IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

Case number: CCT 38/16

In the matter between:

THE MINISTER OF HOME AFFAIRS	First Applicant
THE DIRECTOR-GENERAL OF HOME AFFAIRS	Second Applicant
and	
LAWYERS FOR HUMAN RIGHTS	Intervening Party

HEADS OF ARGUMENT FOR LAWYERS FOR HUMAN RIGHTS

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INTRODUCTION

1 This is an extraordinary application.

2 On 29 June 2017, this Court delivered a unanimous judgment in favour of Lawyers for Human Rights (LHR) declaring sections 34(1)(b) and (d) of the Immigration Act 13 of 2002 (the Act) inconsistent with the Constitution and invalid. It suspended the declaration of invalidity for 24 months so that Parliament could remedy the constitutional defects.

3 On 29 June 2019, that period of suspension expired.

4 More than three years later – on 22 July 2022 – the Minister of Home Affairs and the Director General of Home Affairs (the Minister) approached this Court for direct access. The Minister did not bother to cite LHR as a respondent, despite the fact that the original order was granted in LHR's favour. The Minister now seeks an order for the "*revival*"[1] of this Court's order for a further period of two years.

5 The Minister's case as pleaded is patently untenable as matter of law. This Court has made clear on at least four occasions, that while it can extend a suspension period before it expires, it cannot do so after it has expired. It first did so in *Ntuli.*[2]

[1] Notice of Motion, v 1, p 1, para 1.

[2] Minister of Justice v Ntuli [1997] ZACC 7; 1997 (3) SA 772 (CC); 1997 (6) BCLR 677 (CC) at para 38.

It then reiterated the position in *Zondi,*[3] in *Minister of Social Development*[4] and again in *Cross-Border Roads Transport Agency*.[5]

6 Remarkably, the Minister's heads of argument make no reference to any of these four decisions. Nor do the Minister's heads explain in any way how, in light of these four decisions, the relief now sought can be granted. This is despite the fact that some of these decisions are referred to in LHR's affidavit.[6]

7 Ordinarily, that would be the end of the matter – the application would simply be dismissed. But, in the very unusual circumstances of this case, it is not the end of the matter. The facts of this case make clear a patent need for this Court:

7.1 to provide clarity on what the effect of the inaction by Parliament and the Minister is; and

7.2 to grant a remedy that protects the constitutional rights of persons who are subject to section 34 of Immigration Act.

8 In what follows, we seek to be of assistance to the Court in demonstrating how this Court can do both.

9 We address the following issues in turn:

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[3] Zondi v Member of the Executive Council for Traditional and Local Government Affairs and Others [2005] ZACC 18; 2006 (3) SA 1 (CC); 2006 (3) BCLR 423 (CC) at para 42.

[4] Ex Parte Minister of Social Development and Others [2006] ZACC 3; 2006 (4) SA 309 (CC); 2006 (5) BCLR 604 (CC) at para 38.

[5] Cross-Border Road Transport Agency v Central African Road Services (Pty) Ltd and Another (CCT163/14) [2015] ZACC 12; 2015 (5) SA 370 (CC); 2015 (7) BCLR 761 (CC) at para 42.

[6] LHR affidavit, v 3, p 114, para 28.

9.1 The constitutional defects identified in the 2017 judgment;

9.2 The effect of the failure to pass legislation during the two-year suspension period; and

9.3 The need for this Court to fashion an appropriate remedy to protect the constitutional rights of those affected.

THE CONSTITUTIONAL DEFECTS IDENTIFIED IN THE 2017 JUDGMENT

10 Section 34 of the Act deals with the deportation and detention of illegal foreigners. Section 34(1) provides:

> *"Without the need for a warrant, an immigration officer may arrest an illegal foreigner or cause him or her to be arrested, and shall, irrespective of whether such foreigner is arrested, deport him or her or cause him or her to be deported and may, pending his or her deportation, detain him or her or cause him or her to be detained in a manner and at a place determined by the Director-General, provided that the foreigner concerned-*
>
> *(a) shall be notified in writing of the decision to deport him or her and of his or her right to appeal such decision in terms of this Act;*
>
> *(b) may at any time request any officer attending to him or her that his or her detention for the purpose of deportation be confirmed by warrant of a Court, which, if not issued within 48 hours of such request, shall cause the immediate release of such foreigner;*
>
> *(c) shall be informed upon arrest or immediately thereafter of the rights set out in the preceding two paragraphs, when possible, practicable and available in a language that he or she understands;*
>
> *(d) may not be held in detention for longer than 30 calendar days without a warrant of a Court which on good and reasonable grounds may extend such detention for an adequate period not exceeding 90 calendar days; and*

> *(e) shall be held in detention in compliance with minimum prescribed standards protecting his or her dignity and relevant human rights."*
>
> (emphasis added)

11 Sections 34(1)(a) to (e) are plainly safeguards purporting to ensure that any detention of an illegal foreigner takes place in appropriate circumstances and for an appropriate time.

