**IN THE SENIOR COURTS OF BELIZE**

**IN THE HIGH COURT OF JUSTICE**

**CLAIM NO. 613 OF 2023**

**IN THE MATTER of an application pursuant to section 20 of the Constitution of Belize and Part 56 of the Civil Procedures Rules 2005.**

**IN THE MATTER of sections 3 (a), 5 (1) (e), 5 (6), 6 (1), 7, 18 and 19 of the Constitution of Belize**

**AND**

**IN THE MATTER of Statutory Instruments No. 97 of 2020- A Proclamation Declaring a State of Emergency in the Southside of Belize City**

**AND**

**IN THE MATTER of Regulations 11, 12, and 18 of the Belize Constitution (Emergency Powers) Regulations 2020, Statutory Instrument No. 98 of 2020**

**BETWEEN:**

**[1] JAHREEM STAINE**

**[2] JOHN GRINAGE**

**[3] SHELDON GRINAGE**

**[4] SHEMAR MORTIS**

**[5] EARL BAPTIST**

**[6] SANJAY LINO**

**[7] AKEEM BERMUDEZ**

**[8] MICHEAL FLOWERS**

**[9] GILBERT BELISLE**

**[10] RANDY AUGUST**

**[11] DEAN WILLIAMS**

**[12] ERVIN RHAMDAS**

**[13] HERMAN SOLIS**

**[14] LIONEL LONGSWORTH**

**[15] HAROLD USHER**

**[16] MALIK PITTS**

Claimants

**and**

**[1] THE ATTORNEY GENERAL OF BELIZE**

**[2] THE BELIZE POLICE DEPARTMENT**

**[3] THE MINSTER OF NATIONAL SECURITY**

Defendants

**Appearances:**

Mr. Leeroy Banner for the Claimants
Ms. Alea Gomez for the Defendants

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2024: November 11;
2025 May 15.

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**JUDGMENT**

[1] **NABIE, J.:** This is a constitutional motion filed by sixteen (16) claimants who were arrested by the Belize Police Department and detained at Kolbe Foundation during the State of Public Emergency declared on 6th day of July 2020 which ended on the

5th day of October 2020 having been extended for two (2) months therein. They challenge the validity of the proclamation of the State of Public Emergency and they also challenge the lawfulness of their respective arrests and detention pursuant thereto and under the **Crime Control and Criminal Justice Act**. The claimants have also alleged that several constitutional breaches occurred during their detention as a consequence. They therefore allege that they are entitled to damages.

[2] The Claimants have sought the following orders:-

i. A Declaration that the prevailing circumstances at the time of the Proclamation, promulgated in Statutory Instrument No. 97 of 2020, published in the Belize Gazette Extraordinary on the 6th day of July 2020 declaring a state of emergency in the Southside of Belize City did not warrant the declaration of a state of emergency;

ii. A Declaration that the reason provided in the Proclamation declaring a State of Public Emergency in the Southside of Belize City, Statutory Instrument No. 97 of 2020 did not provide the background for the declaration of the state of emergency;

iii. A Declaration that actions of members of the Belize Police Department as agents of the State by arresting and detaining the Claimants for "Gang related Activities" contrary to the Crime Control and Criminal Justice Act, without reasonable and probable cause; this led to their incarceration from on or around July 6th, 2020 to October 5th, 2020 was contrary to section 5(1) (e) of the Constitution specifically relating to the Claimants' right not to be unlawfully deprived of their liberty;

iv. A Declaration that actions of members of the Belize Police Department as agents of the State by arresting and subsequently detaining the Claimants for between July 6th, 2020 to October 5th, 2020, without reasonable or probable cause and without

conducting enquiries which leading (sic) to their incarceration was contrary to section 3(a) of the Constitution specifically relating to the Claimants' right to protection of the law which is premised on fundamental justice and the Rule of Law;

v. A Declaration that actions of members of the Belize Police Department as agents of the State by arresting and subsequently detaining the Claimants between July 6th, 2020 to October 5th, 2020, without reasonable or probable cause and without conducting enquiries which led to their incarceration was contrary to section 6 (1) of the Constitution specifically relating to the Claimants' right to equal protection of the law and not to be discriminated against.

vi. A Declaration that actions of members of the Belize Police Department as agents of the State by arresting and subsequently detaining the Claimant (sic) between July 6th - October 5th, 2020, without reasonable or probable cause and without conducting enquiries which led to his (sic) incarceration was contrary to section 7 of the Constitution specifically and amounted to cruel and inhumane punishment by the State;

vii. A Declaration that actions of members of the Belize Police Department as agents of the State by arresting and subsequently detaining the Claimant (sic) for (sic) between July 6th to October 5th, 2020, without reasonable or probable cause and without conducting enquiries which led to his (sic) incarceration breach the Claimants' right to Dignity as enshrined in the Constitution;

viii. A Declaration that the State violated section 19 (1) (a) of the Constitution of Belize, as the Claimants were not furnished with a written statement in English specifying the particulars of the grounds that he was (sic) detained for.

ix. A Declaration that the State failed in its Constitution duty to provide judicial oversight in relation to those detained during the State of Emergency and as a consequence violated Section 19 (1) (c) of the Belize Constitution;

x. A Declaration that the State failed to comply with Regulations 11, 12 and 18 of the Belize Constitution (Emergency Powers) Regulations, 2020, S.I. No. 98 of 2020;

xi. A Declaration that the state violated the Rule of Law by arbitrarily imposing the maximum time of detention allowable under the Belize Constitution (Emergency Powers) Regulations, 2020, S.I. No. 98 of 2020;

xii. A Declaration that actions of members of the Belize Police Department as agents of the State by arresting and subsequently detaining the Claimants between July 6th - October 5th, 2020, without reasonable or probable cause and without conducting enquiries which led to their incarceration breached the values as outlined in the preamble of the Constitution especially the notion of freedom and justice founded upon the Rule of Law.

xiii. A Declaration that the issuance of Detention Orders by the Minister of National Security breached the doctrine of the separation of power (sic);

xiv. A Declaration that the nature of detention both in the holding cells at the Queen Street Police Station and at the Belize Central Prison amounted to inhuman or degrading punishment;

xv. A Declaration that the prevailing circumstances during the State of Emergency period (July 6th, 2020, to 6th August 2020) did not warrant the extension of the State of Emergency for an additional two months.

xvi. Compensatory as well as vindicatory damages based on the breach of the Claimants' (sic) Constitutional Rights pursuant to section 20 of the Constitution;

xvii. An order that damages be assessed;

xviii. Interest on all sums found due to the Claimant (sic);

xix. Costs;

xx. Such other reliefs as the Court finds just and equitable.

**Background**

[3] On 6th July 2020 the Governor General issued a proclamation (S.I. 97 of 2020) pursuant to powers under section 18 of the Constitution. By this proclamation, the Governor General declared a state of public emergency in certain parts of Belize City. This state of public emergency was thereafter extended for a period of two (2) months until 5th October 2020 by the National Assembly by virtue of section 18 of the Constitution. The Governor General also promulgated regulations (S.I. 98 of 2020) in accordance with section 18 of the Constitution.

[4] There were 16 claimants in this matter. During the trial, three (3) of the claims were dismissed. Those claimants were Jahreem Staine, Shemar Mortis and Sanjay Lino. The claimants have each filed affidavits in support of the claim. On various days between 6th July and 5th October 2020 the claimants were detained by the police and kept at the Kolbe Foundation Prison until the end of the State of Public Emergency and released without being charged.

They have made allegations regarding the police conduct surrounding their arrest and continued detention. They have also claimed that there was no reasonable and probable cause for their respective arrests.

[5] Bartholomew Jones, the Deputy Commissioner of Police was the only deponent for the Crown and he swore to two affidavits in this matter.

**Issues:**

1. Did the prevailing circumstances at the time warrant a state of public emergency? Was the extension of the State of Public Emergency necessary in the circumstances?
2. Did the Proclamation in SI 97 of 2020 provide the background as required?
3. Did the police by virtue of their conduct in arresting and detaining the claimants violate the rights of the claimants under several sections of the Constitution, namely section 3(the right to protection of the law which is premised on fundamental justice and the Rule of Law), section 5(1)(e) (the right not to be unlawfully deprived of their liberty), section 6(1) (right to equal protection of the law and not to be discriminated against), and section 7 (the right to not to be subject to cruel and inhumane punishment by the State).
4. Did the police and by extension the State breach procedural provisions in the Constitution namely section 19(1) (a) (to be furnished with a written statement in English specifying the particulars of the grounds detained upon) and 19(1)(c) (to have judicial oversight in relation to those detained under the State of Emergency)
5. Did the State fail to comply with Regulations 11, 12 and 18 of the Emergency Powers Regulations?
6. Whether the police have reasonable and probable cause to arrest and detain the claimants?
7. Whether the state violated the Rule of Law when it detained the claimants for the maximum period allowable under the Emergency Powers Regulations?
8. Was there a breach of separation of powers in the issuance of detention orders by the Minister of National Security?

9. Are the claimants entitled to monetary compensation? If so in what quantum?
10. Were the claimants subjected to cruel and inhumane punishment?

**I. Validity of the State of Emergency**

[6] Was a state of emergency necessary? For the purposes of this judgment, the terms "*state of emergency*" and "*state of public emergency*" shall be used interchangeably and have the same meaning.

**Did the Governor General provide the necessary background in the proclamation?**

*The proclamation states:*

> **WHEREAS**, section 18 (2) of the Belize Constitution provides that the Governor-General may, by proclamation which shall be published in the Gazette, declare that a state of public emergency exists for the purpose of Part II of the Constitution;
>
> **AND WHEREAS,** section18 (3) of the Belize Constitution provides that, in order to have effect, the proclamation must contain a declaration of the Governor-General that he is satisfied that a public emergency has arisen as a result of action having been taken or being immediately threatened by any person or body of persons of such a nature and on so extensive a scale as to be likely to endanger the public safety;
>
> **AND WHEREAS,** section18 (4) of the Belize Constitution provides that a proclamation made under section 18 (2) may be made so as to apply only to such part of Belize as may be specified in the proclamation;

**AND WHEREAS,** I am satisfied that a public emergency has arisen in the part of Belize consisting of the part of Belize City known as the Southside, and which is specified in the Schedule, as a result of action having been taken or being immediately threatened by any person or body of persons of such a nature and on so extensive a scale as to be likely to endanger the public safety of the specified part of Belize City;

**AND WHEREAS,** section 18 (5) of the Belize Constitution provides that a proclamation made by the Governor-General for the purposes of and in accordance with section 18 of the Constitution shall, unless previously revoked, remain in force for a period not exceeding one month; but may be extended from time to time by a resolution passed by the National Assembly for further periods, not exceeding in respect of each such extension a period of twelve months; and may be revoked at any time by a resolution of the National Assembly.

