

**IN THE SUPREME COURT OF MAURITIUS**

In the matter of:

1. **Nandcoomar Bodha**, a Member of the National Assembly, residing at Solferino No. 2 Vacoas
2. **Maynanda Rajaratnam**, a small entrepreneur and former councillor, residing at Impasse Cantin, Vacoas
- Vir Abhi Manuyu Trilochun**, self-employed, a registered voter for the Municipal Council of Vacoas Phoenix residing at Solferino No. 2 Vacoas

**APPLICANTS**

v.

**The Prime Minister**, service to be effected at Old Treasury Building, Port Louis

**RESPONDENT**

And in the matter of :

**EXPARTE**

1. **Nandcoomar Bodha**, a Member of the National Assembly, residing at Solferino No. 2 Vacoas
2. **Maynanda Rajaratnam**, a small entrepreneur and former councillor, residing at Impasse Cantin, Vacoas
3. **Vir Abhi Manuyu Trilochun**, self-employed, a registered voter for the Municipal Council of Vacoas Phoenix residing at Solferino No. 2 Vacoas

**APPLICANTS**

**APPLICANTS' AFFIDAVIT**

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1. **Nandcoomar Bodha**, a Member of the National Assembly, residing at Solferino No. 2 Vacoas and holder of the passport bearing No. 1506067
2. **Maynanda Rajaratnam**, a small entrepreneur and former councillor, residing at Impasse Cantin, Vacoas and holder of the National Identity Card No.R110659420619F

**Maitre Kaviraj Bokhoree**  
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3. **Vir Abhi Manuyu Trilochun**, self-employed, a registered voter for the Municipal Council of Vacoas Phoenix residing at Solferino No. 2 Vacoas and holder of the National Identity Card No.T1506654205773

### MAKE SOLEMN AFFIRMATION AS HINDUS AND SAY THAT

#### INTRODUCTION

1. On 26 May 2023, the President of the Republic of Mauritius has, upon the advice of the Respondent, purportedly '*further extended the life*' of the entire Municipal City Council and Municipal Town Councils (hereinafter referred to as the 'Councils') for 2 years with effect as from 13 June 2023.
  - 1.1 A copy of the Proclamation No.14 of 2023, published in the Legal Supplement to the Government Gazette of Mauritius on 26 May 2023, is annexed and marked as Annex A.
2. The decision-making process leading to the advice of the Respondent to purportedly '*further extend*' the life of the Councils for 2 years with effect as from 13 June 2023, shall hereinafter be referred to as the "impugned decision" and/or "the decision making process" interchangeably.
3. The present application is an application for Leave to have the impugned decision judicially reviewed by the above Honourable Court, on the following grounds:
  - (A) the impugned decision is ultra vires, illegal and tainted with procedural impropriety in as much as it relies upon the existence of an "*extended life*" of the Councils which did not even exist at the material time. ["Ground A"]
  - (B) the Respondent failed to adhere to the principles of the rule of law when it purportedly decided to "*further extend*" the life of the Councils, inasmuch as:
    - (i) the decision making process is unclear and lacks transparency
    - (ii) the impugned decision rested solely and entirely on the discretion of the Respondent and has been exercised in a way which is unfair, arbitrary, irrational, without purpose and Wednesbury unreasonable. It further removed the possibility of review and examination by the Courts of the legality and correctness of such impugned decision.

(iii) the impugned decision is further unfair, arbitrary and irrational as it does not apply equally to all.

(iv) the impugned decision denies us the protection of our fundamental human rights and is further inconsistent with national and international laws

["Ground B"].

(C) the impugned decision has thwarted our legitimate expectation to vote and/or stand as candidate at the elections of the Councils which were reasonably expected to take place this year. ["Ground C"]

## **THE PARTIES**

### **The Applicants**

4. I, Applicant No.1, am a registered voter under the Representation of People Act 1958 to vote for Councillors in the Municipal Town Councils of Vacoas/Phoenix. I have occupied the following constitutional posts
  - Member of the National Assembly from September 2000
  - Minister of Agriculture from 2003 to 2005
  - Leader of the Opposition from 2006 to 2007
  - Minister of Tourism from 2000 to 2003 and 2010 to 2011
  - Minister of Foreign Affairs from 2019 to 2021
  - Minister of Public Infrastructure and Land Transport from 2014 to 2019
5. I, Applicant No.1, am the founder and leader of "Rassemblement Mauricien", founded in 2021, represented in the national assembly and will field candidates for municipal and general elections with the Electoral Supervisory Commission whenever elections are to be held. It would have fielded candidates for the next Local Government Elections and I intend to field my candidates for the Municipal City and Town Councils under the Representation of People Act 1958.
6. I, Applicant No.2, am a registered voter under the Representation of People Act 1958 to vote for Councillors in the Municipal Town Council of Vacoas/Phoenix. I was elected at the election of 13<sup>th</sup> June 2015 in Ward 2 of the Municipal Town Council Vacoas/Phoenix as candidate of the political party "Alliance Lepep". My seat was forcefully vacated when I changed political party and joined the "Rassemblement Mauricien" under the leadership of Applicant No.1.