12 However, in the 2017 case, LHR contended that these safeguards were constitutionally inadequate in two fundamental respects.

12.1 First, in respect of section 34(1)(b), LHR contended that it was constitutionally inadequate because it did not ensure that any detainee was automatically brought before a court within 48 hours of his arrest. It thus allowed detention for up to 30 days without any warrant being issued and without any guarantee of automatic judicial oversight.

12.2 Second, in respect of section 34(1)(d), it is a critical safeguard because it provides that (a) no person may be held for longer than 30 days without a warrant issued by a court; and (b) any such warrant may not extend the detention period by more than 90 days. However, it did not guarantee the detainee the right to appear in person in court to make representations before the court made a decision about whether to grant the warrant for extended detention.

13 This Court upheld these challenges. In doing so it explained that section 34(1) grants "drastic powers"[7] to an administrative official. It held that section 34(1) was unconstitutional in three respects.

13.1 First, this Court held that section 34(1)(b) was unconstitutional because it did not require any form of automatic judicial review for the first 30 days of detention.[8]

13.2 Second, this Court held that section 34(1)(d) was unconstitutional because it did not require the appearance of the detainee in person, before any decision to extend the detention for a further 90 days.[9] It noted that the Minister had, in his submissions, accepted that a detainee must be entitled to appear in person and "*to this end, the State undertakes to ensure that if a detainee wishes to appear in person he or she will be afforded the opportunity to do so.*" However, this Court explained that this undertaking did not cure the defect in the provisions.[10]

13.3 Third, this Court held that section 34(1) was unconstitutional because it conferred a detention power without any objectively determinable conditions or guidance for the exercise of that power.

13.3.1 It held, in the body of judgment:

> *"… The exercise of this power is not subject to any objectively determinable conditions. Nor does the*

[7] 2017 LHR judgment at para 47

[8] 2017 LHR judgment at para 52

[9] 2017 LHR judgment at para 56

[10] 2017 LHR judgment at para 57

> *section lay down any guidance for its exercise. There can be no doubt that in present form section 34(1) offends against the rule of law by failing to guide immigration officers as to when they may arrest and detain illegal foreigners before deporting them. More so because this power may be exercised without the need for a warrant of a court. The detention is quintessentially administrative in nature."*[11]

13.3.2 It returned to this in the section on remedy:

> *"It will be recalled that the defect is not restricted to the omission of judicial review and a personal appearance before the court. The problem with section 34(1) of the Immigration Act is way much wider. In the first place the section confers broad discretionary powers without any guidance on how the powers to arrest and detain illegal foreigners must be exercised."*[12]

14 These three constitutional defects must be borne in mind in determining the effect of this Court's order and the way forward.

THE EFFECT OF THE FAILURE TO PASS AMENDING LEGISLATION

15 After considering the orders granted by the High Court, this Court ultimately opted to suspend its declaration of invalidity for two years. It granted the following remedy:

> *"…*
>
> *2. Section 34(1)(b) and (d) of the Immigration Act 13 of 2002 is declared to be inconsistent with sections 12(1) and 35(2)(d) of the Constitution and therefore invalid.*

[11] 2017 LHR judgment at para 48

[12] 2017 LHR judgment at para 70

> *3. The declaration of invalidity is suspended for 24 months from the date of this order to enable Parliament to correct the defect.*
>
> *4. Pending legislation to be enacted within 24 months or upon the expiry of this period, any illegal foreigner detained under section 34(1) of the Immigration Act shall be brought before a court in person within 48 hours from the time of arrest or not later than the first court day after the expiry of the 48 hours, if 48 hours expired outside ordinary court days.*
>
> *5. Illegal foreigners who are in detention at the time this order is issued shall be brought before a court within 48 hours from the date of this order or on such later date as may be determined by a court.*
>
> *6. In the event of Parliament failing to pass corrective legislation within 24 months, the declaration of invalidity shall operate prospectively.*
>
> …"

16 Of course, as we now know, Parliament did not pass the legislation within the two year suspension period. Nor did it seek any extension of this period before it expired. The question is what impact this has on the prevailing statutory regime.