**NOW, THEREFORE, I, Colville N. Young**, Governor-General of Belize, in exercise of the powers vested in me by the above mentioned provisions of the Belize Constitution and otherwise, **DO Hereby Declare and Proclaim** that effective 7th July 2020 -

(a) a public emergency exists in the part of Belize City, known as the Southside, and which is specified in the Schedule;

(b) this Proclamation shall, unless previously revoked, remain in force for a period not exceeding one month, or such longer period, not exceeding twelve months, as the case may be determined by resolution passed by the National Assembly.

**Constitutional Provisions:**

[7] The relevant provisions of the ***Constitution of Belize*** are contained in section 18:

> *"18.-(1) In this Part "period of public emergency" means any period during which -*
>
> *a. Belize is engaged in any war; or*
>
> *b. there is in force a proclamation by the Governor-General declaring that a state of public emergency exists; or*
>
> *c. there is in force a resolution of the National Assembly declaring that democratic institutions in Belize are threatened by subversion.*
>
> *(2) The Governor-General may, by proclamation which shall be published in the Gazette, declare that a state of public emergency exists for the purposes of this Part.*
>
> *(3) A proclamation made by the Governor-General under subsection (2) of this section shall not be effective unless it contains a declaration that the Governor-General is satisfied*
>
> *a. that a state of war between Belize and another State is imminent or that a public emergency has arisen as a result of the occurrence of any earthquake, hurricane, flood, fire, outbreak of pestilence, outbreak of infectious disease, or other similar calamity; or*
>
> *b. that action has been taken or is immediately threatened by any person or body of persons of such a nature and on so extensive a scale as to be likely to endanger the public safety or to deprive the community, or any substantial portion of the community, of supplies or services essential to life.*
>
> *(4) A proclamation made under subsection (2) of this section may be made so as to apply only to such part of Belize as may be specified in the proclamation (in this subsection called "the emergency area"), in which case regulations made under subsection (9) of this section shall except as otherwise expressly provided in such regulations have effect only in the emergency area.*
>
> *(5) A proclamation made by the Governor-General for the purposes of and in accordance with this section*
>
> *a. shall, unless previously revoked, remain in force for a period not exceeding one month;*

*b. may be extended from time to time by a resolution passed by the National Assembly for further periods, not exceeding in respect of each such extension a period of twelve months; and*

*c. may be revoked at any time by a resolution of the National Assembly.*

*(6) A resolution of the National Assembly passed for the purposes of subsection (1)(c) of this section shall remain in force for two months or such shorter period as may be specified therein:*

*Provided that any such resolution may be extended from time to time by a further such resolution, each extension not exceeding two months from the date of the resolution effecting the extension; and any such resolution may be revoked at any time by a further resolution.*

*(7) A resolution of the National Assembly for the purposes of subsection (1)(c) of this section, and a resolution of the National Assembly extending or revoking any such resolution, shall not be passed unless it is supported by the votes of two-thirds of the members of the House of Representatives present and voting.*

*(8) Any provision of this section that a proclamation or resolution shall lapse or cease to be in force at any particular time is without prejudice to the making of a further such proclamation or resolution whether before or after that time.*

*(9) During any period of public emergency, the following provisions shall have effect*

*a. the Governor-General may make such regulations as are necessary or expedient for securing public safety, the defence of Belize, the maintenance of public order and the suppression of mutiny, rebellion and riot, and for maintaining supplies and services essential to the life of the community;*

*b. any such regulations may empower such authorities or persons as may be specified in the regulations to make orders and rules for any of the purposes for which such regulations are authorised by this subsection to be made and may contain such incidental and supplementary provisions as are necessary or expedient for the purposes of the regulations;*

*c. any such regulations or any order or rule made in pursuance of such regulations may amend or suspend the operation of any law and shall have effect notwithstanding anything inconsistent therewith contained in any law;*

*d. in this subsection, "law" does not include this Constitution or any provision thereof or any law that alters this Constitution or any provision thereof.*

*(10) Nothing contained in or done under the authority of any law (including any regulations made under subsection (9) of this section) shall be held to be inconsistent with or in contravention of sections 5, 6, 8, 9, 10, 12, 13, 14, 15, 16, or 17 of this Constitution to the extent that the law in question makes in relation to any period of public emergency provision, or authorises the doing during any such period of anything, that is reasonably justifiable in the circumstances of any situation arising or existing during the period for the purpose of dealing with that situation."*

[8] The claimants allege that that on 6th day of July 2020 when the State of Emergency was declared in the Southside of Belize City that there was no threat to the life of the nation.

[9] They further allege that the proclamation does provide the information or background for the declaration of a state of public emergency. I will deal with that aspect first.

[10] The parties in this matter relied heavily on a decision from the jurisdiction of Trinidad and Tobago regarding the challenge to the State of Emergency in 2011 in that country, that is **Earl Elie v Attorney General of Trinidad and Tobago** [1] (on appeal to the Privy Council). In that case, **Elie** was arrested during the period of public emergency and detained by the police purporting to act under the State of Emergency Regulations. **Elie** was not charged with any offence and was released when the state of emergency came to an end. The constitutional provisions in Trinidad and Tobago are similar to some extent those in Belize. However, Sections 8(2) and 9(1) of the Constitution of Trinidad and Tobago provide as follows:

*"8. (2) A Proclamation made by the President under subsection (1) shall not be effective unless it contains a declaration that the President is satisfied –*

*a. that a public emergency has arisen as a result of the imminence of a state of war between Trinidad and Tobago and a foreign State;*

[1] Civil Appeal No. S0003 of 2018

*b. that a public emergency has arisen as a result of the occurrence of any earthquake, hurricane, flood, fire, outbreak of pestilence or of infectious disease, or other calamity whether similar to the foregoing or not; or*

*c. that action has been taken, or is immediately threatened, by any person, of such a nature and on so extensive a scale, as to be likely to endanger the public safety or to deprive the community or any substantial portion of the community of supplies or services essential to life."*

*"9. (1) Within three days of the making of the Proclamation, the President shall deliver to the Speaker for presentation to the House of Representatives a statement setting out the specific grounds on which the decision to declare the existence of a state of public emergency was based, and a date shall be fixed for a debate on this statement as soon as practicable but in any event not later than fifteen days from the date of the Proclamation."*

[11] Justice of Appeal Mendonca stated at para 37 in **Elie** as follows:

*"The obligation of the President under section 9(1) of the Constitution is to provide to the Speaker a statement setting out the specific grounds on which the decision to declare a state of emergency was based. He is required to do no more than that. That in my judgment does not require the President to set out the evidence or detailed argument in support of the grounds. Where however the court is asked to review the decision to proclaim the existence of a state of public emergency, then it becomes a matter of evidence on which the court will decide whether circumstances justified the Proclamation."*

[12] While the claimants' challenge is to the validity of the State of Emergency, there is no requirement for the Governor General to state any more than he did in the Proclamation. The claimants ought not to confuse the form of the Proclamation with the challenge to its validity. There is no requirement for the Proclamation to provide detailed reasons or background in support of the declaration of a state of emergency. There is no such requirement in our Constitution. However, if I find that there was no justification existed for the declaration of the State of Public Emergency then it would follow that the Proclamation was unconstitutional.

[13] Under the Constitution then it can be said that:

a. A state of public emergency exists when there is a proclamation by the Governor General in force, declaring such.

b. The proclamation is only effective if it contains a declaration that the Governor General is satisfied that certain conditions such as in this matter, *"that action has been taken or is immediately threatened by any person or body of persons of such a nature and on so extensive a scale as to be likely to endanger the public safety or to deprive the community, or any substantial portion of the community, of supplies or services essential to life."*

c. A proclamation may be made for specific areas which will be identified in the Proclamation ("the emergency area").

d. This Proclamation remains effective for a period of one month.

e. The Governor General may make regulations to have effect only in the emergency area except as otherwise provided.

f. The National Assembly may extend the period of the state of emergency for no more than two months at a time.

[14] In the premises, I find that the Proclamation is in order there is no requirement in the Constitution to provide background or detailed reasoning. There is also no such requirement in the Constitution of the Republic of Trinidad and Tobago, but the President is to provide a statement to the Speaker of the House of Representatives within 3 days of the proclamation. The Constitution of Belize does not require the Governor General to provide a statement to the Speaker of the House of Representatives.

**Whether the prevailing circumstances existed in the Southside of Belize City (the emergency area) to warrant the declaration of a state of public emergency within the meaning of the Constitution.**

[15] I am therefore to determine, what is meant by the words "endanger the public safety" (see section 18(3) of the Constitution). It is the claimants' case that the circumstances that existed in the Southside of Belize City (the specific areas where the State of Emergency was declared) did not warrant the Government to declare a State of Emergency.

[16] In my determination of the meaning of "endanger the public safety", I will consider the following:

I. Whether the evidence before this Honourable Court falls within that meaning?

II. What is the threshold evidence required to satisfy that meaning?

III. What is the court to consider in determining that threshold?

**Conditions to Warrant a State of Emergency**

[17] In the **Elie** case, the respondent/Attorney General filed affidavit evidence of about eight (8) witnesses in justification of the State of Emergency. In the case before me, the defendants/Attorney General of Belize, the Belize Police Department and the Minister of National Security filed two affidavits deposed to by the Deputy Commissioner of Police, Bartholomew Jones. The claimants submit that the evidence falls far short of establishing that there was *a threat to the life of the nation*. I will now examine same.

