



APPLICANT'S ATTORNEYS

RECEIVED: BY:  
DATE:  
TIME:

APPLICANT'S ATTORNEYS  
MJ LOMBARD INC ATTORNEYS  
76 SKILPAD AVENUE  
MONUMENT PARK  
PRETORIA  
SUITE 7a, MONPARK BUILDING  
PRETORIA  
TEL: (012) 346 4612  
FAX: (012) 346 4997  
EMAIL: [mjombard@live.co.za](mailto:mjombard@live.co.za)  
REF: ACRBR 777

AND  
TO:

THE REGISTRAR OF THE ABOVE COUR  
PRETORIA

TO:

ENQ: MR M. O. LETSOKO  
E-MAIL: [mletsoko@justice.gov.za](mailto:mletsoko@justice.gov.za)

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

**CASE NO: 96869/20**

In the matter between:

**THE ASSOCIATION & COALITION FOR THE  
RESTORATION OF THE BOER REPUBLIC**

and

**THE PRESIDENT OF THE REPUBLIC OF  
SOUTH AFRICA**

**MINISTER OF HOME AFFAIRS**

**MINISTER OF AGRICULTURE, LAND REFORM  
AND RURAL DEVELOPMENT**

**MINISTER OF CORPORATIVE GOVERNANCE AND  
TRADITIONAL AFFAIRS**

**MINISTER OF INTERNATIONAL RELATIONS AND  
COOPERATION**

**SPEAKER OF THE NATIONAL ASSEMBLY**

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**THIRD RESPONDENT'S ANSWERING AFFIDAVIT**

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I, the undersigned

**MOEKETSA RAMASODI**

do hereby make oath and say that:

1. I am the Acting Director General in the Department of Agriculture, Land Reform and Rural Development ("the Department"). The Minister of Agriculture, Land Reform and Rural Development ("the Minister") is cited as the Third Respondent herein. By virtue of my office I am authorised to oppose this application and to depose to this affidavit on behalf of the Minister.

2. The facts deposed to in this affidavit are true and correct, and are within my personal knowledge save where the contrary appears from the context or is otherwise stated.

3. Where I deal with questions of law, I do so on the advice given by the legal representatives of the Minister.

4. I have read the founding affidavit of the Applicant which is deposed to by **PHILIPPUS ROEDOLF SWANEPOEL** including all the annexures attached thereto.

5. To the extent that I do not deal specifically with any allegation in the Applicant's affidavits, I must be taken to have denied such allegation and to have placed it in issue.

**THE RELIEF SOUGHT**

6. The Applicant seeks the return of land constituting parts of South Africa as defined in the Constitution of the Republic of South Africa, 1996 ("the Constitution"). The Applicant identifies this land as the Boer Republic or Zuid Afrikaansche Republiek, a land which it claims to be a location provided to its members by God.
7. In prayer 1, the order sought is that the Applicant be restored in the ownership right, title and sovereignty of the land previously known as the Boer Republic and its borders as in 1902.
8. The prayer 2 and 3 are for costs and further or alternative relief.
9. In context, the relief sought is primarily premised on the Applicant's purported right to the Boer Republics which it references as the Zuid Afrikaansche Republiek and Oranje Vrijstaat. It relies on its interpretation of and the application of Christian scripture, and on its purported belief, religion, history, culture and opinion.
10. The Applicant grounds its claim on, among others, the following events in history: -
  - 10.1. The 1654 Covenant;
  - 10.2. The Great Trek;
  - 10.3. The Covenant of 9-16 December 1838 and the Battle of Blood River;
  - 10.4. The Paardekraal Covenant of 1880

understanding of the pleadings, I later herein address the question of joinder

14. In the event that the latter two conclusions are not aligned with this Court's

in respect of the decisions taken by Government in its response to this pandemic.

13. Similarly, though reference is made to the Covid-19 pandemic, no relief is sought

Expropriation Bill or the draft Bill").

has been initiated under the draft Expropriation Bill [B23-2020] ("the draft

the subject of expropriation, no relief is sought with respect to the process that

out that though the Applicant makes reference to land in South Africa becoming

12. Finally, in clarifying the relief sought in these proceedings, it is important to point

11.4. the vaccination program against the Covid-19 pandemic.

11.3. the national state of disaster; and

and the Expropriation of Land Bill;

11.2. the discussions around the expropriation of land without compensation

11.1. the Covid-19 pandemic outbreak,

been deprived of that land as a result of the following occurrences: -

undisturbed possession of the land prior to 18 March 2020 and that they have

11. In addition, the Applicant claims that its members were in peaceful and

10.7. The Vereeniging Treaty.

10.6. The two independent wars during 1880-Second Anglo-Boer War; and

10.5. The independence war/the First Anglo-Boer War;

relative to the Minister of Public Works and Infrastructure and the Minister of Health respectively.

**STRUCTURE OF THESE SUBMISSIONS**

15. The structure of this affidavit is as follows: -

15.1. First, I raise a few points *in limine* for this court's consideration;

15.2. Second, I summarise these submissions in the context that the Applicant was not in possession of the land as claimed;

15.3. Third, I set out the history of South Africa in so far as it relates to the events relied on by the Applicant;

15.4. Fourth, I briefly discuss whether there is a nexus between the draft Expropriation Bill, the Covid-19 pandemic and the role of the World Health Organization in coordinating a response to this pandemic and the relief sought in this application;

15.5. Lastly, to the extent necessary, I will address the specific allegations as contained in the Applicant's founding affidavit.