7. I, Applicant No.3, am a registered voter under the Representation of People Act 1958 to vote for Councillors in the Municipal Town Council of Vacoas/Phoenix.
8. We are all registered as 'local government elector' for the Municipal Council of Vacoas/Phoenix in accordance with the Representation of People Act and are therefore entitled to,
  - (i) vote at the Municipal Town Council elections for the election of Municipal Town Councillors of Vacoas/Phoenix to sit on its Council, and
  - (ii) be nominated as candidate for election as Municipal Town Councillors of Vacoas/Phoenix and to stand as candidate, with the exception of Applicant No.1.
9. We are directly and personally aggrieved by the impugned decision inasmuch as it has usurped our rights to vote and/or stand as candidate as applicable, at the Town Council Local Government Elections of 2023, which goes to the very root of our democratic rights.

#### The Respondent

10. The Respondent was appointed as Prime Minister of Mauritius by the President of the Republic of Mauritius, pursuant to Section 59 of the Constitution.
11. Upon appointment, the Respondent has, pursuant to Section 67 of the Constitution, taken and subscribed the oath of allegiance as is prescribed by the Third Schedule of the Constitution which reads as follows:

#### *OATH OF ALLEGIANCE*

*I,....., do swear (or solemnly affirm) that I will be faithful and bear true allegiance to Mauritius according to law. (So help me God.)*

#### RESPONDENT'S IMPUGNED DECISION

##### Respondent as decision maker

12. On 26 May 2023, the President of the Republic of Mauritius purportedly 'further extended' the life of the entire Councils for 2 years with effect as from 13 June 2023.
13. In so doing, the President acted upon the advice of the Respondent.

14. In order to purportedly *'further extend'* the life of the Councils, the Respondent relied on Section 12(1A) of the Local Government Act as can be gleaned from the Proclamation published on 26 May 2023 which is marked as Annex A hereto.
15. The relevant part of Section 12A of the Local Government Act (as amended in 2021 and 2023) reads as follows:

***"12A. Extension of life of Councils, and Village Councils***

*(1) At any time when –*

*(a) there is, or there is likely to be, an epidemic of a communicable disease in Mauritius; and*

*(b) a quarantine period is in force in Mauritius,*

*the President, acting in accordance with the advice of the Prime Minister, shall, by Proclamation, extend, from time to time, the life of 6 years of the entire Councils, or entire Village Councils, by not more than one year at a time, provided that the life of the Councils shall not be extended for more than 2 years.*

*(1A) At any time during the extended period of the life of the entire Councils, or entire Village Councils under subsection (1), the President, acting in accordance with the advice of the Prime Minister, shall, notwithstanding subsection (1), further extend such life for a period of 2 years by Proclamation."*

*[...]*

*(6) In this section–*

*"communicable disease" has the same meaning as in the Quarantine Act 2020;*

*"quarantine period" has the same meaning as in the Quarantine Act 2020*

16. It is apposite to note that Section 12A was amended to include sub-section (1A) on the 24 May 2023, following an urgent introduction of the Local Government Act (Amendment) Bill ("the Amendment Bill") in Parliament on 23 May 2023 through a certificate of urgency issued by the Respondent himself.
- 16.1. The Respondent gave no explanation to the House as to why the Amendment Bill was introduced with a certificate of urgency.
- 16.2. The Amendment Bill was voted after its three readings in one single sitting. It was proclaimed and came into effect on the very next day, i.e., on 24 May 2023.

16.3. A copy of the Legal Supplement of the Government Gazette of Mauritius dated 24 May 2023 is annexed and marked as Annex B.

17. It is also apposite to note that the Proclamation for the aforementioned further extension took place on the 26 May 2023. (We refer to Annex A hereto).

18. It can only be deduced that the Respondent's decision to '*further extend*' the life of the entire Councils could only have taken place on or between 24 May 2023 and 26 May 2023, given that he relied upon Section 12A(1A) of the Local Government Act to '*further extend*' the life of the said Councils.

19. We are advised and verily believe that the Respondent's impugned decision ought to be judicially reviewed for the following reasons:

(A) the impugned decision is ultra vires, illegal and tainted with procedural impropriety in much as it relies upon the existence of an "*extended life*" of the Councils which did not even exist at the material time. ["Ground A"]

(B) the Respondent failed to adhere to the principles of the rule of law when it purportedly decided to "*further extend*" the life of the Councils, inasmuch as :

(i) the decision making process is unclear and lacks transparency

(ii) the impugned decision rested solely and entirely on the discretion of the Respondent and has been exercised in a way which is unfair, arbitrary, irrational, without purpose and Wednesbury unreasonable. It further removed the possibility of review and examination by the Courts of the legality and correctness of the such impugned decision.

(iii) the impugned decision is further unfair, arbitrary and irrational as it does not apply equally to all

(iv) the impugned decision denies us the protection of our fundamental human rights and is further inconsistent with national and international laws

["Ground B"].

(C) the impugned decision has thwarted our legitimate expectation to vote and/or stand as candidate at the elections of the Councils which were reasonably expected to take place this year. ["Ground C"]

## LIFE OF COUNCILS

20. First, it is important to set out the chronology in which the life of the Councils were extended in 2021 and 2022.

21. The Local Government Act 2011 ("the Act") establishes a local authority for capital city and every town of Mauritius, and such authority is known as Municipal City Council and the Municipal Town Council respectively. There exists in Mauritius, one Municipal City Council (for the Capital city of Mauritius) and four Municipal Town Councils.