[18] DCP Jones deposed in his first affidavit as follows:

> *"[5.] Operation SHIELD was conducted on March 18 to April 18, 2020. Additionally, State of Emergency Regulations (SOE) for COVID-19 emerged on April 1, 2020. Following the relaxation of the COVID-19 State of Emergency regulations, and the lifted SOE on June 30, 2020, there was*

*a sporadic increase of violent crimes, particularly robberies and murders within the city perpetrated in the main by gang elements of the Southside of Belize City. Whilst the COVID-19 SOE regulations had created a lull in crime by the criminal elements, with the relaxation, there was a subtle resurgence by some gang members and from the gangs that were not a part of the individuals held in detention under the first SOE.*

*[6.] Further, investigations revealed that gang rivalries that attributed to the increase in crime were Backa Land Crips vs Peace in Village, Ghost Town Crips vs Backa Town Bloods, Horse and Carriage/1 Slap vs Rocky Road Bloods (Antelope Extension area), Rocky Road Bloods vs Sunset Crips, Ghost Town Crips vs George Street Gang and Jerusalem Bone Yard Crips vs Horse and Carriage/1 Slap."*

[19] With regard to the extension of the SOE, in his first affidavit DCP Jones swore as follows:

*"11. After the proclamation was declared, the Belize Police Department launched Operation SHIELD II within the ten declared zones with the purpose of detaining those persons who were believed to be orchestrating and perpetrating the robberies, shootings and murders. As a result, a total combined force of 344 BPD/ Belize Defence Force officers was engaged in the areas declared emergency zones.*

*12. The operation conducted under Operation SHIELD II led to the seizure of a total of five firearms. Further, the investigation revealed that the gang situation in Belize City in July remained tense, particularly with the murder of an alleged gang member at the hands of another gang, internal conflicts among the gangs and local crimes, particularly robberies of grocery stores, being committed by gang members."*

[20] In response to DCP Jones, all claimants filed affidavits which amounted to denials of the Jones' evidence. The first claimant exhibited documents from the Belize Crime Observatory, Ministry of National Security (Home Affairs) which were published online. These documents are Crime Analysis Reports for the months of June 2020 and July – September 2020. There was no objection to the inclusion of these documents in the evidence and the claimants cross examined the DCP on these documents. The cross examination of the DCP was brief on the Crime Analysis Reports. The DCP stated there was a drastic decline in crime coming out of the Covid-19 SOE and that there was a general decline in 2020. The DCP did not agree that the extension of the State of Emergency was due to Covid-19, he did not

totally agree that the State of Emergency was a crime fighting tool and, he further stated that decrease in crime in 2020 was nationwide except for Belize City.

[21] The Crown relied on these reports which identified major crimes as murder, rape, unlawful sexual intercourse, robbery, burglary and theft. It was submitted to the court that:

a. There was a substantial increase in major crimes in June 2020 which reversed the marked decline in the first two months of the Covid-19 measures;

b. There was a substantial increase in murders in July 2020 relative to June 2020;

c. The Belize district accounted for the largest percentage of major crimes.

[22] The Crown asserted that the Crime Analysis Reports, upon which the claimants rely, in fact supported the defendants' position "***that there was an increase in crime after the relaxation of the Covid-19 Regulations***". It was further submitted by the defendants that the increase in major crimes was of such a nature and on such an extensive scale that the lives and/or safety of citizens in the Southside of Belize City were endangered and that the government's ability to provide safety to those citizens were put at risk.

[23] The claimants deposed that "life was normal in the Southside of Belize City – shops, schools, churches and even the courts were opened and people were moving freely throughout the streets". This statement and the Crime Analysis Reports were the evidence used to support the claim that the State of Emergency was not justified. The claimants made no reference to the crime reports in their submissions to this Court on their allegation that the situation on the Southside of Belize City at the material time did not warrant a State of Public Emergency. Rather, they made extensive comparison of their case to the facts and matters in the **Elie** case. While the **Elie** case is of great assistance to the Court, the Court bears in mind that the constitutional provisions while similar are not identical. One conspicuous difference

in Trinidad and Tobago is the President's statement to the Speaker of House which gives a comprehensive reasoning of the specific grounds on which the decision to declare the existence of a state of public emergency was based, following which there would be debate on this statement. Another difference is that the Proclamation in that jurisdiction is for a period of 15 days unless extended or revoked by the Parliament. Those procedures are not to be found in the Constitution of Belize.

[24] However, of great importance is the disparity in the evidence before me and the evidence provided by the State in the **Elie** case. The defendants have provided one deponent, while in **Elie** there were eight deponents, including the then Minister of National Security. This was somewhat surprising. Further, the reasons for the State of Public Emergency appear to be set out in a mere four paragraphs of DCP Jones' affidavit which I have reproduced hereinabove. The claimants submit that the Court is being asked to speculate on the actions taking place in the Southside of Belize City and further that DCP Jones did not flesh out what was actually taking place so as to be *'the threat to the life of the nation'*. The claimants also highlighted in their evidence that during the state of emergency, schools, shops and courts were opened and it appeared to be what can be termed 'a normal day'.

[25] The defendants submitted that based on the DCP Jones' evidence and the Crime Analysis Reports that after the Covid-19 State of Emergency had been lifted, that there was a significant increase in major crimes in the Southside of Belize City that could affect the lives and safety of the citizens. This, they say, warranted the State of Emergency.

[26] During the trial, the following claimants (John Grinage and Ervin Rhamdas) were cross examined on the Crime Analysis Reports. This proved to be an exercise in futility. It was clear that they did not understand the questions and they were unable to provide coherent answers. With respect to John Grinage specifically, he wanted to be spoken to in "creole" and he stated that he "*did not know*" in answer to questions by counsel in relation to the Crime Analysis Reports.

[27] In summary the claimants' evidence on the proving that there was no need for a state of emergency was paltry to say the least. The only evidence they provided on this was the Crime Analysis Reports and no submissions were made on same. Notably, the claimants who were questioned on said Report were unable to understand the questions posed by counsel for the Crown and/ or unable to provide a convincing answer to same. This Court bears in mind that the gist of the claimants' contention was that the circumstances in the Southside of Belize City did not necessitate a state of emergency, and that the Crown did not provide the justification for the State of Emergency.

[28] The Crown's sole deponent gave evidence that "*there was sporadic increase in violent crimes*" and "*there was a subtle resurgence by some gang members*". He also highlighted that gang rivalries contributed to these increases. In relation to the extension of the State of Emergency, Mr. Jones' evidence is that 344 joint police and defence force officers were deployed and during the SOE led to the seizure of five firearms, a tense situation between gangs due to the murder of a gang member, and there were also robberies of groceries by gangs. While it is noted that the period of public emergency was extended by the National Assembly by virtue of section 18(5)(b) of the Constitution, there was very little if any evidence placed before me to support the extension).

[29] Notably, the Constitution of Belize **does not** require that there be a "*threat to the life of the nation"* but rather that there must exist a situation that is *"likely to endanger the public safety".* The claimants rely on the case of **Everton Douglas v Minister of National Security and Others**[2]. This case is distinguishable on the facts and does not assist the Court in determining whether the conditions in the Southside of Belize City warranted the proclamation of public emergency under the Constitution of Belize. In **A and others v Secretary of State for the Home Department**[3] and in the **Lawless v Ireland (No.3),**[4] the relevant term was "threatening the life of the nation". The defendants relied on the authority of **Southern Highlands Provincial**

[2] [2020] JMSC CIV 267
[3] [2004] UKHL 56
[4] (1961) 1 EHRR 15, European Court of Human Rights

**Government v Somare**,[5] an authority emanating from Papua New Guinea. This authority in my view **can** be of assistance to what "*endanger the public safety*" can mean in the context of the Constitution of Belize. Mendonca JA in **Elie** says this at paragraphs 32 to 34:

> *"32. The third case referred to is the Southern Highlands Provincial Government v Somare [2008] 2 LRC 372. This is a decision of the Supreme Court of Papua New Guinea. In this case, the head of state, acting on the advice of the National Executive Council of Papua New Guinea, declared a state of emergency the validity of which was challenged. The issue arose whether there was an emergency within the meaning of 226(c) of the Constitution of Papua New Guinea. This provision defines emergency to mean "action taken or immediately threatened by any person that is of such a nature, and on so extensive a scale, as to be likely to endanger the public safety or to deprive the community or any substantial portion of the community of supplies or services essential to life". The provision is therefore the same as section 8(2)(c) of our Constitution. In the judgment of Injia DCJ, with whom the other judges agreed, he made the following observations with respect to section 226(c) which are of some relevance and assistance to understanding section 8(2)(c):*
>
> > *"[64] The CPC had in mind a situation of civil disorder such as internal conflict or unrest which threatened the life of the government as a guardian of public safety and either itself a provider of social and economic services essential to human life or as facilitating a secure environment which is conducive to provision of such services by other persons. In my view, s 226(c) should be read broadly to include situations of very serious civil unrest or disorder which threaten the lives of citizens or threatens the government as an institution or its function of itself as providing public safety and services essential to life of its people or facilitating the provision of such services by other people.*
> >
> > *[65] Section 226(c) relates to actions taken by natural persons from within the country which are of such magnitude that the public safety and welfare is threatened. The provision of services in public safety and security of supply of goods and services essential to life including health, education, transport and employment are basic functions of the government. It is the function of government to either provide or facilitate the provision of these services which are essential to human life. The actions carried out by persons with harmful intent are so serious and extensive that they strike at the very foundation of government and threaten its existence. The kind*

[5] [2008] 2 LRC 372

*of action taken by persons under the situation described in (c) relates to harmful, illegal or criminal activities carried out by criminals bent on destroying human life, property and government. An organised attack by criminals of wide-scale proportion on citizens or government institutions, services and officers, if it reaches a level which causes civil disorder or cripples civil government, may come within (c). I do not think (c) is intended to include ordinary criminal activities by isolated individuals or groups of persons arising from general breakdown of civil order due to social problems or poor economic conditions. These types of actions can be dealt with under the ordinary criminal law."*

*33. It is relevant to note that Injia DCJ does not attempt to put the meaning of section 226(c) in a strait jacket. He stated that it is to be interpreted broadly and refers to a number of scenarios which may come within the section. So that he says it includes situations of very serious unrest or disorder which threaten the lives of citizens or the government as an institution or its function of itself as providing public safety. That is clearly correct. It is to be however noted in particular that Injia DCJ refers to these matters as among the events included in section 226(c). In other words, the section is not limited to those. It is also of note that among the matters included is the threat to the ability of government to provide for the public safety.*

*34. Injia DCJ also refers to the kind of actions to which the section relates that may cause the situations which he refers to as included in 226(c). Again, I do not think the actions identified are intended to be an exhaustive list. They include actions taken by natural persons from within the country which are of such magnitude that the public safety and welfare are threatened, and harmful, illegal or criminal activities carried out by criminals bent on destroying human life, property and government. This he says may come in the form of an organised attack by criminals if reaching a level which cause civil disorder or cripples civil government. I would not disagree with that but I would not exclude actions of criminals that are not necessarily organised but are on such extensive a scale and of such a nature that the lives of citizens or the ability of government to provide for their safety is threatened."*

[30] In **Elie,** Mendonca JA went on at paragraph 35 to state:

*"There is really no difficulty in my view as to the understanding of section 8(2)(c). As is clear from its wording, it refers to action taken, or immediately threatened, by any person, of such a nature and on so extensive a scale, as to be likely to endanger the public safety. This must refer to a situation where the lives or safety of citizens, not just a few but more generally, are endangered. That can occur in a number of ways including criminal activity of such a nature and on so extensive a scale that it endangers the lives of*

*the citizens or threatens the ability of the government to provide for the safety of its citizens."*

[31] The learning elucidated from the authorities above state that the words, *"likely to endanger the public safety",* as stated in the Constitution of Belize, allude to a circumstance of civil unrest and/or disorder which "*which threaten[s] the lives of citizens" or "[threatens] the government as an institution or its function of itself as providing public safety… and services essential to life of its people or facilitating the provision of such services by other people".* On the premise of this interpretation, I now consider whether based on the evidence before me, such a circumstance existed in such parts of Belize City which were subject to the Governor General's proclamation of a State of Public Emergency.

