



t +27 021 556 5502

a P.O. Box 50110
West Beach
Cape Town 7441

e info@forsa.org.za
www.forsa.org.za

To: The President of South Africa

Mr. Cyril Ramaphosa
Office of the Presidency
Per e-mail:
Cc'd to:

Cc: The Minister of Cooperative Governance and Traditional Affairs

Dr Nkosazana Dlamini-Zuma
Per mail:
Cc'd to:

26 May 2020

(URGENT, AND HIGH PRIORITY)

Dear President Ramaphosa,

**Re: RECOGNITION, AND PROTECTION, OF THE CONSTITUTIONAL RIGHT TO
RELIGIOUS FREEDOM AND RELATED RIGHTS, DURING THE STATE OF
DISASTER**

INTRODUCTION

1. The Constitution of South Africa is lauded worldwide because of its uniqueness and progressiveness.
2. The importance of, and reliance on, religion in our Nation is indeed evident even from the Preamble to our Constitution, which concludes as follows:
 - 2.1. "May God protect our people.
 - 2.2. Nkosi Sikelel' iAfrika. Morena boloka setjhaba sa heso.

- 2.3. God seën Suid Afrika.
 - 2.4. God bless South Africa.
 - 2.5. Mudzimu fhatutshedza Afurika. Hosi katekisa Afrika.”
3. In this time of unparalleled crisis, it is now more than ever that we need to pray to the Almighty God, that God blesses South Africa and protects our Nation. We know you realise this, have in the past recognised this, and have indeed called on the people of this country to pray, as we have been doing – also for you Mr President, and the Ministers and decision-makers navigating our country through this very difficult time.
 4. We trust that the survival and well-being of the people of South Africa is your primary motivation and concern – as is ours. In this, we are united.
 5. As you yourself know, Mr President, the Scriptures command us to “*love the Lord your God with all your heart and with all your soul and with all your mind. This is the first and greatest command. And the second is like it: love your neighbour as yourself. On these two commands hang the commandments of God, and the Prophets*” (Matthew 22:37-40). As Christians, our first priority and primary concern should be the first command. (We will return to this later herein). Without obeying the first command, the second command will be distorted as true love for one's neighbour stems from a true love for, and obedience to, the Lord our God.
 6. On behalf of the churches and religious organisations we represent, Freedom of Religion South Africa (FOR SA) again wants to assure you that they are committed to living out this Scriptural (second) command of “*loving their neighbour*” in a very practical way, particularly in this time where so many of their members and the precious people in our Nation are suffering, or stand to suffer, tremendous loss (of life, health, and/or livelihood), as a result of COVID-19.
 7. As you know, multiple churches and religious organisations (including also the African Indigenous and Spiritual Churches represented herein) have rushed to assist with the distribution of food, masks, sanitisers and other necessities to the most vulnerable in our society. Many have made themselves available as food distribution centres, testing and even medical facilities, to assist Government in doing what is necessary both to help curb the spread of the virus, and to prepare for the fall-out thereof. They are actively engaged in educating and informing their members and the communities they serve with regard to

the necessary health and safety precautions to protect themselves and the people around them, and in providing much needed spiritual and emotional support to all.

8. The churches and religious organisations have done this, and will continue to do so, because they believe that it is their Scriptural duty under God not only to pray – but to be a living expression of His Kingdom on earth, His hands and feet (See, for example 2 Corinthians 5:20).
9. Against this background, it - with respect - saddens and concerns us, and indeed the constituency we represent, that the regulations promulgated in terms of section 27 of the Disaster Management Act 57 of 2002 ('the Act'), to date have failed to specifically mention, and cater for, the largest potential partner and resource available to Government in the form of religious leaders and organisations who can educate our people and help fight the deleterious effects of COVID-19. Instead, the regulations have completely ignored and silenced the religious sector, in violation of the rights of the vast majority of our people enshrined in the Constitution.¹
10. The Constitution guarantees every citizen, including therefore the almost 80% of the population who (according to the 2001 census) profess to be Christian, the right to religious freedom (s 15). This is a fundamental and unqualified right, which does not simply "fall away" during a state of disaster but in respect of which there remains a constitutional duty on the State to respect, protect, promote and fulfil same (s 7(2)).
11. While it is so that the right to religious freedom, like any other right in the Bill of Rights, can be limited, the limitation has to be reasonable and justifiable (not just initially when the state of disaster was first announced, but for as long as it endures across all the Levels 5 to 1), taking into account the factors set out in s 36 of the Constitution. This includes that the Act, and the regulations issued in terms thereof, must be rational (i.e. there must a rational connection between the specific regulations and the objectives they seek to achieve) and proportional (i.e. they must go no further than what is absolutely necessary, adopting the least restrictive measures possible).
12. As our Constitutional Court has on various occasions stated, the fundamental right to religious freedom (s 15), includes not only the right to internally believe in our hearts

¹ Amongst others, the following sections of the Constitution are implicated: 9, 10, 12, 15, 16, 18, 21, 22, 27, 31 and 33

whatever we want to believe, but also the right to share, and to live out, our internal beliefs.²