22. Pursuant to Section 10A of the Act,

- (i) the life of the Councils shall be of 6 years from the date on which the previous poll of the return of the entire Councils, and entire Village Councils was taken.
- (ii) the life of 6 years of the Councils can be sooner dissolved.
- (iii) If not sooner dissolved, the life of the Councils shall at the end of the 6 years stand dissolved.
- (iv) the life of the Councils can only be extended pursuant to the Section 12A of the Act, and shall only continue for the period of extension, unless sooner dissolved.

23. Section 10A of the Act is reproduced verbatim:

***10A. Life of entire Municipal City Council and Municipal Town Councils, and Village Councils***

*(1) The entire Municipal City Council and Municipal Town Councils, and entire Village Councils, shall, unless sooner dissolved, continue for 6 years from the date on which the previous poll of the return of the entire Municipal City Council and Municipal Town Councils, and entire Village Councils was taken and shall then stand dissolved.*

*(2) Where, pursuant to subsection 12A(1), the life of 6 years of the entire Municipal City Council and Municipal Town Councils, or entire Village Councils, is extended, the entire Municipal City Council and Municipal Town Councils, or the entire Village Councils shall, unless sooner dissolved, continue for the period of extension and shall then stand dissolved.*

*(3) Notwithstanding this section, the President, acting in accordance with the advice of the Prime Minister, may, at any time, dissolve the entire Municipal City Council and*

*Municipal Town Councils, and the entire Village Councils, for the holding of a general election of the entire Municipal City Council and Municipal Town Councils, and the entire Village Councils.*

[underlining is ours]

24. There ought therefore to have been an election of Councillors to the entire Councils ("Local Government Elections") every 6 years unless sooner dissolved.
25. The last Local Government Elections took place on 14 June 2015 (We make reference to the information published on the website of the Office of the Electoral Commissioner, through the link: [https://electoral.govmu.org/oec/?page\\_id=1644](https://electoral.govmu.org/oec/?page_id=1644)).
26. No Local Government Elections of the City and Municipal Councillors has taken place since 14 June 2015.
27. The President, acting upon the advice of the Respondent, had purportedly extended the life of the said Councils on 3 occasions, as described below:
  - (i) On 14 June 2021, the President, acting upon the Respondent's advice, purported to extend the life of the entire Councils with effect as from 15 June 2021. A copy of the Proclamation in the Legal Supplement to the Government Gazette of Mauritius is annexed and marked as Annex C ("Extension No.1").
  - (ii) On 13 April 2022, the President, acting upon the Respondent's advice, again purported to extend the life of the entire Councils for 1 year as from 14 June 2022. This purported extension was allegedly based on an epidemic of Covid-19 in Mauritius and a quarantine period was in force in Mauritius. A copy of the Proclamation No. 17 of 2022 published on 13 April 2022 in the Legal Supplement to the Government Gazette of Mauritius is annexed and marked as Annex D. ("Extension No.2").
  - (iii) On 26 May 2023, the President, acting upon the Respondent's advice, again purported to 'further extend' the life of the entire Councils for 2 years with effect from 13 June 2023. (see Annex A). ("Extension No.3")
28. It is important to note that during the three extensions as set out above, Mauritius was not under any lock-down. Furthermore, at the time Extension No.3 was proclaimed, all activities had already resumed to normal and there were no more any restrictions on public social gatherings of any nature or number, nor any compulsory wearing of masks in public.



28.1. On 12 May 2023, i.e., less than two (2) weeks before the Amendment Bill was introduced for reading in the Parliament on 23 May 2023, the Cabinet had even “taken note of the Statement released by the World Health Organization (WHO) regarding the COVID-19 pandemic. COVID-19 was now an established and ongoing health issue which no longer constitute a public health emergency of international concern.” . [We refer to Annex E hereto which is a copy of the highlights of the Cabinet meeting held on 12 May 2023]

28.2. However, in November 2020, Local Government Elections were held for the entire Village Councils. At that particular time, i.e. in November 2020, there were sanitary restrictions in place in Mauritius and the world was still fighting the Covid-19 pandemic which was a huge humanitarian and international concern.

**GROUND A : ULTRA VIRES, ILLEGAL AND PROCEDURALLY IMPROPER – BASED ON A SIMPLE COMPUTATION OF TIME**

29. We aver that the impugned decision is ultra vires, illegal and tainted with procedural impropriety in much as it relies upon the existence of an “extended life” of the Councils which initially never existed at the material time., the whole morefully described below.

Extension No.1

30. We aver that on the 15 June 2021, the life of the entire Councils already ended and they stood dissolved. There could not have been any “extension of life” whatsoever.

31. The computation of time for the duration of the life of the entire Councils run as follows:

- (i) the life of the Councils started on 14 June 2015.
- (ii) Its death (dissolution) occurred on 13 June 2021 at 23:59 hrs.
- (iii) any extension of life could only have been proclaimed with effect as from 14 June 2021 at 00:00 hrs.

32. However, the purported Extension No.1 took effect only on 15 June 2021.

33. By that time, the Councils already stood dissolved under Section 10(A)(1) of the Act.

34. We are advised and verily believe that the result of the Councils becoming dissolved requires no decision making nor does it require any positive act to be taken by any person or body. The death (dissolution) of the Councils is purely and simply based on the date when the previous elections took place i.e. 14 June 2015 and died on the 13 June 2021.

