IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

CASE NO: 3752/2019

In the matter between:

DUWAYNE ESAU	First Applicant
NEO MKWANE	Second Applicant
TAMI JACKSON	Third Applicant
LINDO KHUZWAYO	Fourth Applicant
MIKHAIL MANUEL	Fifth Applicant
RIAAN SALIE	Sixth Applicant
SCOTT HAIGH ROBERTS	Seventh Applicant
MPIYAKHE DLAMINI	Eighth Applicant

and

THE MINISTER OF CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS	First Respondent
THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	Second Respondent
THE MINISTER OF TRADE, INDUSTRY AND COMPETITION	Third Respondent
THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA IN HIS CAPACITY AS THE CO-CHAIRPERSON OF THE NATIONAL CORONAVIRUS COMMAND COUNCIL	Fourth Respondent
THE MINISTER OF CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS IN HER CAPACITY AS THE CO-CHAIRPERSON OF THE NATIONAL CORONAVIRUS COMMAND COUNCIL	Fifth Respondent
THE NATIONAL CORONAVIRUS COMMAND COUNCIL	Sixth Respondent

THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA Seventh Respondent

THE NATIONAL DISASTER MANAGEMENT CENTRE Eighth Respondent

WRITTEN SUBMISSION: MPIYAKHE DLAMINI

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A. Introduction

1. Mr Dlamini is not challenging government policy.

2. He is not mounting a frontal attack on the lockdown either.

3. Mr Dlamini's complaint is that he, as all South Africans, is expected to make huge sacrifices in relation to his fundamental rights (such as human dignity and movement) without being told exactly who is making the decisions that so adversely impact on these fundamental rights and on the basis of what law.[1] For that he wants to hold government accountable. But he is constrained by absence of transparency and accountability on government's part.

4. Accountability, responsiveness and openness are the very foundation of the multi-party system of democratic government on which the South African State is constitutionally anchored. There is no escaping this.

5. The basic constitutional values and principles that govern the public administration of the democratic government that is the South Africa State are captured in s 195 of the Constitution of the Republic of South Africa, 1996 ("the Constitution"). Of relevance to Mr Dlamini's case (as indeed for all South Africans) are the following constitutional values and principles:

    5.1 Public administration must be accountable.[2]

    5.2 Transparency must be fostered by providing the public with timely, accessible and accurate information.[3]

6. The promotion of these values and principles must be ensured by national legislation.[4] So, too, the regulation of appointment in public administration of a

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1 Dlamini founding affidavit, paras 40 & 43.
2 s 195(1)(f).
3 s 195(1)(g).
4 s 195(3).

number of persons on policy considerations.[5] We do not believe that these provisions trigger the subsidiarity principle which says one cannot invoke a provision of the Constitution directly when there is a piece of legislation that has been enacted to give effect to that provision of the Constitution. But, on the off-chance that it is argued by the respondents that they do, we make submissions in that regard.

7. The Constitutional Court has held that s 195 does not give rise to directly enforceable rights.[6] What that means is that s 195 cannot be invoked in order to found a right in the Bill of Rights. What it does not mean, however – nor can it possibly mean – is that non-compliance by the State with s 195 values and principles is not justiciable. That would render the entire s 195 superfluous.

8. The Constitutional Court judgment in *Khumalo and Another v MEC for Education, KZN* 2014 (5) SA 579 (CC) and the Full Bench judgment in *President of the Republic of South Africa v Public Protector* 2018 (2) SA 100 (GP) are just two examples of review applications centred on breaches by the State (in *Khumalo* by the provincial government and in the *Public Protector case* by the President) of s 195 values and principles.

9. So, non-compliance with s 195 of the Constitution is justiciable. What is not justiciable is s 195 as a foundation for a right in the Bill of Rights Chapter.

10. These s 195 values and principles form the backdrop of Mr Dlamini's case, not with a view to founding a right in the Bill of Rights but with a view to holding the government accountable and to vindicate the Constitution itself.

B. The Issues

11. Mr Dlamini's case against the respondents hinges on the answer to each of four self-standing questions:[7]

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5 s 195(4).

6 *Chirwa v Transnet and Others* 2008 (4) SA 367 (CC) at paras 74-76 & 195.

