



**A M P S A**

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### ***Bismih Ta'ala***

Assalamu alaikum wa rahmatullahi wa barakaatuh

Dear Brothers and Sisters in Islam

1. All praise is due to Allah Ta'ala, the Sovereign, the Legislator, the Lord of the Worlds.
2. On 29 December 2020, the Minister of Co-Operative Governance and Traditional Affairs issued certain regulations ("the regulations") by virtue of the powers conferred upon her in terms of the Disaster Management Act, No. 57 of 2002
3. The regulations cover a wide area. They list a number of gatherings that are permitted They also prohibit certain gatherings
4. Among the gatherings permitted in terms of the regulations are gatherings at casinos, theatres, movies, museums, libraries and galleries.
5. Among the prohibited gatherings are gatherings at sports grounds and fields.
6. Certain places are closed to the public. These include beaches in areas declared hotspots, public swimming pools and recreational facilities at such places.
7. Section 36 (3) of the regulations prohibits all social gatherings, including, "faith based gatherings" for two weeks, after which the prohibition will be reviewed.

8. Unlike the original regulations first promulgated in March 2020, there is no prohibition on masjids remaining open, nor any directive requiring masjids to close.
9. The principal legal issue arising from the current regulations is whether or not they proscribe or prohibit congregational worship.
10. The regulations are obscure on this point. A possible interpretation of regulation 36(3), and a very generous and elastic one at that, is that the mere inclusion therein of faith-based gatherings serves to prohibit congregational worship at a masjid.
11. Such interpretation is in our respectful view untenable. We do not believe that the provisions of regulation 36(3) proscribe or prohibit congregational salah for the following reasons:
  - a. the regulations do not require the closure of places of worship to the public. Such places may continue to remain open;
  - b. regulation 36(3) specifically prohibits "*social gatherings*";
  - c. the essence of a social gathering is the element of *social interaction* between people;
  - d. the "faith based gatherings" contemplated in regulation 36(3) are restricted to those that are primarily *social gatherings*, the hallmark of which is social interaction among their attendees;
  - e. salah neither entails nor requires any social interaction between musallees;
  - f. in any event, and at the very lowest, the provisions of regulation 36(3) are ambiguous;
  - g. the limitation of a constitutionally entrenched right, such as freedom of religion or the right to practice one's religion in community, cannot be achieved through an ambiguous regulation. Such a limitation, if it is to be effective, must at the very least be expressed in clear and unambiguous terms. Regulation 36(3) is anything but clear and unambiguous;

h. to the extent that the relevant regulation may be capable of being construed as prohibiting all faith-based gatherings and not merely faith-based *social* gatherings (a proposition that we reject), such prohibition would in any event be invalid as irrational and unconstitutional in the context of the provisions of regulations 36(6), (7) and (8) that permit gatherings at casinos, cinemas, theatres, museums, galleries, libraries and the like.

12. In all the premises, congregational salaah in masaajid has in our view not been proscribed or prohibited in terms of the current regulations.

13. May Allah Ta'ala protect our Deen from intrusion, curtailment or limitation!

**Issued by AMPSA Shura Council**

**29 December 2020**