more than three members. In the circumstances, I invite the Applicant to give a clear indication of when and by whom its constitution was adopted and signed.
13. Secondly, Mr Swanepoel, the deponent to the Applicant's founding affidavit, alleges that he is the convener of the Applicant and is duly authorised to represent the Applicant in these proceedings. He has attached a resolution in support thereof. The resolution is contained in Annexure B to the founding papers.
14. The resolution is signed by Mr Swanepoel, instead of being signed by another member of the Executive Committee or any other duly authorised person. The resolution is flawed in that the deponent cannot authorise

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himself to bring these proceedings to the exclusion of the other members of the Executive Committee.

15. Third, clause 5.6 of the Applicant's constitution provides that the term of office of the Executive Committee shall be one year or continue until adjournment of the following annual general meeting. The resolution authorising Mr Swanepoel to bring these proceedings states that it is an inaugural resolution. At the time when these proceedings were instituted, i.e., 18 September 2020, a period of two years had passed since the appointment of Mr Swanepoel as an Executive Committee member. There is no proof that his membership to the Executive Committee was renewed or extended.
16. In terms of the Rules of this Honourable Court, processes initiating proceedings must describe the parties to the litigation properly. Legal standing must appear from the description of the parties, *ex facie* the initiating documents.
17. Accordingly, it is disputed that the Applicant has locus standi to bring this application and that Mr Swanepoel is duly authorised to depose to the Applicant's founding affidavit.
18. Given the above, this application stands to be dismissed.

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SECOND POINT IN LIMINE: THERE IS NO DISPUTE CAPABLE OF RESOLUTION BY THIS COURT

19. The second point *in limine* is simply that there is no dispute that requires the attention of this Court, or that is capable of resolution by this Court. This is because the Constitution of the Republic of South Africa, 1996, ("the Constitution") does not provide for the relief sought by the Applicant.
20. In terms of section 1 of the Constitution, the Republic of South Africa is one sovereign democratic state. The Constitution is the supreme law of the Republic, and the courts are subject to the Constitution and the law.
21. In the circumstances, this application stands to be dismissed.

THIRD POINT IN LIMINE: THE CASE MADE BY THE APPLICANT DOES NOT COMPLY WITH THE RULES OF COURT

22. The third point *in limine* relates to the manner in which the Applicant has pleaded its case. The allegations made are not supported by facts. Disputes of fact pervade the papers. Irrelevant material that has no nexus to the relief sought forms a substantial part of the case pleaded.
23. For this reason alone, the application stands to be dismissed.

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FOURTH POINT IN LIMINE: NON-JOINDER OF THE MINISTER OF HEALTH

24. To the extent that the Applicant relies on the allegations relative to the Covid – 19 pandemic as pleaded, it has raised matters that the Minister of Health is best placed to respond to. The Applicant has however failed to join the Minister of Health in this application.
25. In the event that this Court takes the view that those allegations are germane to this application, the Applicant's failure to join the Minister of Health is a fatal omission.

FIFTH POINT IN LIMINE: NON-JOINDER OF THE MINISTER OF PUBLIC WORKS AND INFRASTRUCTURE

26. The Applicant seeks the restoration of land. It has also taken issue with the current process underway relative to the amendment of section 25 of the Constitution.
27. To the extent that this Court is required to consider these matters, the Minister of Public Works and Infrastructure ought to have been joined in these proceedings.

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28. In the circumstances, citing the Minister of Public Works and Infrastructure is a necessary element to the relief sought in prayer 1 of the Notice of Motion.

THE RELIEF SOUGHT

29. The Applicant seeks from this Honourable Court an order directing that it be restored the ownership, right, title and sovereignty of the land previously known as the internationally acclaimed Boer Republics and its borders as in 1902.
30. Historically, the two Boer Republics which achieved international recognition and complete independence were the Transvaal and the Orange Free State. However, the discovery of gold and diamonds in these two states led to the Second Anglo-Boer War. In this war, the Transvaal and the Orange Free State were defeated and annexed by the British. They ceased to exist on 31 May 1902 because they signed the Treaty of Vereeniging, thereby giving up their sovereignty in exchange for peace. As a result, the Treaty of Vereeniging terminated the legal standing of the Transvaal and Orange Free State as separate and sovereign states. This led to the creation of the Union of South Africa which evolved to the present-day Republic of South Africa.
31. The Union of South Africa came into being in 1910 and was made up of the Cape, Natal, Transvaal and Free State. It ceased to exist in 1961 when the

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National Party Government under Prime Minister HF Verwoerd declared South Africa a Republic.

32. South Africa held its first democratic election in April 1994 under an interim Constitution. South Africa was then divided into nine provinces, thus replacing the four existing provinces. At the time when the democratic government of South Africa came into being there was no Orange Free State or Transvaal Boer Republic. These had ceased to exist.
33. I now deal with the allegations contained in the Applicant's founding affidavit. Where I do not deal with a particular allegation, such allegation is denied.