7 Dlamini founding affidavit, paras 16 & 19.

11.1 What is the National Coronavirus Command Council ("the NCCC")? We call this **"the Identity Question"**.

11.2 Was the NCCC lawfully established? (**"the Establishment Question"**).

11.3 Does the NCCC have decision-making powers in law? (**"the Legal Powers Question"**).

11.4 Has the NCCC made decisions, including policy decisions? (**"the Factual Powers Question"**).

12. Collectively, we call these **"the Merits Questions"**.

13. Each of these questions stands independently of the others. In other words, whatever answer the court gives to one question will not affect, one way or the other, the answer to the others questions. Each question must be dealt with on its own merits and facts.

14. We submit, as we shall show, that

14.1 the answer provided by the respondents to **the Identity Question** is muddled and therefore indicative of lack of transparency, accountability, responsiveness and openness,

14.2 the answer to **the Establishment Question** is "no",

14.3 the answer to the **Legal Powers Question** is "no", and

14.4 the answer to the **Factual Powers Question** is "yes".

15. We then conclude that the appropriate, effective, just and equitable relief is to declare the establishment of the NCCC unconstitutional and therefore invalid. Having so declared, the court will have no option but to set aside all the decisions made by the NCCC.

16. Such relief will <u>not</u> collapse the government's covid-19 regulatory framework as all the court need do is direct that all the powers unlawfully exercised by the

NCCC be retrospectively exercised by Cabinet and the National Disaster Management Centre ("the Centre").

17. But before dealing with each of these questions, we address the mootness point raised by the Minister of Cooperative Governance and Traditional Affairs ("the COGTA Minister").

C. Mootness

18. The COGTA Minister says, hesitantly, the application *"would appear"* to be moot as the complaints *"would appear to have been addressed in toto by the [28 May 2020] regulations"*. The Minister is mistaken.

19. The 28 May 2020 regulations do not address any of the questions raised by Mr Dlamini.

20. It is true that where the determination of a dispute will have no practical effect, a court may dismiss the application for that reason alone.[8] But mootness is not always a bar to justiciability if the court is satisfied that it is in the interests of justice so to do. The Constitutional Court had this to say in this regard:

> "[T]o the extent that it may be argued that this dispute is moot . . . this court has a discretion whether to hear the matter. Mootness does not, in and of itself, bar this court from hearing this dispute. Instead, it is the interests of justice that dictate whether we should hear the matter."[9]

21. This general principle is not confined to appeals. The High Court, sitting as a court of first instance, has taken a similar view.[10]

22. In light of the uncertainty surrounding all the questions raised by Mr Dlamini regarding the provenance and powers of the NCCC within the South African governance and constitutional landscape, there is no question that it is in the

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8 s 16(2)(a)(i) of the Superior Courts Act, 10 of 2013.

9 South African Reserve Bank and Another v Shuttleworth and Another 2015 (5) SA 146 (CC); 2015 (8) BCLR 959; [2015] ZACC 17) at para 27.

10 NSPCA v Minister of Environmental Affairs and Others 2020 (1) SA 249 (GP) at paras 36 to 42.

interests of justice that these questions be determined by this court. This is so even if the questions are moot, which we deny[11], and which is self-evidently not so.

D. The Merits Questions

(i) What is the NCCC?

23. As the table annexed to Mr Dlamini's replying affidavit vividly demonstrates (**"RSA2"**), the respondents are coy about the nature and composition of the NCCC. Where answers are given, they are contradictory and obfuscatory. It is a classic example of lack of transparency, openness and accountability.

24. The COGTA Minister offers more than one version of what the NCCC is and has, despite being offered an opportunity to pick one version, failed to do so in a fourth set of affidavits. The President offers a totally different version that is irreconcilable with that of the Minister.

24.1 The one version offered by the COGTA Minister is that the NCCC is a subcommittee of Cabinet comprising all Cabinet members and dedicated to dealing with covid-19.[12]

24.2 The Minister's second version is that the NCCC is "a structure of Cabinet comprising 19 Cabinet members".[13]

24.3 The third version is offered by the President in his national address on 15 March 2020 in which he said the NCCC comprises, amongst others, members of the Inter-Ministerial Committee that had, until then, been leading the government's response to the pandemic since the outbreak.[14]

24.4 The President has offered a fourth version in an answer to a Parliamentary question. Asked what are the names, positions and

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11 Dlamini Reply, para 22.