**The role of the court/deference**

[32] The law lords in the UK decision of **A v Secretary of State for the Home Department** provide much guidance on the role of the courts in matters of this nature. Although the test in **A** relates to "*threat to the life of the nation",* the guidance nevertheless may be of some assistance.

[33] In **A v Secretary of State for the Home Department**, following the large scale of attacks in the United States in 2001, the United Kingdom Government concluded that there was a public emergency threatening the life of the nation within the meaning of section 15 of the Convention for the Protection of Human Rights and Fundamental Freedoms. It sought to derogate from the right to personal liberty guaranteed by article 5(1) of the Convention and to provide for the detention of non-nationals if the Home Secretary believed that their presence in the United Kingdom was a risk to national security and he suspected that they were terrorists who for the time being could not be deported from the United Kingdom.

[34] The **Human Rights Act 1998 (Designated Derogation) Order 2001** and the **Anti-terrorism, Crime and Security Act 2001** were enacted in the United Kingdom in the wake of the 2001 terror attacks in the United States. Section 23 of the 2001 Act provided:

*"(1) A suspected international terrorist may be detained under a provision specified in subsection (2) despite the fact that his removal or departure from the United Kingdom is prevented (whether temporarily or indefinitely) by - (a) a point of law which wholly or partly relates to an international agreement, or (b) a practical consideration."*

[35] The appellants in **A v Secretary of State for the Home Department** were non-UK nationals who faced the prospect of torture or inhuman treatment if returned to their own countries, who could not be deported to any third countries, and were not charged with any crime and so, without the derogation from **Article 5(1)(f) of the European Convention for the Protection of Human Rights and Fundamental Freedoms** (right to liberty), could not have been detained. All of them had been certified by the Secretary of State as suspected international terrorists and detained under s.23 of the 2001 Act.

[36] The appellants appealed to the Special Immigration Appeals Commission (SIAC) contending, inter alia, that the s.23 of the 2001 Act and the 2001 order violated the prohibition on discrimination under **Article 14 of the Convention.**

[37] The House of Lords held inter alia that the SIAC had not misdirected itself in law as to the threshold criterion for a public emergency threatening life of the nation, and **the view which it had accepted as to whether there had been such an emergency was one it could have reached on the open evidence in the case.** The majority of the House of Lords found that **great weight should be given to the judgment of the Secretary of State, his colleagues, and Parliament on that question because they had been called upon to exercise a pre-eminently political judgment.** The appellants therefore had shown no ground strong enough to displace the Secretary of State's decision that there had been such a public emergency.

[38] With respect to the contention made by the appellants that there was/is no "public emergency threatening the life of the nation" within the meaning of **art 15(1)** of the European Convention, Lord Bingham traced the law on this issue and illustrated situations based on various cases from paragraphs [17] to [18] of the judgment of the Board:

- **"Lawless v Ireland (No. 3) (1961) 1 EHRR 15:** *"28. In the general context of Article 15 of the Convention, the natural and customary meaning of the words "other public emergency threatening the life of the nation" is sufficiently clear; they refer to an exceptional situation of crisis or emergency which affects the whole population and constitutes a threat to the organised life of the community of which the State is composed. Having thus established the natural and customary meaning of this conception, the Court must determine whether the facts and circumstances which led the Irish Government to make their Proclamation of 5 July 1957 come within this conception.* ***The Court, after an examination, finds this to be the case; the existence at the time of a "public emergency threatening the life of the nation" was reasonably deduced by the Irish Government from a combination of several factors, namely: in the first place, the existence in the territory of the Republic of Ireland of a secret army engaged in unconstitutional activities and using violence to attain its purposes; secondly, the fact that this army was also operating outside the territory of the State, thus seriously jeopardising the relations of the Republic of Ireland with its neighbour; thirdly, the steady and alarming increase in terrorist activities from the autumn of 1956 and throughout the first half of 1957.***

  *29. Despite the gravity of the situation, the Government had succeeded, by functioning more or less normally, but* ***the homicidal ambush on the night of 3 to 4 July 1957 in the territory of Northern Ireland near the border had brought to light, just before 12 July—a date, which, for historical reasons, is particularly critical for the preservation of public peace and order—the imminent danger to the nation caused by the continuance of unlawful activities in Northern Ireland by the IRA and various associated groups, operating from the territory of the Republic of Ireland****."*

- However, in **the Greek Case (1969) 12 YB 1,** the government of Greece failed to prove that there was a public emergency threatening the life of the nation, such as would justify its derogation: *"72. Such a public emergency may then be seen to have, in particular, the following characteristics: (1) It must be actual or imminent. (2) Its effects must involve the whole nation. (3) The continuance of the organised life of the community must be threatened. (4) The crisis or danger must be exceptional, in that the normal measures or restrictions, permitted by the Convention for the maintenance of public safety, health and order, are plainly inadequate."*

- **Ireland v UK (1978) 2 EHRR 25:** the parties had agreed that the IRA had for a number of years represented 'a particularly far-reaching and acute danger for the territorial integrity of the United Kingdom, the institutions of the six counties and the lives of the province's inhabitants'

(see 93 (para 212)). The Court said at para. 207: *"It falls in the first place to each Contracting State, with its responsibility for "the life of [its] nation", to determine whether that life is threatened by a "public emergency" and, if so, how far it is necessary to go in attempting to overcome the emergency.* ***By reason of their direct and continuous contact with the pressing needs of the moment, the national authorities are in principle in a better position than the international judge to decide both on the presence of such an emergency and on the nature and scope of derogations necessary to avert it. In this matter, Article 15(1) leaves those authorities a wide margin of appreciation.***

***Nevertheless, the States do not enjoy an unlimited power in this respect.*** *The Court, which, with the Commission, is responsible for ensuring the observance of the States' engagements (Art. 19), is empowered to rule on* ***whether the States have gone beyond the "extent strictly required by the exigencies" of the crisis.*** *The domestic margin of appreciation is thus accompanied by a European supervision."*

- **Brannigan v UK (1993) 17 EHRR 539 at 569-570 (para 43):** *"in exercising its supervision the* ***Court must give appropriate weight to such relevant factors as the nature of the rights affected by the derogation, the circumstances leading to, and the duration of, the emergency situation."***

[39] Lord Bingham at paragraph 29 **of A v Secretary of State for the Home Department** said:

> "Thirdly, I would accept that great weight should be given to the judgment of the Home Secretary, his colleagues and Parliament on this question, because they were called on to exercise a pre-eminently political judgment. It involved making a factual prediction of what various people around the world might or might not do, and when (if at all) they might do it, and what the consequences might be if they did. Any prediction about the future behaviour of human beings (as opposed to the phases of the moon or high water at London Bridge) is necessarily problematical. **Reasonable and informed minds may differ, and a judgment is not shown to be wrong or unreasonable because that which is thought likely to happen does not happen. It would have been irresponsible not to err, if at all, on the side of safety.** "

[40] According to **Lord Hope of Craighead**, who recognised that the question whether there is a public emergency, required the exercise of judgment, at paragraph 115 H, '*Few would doubt that it is for the executive, with all the resources at its disposal, to*

*judge whether the consequences of such events amount to an emergency of that kind.*' He goes on to say at paragraph 116, *'I am content therefore to accept that the question whether there is an emergency and* ***whether it threatens the life of the nation are pre-eminently for the executive and or Parliament****. The judgment that has to be formed lies outside the expertise of the courts.... But in my opinion* ***it is nevertheless open to the judiciary to examine the nature of the situation that has been identified by Government as constituting the emergency, and to scrutinize the submission of the Attorney General that for the appellants to be deprived of their fundamental right to liberty does not exceed what is 'strictly required' by the situation which it has identified****.'* Article 15(1) of the relevant Convention which was considered by Lord Hope expressly required that "*In time of war or other public emergency threatening the life of the nation."*

[41] In his speech, **Lord Scott** expressed his complete agreement with the conclusions reached by Lord Bingham with whom the majority agreed (see paragraph 140). Though Lord Scott expressed doubt as to whether the 'public emergency' in the case justified the description of 'threatening the life of the nation', he was for his part, prepared to allow the Secretary of State the benefit of the doubt and accept that the threshold criterion of article 15 was satisfied (see paragraph 154 E). He states at para. 154:

> *"...* ***It is certainly true that the judiciary must in general defer to the executive's assessment of what constitutes a threat to national security or to 'the life of the nation'.*** *But judicial memories are no shorter than those of the public and the public have not forgotten the faulty intelligence assessments on the basis of which United Kingdom forces were sent to take part, and are still taking part, in the hostilities in Iraq. For my part I do not doubt that there is a terrorist threat to this country and I do not doubt that great vigilance is necessary, not only on the part of the security forces but also on the part of individual members of the public, to guard against terrorist attacks.* ***But I do have very great doubt whether the 'public emergency' is one that justifies the description of 'threatening the life of the nation'. Nonetheless, I would, for my part, be prepared to allow the Secretary of State the benefit of the doubt on this point and accept that the threshold criterion of art 15 is satisfied."***

[42] **Baroness Hale** similarly stated that the Court should show deference to the Executive's judgement, expertise and decisions consequent thereupon, in assessing the existence of a public emergency. At paragraph 226 she says that:

> "Any sensible court, like any sensible person, recognises the limits of its expertise. Assessing the strength of a general threat to the life of the nation is, or should be, within the expertise of the Government and its advisers. They may, as recent events have shown, not always get it right. But courts too do not always get things right. It would be very surprising if the courts were better able to make that sort of judgment than the Government. Protecting the life of the nation is one of the first tasks of a Government in a world of nation states. That does not mean that the courts could never intervene. Unwarranted declarations of emergency are a familiar tool of tyranny. If a government were to declare a public emergency where patently there is no such thing, it would be the duty of the court to say so."