35. Extension No.1 would therefore be tantamount to a “revival” of the life of the Councils. There is no law which allows the Respondent to decide on the “revival” of the life of the Councils. Only a general Local Government Elections could have given birth to a newly constituted lawful Council.
36. For the reasons set out in paragraphs 30 to 35 above, Extension No.1 was ultra vires, unlawful and was procedurally improper under the facts and circumstances.

### Extension No.2 and Extension No.3

37. Since Extension No.1 was unlawful, the purported Extension No.2 and Extension No.3 were also unlawful and had no legitimacy.
38. As at today, the Councils are inexistent in law as per the Act.
39. The use of the words “*further extend such life*” in the President’s Proclamation dated 26 May 2023 (see Annex A), further lends credence to the fact that Extension No.3 could only have existed and depended upon Extension No.2 and ultimately Extension No.1. Extension No.3 could also only have existed if such life of the Councils was initially existent.
40. As such, the Respondent’s impugned decision to ‘*further extend*’ the life of Councils is ultra vires, illegal, illegitimate and rigged with procedural impropriety.

### GROUND B : THE RESPONDENT FAILED TO ADHERE TO THE RULE OF LAW

41. We are advised and verily believe that the decision-making process, whether they are carried out by courts, administrative bodies, or public bodies, is subject to the rule of law. The rule of law applies not only to the laws themselves but also to the processes by which decisions are made within a legal system.
42. We aver that the Respondent failed to adhere to the principles of the rule of law when it purportedly decided to “further extend” the life of the Councils, inasmuch as :
- (i) the decision making process is unclear and lacks transparency
  - (ii) the impugned decision rested solely and entirely on the discretion of the Respondent and has been exercised in a way which is unfair, arbitrary, irrational, without purpose and Wednesbury unreasonable. It further removed the possibility of review and examination by the Courts of the legality and correctness of the impugned decision;

- (iii) the impugned decision is further unfair, arbitrary and irrational as it does not apply equally to all; and
- (iv) the impugned decision denies us the protection of our fundamental human rights and is further inconsistent with national and international laws

43. For the sake of convenience and ease of reference, we first reproduce the relevant part of Section 12A of the Act.

***“12A. Extension of life of Councils, and Village Councils***

*(1) At any time when –*

- (a) there is, or there is likely to be, an epidemic of a communicable disease in Mauritius; and*
- (b) a quarantine period is in force in Mauritius,*

*the President, acting in accordance with the advice of the Prime Minister, shall, by Proclamation, extend, from time to time, the life of 6 years of the entire Councils, or entire Village Councils, by not more than one year at a time, provided that the life of the Councils shall not be extended for more than 2 years.*

*(1A) At any time during the extended period of the life of the entire Councils, or entire Village Councils under subsection (1), the President, acting in accordance with the advice of the Prime Minister, shall, notwithstanding subsection (1), further extend such life for a period of 2 years by Proclamation.”*

*[....]*

*(6) In this section–*

*“communicable disease” has the same meaning as in the Quarantine Act 2020;*  
*“quarantine period” has the same meaning as in the Quarantine Act 2020*

(i) the decision making process is unclear and lacks transparency

44. We reiterate that the Respondent relied upon Section 12A(1A) of the Act to advise the President to *"further extend"* the life of the Councils.

45.1 The use of the words *"further extend such life"* in Section 12A(1A) of the Act clearly suggests that Extension No.3 could only have depended upon Extension No.2 and ultimately upon Extension No.1.

45.2 However (without prejudice to Ground A above), subsection 12A(1A) of the Act also contains the words *"notwithstanding subsection (1)"*. On the one hand, Section 12A(1A) of the Act relies on the existence of the *"extended period"*, but on the other hand, provides that irrespective of the existence of an *"extended period"* (i.e irrespective of subsection (1)), life of the Councils can be *further extended*.

45.3 It is therefore unclear how and in what manner the Respondent was empowered to give any advice to the President to *"further extend"* the life of the Councils.

45.4 Furthermore, we wish to emphasize that initially, i.e., prior to the amendment made on 24 May 2023 (see Annex D hereto – in respect of Extension No.2) the life six years of the Councils could only have been extended if the conditions set out under Section 12A(1) were fulfilled, i.e., *"at any time - (a) there is, or there is likely to be, an epidemic of a communicable disease in Mauritius; and (b) a quarantine period is in force in Mauritius"*

45.4.1 Ex-facie, a reading of subsection (1A) of the Act shows that no condition whatsoever is attached to the decision to *'further extend'* the life of the Councils, thereby making it unclear as to what conditions and/or pre-conditions ought to exist in order to empower the Respondent to give any advice to the President.

45. The Respondent's impugned decision therefore lacks transparency and accountability to understand how the decision was made.

**(ii) the impugned decision rested solely and entirely on the discretion of the Respondent and has been exercised in a way which is unfair, arbitrary, irrational, without purpose and Wednesbury unreasonable. It further removed the possibility of review and examination by the Courts of the legality and correctness of such impugned decision.**

46. A reading of Section 12A(1A) of the Act shows that the Respondent's impugned decision rested solely and entirely upon the exercise of his own sole discretion. The Respondent is therefore at liberty to give such advice for the purpose of *further extending* the life of the Councils and this, according to his own arbitrary and deliberate whims and unexplained/unreasoned judgment.

47. We draw such conclusion from a distinction between Section 12A(1) and Section 12A(1A) of the Act.

(i) Whilst it is clear that the basis of the decision making process can be clearly identified in Section 12A(1) of the Act (epidemic of a communicable disease and a quarantine period), there is no such trigger points, reasoning or identifiable events provided under Section 12A(1A) of the Act.