12 COGTA Minister Answering Affidavit, paras 17 & 115.

13 COGTA Minister Answering Affidavit, paras 114.

14 Annexure **"SA1"** to Dlamini Affidavit, page 266.

working titles of members of the NCCC, the President listed 20 titled Ministers and added the Deputy President and himself as President. That is a total of 22 members. Then the President said: **"other members of Cabinet were subsequently invited to attend NCCC meetings."**[15]

25. These versions are irreconcilable with each other. So irreconcilable are they that, for purposes of holding to account for transparency, accountability and openness, and even for delictual damages that may arise from decisions or conduct of what is now an amorphous construct called the National Coronavirus NCCC, the people of South Africa would not know to whom to turn. This is because there is no certainty on who the members of this structure are.

26. They are irreconcilable even for purposes of South Africans exercising their constitutional rights to assert, for instance, the right to human dignity.

27. We submit that the respondents have failed the transparency, accountability and openness test and we ask that the court so declare.

(ii) *Was the NCCC Lawfully Established?*

28. We submit not.

29. The respondents are coy in answering this question too. The COGTA Minister gives at least four versions. Only the fourth version answers the question, and the answer does not favour the Minister.

29.1 The first version is that Cabinet may determine its own committees.[16]

29.2 The second version is that, in terms of the Disaster Management Act, 2002 ("the DMA") it is the national executive's responsibility to co-ordinate and manage the response to the COVID-19 pandemic.[17]

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15 Annexure **"RSA3.1"** to Dlamini Reply.

16 COGTA Minister Answering Affidavit, para 17.

17 COGTA Minister Answering Affidavit, para 116.

29.3 The third version is that the establishment and functioning of the NCCC is constitutionally permissible and compliant with the DMA.[18]

29.4 The fourth version is that the Constitution does not regulate how Cabinet organises its affairs or determines its structures – presumably including the NCCC as, according to one version, a cabinet subcommittee.[19]

30. But, under what specific provision of what law the NCCC was established, the Minister does not say. In fact, she says its establishment is not regulated by the Constitution.

31. Nevertheless, says the Minister, despite it not being regulated by the Constitution, the NCCC is nonetheless *"constitutionally permissible"*.[20] How that is cognitively possible is one of life's intricate puzzles for a constitutional lawyer.

32. The Minister also says the establishment of the NCCC is compliant with the DMA.[21] But she points not to a single specific provision of the DMA with which the establishment of the NCCC is allegedly compliant. It is a throwaway submission with no substance. It seems the Minister expects this court to take her word on it.

33. So, in the absence of any law regulating the establishment of the NCCC, as the COGTA Minister herself concedes, its establishment fails the legality and constitutionality test. The Constitution is the supreme law of the Republic; law and conduct that is inconsistent with it is invalid.[22] The only appropriate, just and equitable remedy is to set aside the establishment of the NCCC for that reason.

(iii) Does the NCCC have decision-making powers in law?

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18 COGTA Minister Answering Affidavit, para 116.
19 COGTA Minister Answering Affidavit, para 150.
20 COGTA Minister Answering Affidavit, para 166.
21 COGTA Minister Answering Affidavit, para 166.
22 Constitution, s 2.

34. Here, too, the Minister and the President give the inquirer the run-around. Numerous irreconcilable versions emerge.

34.1 One version is that the NCCC has no decision-making powers whatsoever.[23]

34.2 Another version is that the NCCC acts as a forum for discussion and debate on COVID-19 issues.[24]

34.3 A third version is that it makes what could be termed *"critical decisions"* and that there is nothing inappropriate with this provided such decisions are subsequently taken by cabinet sitting as such.[25]

34.4 This third version – which appears to suggest that decisions of the NCCC require ratification by Cabinet – seems consistent with what the President told South Africans as late as 4 May 2020 when he backed the COGTA Minister in the *volte face* decision on the unbanning of tobacco sales, when the President said:

> "After careful consideration and discussion, the NCCC reconsidered its position on tobacco. As a result, the regulations ratified by Cabinet and announced by Minister Nkosazana Dlamini-Zuma on 29 April extended the prohibition."[26]

34.5 So *"critical"* was this decision of the NCCC that the Minister now faces a court challenge because of it.

34.6 The fourth version is that the NCCC has the power to decide on lockdown alert levels, but that this would require Cabinet approval.[27] The Cabinet approval requirement is an afterthought; it was not there when the Minister made that presentation to Cabinet on 20 April 2020.[28]

34.7 The fifth version is that the NCCC, sitting as a Cabinet committee, has decision-making powers.[29]

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23 COGTA Minister Answering Affidavit, para 116.
24 COGTA Minister Answering Affidavit, paras 16 & 117.
25 COGTA Minister Answering Affidavit, para 153.
26 President's letter to SA on 4 May 2020, annexure **"FA10"** to Esau affidavit, pages 339 to 340
27 COGTA Minister Answering Affidavit, para 85.7.
28 Dlamini Reply, para 28.3.
29 COGTA Minister Answering Affidavit, para 87.