17 It appears that some judicial officers have taken the view that sections 34(1)(b) and (d) are no longer part of the Act at all.

17.1 This was seemingly the approach adopted in three judgments of the High Court.[13]

17.2 It is also, it seems, the approach adopted by an opinion issued by a Senior Magistrate in Johannesburg.[14]

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[13] Okafor v Minister of Home Affairs and Others [2020] ZAGPJHC 383 at para 27; O A v Minister of Home Affairs and Others (33905/2019) [2019] ZAGPJHC 470 at para 25; Nwankwo v Minister of Home Affairs and Others [2020] ZAGPJHC 377 at para 65

[14] See the letter from the Minister of Home Affairs, attached to the founding affidavit – v 1, p 30, para 6

18 We certainly understand how one could reach this conclusion. Indeed, that was the conclusion that LHR itself initially reached.[15]

19 However, on further reflection, it seems to us that this is not the correct conclusion.

20 There is no great mystery about how to interpret the reasons and orders of courts. The following principles apply:

20.1 In *Firestone*, the then Appellate Division held:

> *'The starting point is to determine the manifest purpose of the order. In interpreting a judgment or order, the court's intention is to be ascertained primarily from the language of the judgment or order in accordance with the usual well-known rules relating to the interpretation of documents. As in the case of a document, the judgment or order and the court's reasons for giving it must be read as a whole in order to ascertain its intention." [16]*

20.2 This Court has endorsed this approach in *Eke v Parsons*.[17]

20.3 In *SOS v SABC*, this Court added that that court orders "*are intended to provide effective relief and must be capable of achieving their intended purpose*", and that must be a starting point of interpretation.[18]

21 For purposes of the present case, a critical phrase appears in paragraph 4 of this Court's order:

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[15] LHR Affidavit, vol 3, pp 116, paras 34-35

[16] Firestone South Africa (Pty) Ltd v Genticuro AG 1977 (4) SA 298 (A) at 304

[17] Eke v Parsons [2015] ZACC 30; 2016 (3) SA 37 (CC) at para. 29

[18] S.O.S Support Public Broadcasting Coalition and Others v South African Broadcasting Corporation (SOC) Limited and Others [2018] ZACC 37; 2018 (12) BCLR 1553 (CC); 2019 (1) SA 370 (CC) at para 52

> *"Pending legislation to be enacted within 24 months or upon the expiry of this period, any illegal foreigner detained under section 34(1) of the Immigration Act shall be brought before a court in person within 48 hours from the time of arrest or not later than the first court day after the expiry of the 48 hours, if 48 hours expired outside ordinary court days."*
>
> (emphasis added)

22 That phrase makes clear that this Court was fashioning a regime that would apply in two different situations:

22.1 First, until legislation was enacted during the period of suspension of 24 months; and

22.2 Second, if no legislation was enacted during the period of suspension of 24 months, from that point on.

23 In other words, this Court's primary concern was to ensure that come what may, whether Parliament did its job or not, any illegal foreigner detained under section 34(1) would be brought before a court within 48 hours of his arrest.

24 Understood in this way, it seems to us that the intention of this Court was not that if Parliament failed to enact legislation, sections 34(1)(b) and (d) would be struck off the statute books. Rather the intention was that, in the event that Parliament failed to enact legislation, the 48 hour order in paragraph would become final.

24.1 This is reminiscent of cases where the Court has granted an interim reading-in order and directed that in the event of Parliament failing to act, it would become final.