**POINTS IN LIMINE**

**The order sought by the Applicant is unenforceable**

16. I am advised that this Honourable Court does not make orders that are impossible to implement and therefore legally unenforceable. The enquiry as to whether the order sought will be impossible to implement is a question of fact. This means that compliance with any order made must be possible on the facts.
17. The order sought in prayer 1 of the Notice of Motion seeks to reverse history. It also ignores the constitutional principles and imperatives that ground this constitutional democracy. In addition, it asks this Court to act inconsistently with the provisions of sections 1 and 2 of the Constitution, among others.
18. It is a matter of fact that the Republic of South Africa is a unitary state that consists of nine Provinces, which geographical areas are defined in Chapter 6 read with Chapter 14 of the Constitution of the Republic of South Africa. The national territory of South Africa is therefore clearly defined in the Constitution and there is no existing area of land within this constitutional state that is known as the "Boer Republic". The said land ceased to exist in 1902 when a binding treaty was signed between the colonialists (The British and the Dutch) in order to form the Union of South Africa.
19. The relief sought by the Applicant to have this Court restore to it, land belonging to and defined as one sovereign democratic state, and grant it ownership title and sovereignty of that land, is inconsistent with the Constitution and falls squarely outside the powers and jurisdiction of this Honourable Court.



24. With respect to matters that arise from policy decisions relative to the manner in which Government has elected to deal with the Covid 19 pandemic, I am advised that these decisions concern policy formulation and implementation which the Courts have adjudicated on. The Applicants have not made out a case for those decisions to be revisited, or for this Court to intrude into the preserve of the Executive branch of Government.

23. These questions and choices should be addressed in an appropriate forum with the relevant branch of government. Engagement at a political level also remains an option for the Applicant.

22. The separation of powers constitutional principle is implicated in these proceedings. It is patent from a reading of prayer 1 of the Notice of Motion, and the grounds relied on by the Applicant for the order sought, that the Applicant seeks to challenge first, a political question and not a legal one. This political question has been given effect to in decisions made by the national government and in the public policy choices made by Government within the context of section 85(2) of the Constitution.

**Inconsistency with the separation of powers constitutional principle**

21. For this reason alone, this application stands to be dismissed.  
not exist.

20. In the premises, the restoration of land which the Applicant seeks is impossible to comply with as this land, as identified by the Applicant in its pleadings, does

29. I have been further advised that in so far as this application relies on the discussions in respect of the amendment of section 25 of the Constitution and the discussions on the expropriation of land without compensation, the application is premature since the Expropriation Bill ("the Bill") has not as yet been passed into law. I am advised that any challenge to the Bill at this stage would amount to an intervention in an incomplete legislative process.

**prematu**  
**The order sought in relation to the expropriation of land process is**

28. In the premises, this application stands to be dismissed on this ground alone.

27. The Constitution does not envisage or provide for the conferment of sovereignty separate to the sovereignty of the Republic of South Africa.

26. The Applicant is asking the Court to restore to it ownership right, title and sovereignty of the land previously known some 18 years ago (last known as such in 1902) in the international stage as the Boer Republic. I have been advised that what the Applicant is in fact asking amounts to applying that it be recognised as a state and be awarded territory in South Africa where it has sovereignty to govern itself.

**The conferment of sovereignty on the Applicant**

25. In the premises, this application stands to be dismissed.

34. In context, the concept of a restoration of rights, title, and sovereignty in land that forms part of what the Constitution refers to as a Republic which is "one sovereign, democratic state" in which "no one may be deprived of property except in terms of a law of general application, and no law may permit arbitrary deprivation of property" raises material disputes of facts that ought to be adjudicated upon in action proceedings. (Own underlining for emphasis)

33. Over and above the legal issues raised herein, a number of factual disputes arise in this application, making it impractical for this Court to determine this application. The more significant factual disputes are noted below.

**proceedings**  
**The pleadings raise disputes of fact that cannot be resolved in motion**

32. In the premises, the Applicant has no legal right to the relief sought. This application ought to be dismissed on this basis alone.

31. In essence the issues raised relative to the draft Expropriation Bill do not amount to a legal dispute that is capable of resolution at this stage or in this forum.

30. It is my submission that parliamentary processes would be paralysed if Parliament were to spend its time defending its legislative process in the Courts. This would undermine one of the essential features of our democracy, the separation of powers.

39. To illustrate the point, the Book of Haggai has two not three chapters. The complete book of Hebrews has 13 chapters, while the New Testament is vast, yet

38. The Applicant's reference to the "unique religion, belief and opinion" coupled with what the Applicant refers to as "the interpretation of their God's Word and the application of their God's Word" and "the fulfillment of prophecies as set out in their God's Word" and as noted in paragraph 2.3 to 2.5 of the Founding Affidavit, presents factual disputes grounded in the Applicant's interpretation of scripture.

37. A second dispute that arises relates to whether the Applicant has a membership of "groups, individuals and organisations in South Africa". Other than the identification of the three members of the Executive, including the deponent to the Founding Affidavit, there is no evidence of this in the pleadings. A related dispute of fact arises from the allegation that the Applicant (presumably its unknown members as well) was in "peaceful possession" and "peaceful and undisturbed possession" of the land it wants this Court to restore to it. This allegation raises a material dispute of fact that this Court ought not to be burdened with.

36. The question of whose rights are to be recognised in itself constitutes a huge historical debate of significant proportions that this Court, sitting in motion proceedings, ought not to entertain.

35. One of the disputes that arises concerns the rights of the current incumbents who reside on the land that the Applicant claims. That territory currently forms part of Limpopo, the North-West Province, and part of the Mpumalanga Province.

the Applicant does not attempt to locate its claim in any particular chapter. This is but the tip of the interpretative minefield that the Applicant seeks this Court to delve into in motion proceedings.

40. The Applicant's case is premised on a material misunderstanding of, among others, the role of the World Health Organisation ("WHO"). In particular the allegation relative to the WHO's role in lobbying for a new world order with one world government raises a material dispute of fact that requires evidential substantiation. This can only be achieved in action proceedings and the most appropriate respondent in that regard would be the Minister of Health.