13. For many of the churches and religious organisations we represent, the exercise of this right includes living out their Scriptural conviction that meeting together with other believers, is not just beneficial but is in fact commanded by God. For them, to (repeatedly, and ongoingly) not meet with other believers as commanded and modelled in the Old and New Testament Scriptures³, is to disobey (or sin against) God.
14. For many of them, their commitment to the Body of Christ (which includes, amongst other things, physically meeting with other members of the Body) is more important in a time like this, than going to work, to college, or having their children go to school. While these things are certainly important and beneficial in this life, for many believers these things are – from an eternal perspective – not nearly as “essential” as their devotion to God and His people (the Church). While education and work may prepare and provide for them in this life, for many believers the Church prepares and readies them for eternity – and also helps them to view and process their earthly trials (including COVID-19) from this eternal perspective.⁴
15. To give an example, the Scriptural command to “*not forsake the gathering of the saints*” (Hebrews 10:24-25), first given to the Jewish Christians in and around A.D. 70, was given at a time when the Jewish Christians were undergoing fierce persecution from the Romans, and their meeting together was illegal. In this context, the writer of Hebrews instructs them to not give up meeting together – even if it costs them their freedom, or their lives.
16. For many churches and religious organisations, meeting together is as “essential” to their faith, as it was for the Jewish Christians two thousand years ago – and, like the Jewish Christians, if placed before the choice of obeying God or obeying the law, many would have to obey God instead. The Body of Christ, per definition, is connected one member to another. It physically connects, and meets to honour God, and to serve one another in love.

² See, for example, *S v Lawrence*; *S v Negal*; *S v Solberg* 1997 (4) SA 1176 (CC).

³ See for e.g. Acts 2:12, Matthew 18:20, 1 Corinthians 14:26; Hebrews 10:25.

⁴ See John 12:25 – “*Those who love their life in this world will lose it. Those who care nothing for their life in this world will keep it for eternity.*”

17. It is true that believers are commanded in the Scriptures to obey the governing authorities (Romans 13:1), and that – out of fear for God – we do our best to do so. (God also expects Government to rule in such a way that we may lead a peaceful and quiet life, godly and dignified in every way⁵). The fact however is that Government does place us in a very difficult position when it forces us, by law and at threat of legal penalties, to act contrary to our conscience, religion and belief, which is constitutionally protected (s 15, read with s 9). In *Christian Education South Africa v Minister of Education* 2000 (4) SA 757 (CC), the Constitutional Court per Justice Sachs at para [41] stated as follows:

“... the State should, wherever reasonably possible, seek to avoid putting believers to extremely painful and intensely burdensome choices of either being true to their faith or else respectful of the law.”

Furthermore, *“Freedom (of religion) means that, subject to such limitations as are necessary to protect public safety, order, health, or morals and the fundamental rights and freedoms of others, no one is to be forced to act in a way contrary to his beliefs or his conscience.”*⁶

18. For many believers, according to the Scriptures, it is our identity as children of God, and our belonging and active service to (and as part of) the Body of Christ, that gives us meaning, purpose and dignity – even more so than our chosen occupation, profession, or contribution to the economy or society in broad. As it says in Ephesians 3:10, *“it is through the Church [that] the manifold wisdom of God should be made known to the rulers and authorities in the heavenly realms, according to his eternal purpose which he accomplished in Christ Jesus our Lord.”* (our emphasis).

19. Against this background, FOR SA, and the churches and religious organisations we represent, understand (without conceding such) that it may have been reasonable and justifiable, at least initially when the lockdown was first announced, to limit the right to religious freedom by, amongst other things, restricting the right of churches and religious organisations to ‘operate’ and their members to meet together (even in small groups).

⁵ 1 Timothy 2:2

⁶ Dickson CJC in *R v Big M Drug Mart Ltd* (1985) 18 DLR (4th) 321 referred to amongst others in *Prince v The President of the Law Society of the Cape of Good Hope* 1998 JDR 0368 (C).