[43] In the present case, as mentioned, the concept of '*threatening the life of the nation*' does not feature in our Constitution, but rather, '*likely to endanger the public safety*'. The important principle emanating from **A v Secretary of State for the Home Department (supra)** is that in cases where courts are determining a challenge to a proclamation of a state of emergency, the courts give deference to the Executive and the Legislature as to whether such an emergency exists as this determination is within their remit rather than that of the Judiciary.

[44] Additionally, in **SSHD v Rehman [2001] UKHL 47 at para 31,** the House of Lords stated that *"issues of national security do not fall beyond the competence of the courts... It is, however, self-evidently right that national courts must give great weight to the views of the executive on matters of national security."*

**Evidence before the Court**

[45] In **A** (supra)**,** Lord Hope of Craighead at paras. 117-118 stated as follows:

> *"[117] The evidence which was placed before the SIAC in this case was divided into two parts: material which could be made public and 'closed material'. Your Lordships have not been shown the closed material, and the Attorney General said that he was not asking for that material to be seen. The material which could be made public is contained in two open generic statements which were prepared on behalf of the Home Secretary and in*

*two witness statements by Mr. Robert Whalley, a senior civil servant of the Home Office, dated 1 March 2002 and 19 June 2002.*

*[118] T**here is ample evidence within this material to show that the government were fully justified in taking the view in November 2001 that there was an emergency threatening the life of the nation.** As Mr. Whalley put it in his first witness statement, the United Kingdom was at danger of attacks from the Al-Qa'ida network which had the capacity through its associates to inflict massive casualties and have a devastating effect on the functioning of the nation. This had been demonstrated by the events of 11 September 2001 in New York, Pennsylvania and Washington. There was a significant body of foreign nationals in the United Kingdom who had the will and the capability of mounting co-ordinated attacks here which would be just as destructive to human life and to property. There was ample intelligence to show that international terrorist organisations involved in recent attacks and in preparation for other attacks of terrorism had links with the United Kingdom, and that they and others posed a continuing threat to this country. There was a growing body of evidence showing preparations made for the use of weapons of mass destruction in this campaign. In his second witness statement Mr. Whalley said that it was considered that the serious threats to the nation emanated predominantly, albeit not exclusively, and more immediately from the category of foreign nationals."*

[46] In **R (Al Sweady) v Secretary of State for Defence [2009] EWHC 2387,** the Divisional Court identified serious failings in the defendant's compliance with its duty of candour and emphasised the heightened duty of candour where a claimant alleged a breach of arts 2, 3 or 5 of the ECHR.

At paragraphs 24-29 of the judgment in **Sweady**, the Court stated:

*"24. In this case, it was common ground that in order to resolve many of the factual issues, disclosure was necessary of all reports of and other documents relating to, first, the incidents which led to the death of Mr. Al-Sweady in order to determine whether he died in CAN so that Article 2 would be engaged; second, the treatment of the second to sixth claimants whilst in the custody of the Secretary of State so that the Article 3 and 5 claims could be determined; and third whether there had been a proper investigations of these matters.*

*25. **The duty of disclosure on the Secretary of State in a case such as the present one is heightened by the fact that the allegations raised in this case concerned some of the most important and basic rights under the ECHR. For example, Article 2, which protects the right to life,** "must rank among the highest priorities of modern democratic state governed by the rule of law. Any violation or potential violation must be*

*treated with great seriousness" (per Lord Bingham in R (Middleton) v West Somerset Coroner [2004] 2 AC 182[5]).*

*26.* ***Similarly, Article 3 of the ECHR, which prevents citizens being subjected to "torture or inhuman or degrading treatment or punishment", is also an Article without any exception or reservation.*** *Compliance with it is of vital importance to any civilised state, as is the right to liberty, which is preserved by Article 5.* ***In essence, the claims made in this action related to the most basic human rights and therefore it must be incumbent on this court to consider with great care and to apply intense scrutiny to any claim that any of these three basic human rights have been infringed. This means that the duty of disclosure on the part of the defendant to a claim for an infringement of these rights is even more acute.***

*27. For there to have been effective cross-examination, it was vital for full disclosure to occur as otherwise the evidence of those witnesses could not be effectively challenged and appraised with the consequence that the truth would not have been discovered. Put in another way, where the court is involved in fact-finding on issues as crucial to the outcome of this case as they were in the present case, the approach to disclosure should be similar to that in an ordinary Queen's Bench action.*

*28. We concluded that it is vital that when it becomes clear that the outcome of a judicial review application might depend on the determination of a factual dispute, urgent consideration should be given to ordering disclosure and cross-examination. Rule 12.1 of the Practice Direction to CPR Part 54 provides that "Disclosure is not required unless the court orders otherwise".*

*29. In our view, the parties and the Court should always scrutinise with care the stance of parties to judicial review applications (and in particular those concerning human rights claims) to ascertain if there is any critical factual issue which requires orders for cross-examination of the makers of witness statements or disclosure as being (in the words of Lord Bingham in the Tweed case which we have quoted in paragraph 23 above) "necessary in order to resolve the matter fairly and accurately". Courts should not be reluctant to make such orders in suitable cases, which are especially likely to arise in claims based on the ECHR. As we shall explain, sadly the Secretary of State has consistently failed to comply with these obligations in the present case."*

[47] From the authorities cited above, the courts are minded to give deference to the executive/legislature in the making of such decisions especially in the matters of national security. It is clear that once the government provides to the Courts the circumstances which warranted a declaration of public emergency, the courts are

minded to defer to the executive and legislature on such decisions which result in derogation from the fundamental human rights guaranteed under the Constitution. Therefore, the evidence required to meet this threshold is not necessarily a high one but must provide sufficient justification for such a far-reaching measure. The evidence presented by the defendants certainly is not substantial and raises questions as to the lack of proper evidence given in a matter of such constitutional importance where there is suspension of a citizen's rights. Certainly, in **Elie** and **A,** the government presented substantial evidence. The question which now arises is: Did the crown's evidence meet the requisite threshold in this case?

[48] Under the Constitution, the decision as to whether a state of public emergency exists rests with the Governor General and the National Assembly. Thus, it is a political decision to declare a State of Emergency. The Governor General acts on the advice Cabinet to make the proclamation and the National Assembly can give an extension. The case law has illustrated that courts will give due consideration to the judgment of the executive and the legislature. This is illustrated in the decision of the Board in **A** (supra).

[49] However the courts do still have a role to play. That role is to evaluate whether the declaration of a public emergency was valid. In order to do this, the Court acts as both the interpreter and guardian of the Constitution in its supervisory jurisdiction over decisions of the executive.

[50] The question therefore arises as to whether there existed the requisite conditions in the Southside of Belize City for the invocation of the emergency powers provisions. These are matters for the court to determine on the evidence before it. Therefore, this court must determine what is meant by "likely to endanger the public safety" under s.18 of the Constitution.

[51] I am guided by the learning in the matter of **R (Miller) v Prime Minister [2019] UKSC 41** a unanimous decision of UK Supreme Court, it was held at paragraph 39 that:

> ". . . the courts have the responsibility of upholding the values and principles of our constitution and making them effective. It is their particular

> responsibility to determine the legal limits of the powers conferred any exercise of power has transgressed those limits. The courts cannot shirk that responsibility merely on the ground that the question raised is political in tone or context."

[52] As discussed in **A v Home Secretary**, the court considered whether a state of emergency existed which caused the UK government to make a declaration derogating from its obligations to observe fundamental human rights under the European Convention. The test was whether the threat of terrorist violence amounted to a public emergency "threatening the life of the nation".

[53] I am therefore to determine whether the evidence in this matter falls within the definition of section 18 of the Constitution. I bear in mind what the provision "likely to endanger the public safety" can mean from **Somare** and **Elie**. This is different from the cases of **A, Lawless** and **Everton** where the relevant provision is "threatening the life of the nation". I concur with the courts in **Somare** and **Elie** that the state of affairs necessary to establish that there is likely to endanger the public safety can be of such a nature that the public safety and welfare are threatened, it can mean that there is a wide scale attack by criminals on citizens or government institutions and this can lead to the inability of the government to provide for the safety of citizens. I also agree with the court in those decisions that there is no restricted meaning to the phrase. The words "endanger the public safety" can be broadly interpreted.

[54] At the onset, I do not place much reliance on the Crime Analysis Reports, I find that they are not of great value to the issue in this matter. The cross examination of the claimants on the Reports proved futile and quite unhelpful to this Court as the reports were obtained by the claimants from the internet and they were not able to make any useful comment on same. Strangely, although those documents were put into evidence by the claimants, they did not rely on them in their written submissions. I have taken note of such a course of action adopted by counsel for the claimants.

[55] I therefore considered the evidence of DCP Jones. I find that the state of affairs in the Southside Belize City as set out in the evidence of the defendants was simply not enough for this court to that there existed a situation "likely to endanger the public safety". Although as I have shown at great length the many authorities and dicta which confirm the deference given by the courts in the realm of challenges to political decisions such as the matter before me, it is my finding that the evidence before me proved to be inadequate. In reviewing the DCP's evidence, the use of the words, "sporadic" increase in violent crimes, and "subtle" resurgence by "some" gang members, do not suggest to me that the criminal activity was of the gravity that could not be dealt with by the ordinary law. "Sporadic" means occasional, singly or in irregular, random instances. It is the opposite of "frequent". "Subtle" means slight or fine. There is a distinction between "some" and "several". It is therefore apparent that the criminal activity was not that extensive in nature to declare a public emergency. Even if I were to consider the Crime Analysis Reports in support of the defendants' position that "there was an increase in crime after the relaxation of the Covid-19 Regulations", the said report simply gives data on three months in 2020. There was only reference to the prior crime level during the Covid-19 SOE. There was no comparison to the pre-Covid-19 crime levels, so as to say there was an increase relative to that. It is not logical to rely on the mere increase in the crime level post Covid-19 SOE. The entire world was on a lockdown so to speak during the Covid-19 SOE, so there inevitably would have been an increase post Covid-19 lockdown. If there was evidence of a substantial increase as compared to the pre-Covid-19 SOE crime levels, then the circumstances may have justified measures beyond the ordinary law. However, there is no such evidence before the Court. While I have considered the role of the courts and the deference that is given to the Executive as illustrated in the many references, the defendants cannot rely on this paucity of evidence to justify such a measure which derogates from the fundamental rights guaranteed to members of the public.