AD FOUNDING AFFIDAVIT

34. **AD PARAGRAPH 1.1**

Save for repeating what is contained in the first point *in limine* above, the allegations contained in this paragraph are noted.

35. **AD PARAGRAPH 1.2**

This allegation is disputed.

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36. AD PARAGRAPHS 1.3

This allegation is noted.

37. AD PARAGRAPH 1.4

The First Respondent repeats what it has already stated in its first point *in limine* above.

38. AD PARAGRAPH 1.5

38.1 The First Respondent disputes that Mr Phillipus Roedolf Swanepoel ("the deponent") has been duly authorised to represent the Applicant in these proceedings.

38.2 Accordingly, I repeat what I have already stated in the first point *in limine* above.

39. AD PARAGRAPH 2.1

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- 39.1 The Applicant contends that prior to 18 March 2020, it, together with its members, was in peaceful undisturbed possession of the land known as the Boer Republics. This allegation is disputed.
- 39.2 First, no such Boer Republics exist or existed in the democratic Republic of South Africa. The two Boer Republics referred to, Transvaal and the Orange Free State, were defeated and annexed by the British, and ceased to exist on 31 May 1902.
- 39.3 The Applicant also refers to certain occurrences as a justification for the relief sought. I deal fully in the following paragraphs with each such occurrence. At this point I only wish to mention that such allegations are without merit and do not establish any basis for the relief sought. The allegations made by the Applicant in this regard are not supported by facts and are simply conjecture. As aforementioned an application to strike them out will be made at the hearing of this application.

40. **AD PARAGRAPH 2.1.1**

- 40.1 The Applicant refers to ongoing threats by the Respondents to expropriate land in South Africa. The issue of land expropriation is a legislated process and is undertaken through a public participation

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process by the Parliament of South Africa. The First Respondent as head of the executive branch of government does not have jurisdiction over this process. His responsibilities arise when he is required to assent to the Bill in its final form.

40.2 Accordingly, this issue should be dealt with by the Minister of Public Works and Infrastructure.

41. AD PARAGRAPH 2.1.2 TO 2.1.4

41.1 On 31 December 2019, the World Health Organisation was informed of cases of a pneumonia of unknown cause in Wuhan City, China. A novel coronavirus was identified as the cause by the Chinese authorities.

41.2 This was a worldwide outbreak and not unique to South Africa. It was unprecedented. The measures put by the government to combat its spread had nothing to do with dispossessing the Applicant of any land and did not in fact dispossess the Applicant of any land.

41.3 In any event the allegation that the Applicant was ever in possession of the alleged land is disputed.

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42. AD PARAGRAPH 2.1.5

- 42.1 The allegations in this paragraph are denied.
- 42.2 The vaccines are all designed to teach the body's immune system to safely recognise and block the virus that causes COVID-19.
- 42.3 It is not government's policy to compel anyone to take the vaccine.
- 42.4 I have indicated that the Minister of Health is best placed to address the detail relating to the matters raised by the Applicant. I stand by that submission.

43. AD PARAGRAPH 2.1.6

- 43.1 The South African government has a vaccine rollout strategy with access to the vaccine being its highest priority. The rollout of the vaccine is a phased process, focusing firstly on essential frontline workers and then on different age groups.
- 43.2 Whilst it would be desirable that all citizens get vaccinated, it is disputed that the government has made the vaccination of individuals mandatory. This is not the policy of the government of

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South Africa. The vaccine has been made available to those willing to be vaccinated.

43.3 To date, the Minister of Employment and Labour has gazetted a directive on COVID-19 vaccinations in certain workplaces. Even there, it is stipulated that employers are required to come up with reasonable resolutions so that all parties are accommodated should employees refuse the COVID-19 vaccination on medical and Constitutional grounds.

43.4 In any event, I have indicated that the Minister of Health is best placed to address the detail relating to the matters raised by the Applicant. I stand by that submission.

44. AD PARAGRAPH 2.1.7 and 2.1.8

44.1 The allegations in these paragraphs are denied.

44.2 None of the vaccines in development or used in the country contain any software or microchip technology. They simply cannot be used to track people.

44.3 The vaccines are all designed to teach the body's immune system to safely recognise and block the virus that causes COVID-19. I

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understand there to be several different types of vaccines for COVID-19 that have been developed.

44.4 I have indicated that the Minister of Health is best placed to address the detail relating to the matters raised by the Applicant. I stand by that submission.

45. AD PARAGRAPH 2.1.9 and 2.1.10

45.1 The allegations in these paragraphs are denied.

45.2 The relations between China and South Africa are geared toward the economic growth and development of the country.

45.3 The financial input that will be received by South Africa is intended to fund the government's planned financial stimulus package, speed up infrastructure development and rapidly increase the rate of South Africa's industrialisation.

46. AD PARAGRAPH 2.1.11

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46.1 This allegation is disputed.