20. We are of the viewpoint however that the complete exclusion of the religious sector from the Risk Adjusted Framework and the regulations, is no longer reasonable and justifiable under s 36 and amounts to an unconstitutional violation of the right to religious freedom and related rights – particularly in view thereof that it is now clear that 99% of the economic sector will open up at ‘Level 3’. This, while a lot of these sectors pose a far greater risk of spreading COVID-19 than churches (particularly if meeting in smaller groups).
21. For this reason, and because we want to co-operate with and (as far as our conscience, religion and belief allow) obey Government in regulations it chooses to issue, we appeal to you, Mr President, with great respect and humility – but with all earnestness that the sincerity and importance of our request demands – that the Government gives proper recognition, and protection, to the rights of religious communities in the Risk Adjusted Framework and any regulations further to be promulgated in terms thereof.
22. As explained at the outset of our letter, the vast majority of religious leaders and organisations in this country, including our constituency, are putting their heart and soul into assisting, caring for, and uplifting, our people in this uncertain and (for many) painful time – and will continue to do so, in obedience to and as a living expression of Jesus’ second command to “*love your neighbour as yourself*”.
23. We appeal to you however to also legally (and without the sword of punishment or persecution, as the current regulations effectively imply) allow us to obey Jesus’ “*first and greatest command*”, namely to “*love the Lord [our] God with all [our] heart and all [our] soul and [all] our mind*”. This includes to worship God the way He wants to be worshipped – not as lone individuals staring at a “talking head” on a screen (and in this regard, we remind you that many people in South Africa have no or limited access to data or the internet, and thus do not even have this privilege. The price of data is so high, especially for the poor that services that are streamed over the internet are inaccessible to most South Africans. This means that the people who most need the help and assistance of religious leaders are cut off from them and their support structure). No, we worship Him as members of the Body connecting and meeting together to (in our togetherness, even if initially in smaller groups) better and more accurately reflect what God is like to a Nation that is earnestly praying for His protection and blessing, as you Mr President have asked us to do.

THE PURPOSE OF THIS LETTER

24. Freedom of Religion South Africa (FOR SA), is a legal advocacy organisation working to protect and promote the constitutional right to religious freedom in South Africa, who has a mandate to represent the churches, denominations and religious organisations (including the African Indigenous and Spirituality Churches, representing a membership of over 10 million people), set out in the annexure marked as Annexure 'A' hereto. We record that these organisations represent a membership of some 15.5 million people in South Africa, whose constitutional rights are most seriously affected at present as set out herein.
25. The vast majority of the structures represented by FOR SA in this matter, do not form part of (and/or their views on this matter are not currently represented by) the South African Council of Churches (SACC) who, we understand, have been consulted by you Mr President, on at least three occasions since the start of the lockdown (including most recently, on 20 May 2020).
26. Some of our constituents were included in the virtual consultative meeting between you, Mr President, and the interfaith leaders on 20 May 2020 at 18h30. You were accompanied by several Ministers, who included Dr NC Zuma (Minister of Cooperative Governance and Traditional Affairs, (COGTA)) and Dr ZL Mkhize (Minister of Health).
27. Whilst we appreciate the engagement with others, we are nonetheless surprised that FOR SA was not specifically included, having regard to the correspondence addressed to the Office of the Presidency, and also to the COGTA Minister and Deputy Minister, some three weeks ago, annexed marked 'B', and 'C1' hereto, including its relevant annexures marked 'C2' and 'C3' hereto⁷, on behalf of religious leaders representing some 18.5 million people.
28. We understand from those who attended, that our submissions and proposals – which are very much aligned with what has been proposed by the SACC and various other religious organisations - have been placed before you for your consideration, and that you

⁷ We submit that there is a duty on the President and the COGTA Minister to consult FOR SA as it would be irrational to take decisions that impact on the constitutional right to freedom of religion without such consultation, not only because of the special knowledge of FOR SA, but also because of its broad representation of religious organisations, and the large percentage of the population of South Africa that FOR SA represents. See for instance *Scalabrini Centre, Cape Town and Others v Minister of Home Affairs and Others* 2018 (4) SA 125 (SCA).

are considering them. Notwithstanding this assurance, regrettably, we have to date not received any recognition of that correspondence, or any response thereto.

29. As a result, many of the churches and religious organisations who have given us a mandate to represent them in this matter, and whose views on this matter are not represented by the SACC or other organisations who had been invited to the consultations, feel that their voices have not been heard and that they have been left in the dark regarding Government's intentions for the opening up (or not) of the religious sector and/or any developments in this regard. This has contributed to a great sense of uncertainty, and also frustration, amongst many of our constituents and indeed churches and religious organisations in broad.

30. In the circumstances, and with a view to allowing us to be properly informed of, involved in and meaningfully contribute to the ongoing consultations with regards to the religious sector, FOR SA respectfully requests:

30.1. That we be formally listed in the office of the Presidency dealing with religious stakeholders (as we understand the SACC and other religious organisations are).

30.2. That we be furnished with the minutes of meetings held with religious stakeholders to date, including specifically the meeting on 19 March 2020 (following promulgation of the initial Lockdown Regulations by the COGTA Minister on 18 March 2020), as well as the further meetings that took place on 19 May 2020 (with the SACC) and 20 May 2020 (with the SACC and other interfaith organisations).

30.3. An undertaking that we be included in any consultations with, and correspondence from, the Presidency regarding this matter.

30.4. To the extent that the above requests for inclusion and participation in the ongoing consultations affecting the religious sector and our constituents in particular, are not granted, the reasons therefor.

30.5. A response to this and our previous correspondence.

31. The remainder of this letter will deal with:

- 31.1. The chronological sequence of events since the declaration of a national state of disaster, the Risk Adjusted Framework and Lockdown Regulations that followed, and the impact thereof on churches and religious organisations.
- 31.2. The meeting with the SACC and various interfaith leaders on 20 May 2020.
- 31.3. The draft regulations ostensibly prepared by the COGTA Minister dated 20 May 2020.
- 31.4. The Presidential address to the nation on 24 May 2020.