24.2 For example, in *Levenstein*[19] the Court granted an order in terms of which:

24.2.1 a section of the Criminal Procedure Act was declared unconstitutional;

24.2.2 the order was suspended for 24 months for Parliament to enact remedial legislation;

24.2.3 during the suspension an interim-reading in would apply; and

24.2.4 "*Should Parliament fail to enact remedial legislation within the period of suspension, the interim reading-in remedy shall become final."*

24.3 Similarly, in *Centre for Child Law*,[20] this Court directed that:

24.3.1 a section of the Criminal Procedure Act was declared unconstitutional;

24.3.2 the order was suspended for 24 months for Parliament to enact remedial legislation;

24.3.3 during the suspension an interim-reading in would apply; and

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[19] Levenstein and Others v Estate of the Late Sidney Lewis Frankel and Others [2018] ZACC 16; 2018 (8) BCLR 921 (CC); 2018 (2) SACR 283 (CC) at paras 76 and 89(4)

[20] Centre for Child Law and Others v Media 24 Limited and Others [2019] ZACC 46; 2020 (3) BCLR 245 (CC); 2020 (1) SACR 469 (CC); 2020 (4) SA 319 (CC) at para 128(7)

24.3.4 "*In the event that Parliament does not remedy the aforesaid constitutional defects within 24 months of this order, paragraph 6 of the order shall continue to apply*."[21]

25 We immediately accept that the present case is not on all fours with the *Levenstein* and *Centre for Child Law* judgments.

25.1 In those cases this Court expressly ordered an interim reading-in whereas in this case the Court had concerns about the reading-in and declined to order it.

25.2 But what was clear is that this Court's interim solution to the constitutional defect was not intended to expire at the end of the 24 month period – on the contrary it was expressly directed that it would continue "*upon the expiry of this period".*

26 Indeed, this Court's order would make little sense if it was understood to involve the striking out of sections 34(1)(b) and (d) at the conclusion of the 24 month period and yet the continuation of the 48 hour remedy in terms of the express language in paragraph 4.

26.1 In that event, section 34(1) would now read:

> *"Without the need for a warrant, an immigration officer may arrest an illegal foreigner or cause him or her to be arrested, and shall, irrespective of whether such foreigner is arrested, deport him or her or cause him or her to be deported and may, pending his or her deportation, detain him or her or*

[21] Centre for Child Law and Others v Media 24 Limited and Others [2019] ZACC 46; 2020 (3) BCLR 245 (CC); 2020 (1) SACR 469 (CC); 2020 (4) SA 319 (CC)

cause him or her to be detained in a manner and at a place determined by the Director-General, provided that the foreigner concerned-

(a) shall be notified in writing of the decision to deport him or her and of his or her right to appeal such decision in terms of this Act;

(b) [struck down]

(c) shall be informed upon arrest or immediately thereafter of the rights set out in the preceding two paragraphs, when possible, practicable and available in a language that he or she understands;

(d) [struck down]; and

(e) shall be held in detention in compliance with minimum prescribed standards protecting his or her dignity and relevant human rights."

26.2 That would mean that this Court's order had created the worst of all worlds: a statutory provision which allowed for the detention of an illegal foreigner, without any guidance at all to the immigration officer and without meaningful safeguards at all – except an automatic right to be brought before a judicial officer within 48 hours.

26.3 And in that situation, what would the judicial officer be meant to do when the illegal foreigner was brought before court? He or she would have no guidance as to the limits on or criteria for continued detention. He or she would presumably have to direct the release of the illegal foreigner forthwith, in all cases, irrespective of the circumstances. A right to detain illegal foreigners in this way would seem to serve no purpose at all.

27 It therefore seems to us that the best construction of this Court's order is as follows:

27.1 Sections 34(1)(b) and (d) are constitutionally invalid and the declaration is suspended for 24 months.

27.2 During this limited period, the adequate constitutional safeguard was the 48-hour procedure. If Parliament felt the 48-hour procedure was too cumbersome or needed alteration, it could seek to amend it.

27.3 After this limited period, if Parliament had not enacted new legislation, both sections 34(1)(b) and (d) and the 48 hour procedure would continue. The 48-hour procedure would, in effect, be read-in to sections 34(1)(b) and (d).

28 We should add that our submissions are not altered by paragraph 5 of the order.

28.1 It provides that: "*In the event of Parliament failing to pass corrective legislation within 24 months, the declaration of invalidity shall operate prospectively.*"

28.2 That does not speak to the question of whether sections 34(1)(b) and (d) are struck off the statute books at the conclusion of the 24 month period.

28.3 Rather paragraph 5 seeks to deal with a different question – whether the invalidity is retrospective or merely prospective. This may have any number of consequences, including civil claims and so on.