46.2 The speech made by the President on 27 April 2018, was in celebration of Freedom Day. Amongst others, the President celebrated the involvement and participation of South Africa in building a new and better life for all. It also emphasised the importance of working in partnership with other states to construct an economic framework for growth founded on equality, dignity, and mutual respect.

47. AD PARAGRAPH 2.1.12

47.1 This allegation is disputed.

47.2 Capital punishment was abolished in South Africa on 6 June 1995 by the decision of the Constitutional Court in the matter of S v Makwanyane.

47.3 In any event the allegations contained in this paragraph are irrelevant to the relief sought by the Applicant. An application to strike them out will be made at the hearing of this matter.

48. AD PARAGRAPH 2.1.13 TO 2.1.13.6

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- 48.1 The Global Preparedness Monitoring Board has as its goal the assessment of the world's ability to protect itself from health emergencies and to advocate for preparedness with national and international leaders and decision-makers.
- 48.2 Consequently, the World Health Organisation (WHO) is working closely with governments, experts, and other partners to rapidly expand scientific knowledge on the COVID-19 virus and to provide timely advice on measures to protect people's health and prevent the spread of the outbreak.
- 48.3 The allegations by the Applicant concerning biological warfare cast serious aspersions on the government. These aspersions are unfortunate and without basis. Contrary to what is alleged by the Applicant, and central to the government's association with the GPM Board, is the protection of the citizens of South Africa.

49. AD PARAGRAPHS 2.2 TO 2.2.6

- 49.1 The allegation in paragraph 2.2 under reply is disputed.
- 49.2 As previously mentioned, the Zuid-Afrikaansche Republic, which was located largely in the previously named Transvaal Province,

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and the Orange Free State Republic, were defeated and annexed by the British and ceased to exist on 31 May 1902.

50. AD PARAGRAPH 2.3

50.1 The reference to the biblical verses is noted.

50.2 It is however disputed that such have any basis or relevance to the relief sought by the Applicant.

51. AD PARAGRAPHS 2.4 AND 2.5

51.1 These allegations are disputed.

51.2 I have already set out in detail the background on the history of occupation of land by the Afrikaners. It is therefore disputed that the Applicant was deprived of its undisturbed possession of land as alleged.

52. AD PARAGRAPH 3 TO 3.11

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Save to repeat what has already been stated in the first point *in limine*, the allegations contained in these paragraphs are noted.

53. AD PARAGRAPHS 3.12 to 3.16

These allegations are admitted.

54. AD PARAGRAPH 4.1

As already mentioned above the First Respondent has no jurisdiction over the expropriation of land. It is a matter for the relevant department to process, and for Parliament to consider.

55. AD PARAGRAPH 4.2

55.1 The allegations in this paragraph are noted to the extent that they correctly summarise the order of events subsequent to the outbreak of the COVID-19 virus.

55.2 The First Respondent disputes however, that the outbreak of the Covid-19 virus bears any connection to the relief sought by the Applicant.

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56. **AD PARAGRAPH 4.3**

This allegation is disputed.

57. **AD PARAGRAPHS 4.4 to 4.4.3**

57.1 The allegations in these paragraphs are noted.

57.2 It is submitted however, that allegations contained herein are irrelevant and an application to strike out will be made at the hearing of this matter.

58. **AD PARAGRAPHS 4.4.4 TO 4.4.6**

58.1 These allegations are disputed, with specific reference to the allegation on the electronic identification and tracking of individuals.

58.2 I have indicated that, none of the vaccines in development or used in the country contain any software of microchips.

58.3 The vaccines are all designed to teach the body's immune system to safely recognise and block the virus that causes COVID-19.

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59. **AD PARAGRAPH 4.4.8**

59.1 This allegation is disputed.

59.2 The financing secured from China by the government of South Africa was towards an economic stimulus package. The financial input is intended to fund government's planned financial stimulus package, speed up infrastructure development and rapidly increase the rate of South Africa's industrialisation.

60. **AD PARAGRAPHS 5 TO 5.1.11**

60.1 The allegations contained in these paragraphs are noted to the extent that they correctly reflect historical events.

60.2 Further details regarding land occupation in South Africa will be dealt with fully in the answering affidavit of the Third Respondent.

CONCLUSION

61. The application is without merit and the Applicant has failed to set out sufficient grounds justifying why the relief sought should be granted.

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62. In the circumstances the Applicant's application should be dismissed with costs, such costs to include costs of two counsel.

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PHINDILE BALENI

I certify that the Deponent has acknowledged that she knows and understands the contents of this affidavit which was signed and sworn to before me at _____ on this _____ day of NOVEMBER 2021, and that the provisions of the Regulations contained in Government Notice No R1258 of 21 July 1972 as amended by Government Notice No R1648 dated 19 August 1977 and No RI 428 dated 11 July 1980, have been complied with.

[Handwritten Signature]
COMMISSIONER OF OATHS

[Handwritten Signature]
INSPECTOR GENERAL
SOUTH AFRICAN POLICE SERVICE

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PRESIDENTIAL PROTECTION SERVICE
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