41. Similarly, the reference to the role the Respondents, the United Nations, and others to this "new world order" requires intense interrogation so as to establish the real factual position. This debate is directly linked to the "radio frequency identification", the "technological chip in the hand and forehead" allegation, the allegation regarding the Covid 19 vaccine, and the role of People's Republic of China ("China"), which allegations have no factual basis.

42. The above instances are but a microcosm of the disputes of fact that pervade the Applicant's pleadings. I am advised that further illustrations will be brought to this Court's attention at the hearing of this application.

43. In the premises, given the above points *in limine*, this application stands to be dismissed with costs.

44. I now turn to briefly addressing the question of joinder to the extent that this

Court understands the relief sought to include the executive functions of the Minister of Public Works and Infrastructure and the Minister of Health.

**Non-Joinder of the Minister of Public Works and Infrastructure**

45. The Minister of Public Works and Infrastructure is the custodian of public works infrastructure including roads, and schools. This Minister takes responsibility for aligning any legislation on the expropriation of land with the Constitution. Expropriation of land can only be effected for a valid public purpose or in the public interest.

46. It therefore would be the responsibility of the Minister of Public Works and Infrastructure to respond to any request by the Applicant for land to be expropriated for it to achieve its objectives.

47. To the extent that this Court may find that the issues raised in relation to the expropriation of land are germane to the main dispute in this application, the Minister of Public Works and Infrastructure ought to have been cited as a party herein.

**Non-Joinder of the Minister of Health**

48. The Minister of Health is the Cabinet member under whose remit political oversight of South Africa's national health system falls. Under the Minister's guidance and direction, the Health Department is to this end, responsible for policy formulation, coordination, support and monitoring of the health sector.

of the Covid-19 pandemic, the subsequent national state of disaster and the roll ongoing debates and the proposed Bill on the expropriation of land, the outbreak claim, in its pleadings it has failed to provide the basis in which it claims that the By way of example, and subject to the Applicant providing further clarity on its which events it is relying on.

Applicant relies for its assertion that it is entitled to the relief sought, in particular To this end, it has been difficult to discern exactly the basis on which the

as from 27 February 2018. 18 March 2020. Then the Applicant again refers to occurrences that took place them to their prayers and yet it claims to have been deprived possession since events dating between 1652 and 1902 confirms their possession and entitles difficult to answer to the allegations as pleaded. The Applicant pleads that the This application is peppered with so many contradictions that it has been

**Failure to comply with the Uniform Rules of the Court**

been joined as a party to these proceedings. 19 pandemic require this Court's attention, the Minister of Health should have To the extent that this Court may find that the issues raised relative to the Covid- issues.

As indicated earlier herein, various factual disputes relating to health related matters arise in these pleadings. The issues relating to Covid-19 and the strategic decisions on the vaccine program as raised by the Applicant are health related

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out of the vaccine program are acts of deprivation of the Applicant's possession of the land it claims restoration of.

54. I have been advised that in terms of the Uniform Rules of this Honourable Court, every pleading shall contain a clear and concise statement of the material facts upon which the pleader relies for its claim. Such claim must be pleaded with sufficient particularity in order to enable the responding party to answer thereto.

55. In the premises, failure by the Applicant to provide the basis on which it relies for its claim should be construed to mean that the Applicant launched this application knowing full well that it is asserting rights it does not have. In that regard the application is an abuse of court process and should be dismissed with costs.

56. I have indicated that the Applicant has raised a number of material factual matters that require proper interrogation and ventilation in a different forum. However, in an effort to give this Court a broad overview of the Third Respondent's answer in relation to the general tenor of the Applicant's pleadings, I now turn to giving a synopsis of the Third Respondent's submissions on the merits.

### THE APPLICANT'S POSSESSION OF THE LAND

57. I have relied on various historical texts and articles to make these submissions on the history of South Africa, which material I will make available to this Court should this become necessary. I recognise that different authors take different perspectives on the content of this history. However, I note the material below



in an effort to give a summation of the salient points that I believe are of relevance in giving this Court some historical context and content.

58. The land that the Applicant is claiming, in the context of South African history, ceased to exist in 1902 after the Dutch/Afrikaans settlers also known as the Boers were defeated in what is historically known as the Anglo-Boer war as will be demonstrated in detail below.

59. The Anglo-Boer war ended officially on 31 May 1902 when the Boer leaders signed the Treaty of Vereeniging with the British where it was agreed that the then Transvaal and the Orange River colonies would become British colonies.

60. I have been advised that treaties are binding and a state that signs a treaty is obliged to comply with it. A claim by the Applicant that its members were in undisturbed possession of sovereign territory that is a part of the South African constitutional democracy, and has not existed in over 100 years, is for this reason ill-conceived. In any event, there is no evidence that the Applicant and/or its members are the descendants of the occupiers of the so called Boer Republics.

61. The Applicant and its members are part of the South African state and are accorded the rights and obligations recorded in the Constitution along with all other South Africans. In this context, any claim for restitution is located in section 25(7) of the Constitution. The Applicant's claim falls outside that constitutionally directed time period.

62. The Applicant's claim that the outbreak of the Covid-19 pandemic and the discussions around the expropriation of land that are currently being ventilated

66. I briefly outline the history of events relied upon by the Applicant in their claim as set out in this application and the conquest of land belonging to the Khoi, San and African peoples by Europeans who settled in South Africa below.

65. The dispossession of land was central to colonialism and apartheid. This commenced as soon as white settlement began, with the Khoi and the San people being the first victims, followed by indigenous African people who had long been in the country when the Europeans arrived. This was followed by "an array of laws" dating from the early days of colonisation. The most infamous being the Native Land Act of 1913 (subsequently renamed the Black Land Act).