[56] In finding I find that the evidence of the Deputy Commissioner of Police was insufficient in elucidating the circumstances which led to the proclamation, I considered that he deposed that he was authorised to swear to his affidavits on

behalf of the defendants and his evidence was based on the relevant files and matters within his own knowledge. However, he has not provided any information about the decision making of the political directorate and what was considered by those persons in reaching to this position. Further, I note DCP Jones was silent as to whether there was any confidential information that could not have been disclosed in his evidence due to national security reasons. As mentioned above, the proclamation of a State of Public Emergency is a political decision in which the Executive and the Legislature are intrinsically involved. This is an important issue of national security in which members of Central Government made a decision to limit the rights of the citizens of the Southside of Belize City. Yet, before me is evidence of a public officer and not evidence of any member of Government which may have helped this Court in its determination of whether there was likely to be some endangerment to public safety. Such evidence, I find, may have proven useful to this Court in coming to a conclusion. It is of utmost importance that in matters such as this one, especially being a matter of national security, the defendants ought to have placed before the court the necessary evidence for the court to make a proper deliberation of the factors the State considered in coming to a decision. I find that the justification provided was not substantial at all and the court cannot be placed in a position to speculate what was happening in the Southside of Belize City. If in fact the evidence provided was all that there was in coming to the decision to proclaim a state of emergency, then in my view, there was no good enough reason or none at all for taking this measure.

[57] By contrast, in **Elie,** "*There was: 'A spate of murders' meaning a flood, deluge or torrent of murders." Innocent people were being killed while simply going about their daily business. There was a real risk of reprisal and retaliation and so a real risk of further escalation of the murders. There was the "real possibility" of the police and other government agencies, or as Sandy put it "national agencies", coming under attack that could weaken the capability of the government to address the criminal activity and the public safety"* (para 46 of **Elie**).

[58] Further, in **Elie**, Mr. John Sandy, the, then Minister of National Security deposed inter alia that:

> *"10. In its deliberations, Cabinet had to consider not only the intelligence we had but the "what if" scenario. That is, what if we ignored the intelligence and the possible consequences if the intelligence were true. At the end of the deliberations, Cabinet agreed that it would be irresponsible to ignore the intelligence having regard to the extent of damage and the number of lives that could have been lost and had been already lost. We considered that the risk was too high. In the past there were instances where certain information was available about a threat to the nation which the government at the time had not acted upon which resulted in serious and adverse consequences to the lives of citizens and the stability of the Government for example, the 1990 attempted coup. Cabinet agreed that the consequences would have been too grave not to act on the intelligence received.*
>
> *11. At that time, the state of emergency was seen as the best option because it meant that the Government had the ability to declare martial law and had the support and involvement of the military. In my opinion, as then Minister of National Security, the support and involvement of the military was absolutely essential to deter any threat."*

[59] Additionally, in **A** (see paras. 117-118), there was evidence from Mr. Whalley that:

> "*The United Kingdom was at danger of attacks from the Al-Qa'ida network which had the capacity through its associates to inflict massive casualties and have a devastating effect on the functioning of the nation. This had been demonstrated by the events of 11 September 2001 in New York, Pennsylvania and Washington. There was a significant body of foreign nationals in the United Kingdom who had the will and the capability of mounting co-ordinated attacks here which would be just as destructive to human life and to property. There was ample intelligence to show that international terrorist organisations involved in recent attacks and in preparation for other attacks of terrorism had links with the United Kingdom, and that they and others posed a continuing threat to this country. There was a growing body of evidence showing preparations made for the use of weapons of mass destruction in this campaign… it was considered that the serious threats to the nation emanated predominantly, albeit not exclusively, and more immediately from the category of foreign nationals."*

[60] Conversely, in the instant case, the evidence falls far short of that which was presented in **Elie** or **A.** Using the test stated in **Elie,** I therefore do not find in this case that there was evidence of *"criminal activity of such a nature and on so extensive a scale that it endanger[ed] the lives of the citizens [of Belize] or*

*threaten[ed] the ability of the government [of Belize] to provide for the safety of its citizens."* By contrast in Elie the there was a spate of murders within a short period and also threats to government ministers.

[61] I rely on the case of **Miller** (supra) where there was a lack of justification for a five-week prorogation of Parliament. The evidence before the court did not give reasons as to why five weeks were required. It is important note the conclusion in **Miller** at paragraph 61 where the Law Lords stated:

> "It is impossible for us to conclude, on the evidence which has been put before us that there was any reason- let alone a good reason- to advise Her Majesty to prorogue Parliament for five weeks, from 9th or 12th September until 14th October. We cannot speculate, in the absence of further evidence, upon what such reasons might have been. It follows that the decision was unlawful."

[62] In the circumstances, based on the evidence before me, it is pellucid that there was no basis for me to conclude that in the Southside of Belize City there existed a situation that was likely to endanger the public safety. I find that there did not exist a situation in the Southside of Belize City that could not have been dealt with under the ordinary crime fighting laws. The use of the public emergency laws must be reserved for more extreme and extraordinary conditions and ought not to be used as a crime fighting tool unless the criminal activities are of such a nature to cause civil disorder which prevents the government from ensuring the safety of the citizenry. A state of public emergency allows for the derogation from the fundamental rights enjoyed by all citizens. There are stop and search powers, issuance of detention orders, persons detained are not able to access bail and habeas corpus and curfew to name a few of the measures. Therefore, I am constrained to find that the Proclamation declaring a State of Public Emergency made on 6th July 2020 was unconstitutional I. Further, again due to the lack of evidence, the extension of the public emergency was also unconstitutional.

**II. Arrest and Detention**

[63] I now consider, the following issues based on the claimants' claim:

i. Whether the claimants arrest and detention were lawful?
ii. Was there a breach of any of the claimants' constitutional rights by virtue of their arrest and detention?

[64] In light of my finding above, the natural conclusion would be that everything that flowed from the proclamation of 6th July 2020 would also be unlawful, such as the regulations, the detention orders, and the detention of the claimants. However, I will fully address the issue of the arrest and detention of the claimants, in the event that I am wrong on the validity of the State of Emergency. At the outset, I find that the detention of the claimants nonetheless was unlawful and unconstitutional in the circumstances which I will deal with now.

[65] The claimants' affidavits were more or less identical, save and except their respective "paragraph 7" which detailed the period of incarceration. I have reproduced the following extract from the affidavits which are, as aforesaid, all identical. The periods of incarceration were undisputed:

[66] The claimants' affidavits stated as follows at paragraphs 8 to 14:

> *"8. Before I was taken to the prison, I was given two documents stating the "Reason for Detention" and "Detention Order" which were signed by Assistant Commissioner of Police, Mr. Bartholomew Jones and Hon. Michael Peyrefitte, Minister of National Security respectively.*
>
> *9. According to "Reason for Detention," I was being detained for "Gang activities" contrary to the Crime Control and Criminal Justice Act, CAP 102 of the Substantive Laws of Belize RE 2011 as amended by Act No. 6 of 2018.*
>
> *10. The Detention Order states that I am to be detained for gang activities and that I am to be detained until the end of the state of emergency."*

**Lack of Reasonable Grounds for Arrest and Prolonged Detention**

**Arrest & Detention**

> *"11. I was arrested and detained by the police officers without having any reasonable grounds for suspecting that I was involved in gang activities.*
>
> *12. I was never told which gang I was a member of, what evidence the police had in their possession to establish that I was a member of a gang.*
>
> *13. I was simply arrested and detained by the police because of where I was living and that my address was part of the area that was part of the state of emergency."*

**Continued Detention**

> *"14. During my period of detention from around … to …, I was never questioned, interviewed, interrogated, or charged for any gang related offence and no evidence was put to me to suggest that I belonged to a gang."*

[67] **Cross-examination of the Claimants**

**John Grinage**

He agreed that on 19th September 2020, he was interviewed by PC Taka at the Anti-Gang Task Force Headquarters in Belize City but denied that the interview was in the presence of JP Andre Godfrey. He stated that he was not informed of the reasons for his arrest and not told of his constitutional rights. He denied that he was interviewed by PC Jerome Middleton on 8th July 2020 in Belmopan.

**Sheldon Grinage**

Mr. Grinage first denied but then agreed that he was interviewed by PC Arnold on 8th September 2020, which was contrary to his affidavit evidence. He stated that he was not told the reason for his detention and was not told of his constitutional rights. He stated that he did not take part in the interview but was asked some questions before taken to a cell.

**Akeem Bermudez**

Mr. Bermudez first denied receiving a letter outlining the reasons for detention, but he later agreed when it was pointed out to him what he had deposed to in his affidavit. He did not appear to understand the questions posed to him. He eventually agreed that PC Castillo questioned him about being a member of a gang. He denied being told of his constitutional rights. He agreed that he did not take part in in the interview.

**Michael Flowers**

Mr. Flowers received a detention order on 8th September 2020 outlining the reasons for his detention, being part of a gang and being a suspect in a murder and aggravated assault. He agreed that he was interviewed by PC Guerra, but not in the presence of JP Andre Godfrey. He stated that it was in fact a quick interview. He said that the police told him that he had no rights and they just choose people whom they will send up. He was however, unable to answer questions. He disagreed with the Crown when he was accused of misleading the Court.

**Gilbert Belisle**

Mr. Belisle said he was in his bed on 8th September 2020 when he was taken to the police station then to central prison. He said that he did not speak to anyone at the police station.

**Dean Williams**

Mr. Williams agreed that he received a detention order on 8th September 2020. He did not recall what was written on the document. He also said that he received the paper to go to prison. He disagreed he was able to talk on the phone. He was taken to the prison 20-30 minutes after receiving the detention order.

**Ervin Rhamdas**

Mr. Rhamdas testified that the police "abstracted" him to send him to jail. When asked whether he was taken to the police station on the 9th July 2020,

he answered that the he was taken straight to prison. He denied that he was interviewed by PC Guerra on that date in the presence of his mother. He said that he received a call in jail and that was how his mother found out he was there.