28.4 This is made clear by *Levenstein*. There, having expressly provided that the interim reading-in "*will become final*" if Parliament failed to act, this Court rightly still addressed the retrospectivity issue – by making clear that the order of invalidity applied retrospectively to 27 April 1994.[22]

29 We therefore submit that it is not the case that sections 34(1)(b) and (d) have been struck off the statute books due to the inaction of the Minister and Parliament. Rather the position is that they continue to operate, but now in conjunction with the 48-hour procedure set out in paragraph 4 of this Court's order.

AN APPROPRIATE REMEDY TO PROTECT CONSTITUTIONAL RIGHTS

30 We have explained above that sections 34(1)(b) and (d) have not been struck off the statute books due to the inaction of the Minister and Parliament. Rather the position is that they continue to operate, but now in conjunction with the 48-hour procedure set out in paragraph 4 of this Court's order.

31 We respectfully submit that this Court's judgment should make clear that this is the position. Whether this Court does so by means of its reasoning or by means of a declaratory order is for it to determine – though given the considerable uncertainty that has occurred on this score a declaratory order has much to commend it.

[22] Levenstein at para 89(4)

32 However, that is not the end of the matter. As we have explained above in paragraphs 12 to 14, this Court in its 2017 judgment identified three constitutional problems with section 34 of the Act.

32.1 The first was the absence of automatic court oversight in section 34(1)(b) following detention.

32.2 The second was the absence in section 34(1)(d) of an in-person appearance by a detainee when a court was considering whether to extend the detention beyond the initial 30 days.

32.3 The third was that section 34 conferred a detention power without any objectively determinable conditions or guidance for the exercise of that power.

33 The 48-hour procedure in paragraph 4 of this Court's order cures the first of these defects. But it does not cure the second or third defects.

34 This Court's 2017 judgment unfortunately does not explain why it was felt that the second defect did not need to be cured during the suspension period.

34.1 But we can only presume that this is because this Court had taken note of the Minister's undertaking, referred to in the judgment that "*the State undertakes to ensure that if a detainee wishes to appear in person he or she will be afforded the opportunity to do so.*"[23]

[23] 2017 LHR judgment at para 57

34.2 Whatever the adequacies or inadequacies of that undertaking during the two year period, that two year period has come and gone. It would be constitutionally intolerable for the right of detainees to appear in person[24] to depend – almost six years later – on a undertaking from counsel for the Minister, which may or may not be honoured.

34.3 We therefore submit that this Court should direct that when a judicial officer is to consider whether to extend a detention in terms of section 34(2)(d) of the Act, the detainee must appear in person.

34.4 We can see no possible objection by the Minister to this. Indeed the Minister's heads of argument rightly seem to recognise this problem.[25] And, of course, the order would be consistent with the undertaking that was previously given to this Court.

34.5 Such an order would manifestly fall within this Court's powers to grant just and equitable relief under section 172(1)(b) of the Constitution. This Court has repeatedly made clear the breadth of these powers. In *Economic Freedom Fighters*, it explained:[26]

> *"[T]his Court's remedial power is not limited to declarations of invalidity. It is much wider. Without any restrictions or conditions, section 172(1)(b) empowers courts to make any order that is just and equitable. In Hoërskool Ermelo the*

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[24] Section 35(2)(d) of the Constitution provides:

> "Everyone who is detained, including every sentenced prisoner, has the right ... to challenge the lawfulness of the detention <u>in person</u> before a court and, if the detention is unlawful, to be released".

Section 35(2)(d) therefore vests as an express constitutional right, the long standing common law right of a detained person to bring a habeas corpus application to challenge his detention and secure his release.

[25] Minister's heads of argument, para 4.9

[26] Economic Freedom Fighters and Others v Speaker of the National Assembly and Another [2017] ZACC 47; 2018 (3) BCLR 259 (CC); 2018 (2) SA 571 (CC)

> *Court said about a just and equitable remedy: '… The litmus test will be whether considerations of justice and equity in a particular case dictate that the order be made. In other words the order must be fair and just within the context of a particular dispute.'*
>
> *The power to grant a just and equitable order is so wide and flexible that it allows courts to formulate an order that does not follow prayers in the notice of motion or some other pleading. This power enables courts to address the real dispute between the parties by requiring them to take steps aimed at making their conduct to be consistent with the Constitution…"*[27]

35 That leaves the third defect – the absence of objectively determinable conditions and guidance for the exercise of the section 34 detention power.