64. It is a well-documented narrative that South Africa has a tragic history of land dispossession and that land acquisition during the events that the Applicant relies on was achieved by ruthlessly running roughshod over African communities.

**SOUTH AFRICAN HISTORY IN CONTEXT**

63. It is common knowledge that the Covid-19 virus was first reported in Wuhan City, China and has since spread to more countries including South Africa. To claim that this was as a result of the actions of the Respondents is a clear indicator of the baseless nature of the claim by the Applicant.

cannot and does not constitute a deprivation or dispossession of property as envisaged in section 25 of the Constitution.

72. The voortrekkers when migrating from the Cape Colony to get away from British rule, fought, seized and occupied land while dispossessing the Khoi, the San and African communities in the process.
71. After the British took over the Cape Colony from the Dutch in later years, colonial expansion and dispossession were expanded even further into the Southern African interior. The tensions between the Dutch and British forced the Dutch voortrekkers to begin migrating from the Cape Colony into the interior to escape British rule.
70. In 1655, the Dutch decided to turn the refreshment station into a fully-fledged colony and this resulted in wars of land dispossession.
69. It is well-documented that the history of white colonial land dispossession began at the Cape with the expansion of the Dutch colonial settlement established by Jan van Riebeeck on behalf of the Dutch East Indian Company (VOC) in 1652. Initially Jan Van Riebeeck was only authorised to set up a refreshment station for the company's ships, but with the need for a more suitable source of meat and vegetable supply more land was required.
68. In order to put the historical events in context, I set out below a brief history of how land was invaded in South Africa.
67. The Applicant's submission that the events set out in its founding affidavit entitles them to ownership rights, title and sovereignty of the land is misplaced.

***The Conquest of Land from African People by Europeans In South Africa***

73. These dispossessed communities fought to defend and regain their lost land, but the superior weaponry by these trekkers enabled the colonialists to prevail.

### *The Great Trek*

74. It is well known that the Great Trek was a landmark in an era of colonialism, bloodshed, land seizure and labour coercion. This took the form of mass migration into the interior of Southern Africa by Dutch speaking colonists who were looking for a "promised land" where they would be "free and independent" people in a "free and independent" state.

75. In the migration to the interior of Southern Africa, the Great Trek caused tremendous social upheaval, rapturing the lives of hundreds of thousands of indigenous people.

76. As they continued with their land invasion, the trekkers had certain vital advantages over black African people with whom they were to come into contact and even into conflict. Their guns gave them the capacity to kill at a distance, and their horses a degree of mobility with which none of the African people could compete.

### *The Battle of The Blood River*

77. The assertion that the Battle of Blood River in 1838 is one of the reasons why the land should be restored to the Applicant is misguided, irrational and illusive.

82. In that year, England signed the Sand River Convention with the Boers which stipulated that all African land north of the Vaal River belonged to the Boers. The

81. In the Transvaal, consisting today of the whole of Limpopo, North-West and parts of the Mpumalanga Province, African land was confiscated by the Boers through invasion and the establishment of the so-called Zuid Afrikaansche Republiek or the Boer Republic from 1852 onwards.

**The "Zuid Afrikaansche Republiek (ZAR)**

80. Following this war, the Boer confiscated large tracts of the Zulu Kingdom. This belief that victory of Blood River was won with the aid of God is mythical and fallacious.

79. Much later in the same year, another prominent voortrekker leader called Andries Pretorius and his group made what they refer to as a "vow to God" that if their God granted them victory over the Zulu people, they would build a church in their God's name and keep the day sacred. The battle began and wave upon wave of the Zulu people were sadly slain by the Boer guns.

78. The history of South Africa is well documented in so far as it relates to how the Battle of Blood river unfolded. The voortrekkers, under the leadership of Piet Retief, invaded the KwaZulu Kingdom in 1837 using the guise of having come to negotiate the right to settle in parts of the Zulu kingdom. The Zulu people under the leadership of King Dingane resisted this invasion, and this resistance led to the death of Piet Retief and his group.

convention therefore had the effect of automatically turning Africans into tenants and labour tenants on land that they lived on for many generations.

**The Independence War / The First - Anglo Boer War and the Second Anglo-Boer War**

83. The First Anglo-Boer war was also known as the First Transvaal war of independence because of the conflict that arose between the British colonisers and the Boer colonisers from the Transvaal Republic or Zuid-Afrikaansche Republiek.

84. It is well recorded that the cause of this war was, amongst others, the expansion of the British Empire, problems with the Transvaal government and the Boer opposition to British rule in the Transvaal.

85. After the First Anglo-Boer War the British government did not give up its ambition to unify South Africa under Imperial British rule. The two Boer republics of the Orange Free State and the South African Republic or Transvaal still maintained their desire for independence.

86. A number of factors led to the Second Anglo-Boer war. These included conflicting ideologies of imperialism and republicanism, the discovery of diamonds and gold and tensions between political leaders.

87. A peace treaty was signed in 1902 ending the Second Anglo-Boer war.

The Vereeniging Treaty

88. The assertion that the treaty of Vereeniging signed between the Boers and the British is proof that the Applicants are entitled to land they are claiming is ill-conceived.

89. The Afrikaner nationalism, which came into being slowly after the Great Trek, grew much stronger in the 1870s and 1880s. It developed a strong anti-British character as Britain's aggressive attempts to extend its influence in South Africa threatened republican power and the independence of the so-called Boer republics.

90. The Anglo-Boer war ended officially on 31 May 1902. The British were victorious. The Boer leaders signed the Treaty of Vereeniging with the British where it was agreed that the Transvaal and the Orange River colonies would become British colonies.

91. The treaty had the consequence of the Boer republics remaining independent, with foreign relations and self-government under British control. The British recognised that for the continued domination and exploitation of South Africa, it was a better option to foster unity among the settler populations, with the condition that British culture and loyalty would be the foundation of this peace.