32. This is done with a view, in addition to seeking to be included in the ongoing consultations and engagement with religious stakeholders (as already mentioned above), and to ensuring that the constitutional rights to religious freedom and related rights of the faith community are properly recognised and protected during this time, to:

- 32.1. Set out our understanding of the present position of churches and religious organisations, and seek clarification in this regard *before* the amended regulations for 'Level 3' are promulgated so that they can be clear in their application in the final promulgated form⁸.
- 32.2. Set out FOR SA's concerns, and that of the constituency we represent, with regard to the current position as we understand it.
- 32.3. Request clear timelines as to when Government intends, as indicated during the President's address to the Nation on Sunday evening 24th May 2020, to:
 - 32.3.1. consult further with interfaith and religious organisations (including FOR SA);

⁸ "Laws must of course be written in a clear and accessible manner. Impermissibly vague provisions violate the rule of law, a founding value of our Constitution. For the 'law' to 'rule', it must be reasonably clear and certain." See *NCR v Opperman* 2013 (2) SA 1 (CC) at para 46.

32.3.2. confirm (presumably before new regulations are promulgated, or as soon as possible thereafter) the “*workable solution*” that it has committed to finding; and

32.3.3. provide reasons for their decisions.

CHRONOLOGY OF EVENTS

33. On 15 March 2020, the President of South Africa announced a national state of disaster in terms of section 27(1) of the Disaster Management Act 57 of 2002 (hereinafter ‘the Act’), as a result of the COVID-19 epidemic, ostensibly being experienced worldwide.

34. Section 27(2) of the Act empowers the authorised Minister (in this instance, the COGTA Minister) to promulgate regulations which, amongst others, regulate freedom of movement.

35. Section 27(3) of the Act provides that the aforesaid regulations may only be promulgated for the purpose of:

35.1. assisting and protecting the public;

35.2. providing relief to the public;

35.3. protecting property;

35.4. preventing or combating destruction; or

35.5. dealing with the destructive and other effects of the disaster.

36. From 18 March 2020 to 20 April 2020, the COGTA Minister issued regulations in terms of section 27(2) of the Act (“the initial regulations”). These initial regulations were extreme and far-reaching and the limitations contained in the regulations rendered many of the fundamental rights set out in the Constitution, nugatory.

37. In this regard, it is striking that the regulations gave no recognition for the important role that religious leaders have traditionally played, and continue to play, to contribute to the overall health (which, according to the World Health Organisation (WHO), has to be interpreted holistically and includes the psychological, emotional and spiritual well-being) of our society and its people. In particular, the regulations made no provision, at any of

the levels, for any collective religious activities or observances in any form or size, nor did it recognize the role of the religious leaders as essential services, or allow them to fulfil their core pastoral roles and care for their community in person.

38. These regulations materially limited the constitutional right to freedom of religion (s 15), as well as to equality and the prohibition on unfair discrimination (s 9), to human dignity (s 10), to freedom of association (s 16), to freedom of movement (s 21), and the rights of religious communities to practise their religion (s 31).
39. On 25 April 2020, the COGTA Minister published a draft Schedule of Services: Framework for Sectors, which set out a risk adjusted strategy for each sector of the economy of the country. This Framework set out five risk adjusted levels (Levels 5 to 1) of restrictions. Again, this Framework made no mention of, nor provision for, the religious sector. More specifically, none of the levels allowed for any collective (even in smaller groups) religious activities or observances, or indeed for the services and operations performed by religious leaders and organisations on a day-to-day basis, such as prayer, counselling, providing food and clothes to the poor, and the administrative and organisational activities involved to facilitate and support all of the foregoing.
40. On 27 April 2020, FOR SA wrote to the COGTA Minister in response to its call for comments on the draft Schedule. In its letter, which is attached hereto marked 'B', FOR SA made certain enquiries on behalf of its constituents in order to obtain clarification on the import and effect of the initial regulations on the religious sector. The purpose of the letter was to understand the extent of the limitation of the abovementioned constitutional rights and to determine to what extent the Minister intended to continue to limit these rights. As mentioned above already, to date, FOR SA has not received any reply to this letter.
41. On 29 April 2020, the COGTA Minister promulgated the 'Alert Level 4' Regulations ("the current regulations"). The current regulations were in line with 'Alert Level 4' of the above Framework. In particular, the current regulations do not mention religion or religious activities, and do not grant religious leaders any specific allowances to counsel and care for their congregants, nor permit any form of collective religious activity or observance.
42. On 8 May 2020, FOR SA, in response to an invitation on the PMG website for comments on the current regulations, wrote to the Chairperson of the COGTA Parliamentary Portfolio Committee, representing the concerns on behalf of some 18.5 million people regarding

the unreasonable and unjustifiable limitation of their fundamental rights, more especially their rights to religious freedom. This letter (annexure 'C1' hereto) and its relevant annexures (annexures 'C2' and 'C3' hereto) were forwarded to the President, the COGTA Minister and Deputy Minister, the Nerve Centre and most recently also, to the Speaker.