35.1 This Court's judgment made clear that it expected that this would be resolved by Parliament during the two year period.[28]

35.2 Yet, almost six years there is no resolution in sight. There is not even a Bill that has been introduced in Parliament.

35.3 In those circumstances, we submit that this Court ought to now provide some minimum guidance itself. It should direct that, in considering whether to exercise the power of detention, the immigration officer must consider whether the interests of justice permit that detention is not proceeded with and appropriate alternative conditions are imposed.

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[27] At paras 210-211

See also: Electoral Commission v Mhlope and Others (CCT55/16) [2016] ZACC 15; 2016 (8) BCLR 987 (CC); 2016 (5) SA 1 (CC) (14 June 2016) at paras 83 and 132; AmaBhungane Centre for Investigative Journalism NPC and Another v Minister of Justice and Correctional Services and Others; Minister of Police v AmaBhungane Centre for Investigative Journalism NPC and Others [2021] ZACC 3; 2021 (4) BCLR 349 (CC); 2021 (3) SA 246 (CC) at para 143

[28] 2017 LHR judgment at para 67-68

Magistrates faced with section 34 detentions should adopt the same approach.[29]

36 Lastly, and given that it is plainly desirable that legislation be enacted to deal with the problem once and for all, this Court should direct the Minister to file a report within two months of its order indicating a plan for the enactment of legislation and to report at three monthly intervals thereafter.

CONCLUSION AND PROPOSED ORDER

37 By way of summary, we therefore submit as follows.

38 First, the present application by the Minister is stillborn. It seeks an order for the "*revival*"[30] of this Court's 2017 order more than three years after the suspension period expired. This is at odds with this Court's decisions in *Ntuli; Zondi; Minister of Social Development;* and *Cross-Border Roads Transport Agency*.

39 Second, the difficulty raised by the Minister can be resolved in a different way. On a proper interpretation of this Court's 2017 order, sections 34(1)(b) and (d) have not been struck out of the statute books. Rather they have been kept alive, coupled with the 48-hour procedure set out in paragraph 4 of this Court's order.

40 Third, there is a manifest need to achieve certainty and clarity on the prevailing legal position and to remedy the three constitutional defects that this Court

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[29] See LHR affidavit, vol 3, p 118, para 37

[30] Notice of Motion, v 1, p 1, para 1

expected would be remedied by the Minister and Parliament. This Court should therefore grant an order in the following terms:

> *"1. It is declared that, on a proper interpretation of this Court's 2017 order and subject to what follows in this order, sections 34(1)(b) and (d) of the Immigration Act 13 of 2002 continue to be of force and effect.*
>
> *2. Any illegal foreigner detained under section 34(1) of the Immigration Act shall be brought before a court in person within 48 hours from the time of arrest or not later than the first court day after the expiry of the 48 hours, if 48 hours expired outside ordinary court days.*
>
> *3. A warrant of court extending the detention of the illegal foreigner in terms of section 34(1)(d) of the Immigration Act may not be granted unless the illegal foreigner has appeared in person before the court concerned and been given an opportunity to make representations to the court concerned.*
>
> *4. Any immigration officer or court considering a detention in terms of section 34(1) must consider whether the interests of justice permit the release of the illegal foreigner concerned, subject to reasonable conditions.*
>
> *5. The Minister of Home Affairs is, within two months of this order, to file a report with this Court and the intervening party setting out a plan and proposed timetable for the enactment of legislation to amend section 34(1) of the Immigration Act in accordance with this Court's 2017 judgment and to file progress reports every three months thereafter until the legislation is enacted."*

COSTS

41 We submit that the Minister should pay LHR's costs, including the costs of two counsel. Even if the conduct of the Minister was entirely reasonable (which it plainly was not), there is no reason that LHR should be left out of pocket when

having sought to contribute to a just and equitable solution of the predicament in which the Minister found himself.[31]

42 We leave in the hands of the Court the question of whether the Minister's legal team should be able to recover costs when the application was patently stillborn, as has been pointed out by LHR in its affidavit.[32]

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22 May 2023

[31] See: Electoral Commission of South Africa v Speaker of the National Assembly and Others [2018] ZACC 46; 2019 (3) BCLR 289 (CC) at para 65

[32] LHR affidavit, v 3, p 114, para 28