92. Among the more notable consequences of this treaty was the fact the Dutch language was granted equal status with English in legislation.

The Union of South Africa

93. It is noteworthy that the Applicant has somehow conveniently excluded from their founding papers, the history of South Africa from 1910 onwards when South Africa became a union, a move that saw the dismantling of the Boer Republic/*the Zuid Afrikaansche Republiek*. This accord symbolized a union of two races in South Africa, the English and the Afrikaners.
94. On 31 May 1910, exactly eight years after the Boers had made peace with the English through the Treaty of Vereeniging, South Africa became a Union. This Union consisted of the Cape, Natal, Transvaal and Orange Free State colonies forming a unitary state under British crown and under dominion of the local white minority which did not recognize the rights of black people.
95. The four South African territories, the two former Boer republics ("Transvaal" and "Oranje-Vrystaat") and the two former British colonies ("Cape Colony" and "Natal"), were united to form what became known as the Union of South Africa.
96. In 1912, the Union Parliament introduced the Draft Native Settlement Bill which became law in June 1913 as The Natives Land Act. This Act was the cornerstone of territorial segregation in South Africa. It prohibited all Africans from purchasing land already usurped by Europeans.
97. The Natives Land Act of 1913 legitimised the dispossession of land that happened during the colonial era and acted as a catalyst for massive forced removals, giving European farmers the right to eject Africans from land on which they had been living for generations.



98. Not only did the Native Land Act see thousands of black families forcibly removed from their land by the apartheid government, but it also limited land ownership by Africans to 7% and later 13% through the 1936 Native Trust and Land Act of South Africa. The apartheid government through this legislation began the mass relocation of black people to poor homelands and to poorly planned and poorly serviced townships.
99. The Native Land Act was finally repealed when the Abolition of Racially Based Land Measures Act 108 of 1991 came into force on 30 June 1991.
100. The Applicant has therefore no claim towards land on the basis of the above historical facts. That land ceased to exist when South Africa became a union as far back as 1910.
101. It is therefore incontestable that historically black land ownership was undermined through decades of colonial dispossession and discriminatory apartheid legislative enactments and measures which for many years prevented the original and majority of the population from owning property based solely on race.
102. The majority of the South African population were further cruelly robbed of their land when the Natives Land Act allotted 87% of South African land to white settlers, leaving the majority Black population with just 13% of land. This socio-economic reality of today's South Africa was inherited from the very same colonial history of land dispossession, oppression and exploitation which the Applicants are relying on.

103. In the late 1940s the institution of apartheid was established by the National Party. The apartheid system codified and further intensified racial laws and consequently racism became a matter of doctrine and ideology.

## THE DEMOCRATIC DISPENSATION

104. The prevailing apartheid legislation was repealed in the early 1990s and a National Peace Accord which symbolised the country's first multi-party agreement was signed. This National Peace Accord commenced discussions centred around the transition into the new democratic South Africa and the formation of an interim government.

105. I have been advised that the Constitutional Certification of the 1996 Constitution involved bringing together in one country, areas which had been separated under apartheid. It also involved the abolishment of discriminatory laws. At the same time it established a constitutional State based on respect for fundamental human rights, with a decentralised form of government in place of what had previously been authoritarian rule enforced by a strong central government.

106. When the Constitution came into force, structures of the old government ceased to exist. These included the four provincial governments, the six governments of what were known as self-governing territories, as well as the legislative and executive structures of Transkei, Bophuthatswana, Venda and Ciskei, which, according to South African law, had been independent States.

107. In addition the Constitution was required to make provision for certain functions, which had previously been carried out by the national government, to

111. Though the Minister of Public Works and Infrastructure takes responsibility for tabling the draft Expropriation Bill in Parliament, I deem it prudent to give some background information on the status of the draft Bill. First, it is a draft Bill. Second, it is still subject to informal discussions. Third, it has yet to be introduced

is therefore disingenuous and without merit.

110. The prevailing socio-economic challenges such as landlessness, poverty and inequality that the country is facing today are central to the legacies of colonialism and apartheid. The claim that the ongoing discussions on expropriation of land is an act which deprived the Applicant of possession of land

**LAND REFORM AND THE EXPROPRIATION OF LAND**

109. I am rather perplexed that the Applicant seeks to challenge this constitutional order 27 years into the new democratic dispensation.

as the country was transitioning.

108. A new democratic constitutional order is premised upon an open and democratic South Africa. It was a negotiated commitment which sought to avoid cataclysm

be transferred to the nine new provinces which were established on the day the Constitution came into force. Simultaneously it provided for functions that had previously been performed by the executive structures which had ceased to exist to be transferred partly to the national government and partly to the new provincial governments which were to be established. All this was done to ensure constitutional, legislative, executive, administrative and judicial continuity.

- in Parliament. For these reasons alone, the contents of the draft Bill cannot form part of the dispute raised by the Applicant in this litigation.
112. It is significant that the Applicant does not seek an order that sets aside the process of amending section 25, nor does it seek to challenge the expropriation process.
113. Most importantly, the land reform process should not be conflated with the expropriation process. The proposed process of amending section 25 does not introduce land reform but rather initiates a discussion on expropriation without compensation.
114. The greater part of the draft Expropriation Bill deals with public works, i.e. expropriation of land for public purposes. Only one part of that draft Expropriation Bill deals with expropriation for land reform without compensation.
115. The Department of Agriculture and Land Reform was consulted on this aspect. What is material is that expropriation without compensation must be provided for in legislation, hence the facilitation of public debates on the issue by *inter alia*, relevant Ministers and officials, political parties and by Parliament.
116. Of equal significance is the fact that the draft Expropriation Bill as currently formulated may undergo further amendment before being introduced in Parliament. It would therefore be premature for the Applicant to challenge this draft Expropriation Bill in its current form.