43. FOR SA's letter included submissions on how religious activities, observances and operations could reasonably and responsibly take place on a phased, and risk-adjusted basis. In other words, how religious leaders and organisations could (similar to the phased approach adopted with regard to the economic sector) enjoy progressively increased levels of freedom and return to "normality" depending on the level of risk.

44. In this letter further, it was recorded that:

'Since the regulations have a material impact on religious organisations and their members, we respectfully submit, you have a constitutional obligation to properly consider and consult with us with regards to our submissions, as well as to properly address and respond to our concerns. A failure to do so, would render the regulations irrational and unconstitutional.'

45. Since then FOR SA has not received any substantive reply to these submissions, despite the urgency and the fact that four weeks have elapsed since our first correspondence to the COGTA Minister.

46. In the meanwhile, other sectors have increasingly been accommodated, including (in terms of the Guidelines for Traditional Health Practitioners issued by the Gauteng Department of Health on 14 May 2020) traditional healers, whose actions are clearly not merely scientific but also religious.

47. As mentioned before, we understand that the President did however consult with, amongst others, representatives of the SACC on 19 May 2020 and also with a broader group of interfaith leaders on 20 May 2020. Despite the vast constituency it represents (namely religious leaders from across the faith spectrum representing some 18.5 million people, as per our letters to the President and COGTA Ministry), FOR SA was neither invited to, nor notified of, these meetings nor their outcome.

THE MEETING OF 20 MAY 2020, AND THE PRESIDENTIAL ADDRESS ON 24 MAY 2020

48. The meeting with interfaith leaders on 20 May 2020⁹, ended with you Mr President expressing words to the following effect:

- 48.1. This has been for those present; the most important consultation and it was heartening to hear the thoughts and proposals made by all present.
- 48.2. The message had been a resounding confirmation of the position of religious organisations in the whole process of dealing with COVID-19: that religious organisations want to be seen as partners, not just as organisations that have to be consulted; and that we would like to assist Government, and that it was very heartening to hear the willingness to work with Government.
- 48.3. That Mr President wanted the religious community to be critical of Government where it makes mistakes.
- 48.4. That the delegation on behalf of Government heard the messages very clearly that religious leaders want to be classified as essential services as part of counselling and social relief tasks.
- 48.5. That the delegation on behalf of Government heard the request for the slow opening in stages of worship and that the Risk Adjusted process would become part of what religious organisations would do. That the delegation heard this message very clearly.
- 48.6. That the delegation on behalf of Government heard the message about the needs of church leaders in this time of great difficulty.
- 48.7. Concern was expressed around the situations that occurred in South Korea and in the Free State. The proposals needed to be considered with this experience in mind. That the Government had taken the clear position that meetings should not be allowed and that they should not be allowed in all the levels.
- 48.8. However, that the delegation on behalf of Government heard what had been presented to them by the religious leaders.

⁹ A copy of the recording of this meeting has been made available to us by one of our constituents.

- 48.9. It was proposed that Government be given time to go through the proposals put forward. Time that would go beyond Thursday and beyond Friday to look at it very closely, look at implications and consult with its advisors. Then a further meeting would be arranged. Government would proceed going to Level 3 and then give consideration to what has been proposed. If Government was able, it would be discussed with the representatives of the religious and interfaith organisations, and if not possible, reasons would be provided.
- 48.10. The National Corona Command Council (NCCC) would be meeting and it will discuss the proposals, and come back to the representatives and have a proper reply and discussion going forward.
- 48.11. The nation would be advised that Government has consulted with interfaith leaders and that Government is going to have further consultations.
49. As is apparent from the above, and many articles that appeared in the media, churches and other religious organisations were hopeful that together with the opening of the economy and other walks of life, they would be able to commence operating and serving their members and communities again under 'Alert Level 3'.
50. This expectation was heightened by the communication from the Presidency on 20 May 2020 at 21h15, announcing the engagement with interfaith leadership on that day and indeed the announcement from the Presidency on 23 May 2020 at 20h30 that the President will address the nation on developments in South Africa's risk-adjusted strategy to manage the spread of COVID-19. The latter mentioned announcement specifically referenced consultative meetings with leadership of interfaith communities and the SACC. Given what we have summarised in paragraph 48 above, perhaps there were different expectations as to what would occur next.
51. Naturally many churches and religious organisations, including our constituency, were disappointed when, during your Presidential address to the nation on Sunday evening 24 May 2020, it became apparent that, as matters presently stand, churches will not be able to 'operate' under 'Alert Level 3', or at least will not be able to conduct any form of services at premises normally open to the public, where religious activities may take place.