(ii) This renders the Respondent's impugned decision devoid of the need and existence of any decision making process and entirely at the mercy of the Respondent.

(iii) It therefore removes any control or examination on the legality or correctness of his decision by way of review by the Courts.

48. By advising to '*further extend*' the life of the Councils pursuant to Section 12A(1A) of the Act on his own deliberate judgment, the Respondent has unfairly, arbitrarily, irrationally unreasonably, and without any purpose, usurped our right to vote for local representatives and the right to vote from the electorate, which is contrary to our representative democracy.

49. In support of the above contention,

51.1 we re-iterate paragraphs 16, 16.1, 16.2 and 16.3 above.

51.2 We also quote part of the Parliamentary Debates regarding the amendment made to the Act in 2021 ("the 2021 Amendment") and the amendment made to the Act in 2023 ("the 2023 Amendment"), in order to understand how the decision-making process of the Respondent and the impugned decision is unfair, arbitrary, irrational, has been made without any purpose, Wednesbury unreasonable and further threatens the very fabric of our Democracy.

51.3 We first refer to the Hansard dated 18 May 2021 (Annex F)

51.4 On 11 May 2021, the Government introduced Bill No. VII of 2021 ("the 2021 Bill") to amend the Local Government Act 2011 ("the Act"). In the original 2021 Bill the Government proposed to have an additional reason to trigger the said extension i.e the state of emergency. This proposed additional reason i.e, period of public emergency, was removed from the Bill. The explanations given by the Vice-Prime Minister who introduced the 2021 Bill is very telling and self-explanatory.

51.5 The Explanatory Memorandum to the 2021 Bill (Annex G) reads as follows:

*The object of this Bill is to amend the Local Government Act so as to provide that, at any time, when -*

*(a) a period of public emergency is in force in Mauritius; and*  
*(b) there is, or there is likely to be, an epidemic of a communicable disease in Mauritius and a quarantine period is in force in Mauritius,*

*the President, acting in accordance with the advice of the Prime Minister, shall, by Proclamation, extend, during such periods, from time to time the life of 6 years of the entire Councils, or entire Village Councils, by not more than one year at a time, provided that the life of the Councils shall not be extended for more than 2 years.*

[Underlining is ours]

51.6 Clause 12A(1) of the 2021 Bill provided as follows:

*12A. Extension of life of Councils, and Village Councils*

*At any time when -*

*(a) a period of public emergency is in force in Mauritius; and*  
*(b) there is, or there is likely to be, an epidemic of a communicable disease in Mauritius and a quarantine period is in force in Mauritius,*

*the President, acting in accordance with the advice of the Prime Minister, shall, by Proclamation, extend, during such periods, from time to time the life of 6 years of the entire Councils, or entire Village Councils, by not more than one year at a time, provided that the life of the Councils shall not be extended for more than 2 years.*

[Underlining is ours]

51.7 During the Second Reading of the 2021 Bill, the mover of the Bill, the Vice-Prime Minister, Minister of Local Government and Disaster Risk Management, Dr. A. Husnoo (“the Minister”) addressed the following pertinent issues inter alia, which are reproduced below: [For convenience, we have underlined the relevant parts]

*[The Ground of ‘Public Emergency’ under Clause 6]*

*Mr Speaker, Sir, before proceeding any further, I wish to make an amendment at Clause 6 in the proposed Section 12 (A) as circulated and which I am going to move at Committee Stage.*

*Accordingly, a period of emergency will not be a situation which would trigger the extension of the life of Councils. Why, Mr Speaker, Sir? This is more indicative of the genuine intention of Government, as well as meant to give further reassurance to the House as to the primary objectives of this Bill. Now the amendments will be only limited to situations of an epidemic or when a quarantine is in force in the Republic of Mauritius.*

*Initially, it was thought appropriate to include a period of emergency in the proposals so as to circumscribe all possible circumstances in which the holding of the local elections would have to be postponed. However, the definition of an emergency situation is broader. Our main purpose today is to address a particular state of affairs, that is, the pandemic and for which we have to muster all our efforts to combat collectively. Therefore, the Bill which is before the House today is focused and straightforward as to its intent and purpose.*

*We are all aware that, holding of regular free and fair elections is an essential feature of democratic practices which is deeply entrenched in our Constitution. We did firmly demonstrate our strong commitment, as a reliable Government to respect the democratic process.*

*This Government has and will always uphold the underlying principle of the Rule of Law, which is one of the fundamental tenets of the Constitution of Mauritius. It safeguards the civil and political rights of its citizens, including free and fair elections. This has, over the years, contributed significantly to the political stability and economic growth of our country. We are not going to depart from this principle. On behalf of the Government, I can assure our fellow citizens that we will never attempt to restrict their rights nor limit their freedom. We should, however, bear in mind that our objective is also to preserve the wellbeing and safety of our population, especially during these challenging and tough times and we will not, in any circumstances, flout our responsibilities.*

Mr Speaker, Sir, Professor Stanley De Smith, the father of our Constitution, dedicated much effort in the preparation of our Constitution to ensure the stability of our nation. Nevertheless, he also enshrined exceptions in certain circumstances which are, inter alia, "public health and public safety" to protect the community at large. However, these powers are not being used abusively or in an anti-democratic way by this Government.