121. The Covid-19 pandemic has led to a dramatic loss of human life worldwide and caused unprecedented economic and social disruptions. It has brought the world

**THE OUTBREAK OF COVID-19**

120. Parliament is a principal legislative organ of the state and with regard to that role, it must be free to carry out its function without interference. To this extent, it has the power to determine and control its internal processes and procedures. The process must be allowed to run its course.

119. The draft Expropriation Bill is still being debated by the political parties and has not been tabled before Parliament yet. It is therefore my respectful submission that this application in so far as it challenges the expropriation bill, is rather premature and this Honourable Court has no jurisdiction to intervene in this legislative process.

118. On 27 February 2018, the National Assembly passed a motion to have section 25 of the Constitution amended in order to intensify land redistribution through the introduction of expropriation of land without compensation.

**THE LAND EXPROPRIATION BILL**

117. Most pertinently, the current discussions on the amendment of section 25 are ongoing. The Applicant itself has indicated that it has participated in these debates, which are yet to be concluded. What must be made clear is that the amendment of section 25 does not introduce an expropriation process as a new process.

to its knees in every possible sphere and this has been no different for South

Africa. It is therefore rather unfortunate that the Applicant would claim

dispossession of what they refer to as their land using the Covid-19 pandemic

outbreak as the reason thereof.

122. It is general knowledge that on 31 December 2019, the World Health

Organisation (WHO) reported a cluster of pneumonia cases in Wuhan City, China.

This Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2) was

confirmed as the causative agent of what we now know as Coronavirus Disease

2019 (COVID-19). Since then, the virus has spread to more countries all over the

world, including South Africa.

123. While the virus continues to infect many people around the world, there has

however been a lot of fake news spreading via social media and other online

platforms. This relentless flood of information has made it difficult to separate

fact from fiction, which misinformation is somewhat dangerous.

124. The Applicant is now using the very same misinformation as an opportunity to

claim dispossession of land which ceased to exist over 100 years ago. There is

no nexus between the Applicant's claim and the Covid-19 pandemic.

## **RISK ADJUSTED STRATEGIES TO MITIGATE THE SPREAD OF COVID-19 IN SOUTH**

### **AFRICA**

125. It is well known that the first Coronavirus case reported in South Africa occurred

on March 5<sup>th</sup>, 2020. Since then, and just as it is in many governments around the

world, there has been a concerted effort made by all spheres of government to

ensure that the spread of the virus was curtailed and the number of people who became infected was contained as far as possible.

126. The primary goal of this effort was to ensure the protection of the general world population. Several guidelines and protocols were put in place to achieve this. All planning undertaken in curbing the spread of the virus has been done strategically in a phased approach which included preparedness, containment, mitigation, and recovery.

127. To date, there have been several strategies implemented by the South African government to curb the exponential spread of the virus. I am aware that a number of these strategies have been contextualized to the needs of South Africans and modelled from countries that have successfully curbed the spread of infection. To date, the different stages of the country's lockdown has been designed to accommodate various factors and a number of restrictions have been put in place.

128. On or during March 2020, a state of disaster was declared and several plans were put into effect. These included the immediate lockdown of the country that saw non-essential services operating from home and all social and interactional activities ceasing with immediate effect.

129. These restrictions were nothing more than an effort by the government to combat the spread of Covid-19. They were not intended to, nor to my knowledge did they, dispossess or deprive citizens including the Applicant of their right to land as asserted by the Applicant.

**RESPONSE TO THE APPLICANT'S FOUNDING AFFIDAVIT**

130. I now proceed to deal with the averments made in the Applicant's founding affidavit *ad veritatem*.

**131. AD PARAGRAPH 1.1**

131.1. I deny that the Applicant, as set out in this paragraph, is a body with its own legal personality in terms of the laws of the Republic of South Africa. The Applicant has not set out how it has met the requirements of a duly constituted Association in terms of the laws of the Republic of South Africa.

131.2. The document that the Applicant purports to be its Constitution does not indicate when it was signed or adopted. I invite the Applicant to place before this Court a valid and properly executed Constitution.

**132. AD PARAGRAPH 1.2 and 1.3**

132.1. The Applicant's reference to the facts in paragraph 1.2 is opaque, making it difficult to understand the averment made therein.

132.2. To the extent that the Applicant seeks to state that the averments in its founding affidavit are facts, or that they are true and correct, or further still, that they are within the deponent's personal knowledge and belief, I deny that those averments are both true and correct or within the deponent's personal knowledge.



132.3. Subject to the above, I note the remainder of the averments made in

paragraph 1.3 of the Applicant's Founding Affidavit.

**133. AD PARAGRAPH 1.4 and 1.5**

133.1. I deny the contents of these paragraphs.

133.2. There is no record of who attended the inaugural meeting of the

Applicant, how many members voted for this resolution and how many

member in total the association has.

133.3. This information should be pleaded in order to demonstrate that the

Applicant is duly constituted in terms of the laws of the Republic of South

Africa and that the Convenor has the authority to initiate these

proceedings.

**134. AD PARAGRAPH 2.1**

134.1. I deny the allegations contained in this paragraph.

134.2. The Applicant contends that its rights contained in prayer 1-3 of the

Notice of Motion are primarily based and founded on its history.

134.3. Prayer 2 and 3 in the notice of motion refers to costs and further and/or

alternative relief respectively. It is incomprehensible how costs and

further and/or alternative relief can be a right based and founded on,

*inter alia*, the Applicant's "unique religion, belief and opinion".

134.4. I have been advised that the prayer for alternative relief is limited by the

statement of fact and by the terms of the express claim. The words further and/or alternative relief are a mere surplusage, redundant and a mere verbiage that cannot entitle the Applicant to any other relief that is not expressly claimed.