52. In your address, Mr President, you announced that “...we have had fruitful discussions with the interfaith religious community on their proposals for the partial opening of spiritual worship and counselling services subject to certain norms and standards”.
53. The announcement has been taken to mean by FOR SA, and various churches and religious organisations, that the reasonable opening of spiritual worship services (presumably in smaller groups), could still occur in Level 3.
54. FOR SA would encourage this, and seeks clarity on the pace and scope whereby this could happen. In this regard, we refer to and reiterate the proposals made in our previous correspondence (annexures ‘C1’ – ‘C3’ hereto) for a phased opening up of the religious sector with a view to ultimately returning to ‘normality’, the same is now fast happening in the economic sector.
55. In this respect, and in particular in respect of the concerns expressed regarding the reported spreading of COVID-19 following a religious gathering in South Korea and in Bloemfontein, South Africa respectively, the following must be noted:
- 55.1. With regards to the South Korea meeting, we have it on good authority from the International Institute of Religious Freedom (IIRF) that much of what was reported in the news, was in fact based on “fake news”. (To the extent necessary, we can ask the IIRF for supporting submissions in this regard).
- 55.2. However, to summarise, according to an article on *Chosun Ilbo* (a major daily newspaper in South Korea), Seoul Mayor Park Won Soon, and Governor of Gyeonggi Province, Lee Jae Myung (who have been putting the responsibility of the outbreak on Shincheonji Church in the media) have spent over 400 million South Korean won (R5,7 million Rand) testing +/- 700 000 people connected to the Shincheonji incident. This revealed an infection rate of only 0.0028%. Criminal charges were initially proposed against the “Chairman” of Shincheonji Church, but in light of the accurate information the church immediately provided to authorities to assist their tracing and testing, this was dropped.
- 55.3. In addition, upon learning (on February 18th, 2020) that a member of its church was infected, Shincheonji immediately and voluntarily closed all its gatherings and meetings nationwide.

55.4. With regards the Bloemfontein meeting, we wish to point out that this meeting took place before international borders were shut by Government (as a means of preventing the spread of the virus from international “hotspots”), and before any regulations (including the general ban of “gatherings”) were promulgated, or health and safety protocols recommended by, Government or any understanding of the import or effects of COVID-19 had entered the public consciousness.

56. We make this point simply to point out that it is unreasonable and unjustifiable to, on the basis of these two events, continue to limit the rights of the religious community – particularly when all other sectors of the economy (bar a few minor exemptions) are opening up at ‘Level 3’, and the risk of infection in those contexts are no less than what may present in the context of a religious gathering (particularly of smaller numbers).

LEVEL 3 AND RELIGIOUS ORGANISATIONS

57. At this juncture, we mention that we have had sight of draft regulations for Level 3 ostensibly prepared by the COGTA Minister, and dated 20 May 2020 (i.e. the same day as the President’s meeting with interfaith leaders). While acknowledging that the regulations are only in draft form (and on the assumption that they are indeed the draft regulations prepared by the Minister), and acknowledging further that it is not apparent whether the draft regulations were prepared before, or after, the input of the interfaith leaders Mr President had consulted with on that day, we note that at ‘Level 3’:

57.1. Attendance at funerals remains limited to 50 people (clause 35).

57.2. All gatherings remain prohibited, except for at funerals, when at a workplace or for work purposes, agricultural auctions, or professional non-contact sports matches (clause 37).

57.3. Any place or premises normally open to the public where religious, cultural, sporting, entertainment, recreational, exhibition, organisational or similar activities may take place, remains closed (clause 38). The same clause does however make provision for beaches and public parks to open.

57.4. Finally, the annexed ‘Table 2: Alert Level 3’ to the draft regulations, essentially permit persons in “*all*” industries and activities to return to work, except for some very narrow “*specific economic exclusions*” specifically stipulated in the Table.

58. From the draft regulations, it thus appears that, despite persons in all industries and activities being permitted to perform work outside the home, and to travel to and from work, and that all businesses and other entities being able to operate except a narrow category (which does not include churches and other religious organisations), under Alert Level 3, it appears that any place or premises normally open to the public where religious activities may take place, remain closed. This is contrary to your address on 24 May 2020 Mr President, wherein you mentioned that all the other categories of buildings mentioned in paragraph 57.3 above will remain closed, but you strikingly did not include “religious” therein.

59. Our interpretation of the position that will apply during ‘Level 3’, is thus as follows:

59.1. Pastors and other religious workers may:

59.1.1. conduct memorial services at funerals, subject thereto that same do not take place at churches or other buildings normally used for religious purposes (clause 35 read with clause 38 of the draft regulations);

59.1.2. care for the poor, including by providing food (hot and cold meals)¹⁰ and clothes;

59.1.3. attend at administrative offices for purposes of administrative tasks only, but that they may (in terms of the draft regulations) not do so at premises normally open to the public where religious activities take place, as these must remain closed (which means that all offices at religious buildings cannot open or operate – which for instance makes the administration of a church impossible).

59.2. Pastors and religious workers may not however:

59.2.1. visit their members and/or other members of the community, for purposes of spiritual counselling;

59.2.2. in respect of pastors who are religious marriage officers, solemnise any marriages;

¹⁰ We refer to the order in *Democratic Alliance & Others v Minister of Social Development & Others*, Western Cape Division, Case No: 5812/2020.