34.8 The sixth version is that the NCCC is a coordinating body given authority by Cabinet to do that.[30]

35. These versions as regards whether the NCCC has the power to make decisions, and what the legal source of that power is, are inconsistent with one another. Again, this is demonstrative of a lack of transparency, accountability and openness in a democratic and constitutional State. That the Minister still fails to commit herself to one version, after being afforded an opportunity so to do, is regrettable and a flagrant disregard for constitutional values and principles governing public administration in a constitutional State.

36. We thus ask that the court declare that the NCCC has no power in law to make decisions – critical or otherwise – in relation to public administration and regulation of the covid-19 government intervention. An unavoidable consequence of that declaration is the setting aside of all decisions made by the NCCC, a fact that is indisputable on the facts as provided by the Minister and the President.

37. Again, this will not have the effect of collapsing the entire covid-19 regulatory framework if those who have the power to make the decisions unlawfully made by the NCCC are permitted to make them with retrospective effect.

(iv) *Has the NCCC made decisions, including policy decisions?*

38. Once again, between them the Minister and the President fail to provide one straight answer to this question.

38.1 On one version the Minister says Cabinet took the decision to enter a strict lockdown phase.[31]

38.2 This is directly contradicted by the President who told South Africans, on 24 March 2020, that **"the National Coronavirus Command Council**

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30 President (through D-G at Presidency on 4 May 2020), annexure **"SA9"** to Dlamini affidavit, page 336, para 2.6.

31 COGTA Minister Answering Affidavit, para 60.

has decided to enforce a nation-wide lockdown for 21 days with effect from midnight on Thursday 26 March".[32]

38.3 The President again contradicted the Minister exactly a month later, on 23 April 2020, when he said: **"The National Coronavirus Command Council met earlier today and determined that the national coronavirus alert level will be lowered from level 5 to level 4 with effect from Friday the 1st of May"**.

38.4 As Chair of the NCCC, there can be no doubt about what the President meant. Not once has either the President or the Minister come out and said he made a mistake or spoke out of turn in saying these decisions were made and enforced by the NCCC, or that the Minister made a mistake in saying, as late into the lockdown as 20 April 2020, that **"the National Command Council determines level of alert for each province and district"**[33]. Only now that the issue is being raised squarely before this court, does the Minister advance yet another version that this was *"imprecise language"*.[34] We submit that this latest version is too expedient to be accepted at face value. Both the Minister and the President, who have issued many regulations (in the case of the Minister), made speeches and wrote letters (in the case of the President) since 15 March 2020, have had every opportunity to correct what they believed to be *"imprecise language"*. They did not. There is no imprecise language. The explanation is simply implausible and we ask this to reject it.

39. In the circumstances, we ask this court to find that the NCCC did make decisions pertaining to the regulation of the government's covid-19 intervention. This is manifest in the facts provided by the Minister herself, and from the President's public utterances.

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32 President's national address on 24 March 2020, annexure **"SA3"** to Dlamini affidavit, page 272

33 COGTA Minister's slide presentation to Cabinet on 20 April 2020, annexure **"SA3"** to Dlamini affidavit, page 82.

34 COGTA Minister Answering Affidavit, para 87.

40. Since the NCCC has no power in law to make these decisions (as we have shown when dealing with **the Legal Power Question**), we ask that this court set aside those decisions as being unlawful as they were not sanctioned by any law.

41. In fact, it has recently emerged that, in an answer to a question put to him by a Member of Parliament, the President confirmed that no powers have been delegated to the NCCC. So, not only is there no law to which the Minister has pointed us that confers a power on the NCCC to make decisions such as determining alert levels and enforcing national lockdown (as the President told the nation), but the NCCC also had no such power delegated to it by Cabinet or Parliament or the President or anyone else who has the power so to delegate.[35]

42. Such relief is just and equitable as it will re-enforce constitutionalism without collapsing government's laudable intentions of combating the covid-19 pandemic. All that needs happen is the retrospective exercise by the institutions that have the powers hitherto unlawfully exercised by the NCCC.