134.5. As already stated, the Applicant was never in a peaceful and undisturbed possession of the said land prior to 18 March 2020.

135.

AD PARAGRAPH 2.1.1 to 2.1.4

135.1. I deny that the occurrences mentioned in these paragraphs constitute unlawful actions by the Third Respondent and that they resulted in the deprivation of the Applicant and its members' possession.

135.2. I have already canvassed in detail the reasons for the proposed bill to expropriate land in South Africa as well as how the world found itself having to deal with the outbreak of Covid-19. I have made submissions on this issue in the earlier part of this answer. I stand by those submissions and ask that they be incorporated herein.

135.3. I further deny that the proposed plans to expropriate land in South Africa is unlawful as asserted by the Applicant in this paragraph. The Constitution of the Republic of South Africa 1996 is specific about land reform and addressing the issues of property rights. It further provides a framework for land reform, protection of property rights and expropriation if it is in the public interest.

137.2. I reiterate that to date Government has made the vaccination programme a voluntary one.

137.1. I deny the allegations contained in these paragraphs and invite the Applicant to annex hereto the documents relied upon.

**137. AD PARAGRAPH 2.1.6 to 2.1.10**

136.4. I further deny that the vaccine will become peremptory and again invite the Applicant to annex hereto the documents that it relies on in support of this allegation.

136.3. I invite the Applicant to annex hereto the documents relied on to affirm how it is common cause and public knowledge that the ingredients of the proposed vaccine contain plasma cells from donors.

136.2. In particular I deny that those with religious objections will be compelled to take the vaccine. To date Government has made the vaccination programme a voluntary one.

136.1. I deny the allegations contained in this paragraph.

**136. AD PARAGRAPH 2.1.5**

135.4. The assertion therefore that expropriation of land is a threat which is unlawful is disingenuous and flawed, more so because expropriation of land is not a new phenomenon under the new democratic dispensation.

140.1. I deny the contents of these paragraphs.

**AD PARAGRAPH 2.1.13 including all its sub-paragraphs.** 140.

139.1. Save to admit that the Disaster Management Regulation provides for the sanction of criminal prosecution on anyone who is found guilty of contravening the regulations, the rest of the allegations contained in this paragraph are denied.

**AD PARAGRAPH 2.1.12** 139.

138.3. More pertinently, the speech by the President has been referred to out of context. I am advised that further legal argument will be advanced in this regard at the hearing of this application.

138.2. These allegations were taken from the President's Freedom Day speech on 27 April 2018. They are far-fetched, and outrageous.

138.1. I deny the contents of this paragraph.

**AD PARAGRAPH 2.1.11** 138.

137.3. The Applicant raises a number of unsubstantiated and material issues in the paragraphs under reply, including allegations referring to the People's Republic of China. These allegations are entirely gratuitous and without foundation. I invite it to substantiate the allegations made.

140.2. The Global Preparedness Monitoring Board (GPMB) is an independent

group of global leaders and experts working towards making the world safer from, *inter alia*, the impact of the ongoing pandemic.

140.3. In summary, the GPMB is a monitoring and advocacy body convened by World Health Organisation (WHO) and the World Bank. Its primary objective is to prepare and mitigate the effects of global health emergencies, specifically in the wake of the 2014-2016 ebola epidemic. Page 10 of the report explains that in order to assess the preparedness for health emergencies, one of the indicators is the use of routine simulation exercises. The simulation mirrors the natural epidemics in order to assess readiness of different communities should these epidemics or pandemics occur. I attach hereto marked "AA1", a copy of the said report.

140.4. I have also attached a report titled *Preparedness for High Impact Respiratory Pathogen* marked "AA2" commissioned by the GPMB in order to understand the reason why the simulations exercises may have been recommended.

140.5. I deny that the ideals of the WHO and GPMB are nothing other than biological warfare against all citizens or that they have the primary objective to enforce the ideals and objectives of the new world order upon citizens. I invite the Applicant to annex hereto proof of the allegations made.

146.2. This matter was subsequently referred to the Joint Constitutional Review Committee which then undertook an extensive nation-wide

expropriation of land in the public interest, and without compensation. adopted a motion to amend Constitution so as to allow for the

146.1. It is admitted that in February 2018, the Parliament of South Africa

146. AD PARAGRAPH 4.1

I admit the contents of these paragraphs.

145. AD PARAGRAPH 3.12 to 3.16

registered Constitution, the contents of these paragraphs are noted. Subject to inviting the Applicant to provide evidence that it has a validly

144. AD PARAGRAPH 3 including sub paragraph 3.1 to 3.11

143.3. In addition, I invite the Applicant to annex the documents relied on.

143.2. I have made submissions on this issue in the earlier part of this answer. I stand by those submissions and ask that they be incorporated herein.

143.1. I deny the contents of these paragraphs.

143. AD PARAGRAPH 2.4 and 2.5

public hearings process. The latest draft of this Expropriation Bill was

published in October 2020.

146.3. This draft Bill, as with all other draft bills, is rarely a final product and does not assume the status of law until it has been assented to and signed by the President.

146.4. There is no nexus between the draft Bill and the claim of the Applicant in these proceedings as the contents and processes of this draft Bill do not form part of the relief sought in prayer 1 of the Notice of Motion.

146.5. I have made already made submissions on this issue in the earlier part of this answer. I stand by those submissions and ask that they be incorporated herein.

**AD PARAGRAPH 4.2**

147.1. Save to admit that the first cluster of the outbreak of the Corona virus was reported in China, the rest of the contents of this paragraph are denied.

**AD PARAGRAPH 4.3**

148.1. I deny the contents of this paragraph.

**AD PARAGRAPH 4.4**

152.1. I deny the contents of these paragraphs.

**152. AD PARAGRAPH 4.4.5 and 4.4.6**

may be necessary for him to respond to all the allegations made.