Mr Speaker, Sir, it is within this perspective that Government is coming forward with this Bill. We are not the only country which has taken such a decision. According to the International Institute for Democracy and Electoral Assistance (IDEA), from 21 February 2020 until 09 May 2021, around 78 countries and territories across the world have postponed national and subnational elections due to COVID-19. So, what we are doing now in Mauritius is not an exception.

The Bill makes new provision for the extension of the life of the Councils solely in situations of an epidemic of a communicable disease or a quarantine period is in force in the country. In this respect –

"communicable disease" has the same meaning as in the Quarantine Act 2020, and  
"quarantine period" has the same meaning as in the Quarantine Act 2020.

The aim of the Government is not to delay the holding of the polls indefinitely, not at all, Mr Speaker, Sir. The proposals are for bringing specific extensions to the life of the Councils for short periods of time, not for more than one year at a time and for a maximum of two years. This maximum period of two years is considered reasonable as, at this juncture, even experts in the field do not have any visibility as to when we will manage to control this unprecedented pandemic and we will return to normalcy.

Mr Speaker, Sir, although the Bill makes provision for a maximum period of extension of two years, this Government, to repeat myself, always adheres to the fundamental principle of good governance and respect of our values and traditions and undertakes to hold this election within a shorter period as soon as the conditions allow.

I wish to reassure the House and the population at large, that this major initiative of the Government to bring about amendments to these specific provisions of the Local Government Act has not been prompted by any political motive whatsoever



and there is no hidden agenda attached thereto. It is only the prevailing unprecedented sanitary conditions that have dictated our action.

Mr Speaker, Sir, I once again reassure the House that the decision of the Government to amend the Local Amendment Act is purely and exclusively motivated to safeguard the health, welfare and safety of the population.

51.8 It is clear from the above that the Government, in particular the Minister (including the Respondent), was concerned that the extension provision is not abused and such extension is to be restricted for the protection of people's health and lives.

51.9 We now refer to Hansard 23 May 2023 ("Hansard 2023")– (Annex H), more especially to relevant part thereof where the Vice-Prime Minister, Minister of Local Government and Disaster Risk Management (Dr. Husnoo) has concluded his speech as follows:

Mr Speaker, Sir, I once again reassure the House that the decision of the Government to amend the Local Government Act is to bring proper reform to the local authorities so that in the future, the Councils would be able to provide enhanced quality service to the country.

*With these words, Mr Speaker, Sir, I commend the Bill to the House.*

51.10 It is clear from the above that the reason given for the 2023 amendment is the reform of the local authorities. This is in stark contradiction to the reasons and reassurances given by the Respondent, through the Government, in 2021. Reform of the local authorities seems to now amount to a better reason to delay elections administratively as compared to a public state of emergency.

51.11 We also refer to the relevant part of the Hansard dated 23 May 2023 where the Leader of the Opposition stated the following in his introductory part of his debate:

**Mr X. L. Duval (Leader of the Opposition):** *Mr Speaker, Sir, I must start my speech to protest against the very short time that is being given to Members of Parliament on the Opposition side mainly, to comment on this extremely important, extremely dangerous Bill that is being proposed today. The population will be shocked, Mr Speaker, Sir, to learn that Members of Parliament, apart from the Leader of the Opposition, will have from 8 minutes to 13 minutes each to talk and to expend [sic] on their worries regarding this Bill. So, it is a terrible thing to happen to us.*

[...]

*Mr Speaker, Sir, I have listened very carefully to what the hon. Vice-Prime Minister had to say on this Bill. What I will say at the outset – I will come back to it in a moment – is this is the first time we have details of what he is proposing; it was not public before. But my reaction is that hardly any of the so-called reforms that he wants to bring, affects the election process. Hardly any!*

*He is talking about I-Council. He is talking about cleaning and all. These do not affect the electoral process and so, there are a few issues that will affect the electoral process like whether MPs or not are able to stand; whether we should have Municipal Councils in Goodlands, Grand Baie, etc. These, Mr Speaker, Sir, - I am suggesting showing respect to the electorates - can be dealt with at the end of the next mandate. Make it coterminous at the end of the next mandate with the general elections, but not for this time. It does not justify the taking away of the most important right in a democracy, that is, the right to vote, because, Mr Speaker, Sir, they can be lots of types of democracies but what is sure and certain is that you cannot have a democracy without an election. It isn't possible. You can have a fake election; you can have a rigged election; you can have a single party election but you cannot have a democracy of any type without elections. And when you take away the right to vote, the right for the people to express themselves, then you are in fact denying democracy. You are, in fact, cancelling democracy and this time, of course, we are talking about local democracy."*

50. We aver that it is clear that the Respondent has departed from the reasoning behind the 2021 Amendment where public health and safety were the conditions sine qua non to extend the life of Municipal City Councils and Municipal Town Councils.

51. For the reasons stated above, we aver that the Respondent's decision making process and advice to further extend the life of the Councils based on the 2023 Amendment is irrational, devoid of any purpose and has denied us our right to vote for no reason whatsoever. Such advice lacks any purpose upon which the parameters of his powers and the decision making process could be based upon.

52. A reading of the Hansard 2023 also indicates that the only purpose of further extending the life of the Councils appears to be one which is self-serving, arbitrary and wednesburry unreasonably, given that it is only based on a "desire to reform the local government".