- 59.2.3. commence to have church or religious services in any form, no matter how few attend and what health and safety precautions are taken;
- 59.2.4. commence to meet as small groups of people, or cell groups, in people's homes to worship and pray, which meetings are an integral part of most churches; nor
- 59.2.5. continue with their in-house training programs and Bible Colleges even though the teaching situations would be no different to the situations at schools and institutions of higher education that are to be opened under the level 3 regulations.

FOR SA'S POSITION AND CONCERNS

60. As is apparent from the foregoing, FOR SA's concern is that if the regulations to be promulgated for the other alert levels (Levels 3 and below) follow the Risk-Adjusted Framework, as the regulations to date have done and as the draft regulations for Level 3 dated 20 May 2020 seem to indicate, there is no scope for collective religious activities or observances, or for the day-to-day operations of religious organisations, until the COGTA Minister decides the COVID threat has subsided and the country is no longer at any risk level (i.e. until past Level 1).
61. This approach to religious freedom denies some 15.5 million people for which FOR SA speaks, all their religious freedoms and related constitutional rights, alternatively grants hollow recognition and protection of their constitutional rights.
62. This is particularly so, in light thereof that there can be no greater risk of infection if compared to sectors that have been opened up, and giving the crowds gathering for instance to receive food or social grants.
63. In the premises, the above-mentioned Risk-Adjusted Framework is unconstitutional. As a consequence, any regulations made in terms of this Framework are then also unconstitutional and stand to be set aside.
64. Mr President, you may be aware that there is already significant pending litigation which challenges the current regulations, and which directly affects the rights and interests of our constituency also. In particular we refer to the matter of *Muhammed & Two Others v President of The RSA & Others*: Case No. 21401/2020, CCT 89/2020, pending in the

Constitutional Court which seeks amongst others an order declaring Regulation 16(2), Regulation 23, and Regulation 24 read with the definition of "gathering" in the Regulations issued by the COGTA Minister under Section 27(2) of the Disaster Management Act 2002 GN R480 dated 29 April 2020 to be overbroad, excessive and unconstitutional insofar as they close places of worship, prohibit religious gathering at places of worship, and prohibit movement of persons to and from places of worship.

65. Court processes cannot wait, and FOR SA foresees that – unless the regulations to be promulgated for ‘Level 3’ recognise the rights of, and cater for, churches and religious organisations to be able to resume their work for and amongst the members and the communities they serve – FOR SA may well have to engage in this and other potential litigation to protect the interests of its constituency, and their fundamental right to freedom of religion and related rights in South Africa.

66. Like you, Mr President, we are hoping instead that a “*workable solution*” can be found (and soon), that will obviate the need for litigation to ensure that the religious community’s constitutional rights in South Africa are properly recognised and protected during this time – and given the opportunity as requested, FOR SA is indeed committed to working with you with a view to finding such a solution.

67. In the circumstances, we respectfully request that:

67.1. The different risk levels in the Risk-Adjusted Framework are immediately adjusted to make provision for the religious activities, observances and operations by religious organisations as set out by the submission previously made by FOR SA (annexure ‘**C1**’ – ‘**C3**’ hereto).

67.2. The draft ‘Level 3’ Regulations dated 20 May 2020, be amended before their promulgation to:

67.2.1. accord with the allowances for religious freedom and the related rights of religious communities, set out in FOR SA’s submissions with regard to the meeting of churches and religious organisations;

67.2.2. to permit religious leaders to make their proper contribution to the health and wellbeing of their communities in this crisis; and

67.2.3. to permit church offices to open, religious leaders be permitted to resume their pastoral and counselling duties to those who need their assistance, to care for the poor and needy as well as the spiritual and mental health needs of their communities.

67.3. All subsequent regulations incorporate the level of religious activity, observance and operations by religious organisations set out in FOR SA's submission for each subsequent risk level.

67.4. Provide assistance with data for congregants who are not permitted to attend church or religious services.

67.5. The Regulations permit the re-opening of in-house training programs/Bible Colleges at churches or religious organisations on the same basis and under the same conditions as the institutions of higher education.

68. Should we not receive a reply confirming your agreement to the FOR SA risk adjusted levels for religious activities, observances and operations and our requests set out above, by **5pm on Monday 1st June 2020**, you may leave us no choice but to approach the High Court on an urgent basis to have the Risk-Adjusted Framework, as well as all the regulations which adhere to it, declared unconstitutional together with ancillary relief.

69. We trust however that this will not be necessary, and that we will receive a speedy response to our request for engagement with your office.