151.4. In particular, I defer to the answer of the First Respondent in so far as it

of the allegations made in this paragraph.

defer to the answer of the First Respondent in regard to the remainder

BRICS, the G20, the Commonwealth and other international bodies, I

151.3. Save to admit that the South African Government is a member of SADC,

151.2. In the interim, and in so far as may assist this Court, I respond as follows.

reason I invite the Applicant to clarify the contents thereof.

151.1. The allegations made in this paragraph are not clearly pleaded. For this

**151. AD PARAGRAPH 4.4.4**

Foundation, and the objectives of that Foundation.

refer to the existence and the purpose of the Bill and Melinda Gates

150.1. The contents of these paragraphs are admitted in so far as they correctly

**150. AD PARAGRAPH 4.4.1 to 4.4.3**

no basis in fact.

149.1. I deny the contents of this paragraph insofar as the analysis offered has



152.2. I invite the Applicant to annex hereto the documents relied upon.

**153. AD PARAGRAPH 4.4.7**

153.1. I deny the contents of this paragraph.

153.2. I invite the Applicant to substantiate the allegations made.

**154. AD PARAGRAPH 4.4.8**

154.1. I deny the contents of this paragraph.

154.2. I invite the Applicant to substantiate the allegations made.

**155. AD PARAGRAPH 5 and all its sub-paragraphs**

155.1. I note the history set out in these paragraphs.

155.2. I note that the Applicant admits that the rights in the Constitution have

been accorded to its members.

155.3. I have addressed the facts that underpin South Africa's history. I stand

by those averments and beg leave to incorporate them in this answer.

**CONCLUSION**

156. I submit that the Applicant has failed to make a case and that the relief sought should be dismissed with costs.

**WHEREFORE** the Third Respondent prays for dismissal of the relief sought with costs,

including the costs attendant on the employment of two counsel.

DEPONENT

\_\_\_\_\_

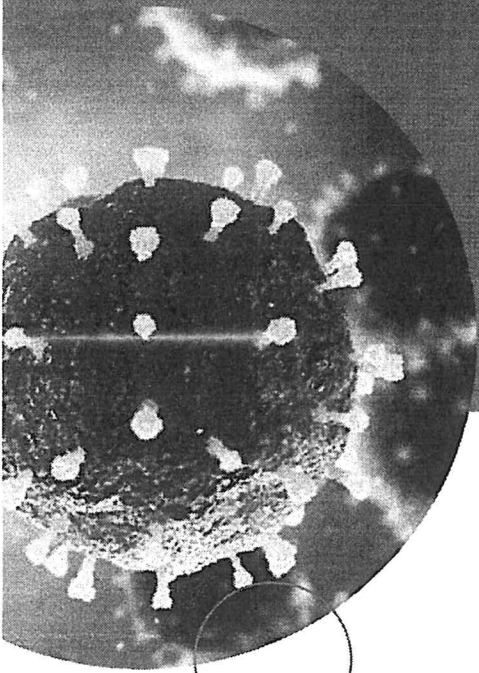
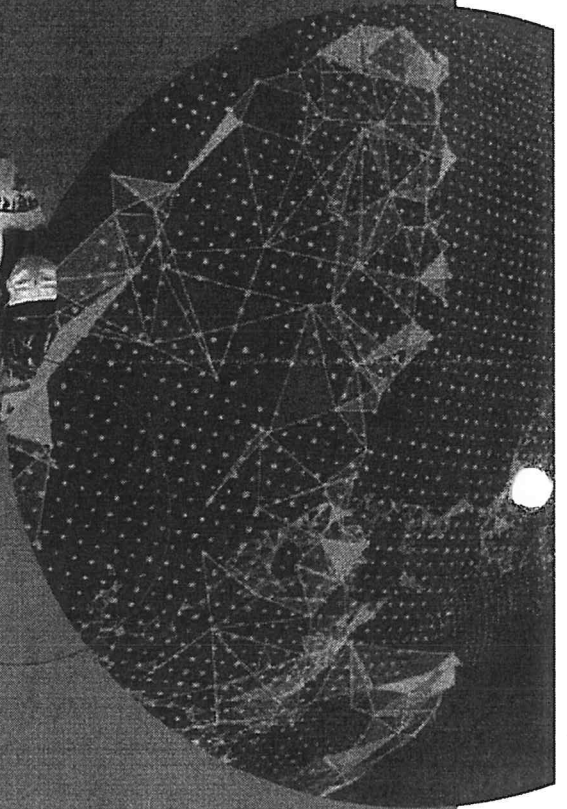
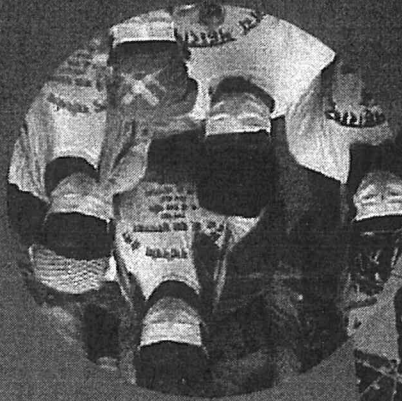
I hereby certify that the Deponent has acknowledged that that he knows and understands the contents of this affidavit which was signed and sworn to before me at \_\_\_\_\_ on this \_\_\_\_\_ day of November 2021 and the Regulations contained in Government Notice R1258 and R1648 of 21 July 1977 respectively, having been compiled with.

COMMISSIONER OF OATHS

\_\_\_\_\_

GLOBAL PREPAREDNESS MONITORING BOARD

**GPMB**



September 2019

Global Preparedness Monitoring Board

Annual report on global preparedness  
for health emergencies

# A WORLD AT RISK

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