43. Two more issues remain and we deal with them briefly. These are:

    43.1 the confidentiality and/or secrecy that the Minister claims in respect of Cabinet minutes, and

    43.2 the subsidiarity principle

E. <u>Confidentiality and/or secrecy of Cabinet Minutes, et al</u>

44. The Minister tells this court about decisions that she says were taken by Cabinet at meetings. She refuses to provide minutes of those Cabinet meetings or a recording or transcribed record. For example, she refers to a Cabinet meeting of 20 March 2020 where the President is supposed to have swelled the ranks of the NCCC with all members of Cabinet but she provides no

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[35] Annexure **"RSA3.1"** to Dlamini Reply.

minutes, recording or transcribed record. She does not even put up a confirmatory affidavit by the President to this effect.

45. All this, we respectfully submit, is indicative and characteristic of an intention to avoid transparency and accountability. With respect, the Minister clearly displays an insouciant attitude towards important facts on what was said at the various meetings she describes.

46. The Minister needs to produce official minutes, or recordings or transcribed records of the meetings, or some other documentary evidence of what she records. We would find it quite extraordinary that there is no official record (more than just what the Minister tells this court) of discussions of matters of such grave national import.

47. The Minister's sweeping proposition that the applicants are not entitled to minutes of Cabinet meetings, and even those of the NCCC, is incorrect and/or stated too broadly.

48. Confidentiality is no basis for non-disclosure of a document to a court when the determination of the issues before court hinge upon the court's assessment of information contained in that document. Because the Minister has herself relied for her defence on discussions and debates that she says took place at various meetings, including Cabinet meetings, she opened that door for the production of the minutes or official recordings or transcribed record of those discussions and so should have produced them.

49. In any event, the Minister fails to explain to this court on what ground she asserts that the applicants are not entitled to this information and these documents.

50. Confronted with this question, the Constitutional Court in *Independent Newspapers (Pty) Ltd v Minister for Intelligence Services: In re Masetlha v President of the Republic of South Africa and Another* 2008 (5) SA 31 (CC) said:

> "[54] A mere classification of a document within a court record as 'confidential' or 'secret' or even 'top secret' under the operative intelligence legislation or the mere ipse dixit of the minister concerned does not place such documents beyond the reach of the courts. Once the documents are placed before a court, they are susceptible to its scrutiny and direction as to whether the public should be granted or denied access.
>
> [55] It follows that where a government official objects to disclosure of a part of the record before a court on grounds of national security, the court is properly seized with the matter and is obliged to consider all relevant circumstances and to decide whether it is in the interests of justice for the documents to be kept secret and away from any other parties, the media or the public. This forms part of a court's inherent power to regulate its own process that flows from s 173 of the Constitution. In my view, a court in that position should give due weight both to the right to open justice and to the obligation of the State to pursue national security within the context of all relevant factors. As in the present matter, it would not be concerned with a statute or other law of general application as the basis for restricting the disclosure of the material. In deciding whether documents ought to be disclosed or not, a court will have regard to all germane factors which include the nature of the proceedings; the extent and character of the materials sought to be kept confidential; the connection of the information to national security; the grounds advanced for claiming disclosure or for refusing it; whether the information is already in the public domain and if so, in what circumstances it reached the public domain; for how long and to what extent it has been in the public domain; and, finally, the impact of the disclosure or non-disclosure on the ultimate fairness of the proceedings before a court. These factors are neither comprehensive nor dispositive of the enquiry."

(emphasis supplied)

51. In order for Mr Dlamini properly and effectively to exercise his fundamental rights against government, he is entitled to the material that informed government's decisions. Government cannot validly seek refuge behind the veil of secrecy or confidentiality or privilege.

52. Ordinarily courts would look favourably on a claim of a litigant to gain access to documents or other information reasonably required to assert or protect a threatened right or to advance a cause of action. This is so because courts take seriously the valid interest of a litigant to be placed in a position to present its case fully during the course of litigation. Whilst weighing meticulously where the interests of justice lie, courts strive to afford a party a reasonable opportunity to achieve its purpose in advancing its case. After all, an adequate opportunity to

prepare and present one's case is a time-honoured part of a litigating party's right to a fair trial.[36]

F. The Principle of Subsidiarity

53. Our position is that the subsidiarity principle finds no application in this case. Nevertheless, should it rear its head we make the following submissions for the sake of completeness.

54. Section 195(3) of the Constitution says national legislation must ensure the promotion of the values and principles that Mr Dlamini invokes, and which the Minister, fact-free, asserts that she has complied with in the public administration of the covid-19 pandemic. Those values and principles are transparency, accountability, responsiveness and openness.[37]

55. Section 195(4) of the Constitution says

> "The appointment in public administration of a number of persons on policy considerations is not precluded, but national legislation must regulate these appointments in the public service."