Yours faithfully,

Adv Nadene L. Badenhorst

Legal Counsel, FOR SA

Annexure 'A':

	Title	Name	Surname	Name of Organisation	Membership Represented
1	Bishop	Samuel	Ndlovu	Alliance of Pentecostal and Charismatic Churches	Membership of 1589 churches all over the country.
2	Rev	Johan	Schütte	Afrikaanse Protestantse Kerk	29 626 members in 206 congregations
3	Archbishop	Lazarus	Selahle	All Africa Bishops Council	Approx. 50 000 people across the RSA.
4		Betty	Molapisi	All African Federation of Churches	327 affiliated churches with approx. 80 000 members
5	Dr	Shimmy	Kotu	Anti-Regulation of Religion Summit	Group of no less than 1 million Christians in RSA.
6	Bishop	Owen	McGregor	Apostolic Network of Minsters	3 Pastoral Fraternal and 35 churches representing at least 15 000 people.
7	Pastor	Barry	Isaacs	Cape Town (CT4J)	
8	Pastor	Karen	Victor	Christ Embassy Cape Town	A national church membership including affiliated churches in our ministers network is between 700 000 and 1 000 000.
9	Archbishop	Benson	Uwha	Christian Association of Nigeria South Africa	Well over 2.5 million members.
10	Pastor	Johnny	Slabbert	Christian Family Church	Approx. 100,000 congregants from across the RSA.
11	Adv	Reg	Willis	Christian Lawyers Association	
12	Pastor	Barry	Isaacs	Concerned Clergy of the Western Cape.	
13	Rabbi	Larry	Matlala	Council of Charismatic Churches RSA	A confirmed membership of 1055
14	Dr	JR	Crompton	Faith Fellowship of Churches	Approx. 19 churches with an average attendance of 4 250 congregants across the RSA.
15	Pastor	Morgan	Pillay	Fellowship of Community Churches	13 churches with over 3000 members
16	Pastor	Andrew	Selley	Four12 Global apostolic partnership of churches	55 congregations across the RSA

17	Mr	Michael	Swain	Freedom of Religion South Africa NPC (FOR SA)	A legal advocacy group working to protect and promote religious freedom in South Africa.
18	Dr	Stafford	Petersen	Full Gospel Church of God in Southern Africa	Approximately 800 000 congregants from 1400 congregations across the RSA
19		Thembi	Tulwana	Inkululeko Yeziswe Association (IYA)	Approx. 10 million people from 65 African Indigenous and Spirituality denominations and structures across the RSA under the leadership of Dr. Prophet uZwilezwe Radebe
20	Pastor	Neville	Sewlall	Jacobs Well Ministries	350 people
21	Pastor	Andrew	Selley	Joshua Generation Church	Approx. 3000 congregants across 26 congregations in the RSA
22	Bishop	Owen	McGregor	Mount Calvary Pentecostal Church	Approx. 12 000 people
23	Pastor	Neville	Sewlall	Pietermaritzburg for Jesus	20 Forums and Fraternal across PMB
24	Bishop	Glenn	Lyons	REACHSA	Approx. 50 000 members and 150 churches across the RSA.
25	Pastor	Barry	Isaacs	Religious Leaders Task Team (RLTT)	
26	Dr	Jerome	Swartz	SAIPPREM	1800 pastors nationally with approx. 1 million congregant members.
27		Andrew	du Preez	Seventh-day Adventist Church	200 000 members
28	Pastor	Sipho	Mahlangu	Soweto Ministers Fraternal	Approx. 25 000 people across the RSA.
29	Bishop	Masilo	Monyai	The Christian Judicial Council	Approx. 42 fraternal and 80 independent ministries across the RSA.
30	Pastor	Barry	Isaacs	Transformation Africa	
31	Dr	Dave	Pedersen	Vineyard Churches	Approx 25 000 participants in RSA.
32	Reverend	Cheryl	Jonck	Wesleyan Church of Southern Africa	A constituency of approximately 5000 people

33	Dr	JR	Crompton	<p>Word of Faith Christian Centre</p> <ul style="list-style-type: none"> • Cornerstone Church in JHB, • Glen Eden Church, • Waypoint Community Church, • Southern Gateway Church, • Philadelphia Church, • Joy to the Nations Church, • Kings Cross Church, • Living Hope Ministries Int • Gates of Praise Church, • Miracle Healing Centre International, • Face To Face Church, • Storehouse Church, • Bay City Church, • Church Unlimited, • GraceHill Family Church, • Westside Church International, • CityHill Lighthouse Church, • Xtreme Life Church, • HisLight Church, • Hilton Christian Fellowship, • Die Akker Church, 	<p>Approx. 3 000 members in the Port Elizabeth branch, and representing 20 branch churches with approximately 3 000 congregants each across the RSA.</p>
----	----	----	----------	--	--

34	Advocate	Werner	Badenhorst	<ul style="list-style-type: none"> • Eden In The City Church, • Hope City Church, • The Base Church, • Destiny Life Church, • Cat Church Tsitsikamma, • Church on the Way, • City Life Church, • Gateway Fellowship, • Turning Point Church, • CityGate Church, • City Hill Church Amanzimtoti, • Cornerstone Church, • Bridge Church Newcastle, • Victory Church, • City on a Hill Church, • Glenridge Church, • Zonki'lizwe, • New Covenant Church Midvaal, • Newday Church. 	Approx. 35 000 people across the different congregations in RSA
----	----------	--------	------------	--	---