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بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

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STATEMENT ON CLOSURE OF MASAAJID

The regulations published under the Disaster Management Act 57 of 2002 on 27 June 2021 in terms of Government Notice R564 represent a further violation of the right to religious freedom and practice as enshrined in the Constitution. The discrimination between controlled faith-based gatherings and other gatherings permitted in terms of the regulations, as well as the closure of places of worship, purely on the basis that gatherings that are prohibited (such as congregational salaah) may take place there, is in our view irrational and arbitrary so as not to pass constitutional muster. These are however issues that require to be addressed separately in another forum.

We express our strenuous objection to, and register our vociferous protest, against the closure by the State of our masaaqid, which are places wherein the Mercy of Allah descends.

On the question of safety and protection in the masaaqid, Nabi Mohammed (saw) is reported to have stated the following:

عَنْ سَلْمَانَ عَنِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ مَنْ تَوَضَّأَ فِي بَيْتِهِ فَأَحْسَنَ الْوُضُوءَ ثُمَّ أَتَى الْمَسْجِدَ فَهُوَ زَائِرُ اللَّهِ وَحَقُّ عَلَى الْمَزُورِ أَنْ يُكْرِمَ الزَّائِرَ

Sayyiduna Salmaan Radiyallahu anhu narrates that Sayyiduna Rasulallah ﷺ said:

“Whomsoever performs wudhu at home properly, then proceeds to the Masjid is the guest of Allah Ta’ala. It is the obligation of the host to honour his guest. [Tabrani; At-Targhib 2:214; Majma’ 2114]

As for those who close the masaajid, Allah the Sovereign and the only Legislator says:

وَمَنْ أَظْلَمُ مِمَّنْ مَنَعَ مَسْجِدَ اللَّهِ أَنْ يُذْكَرَ فِيهَا اسْمُهُ وَسَعَىٰ فِي خَرَابِهَا أُولَٰئِكَ مَا كَانَ لَهُمْ أَنْ يَدْخُلُوهَا إِلَّا خَائِفِينَ
لَهُمْ فِي الدُّنْيَا خِزْيٌ وَلَهُمْ فِي الْآخِرَةِ عَذَابٌ عَظِيمٌ ١١٤

“And who are more unjust than those who forbid that Allah's Name be mentioned (i.e. prayers and invocations) in Allah's Masjids and strive for their ruin. It was not fitting that such should themselves enter them (Allah's Masjids) except in fear. For them there is disgrace in this world, and they will have a great torment in the Hereafter.” (surah 2, verse 114)

For present purposes, we confine our comments to addressing the key provisions of the current regulations in so far as they impact on masaajid. The sheer magnitude of the intrusion upon our right to worship and practice our Deen is manifestly evident from such regulations.

Regulation 21(1) prohibits all gatherings except for funerals, when at a workplace or when buying or obtaining goods and services. Regulation 21(3) prohibits all social gatherings, including faith-based gatherings, until at least 11 July 2021. Regulation 24(1) provides that any place or premises where inter alia religious activities prohibited in terms of the regulations take place is required to close. Regulation 24(2) defines the category of places or premises that are required to close. It is however an inclusive provision and is not intended to be a closed list of all places or premises that are required to close. In short, the omission of the mention of places of worship in regulation 24(2) does not exempt such places from closure.

There are novel provisions in the new regulations that did not feature in any of the prior regulations. Regulation 21(23) provides that any person who attends, inter alia, a faith based or religious gathering who knows or ought reasonably to have known or suspected that it is

prohibited, commits an offence and is liable on conviction to a fine or imprisonment not exceeding six months.

Further novel provisions are to be found in regulations 31(1)(b) and 31(2). The former renders any person who contravenes any prohibition of the regulations guilty of an offence. The latter provides that any person who fails to comply with, or contravenes, inter alia regulation 24(1), which requires the closure of masajid and other places of worship, commits an offence. The managing committees of masajid responsible for their functional operations would hence be at potential risk of exposure under regulation 31(2) to the commission of an offence.

It seems clear, therefore, that while regulation 21(21) retains the obligation of an enforcement officer to order persons at a prohibited gathering to first disperse, the novel regulations referred to above could on an ordinary interpretation be invoked to charge persons engaging in congregational salaah with an offence without more, ie. without the prior step of first requiring dispersal. The failure to close a masjid or other place of worship where gatherings may occur is, at the risk of repetition, now an offence.

The severity of the impact of the current regulations and their erosion of our right to practice our deen cannot be adequately emphasized.

May Allah protect us against such oppression (dhulm) !

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