56. Both s 195(3) and s 195(4) might arguably[38] trigger the subsidiarity principle which prescribes that where legislation has been enacted to give effect to a right, a litigant should rely on that legislation in order to give effect to the right or alternatively challenge the legislation as being inconsistent with the Constitution.

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36 *Masetlha* at [25].

37 See s 195(1)(f), s 195(1)(g) and s 1(d) of the Constitution.

38 We say "arguably" for two reasons. The first is that neither of these provisions is couched in the usual sense where the legislature is enjoined to enact legislation in order to give effect to a constitutional right. The second reason is that the principle seems to apply only where a right in the Bill of Rights Chapter of the Constitution is in issue. We invoke the point, *ex abudanti cautela*, on the off-chance that it may be raised as a bar to our argument that the Minister has failed the transparency, accountability, responsiveness and openness test. If the court should decide that the principle finds no application here, we are happy to abandon this part of our argument and invoke s 195 and s 1(d) of the Constitution directly.

57. In this regard the Constitutional Court said in *My Vote Counts NPC v Speaker of the National Assembly and Others* 2016 (1) SA 132 (CC):

> "[160] Contrary to the suggestion in the minority judgment that our insistence on compliance with the principle [of subsidiarity] puts form ahead of substance, this principle plays an important role. The minority judgment correctly identifies the 'interrelated reasons from which the notion of subsidiarity springs'. First, allowing a litigant to rely directly on a fundamental right contained in the Constitution, rather than on legislation enacted in terms of the Constitution to give effect to that right, 'would defeat the purpose of the Constitution in requiring the right to be given effect by means of national legislation'. Second, comity between the arms of government enjoins courts to respect the efforts of other arms of government in fulfilling constitutional rights. Third, 'allowing reliance directly on constitutional rights, in defiance of their statutory embodiment, would encourage the development of two parallel systems of law'.
>
> [161] The principle of subsidiarity is a well-established doctrine within this court's jurisprudence. The essence of the principle was captured by O'Regan J in *Mazibuko*, where she held that —
>
> 'where legislation has been enacted to give effect to a right, a litigant should rely on that legislation in order to give effect to the right or alternatively challenge the legislation as being inconsistent with the Constitution'."

58. In this case, the COGTA Minister reveals no piece of legislation enacted to ensure the promotion of the values and principles of transparency and accountability in the public administration of the covid-19 pandemic.

59. The Minister also points to no piece of legislation, despite a direct inquiry in this respect, that regulates appointments to the NCCC which, whether in an advisory capacity or decision-making capacity, is clearly involved in the public administration of the covid-19 pandemic. Not even the Constitution, according to the Minister[39] and the President[40], regulates the establishment and functioning of the NCCC.

60. We know of no legislation that governs appointment of persons to the NCCC which, on the Minister's own say-so, performs a public function.

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39 COGTA Minister answering affidavit, para 150.

40 "SA9", p 335.

61. Since it is Ministers who are accountable to Parliament and not Interministerial-Committees/internal Cabinet committees who are accountable to Parliament, these committees must, even more so, comply with the provisions of the Constitution.

62. Mr Dlamini is entitled to rely directly on s 1(d), s 195(1)(f) and s 195(1)(g) of the Constitution. He is entitled, at the very least, to expect accountability, transparency, responsiveness and openness from the Minister about the NCCC. The Minister failed him, the other applicants and all South Africans in this regard.

G. Conclusion and Appropriate Relief

63. In all these circumstances, we submit that

63.1 a proper case has been made out for the orders in prayers 2 and 3 of the notice of motion; and

63.2 this is an effective, just and equitable remedy.

V Ngalwana SC
F Karachi
E Richards

Counsel for 8th Respondent
Chambers, Sandton
10 June 2020

EIGHTH RESPONDENT'S LIST OF AUTHORITIES

1. *Chirwa v Transnet and Others* 2008 (4) SA 367 (CC).
2. *South African Reserve Bank and Another v Shuttleworth and Another* 2015 (5) SA 146 (CC).
3. *NSPCA V Minister of Environmental Affairs and Others* 2020 (1) SA 249 GP.
4. *Independent Newspapers (Pty) Ltd v Minister for Intelligence Services: In re Masetlha v President of the Republic and Another* 2008 (5) SA 31 (CC).
5. *My Vote Counts NPC v Speaker of the National Assembly and Others* 2016(1) SA 132 (CC).