**Earl Baptist**

Mr. Baptist testified that on 8th September 2020, he was taken to the Anti-gang task force headquarters and had a conversation with PC Justin Arnold. He was not told of the reasons for the detention, but was given a letter with reasons. He said that he was never told of his constitutional rights and that there was no JP present when he spoke with the officer.

**Randy August**

Mr. August's evidence was that he was picked up by the police on 8th September 2020. He admitted that PC Castillo wanted to interview him but that he refused to take part in the interview. He said that he was told that he had no rights. He denied that a Justice of the Peace was present and that he had received a detention Order.

**Herman Solis**

Mr. Solis agreed that he was interviewed by a police officer on 11th July 2020 after being arrested by the police. He could not recall the name of the officer and he affirmed that there was no JP present. He admitted that he was told that he was detained for the SOE and some murders and robberies. He further testified that he was given a paper but was not told of any rights. He denied that he was misleading the court.

**Lionel Longsworth**

Mr. Longsworth stated he was taken straight to jail Kolbe Foundation and was never taken to a police station. He was given a document for his arrest. He denied that he was interviewed by the police. He was told he was detained under the state of emergency.

**Harold Usher and Malik Pitts**

Mr. Usher and Mr. Pitts were not cross examined by the defendants.

**Evidence of Deputy Commissioner of Police Bart Jones**

[68] With respect to persons detained under the State of Emergency, DCP Jones deposed that their arrests and detention were based on investigations that the claimants were associated with gangs, contrary to the **Crime Control and Criminal Justice Act**. On various days the claimants were given a letter stating the reasons for arrest and also given a detention order pursuant to the State of Emergency Regulations 2020.

**Cross-examination**

[69] In answer to setting out the evidence that led to the claimants' arrests, he said he was not the investigator but he was satisfied from the information received. DCP Jones agreed that the information was not in his affidavit. He was unable to identify the arresting officers. He did not interview any of the claimants and also agreed that he did not provide the information that he had received about the claimants in his affidavits.

When asked about the notes of the interviews with the claimants, he was unable to say if the interview was recorded or whether there existed notes of the interviews.

[70] DCP Jones agreed that he did not provide the court with the information regarding gang membership and details of the inquiries conducted. He was unable to tell the court whether there were investigation diaries prepared for each of the claimants. He also could not say whether the claimants had been detained for enquiries only.

DCP Jones was not aware as to when/whether or not all the claimants had been released or whether they had been released at the end of the SOE. DCP Jones took no part in the investigation.

DCP Jones admitted that as far as he was aware, no tribunal had been appointed.

[71] The **Belize Constitution (Emergency Powers) Regulations, 2020** provides as follows:

> **Regulation 11**
>
> (1) *" Notwithstanding any rule of law to the contrary, a police officer may arrest, without a warrant, and detain, for the purposes of enquiries, any person within an emergency area, whose behaviour is of such a nature as to give* ***reasonable grounds for suspecting*** *that he has –*
>
> *(a) acted or is acting in a manner prejudicial to public safety;*
>
> *(b) has committed, is committing or is likely to commit an offence under the Crime Control and Criminal Justice Act.*
>
> *(2) Notwithstanding sub-regulation (1), a police officer may arrest, without a warrant, and detain, for the purposes of enquiries any person located outside the emergency area that the police officer has evidence or intelligence indicating that such person frequents the emergency area or is connected with the emergency area or with a person within the emergency area and the behaviour of the person of interest is of such a nature as to give the police officer an honest belief that that person has –*
>
> *(a) acted or is acting in a manner prejudicial to public safety;*
>
> *(b) has committed, is committing or is likely to commit an offence under the Crime Control and Criminal Justice Act.*
>
> *(3) A person detained under these Regulations may be held for a period of up to thirty (30) days.*
>
> *(4) A person detained under this regulation shall be deemed to be in lawful custody and may be detained in any prison, police station or lock-up or in any other place(s) authorized by the Minister by Order published in the Gazette, and a police officer may, during such detention take photographs, descriptions, measurements and fingerprints of any person so detained and any information so obtained may, after the release of such person, be preserved."*

**Regulation 12**

*"The provisions of section 19 of the Belize Constitution shall apply to any person arrested and detained under these Regulations."*

**Regulation 18**

*"(1) The Minister,* ***if satisfied that a person has been concerned in acts prejudicial to public safety or public order*** *including an offence under the Crime Control and Criminal Justice Act,* ***or in the preparation or instigation of such acts*** *and that for any reasons thereof* ***it is necessary to exercise control over that person****, may make an order to be known as a Detention Order against any person directing that he be detained.*

*(2) A person detained under a Detention Order shall be deemed to be in lawful custody and shall be detained in such place as may be authorised by the Minister and in accordance with such instructions as shall be issued by the Minister…"*

[72] **Section 19 (1) of the Constitution** provides:

*"19.-(1) When a person is detained by virtue of a law that authorises the taking during a period of public emergency of measures that are reasonably justifiable for the purpose of dealing with the situation that exists in Belize during that under emergency period, the following provisions shall apply, that is to say –*

*(a) he shall, with reasonable promptitude and in any case not more than seven days after the commencement of his detention, be informed in a language that he understands of the grounds upon which he is detained and furnished with a written statement in English specifying the particulars of those grounds.*

*…*

*(b) not more than one month after the commencement of his detention and thereafter during his detention at intervals of not more than three months, his case shall be reviewed by an independent and impartial tribunal established by law and presided over by a person appointed by the Chief Justice from among persons who are legal practitioners."*

[73] **The Crime Control and Criminal Justice Act**

*"5. (1) It is hereby declared that gangs are unlawful and any person -*
*(a) who is a member of a gang; or*
*(b) who, in order to gain an unlawful benefit, professes to be a gang member when in fact he is not, whether by telling anyone that he is a gang member or otherwise suggesting to anyone that he is a gang member, commits an offence and is liable on summary conviction to imprisonment for ten years and on any subsequent conviction on indictment to imprisonment for twenty years."*

**The Crime Control and Criminal Justice Act** defines "gang", "gang member" and "gang-related activity" as follows;

*""gang" means a combination of two or more persons, whether formally or informally organized, that, through its membership or through an agent, engages in any gang related activity;*

*"Gang member" means a person who belongs to a gang, or a person who knowingly acts in the capacity of an agent for or an accessory to, or voluntarily associates himself with any gang-related activity, whether in a preparatory, executory or concealment phase of any such activity, or a person who knowingly performs, aids, or abets any such activity;*

*"Gang-related activity" means any criminal activity, enterprise, pursuit or undertaking in relation to any of the offences listed in the First Schedule acquiesced in, or consented or agreed to, or directed, ordered, authorized, requested or ratified by any gang member, including a gang leader."*

[74] **Section 3(a) of the Constitution of Belize** states the following:

*"Whereas every person in Belize is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely –*

*(a) life, liberty, security of the person, and the protection of the law."*

**Section 5(1)(e) of the *Constitution of Belize*** states the following:

*5. - (1) A person shall not be deprived of his personal liberty save as may be authorised by law in any of the following cases, that is to say:-*

*(e) upon a reasonable suspicion of his having committed, or being about to commit, a* criminal offence under any law;

[75] The claimants were arrested for being affiliated with gangs or being a member of a gang. Therefore, the arrests were under the regulations. Regulation 11 speaks of "***reasonable grounds for suspecting".*** A police officer can arrest any person whose behaviour is seen as having *acted or is acting in a manner prejudicial to public safety; or has committed, is committing or is likely to commit an offence under the* ***Crime Control and Criminal Justice Act****.* Section 5(1)(a) of the **Crime Control and Criminal Justice Act** makes it unlawful to be a member of a gang. The police, therefore, ought to have ***reasonable grounds for suspecting*** that that claimants were members of a gang. In this case, the defendants did not provide evidence from the arresting officers. Neither did DCP Jones, the sole deponent, give the grounds for arresting and detaining the claimants, apart from bare statements that investigations revealed that the claimants were associated with gangs, contrary to the **Crime Control and Criminal Justice Act**, and/or were listed as suspects in offences committed in Southside Belize City. For some claimants (Michael Flowers and Akeem Bermudez), no reasons based on any investigations, were stated.

[76] The claimants submitted that to effect an arrest under the Emergency Powers Regulations 2020, a police officer must have reasonable suspicion that each of the claimants committed, is committing or is likely to commit an offence under the **Crime Control and Criminal Justice Act** or has acted in a manner prejudicial to public safety. They further stated that any detention under the EPR must be for the purpose of enquiries and the onus is on the police to establish reasonable and probable cause for an arrest.

[77] The defendants merely submitted that the detention of the claimants was done only on the basis that the officers had reasonable grounds for suspecting that each of them has acted in a manner prejudicial to public safety or has committed, is committing or is likely to commit an offence under the **Crime Control and Criminal Justice Act**.

[78] From the regulation, the standard to be applied for justification of arrests and detention under the 2020 State of Emergency is **reasonable grounds for suspecting.** The cases cited below on reasonable and probable cause was of significant assistance though it is a higher standard than the Belize Regulations. Under regulation 11, the standard is **reasonable suspicion** as opposed to **mere suspicion** as was the case in **Elie.** Therefore, the defendants must cross that threshold whether or not the proclamation was lawful. The standard is **reasonable grounds to suspect,** which is somewhat lower than **reasonable and probable cause**, but in any event, this is a higher standard than Elie which is **mere suspicion**. In **Elie**, both the court at first instance and the appellate court relied on **McKee v. Chief Constable of Northern Ireland**[6]. They found that under the T&T SOE regulations, a police officer effecting an arrest must still have suspicion the person has afoul of regulation 16 (T&T) and that suspicion must be honestly held by him. Though, the burden of proof of "reasonable suspicion" is generally lower, the defendants' evidence fails to sufficiently address the circumstances under which this suspicion arose. Therefore, I find that the defendants' bare submission that there existed a reasonable suspicion is not supported by any evidence.

[79] In **Chandrawatee Ramsingh v The Attorney General of Trinidad and Tobago**[7], their Lordships of the Judicial Committee Privy Council set out at paragraph 8 the relevant principles to be considered in a false imprisonment claim:

i. The detention of a person is prima facie tortious and an infringement of **section 4(a) of the Constitution of Trinidad and Tobago**;
ii. It is for the arrestor to justify the arrest;
iii. A police officer may arrest a person if, with reasonable cause, he suspects that the person concerned has committed an arrestable offence;

[6] [1984] 1 WLR 1358
[7] [2012] UKPC 16

iv. Thus, the officer must subjectively suspect that that person has committed such an offence;

v. The officer's belief must have been on reasonable grounds or, as some of the cases put it, there must have been reasonable and probable cause to make the arrest; and

vi. Any continued detention after arrest must also be justified by the detainer.