**(iii) the decision making process is further unfair, arbitrary and irrational as it does not apply equally to all**

53. In November 2020, when the world was bearing the full brunt of Covid-19 pandemic, the Respondent advised the President to issue a writ of elections for the village and district councillors. [We make reference to the website of the Office of the Electoral Commissioner via the link : [https://electoral.govmu.org/oec/?page\\_id=1647](https://electoral.govmu.org/oec/?page_id=1647)]

54. This clearly differentiates electorates from villages and towns /city and by denying us the right to vote, the Respondent's decision making process is fraught with unfairness, irrationality, arbitrariness and wednesbury unreasonableness.

55. We strongly believe that the ruling government is currently very unpopular and does not want to face an electoral defeat which will bring irrefutable fact of their unpopularity.

56. All major political parties have always fielded their candidates for the Municipal Council Elections. All 5 municipal councils are currently controlled by the same party controlling the central government. Furthermore, the political parties (in alliance) controlling the central government has the Respondent as its leader. We therefore verily believe that the Respondent's intention is to prevent a crushing defeat in the Municipal Councils election and reasons advanced for the further extension is purely cosmetic.

**(vi) the impugned decision denies us the protection of our fundamental human rights and is further inconsistent with national law and international law**

57. In 1973, the Republic of Mauritius has through Accession adopted the United Nations International Covenant on Civil and Political Rights Convention (ICCPR) and committed itself to recognise the People's right to participate in public affairs through universal suffrage.

Article 25 of the ICCPR reads as follows:

*"Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:*

*(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;*

*(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;*

*(c) To have access, on general terms of equality, to public service in his country."*

58. Article 25 of the ICCPR extends and covers all aspects of public affairs, including those at local levels. We refer to the General Comment No.25 which is annexed and marked as Annex I. The relevant extracts are reproduced for ease of reference and read as follows:

4. *"The conduct of public affairs, referred to in paragraph (a), is a broad concept which relates to the exercise of political power, in particular the exercise of legislative, executive and administrative powers. It covers all aspects of public administration, and the formulation and implementation of policy at international, national, regional and local levels. The allocation of powers and the means by which individual citizens exercise the right to participate in the conduct of public affairs protected by article 25 should be established by the constitution and other laws.*

5. *Citizens participate directly in the conduct of public affairs when they exercise power as members of legislative bodies or by holding executive office. This right of direct participation is supported by paragraph (b). Citizens also participate directly in the conduct of public affairs when they choose or change their constitution or decide public issues through a referendum or other electoral process conducted in accordance with paragraph (b). Citizens may participate directly by taking part in popular assemblies which have the power to make decisions about local issues or about the affairs of a particular community and in bodies established to represent citizens in consultation with the government. Where a mode of direct participation by citizens is established, no distinction should be made between citizens as regards their participation on the grounds mentioned in article 2, paragraph 1, and no unreasonable restrictions should be imposed."*

59. We are advised and verily believe that our right to vote and/or to stand as candidates are not restricted to the elections for the National Assembly but also extends to the Local Government Elections.

60. We are advised and verily believe that the same view was endorsed in the recent case of ***Maharaj v The Cabinet of the Republic of Trinidad and Tobago & Anor (2023) UKPC 17*** that the right to vote is an essential feature of our democracy, whether at a national or a local level. A copy of the judgment of the said case is annexed and marked as Annex J.

61. Through and by Extension No.3,

(i) we have been denied "our right to decide whether we wish the incumbent representatives of the current Councils to remain in office, assuming they stand for re-election at the end of the period for which they were elected."

(ii) we have been denied the right to be governed by representatives chosen democratically;

(iii) it is solely and entirely the Respondent who now decides who are the representatives of the Councils and for what period,

(iv) our right to vote was usurped by the Respondent and he has disrespected and violated the very essence of our democracy which he has solemnly affirmed to protect, through the oath of allegiance.

62. We aver that the Prime Minister's Oath (as averred in paragraph 11 above) is an integral part of our Constitution.

63. When the Respondent solemnly affirmed to be faithful to Mauritius, he undertook to apply all the democratic principles enshrined and recognised in our laws and one of these principles in a representative democracy is to allow people to choose their representatives.

64. When the Respondent solemnly affirmed to bear true allegiance to Mauritius, he undertook to be true in protecting our Democracy against any other State or other influences or undemocratic philosophies and principles to be incorporated in our system of Government and governance.



65. It is clear that we as reasonable and faithful citizens of our Sovereign Democratic country, when analysing the implications of the Respondent's impugned decision, we feel and fear that he has acted in defiance of his oath and is flouting the very principles of our democracy and has taken us in the realm of autocracy. He has broken his Sacrosanct Oath. This is the worst damage that can be caused to our rights.

66. For all reasons set out above, we aver that this leads us to say that the Respondent's decision-making process has infringed the principles of the rule of law.

#### **GROUND C : APPLICANTS' LEGITIMATE EXPECTATIONS**

67. We re-iterate paragraphs 57 to 67 above, and further aver that the Respondent's impugned decision infringes the very essence of our democracy and has usurped our rights to vote and/or stand as candidate as applicable, at the Local Government Elections.

68. I, Applicant No.1, further aver that I had a legitimate expectation that I will be able to field my candidates after the said dissolution.



69. I, the Applicant No.2, further aver that I intended to stand as candidate to the next elections.

70. I, Applicant No.3, had a legitimate expectation to vote for the next Councillors.

71. We therefore aver that for the additional reasons set out in paragraphs 5 to 9 above, the Respondent's impugned decision has thwarted our legitimate expectation to vote and/or stand as candidate at the elections of the Councils which were reasonably expected to take place this year.

### **NO OTHER AVAILABLE REMEDIES**

72. We are advised and verily believe that there is no other available remedy open to us, to challenge the impugned decision making process of the Respondent, on all the grounds we have, other than by way of a Judicial Review under Order 53 of the RSC of England and Wales.

### **EXTREME URGENCY AND EX PARTE APPLICATION**

73. We aver that for all the reasons set out above, the Respondent's impugned decision infringes the very essence of our democracy and has usurped our rights to vote and/or stand as candidate as applicable, at the Local Government Elections.

74. We aver that we have the locus standi to make this application.

75. We have acted promptly in making this application which required extensive research by our legal advisers and ourselves with very limited means available and pressure of time.

76. We are advised and verily believe that based on the aforementioned grounds, there is an arguable case fit for further consideration on the merit stage of the judicial review.

77. We aver that the present application is therefore so urgent that it requires the intervention of the above Honourable Court to grant us Leave to apply for judicial review against the Respondent's impugned decision, on an ex parte basis, i.e., without giving any prior notice to the Respondent, and in line with Rule 2 (4) of the Supreme Court Rules 2000 of Mauritius and Rule 3 of Order 53 of Rules of the Supreme Court of England and Wales.

78. In order to further justify that Leave must be granted to us on an ex parte basis, we refer to Annex K, which is a survey which was caused to be carried out by us in respect of the time taken by our Courts to adjudicate on applications for Judicial Review. The survey

contains reported judgments published on the website of the Supreme Court of Mauritius for this year alone. The delay shown in the said survey indicates that an application for leave to apply for judicial review ("first leg") takes between a year to more than 4 years; and that the application for judicial review ("second leg") takes between 3 years to 10 years.

79. We respectfully aver that the statistics of this year alone show that there is considerable delay in disposing of judicial review cases either at leave stage or at the merit stage itself.

80. We are advised and verily believe that all applications of judicial review are inherently urgent as the said applications must be made "*promptly*". Delay in dealing with an application such as this one would defeat its very purpose and amount to a denial of justice.

81. We are apprised that the above Honourable Court has developed a practice of hearing the Respondent, prior to granting Leave to apply for Judicial Review. We aver that the present situation justifies that the above Honourable Court departs from the adopted *cursus* and practice to grant us Leave to apply for Judicial Review on an *ex parte* basis, and in line with UK Order 53 rules (which is applied in Mauritius).

82. We also reiterate most respectfully that the subject matter which concerns our fundamental rights which ought to be exercised in a representative democracy compels us to pray **ONLY** that Leave to apply for judicial review to be granted to us on an *ex-parte* basis.

83. Time is a luxury and is of the essence that we do not have and the underlying principles that the Court is called upon to adjudicate requires special attention and absolute celerity in line with our democratic principles.

84. We aver that we are ready and willing to offer submissions and arguments to the above Honourable Court, should the Court be minded to hear us prior to granting us Leave to apply for Judicial Review on an *ex-parte* basis.

85. Should Leave for Judicial Review be granted to us, we further pray to the above Honourable Court to set out a clear and specific time frame within which the application for Judicial Review against the Respondent's impugned decision be heard.

#### **PRAYERS**

86. For the above reasons, we pray to this above Honourable Court:



(A) For an Order granting us LEAVE to apply for JUDICIAL REVIEW against the decision of the Respondent to advise the President to *further extend* the life of the Municipal City Council and Municipal Town Councils by 2 years with effect from 13 June 2023,

(B) In the event LEAVE FOR JUDICIAL REVIEW is granted,

(i) For a procedural Order setting out a calendar for the matter to be heard by the Supreme Court within a delay of 3 months as a matter of urgency;

(ii) for a MANDATORY ORDER ordering the Respondent to advise the President of the Republic of Mauritius to issue writs of election within 60 days of the present Court Order, in line with Section 11 of the Local Government Act, and the said elections to take place according to law;

(iii) for a DECLARATION declaring that the advice given to the President to further extend the life of the Municipal City Council and Municipal Town Councils is against the Rule of Law and/or unlawful and/or procedurally improper and/or irrational and/or arbitrary and/or unfair and/or made without purpose and/or unreasonable in the Wednesbury sense, thus void for all intents and purposes,

(iv) An order Declaring the Respondent has broken his Oath of Allegiance taken by him before acceding to the position of Prime Minister;

(C) Such other Order/s as the above Honourable Court may deem fit and proper in the present circumstances.

87. We pray accordingly.

SOLEMNLY AFFIRMED BY THE ABOVENAMED DEPONENTS NOS 1 TO 3  
AT CHAMBERS, NEW SUPREME COURT HOUSE, PORT-LOUIS  
THIS 16<sup>th</sup> DAY OF JUNE 2023

*Randoo*  
1. *[Signature]*  
2. *[Signature]*  
3. *[Signature]*

DRAWN UP BY ME

*[Signature]*  
K. Bokhoree

Attorney

On 16/06/2023

BEFORE ME

*[Signature]*

RAJ JHUBOO  
Chief Court Officer/  
Court Manager

I certify that the present affidavit will form part of a case before the Supreme Court of

Mauritius

*[Signature]*  
K. Bokhoree