**Section 4(a) of the Constitution of Trinidad and Tobago** sets out inter alia the right of the individual to liberty and the right not to be deprived thereof except by due process of law. It is the equivalent of **Section 3(a) of the Constitution of Belize.**

[80] Justice Mendonça (as he then was) in the case of **Harold Barcoo v The Attorney General of Trinidad and Tobago**[8] considered whose suspicions ought to be examined in cases of false arrest or wrongful imprisonment. Pages 5 and 6 of the judgment prescribes:

> "The test whether there is reasonable and probable cause has both subjective and objective elements. In **Clayton and Tomlinson, Civil Actions against the Police (1987)** the authors put the test as follows posed as follows (page 147):
>
> 1. Did the officer honestly have the requisite suspicion or belief?
>
> 2. Did the officer, when exercising the power, honestly believe in the existence of the "objective" circumstances which he now relies on as the basis for that suspicion or belief?
>
> 3. Was his belief in the existence of the circumstances based on reasonable grounds?
>
> 4. Did these circumstances constitute reasonable grounds for the requisite suspicion or belief?
>
> The first two questions are "subjective" and the second two are "objective". If the answer to anyone of these questions is "no" then that officer will not have had "reasonable grounds".

[8] HCA (T&T) 1388 of 1989

[81] Narine J.A. at paragraph 14 of **Nigel Lashley v The Attorney General of Trinidad and Tobago**[9] also laid out the test for reasonable and probable cause for arrest:

> "It is well settled that the onus is on the police to establish reasonable and probable cause for the arrest: **Dallison v. Caffery (1964) 2 All ER 610 at 619 D** per Diplock LJ. The test for reasonable and probable cause has a subjective as well as an objective element. The arresting officer must have an honest belief or suspicion that the suspect had committed an offence, and this belief or suspicion must be based on the existence of objective circumstances, which can reasonably justify the belief or suspicion. A police officer need not have evidence amounting to a prima facie case. Hearsay information including information from other officers may be sufficient to create reasonable grounds for arrest as long as that information is within the knowledge of the arresting officer: **O'Hara v. Chief Constable(1977) 2 WLR 1; Clerk and Lindsell on Torts (18th ed.) para. 13-53.** The lawfulness of the arrest is to be judged at the time of the arrest."

At page 8 Narine JA continued:

> *"The power to arrest is by its very nature a discretionary one. A police officer may believe that he has reasonable and probable cause to arrest a suspect, but may decide to postpone the arrest, while he pursues further investigations. His exercise of the discretion may be based on the strength or weakness of the case, the necessity to preserve evidence, or the need to ensure that the suspect does not abscond to avoid prosecution. The exercise of the discretion must be considered in the context of the particular circumstances of the case. The discretion must be exercised in good faith and can only be challenged as unlawful if it can be shown that it was exercised "unreasonably" … Arrest for the purpose of using the period of detention to confirm or dispel reasonable suspicion by questioning the suspect or seeking further evidence with his assistance is an act within the broad discretion of the arrestor… A police officer is not required to test every relevant factor, or to ascertain whether there is a defence, before he decides to arrest… Further, it is not for the police officer to determine whether the suspect is in fact telling the truth. That is a matter for the tribunal of fact."*

[82] The onus was on the defendants to establish that there was, at the time of arrest, reasonable grounds for suspecting that the claimants had committed, were committing or were likely to commit an offence as prescribed by the legal framework. From the evidence which is before me, I am unable to decipher what operated in the mind(s) of the police officer and/or officers who arrested the claimants. I am also

[9] Civil Appeal (T&T) no. 267 of 2011

unable to determine whether the grounds or suspicion for arresting the claimants were reasonable in the circumstances. None of the arresting officers swore to affidavits to provide the court with what was operating in their minds when the claimants were arrested. DCP Jones was not the arresting officer, nor did he, in his affidavit, provide any such evidence to this court. There is a lack of necessary evidence to establish reasonable grounds for suspecting. It was incumbent on the defendants to provide the rationale for the arrests. Further, there was also no evidence as to any further inquiries to justify the detention and continued detention. I do not accept that the claimants' interviews were sufficient to illustrate that there were inquiries. The law in this area is clear, the burden shifts to the defendants and the court is again left wanting for evidence.

[83] In the absence of such evidence, I must prefer the claimants' evidence over that of the defendants. It is not in dispute that the claimants were arrested and detained. The failure of the defendants to provide this Court with adequate evidence means that the claimants have proven that, on a balance of probabilities, their arrests were unlawful.

[84] It follows from my conclusion above on the initial arrest, that the claimants' continued detention is also unlawful. I am guided by the dicta in **Chandrawatee Ramsingh** (supra) wherein the Privy Council explained that whether or not the continued detention of a person is justified depended on all the circumstances of the case. At paragraph 16 of their judgment the Privy Council explained that:

> *"… the respondent must show that the whole period of detention was justified. However, while it would be wrong in principle to hold that, because the initial arrest as justified it follows that the subsequent detention was also justified, it is important to consider the subsequent detention in light of the arrest."*

[85] Regulation 11 prescribes that any arrest is for the purpose of enquiries. Again, there is no evidence that any enquiries took place. The power to detain is not unlimited or open ended (see **Elie**). The claimants were detained by the authorities for periods spanning 17 days in one case, to 88 days in another, yet, there is no explanation and/or justification for the claimants' detention by the Crown for those durations. I

find this not only to be an unfortunate state of affairs, but also oppressive and high-handed. This Court has been deprived of crucial evidence from which it could have made a proper assessment of the circumstances which existed.

[86] I, therefore, find that there has been a breach of the claimants' right to liberty under **sections 3(a)** and **5(1)(e)** of the Constitution of Belize.

[87] It does not inexorably follow that the lack of reasonable suspicion cause for the claimants' arrest and detention equates to a breach of their rights to protection of the law under **Section 3(a),** their right to equal protection of the law and the right not to be discriminated against under **Section 6(1) of the Constitution of Belize** or their right to protection from inhuman treatment under **Section 7 of the Constitution of Belize.** I will now proceed to discuss whether there were breaches of each of these rights. The claimants' arguments are centred around the protection of the law.

[88] With respect to the claimants' right to protection of the law under **Section 3(a) of the Constitution of Belize,** the CCJ in **The Maya Leaders Alliance v Attorney General of Belize**[10] at para 47 stated the following:

> "The law is evidently in a state of evolution but we make the following observations. The right to protection of the law is a multi- dimensional, broad and pervasive constitutional precept grounded in fundamental notions of justice and the rule of law. The right to protection of the law prohibits acts by the Government which arbitrarily or unfairly deprive individuals of their basic constitutional rights to life, liberty or property. It encompasses the right of every citizen of access to the courts and other judicial bodies established by law to prosecute and demand effective relief to remedy any breaches of their constitutional rights.
>
> However, the concept goes beyond such questions of access and includes the right of the citizen to be afforded, 'adequate safeguards against irrationality, unreasonableness, fundamental unfairness or arbitrary exercise of power.' The right to protection of the law may, in appropriate cases, require the relevant organs of the state to take positive action in order to secure and ensure the enjoyment of basic constitutional rights. In appropriate cases, the action or failure of the state may result in a breach of the right to protection of the law. Where the citizen has been denied rights of access and the procedural fairness demanded by natural justice, or

[10] [2015] CCJ 15

where the citizen's rights have otherwise been frustrated because of government action or omission, there may be ample grounds for finding a breach of the protection of the law for which damages may be an appropriate remedy."

[89] With respect to the claimants' right to ***equal*** protection of the law, **Section 6(1) of the Constitution of Belize** states as follows:

> *"(1) All persons are equal before the law and are entitled without any discrimination to the equal protection of the law.*

[90] Jamadar J (as he then was) in **Sanatan Dharma Maha Sabha and ors v The Attorney General[11],** at pp.57-58 of the judgment, stated the following with respect to the right to equality before the law and protection of the law under **Section 4(b) of the Constitution of Trinidad and Tobago**:

> "Sixth, "equality before the law" and "the protection of the law" [4(b)] encompass both the negative concept that "no person is above the law" and the positive concept that all persons have an inalienable right to enjoy their constitutional rights and freedoms, unrestrained except by equal and impartial laws and provided the same are reasonably justifiable in a democratic society [section 13(1) of the Constitution]…
>
> Thus, a complainant must show that he/she has suffered some form of differential treatment or disadvantage, by reason say of one of the personal characteristics in the general non-discrimination prohibition. This differential treatment or disadvantage may be direct or indirect. For example, a law which results in preferential treatment of a group by reason of religion, in comparison to others similarly circumstanced, with the effect that those others experience some disadvantage, could amount to discrimination by reason of religion and a breach of the protection of the law aspect of the 4(b) equality provision [which is accentuated given the constitutional right to enjoy freedom of religious belief and observance – section 4(h)].
>
> In determining the protection of the law aspect of section 4(b) regard must also be had to, inter alia, the constitutionally guaranteed rights and freedoms."

[91] The actions of the state officials have not been justified or explained. The defendants' submissions are not supported by anything but the provisions that allow for the arrest and detention under the SOE and bare statements that the claimants

[11] HCA (T&T) No. CV S 2065 of 2004

met the requirements for arrest and detention due to purported gang association or suspected commission of offences. I find that the conduct of the police was arbitrary and high-handed. Protection of the law encompasses fairness, respect for the rule of law, justice and the right to equal treatment among other legal principles. In this matter, I accept that there was adherence to some procedural provisions, such as the requirement to supply a written statement as to reasons for arrest and the conducting of interviews for some of the claimants. However, the right to life and liberty are fundamental rights, and violation of those rights are serious matters and ought not to be treated in a flippant manner. No reasonable grounds to suspect the claimants' involvement in acts prejudicial to public order or offences under the prescribed laws, have been furnished. The defendants have also not advanced any details as to the further enquiries that had to be conducted by the police. In the absence of such testimony, I can only conclude based on the evidence that there were no reasons or no good reason to suspect the claimants of being in breach of the anti-gang laws and there were no enquiries conducted after their initial arrest and detention. The law is clear that the claimants can only be detained for enquiries. Therefore, I find that the arrest and detention of the claimants were unlawful and unconstitutional and further the issuance of the detention orders by the Minister was not justified.

[92] In the circumstances, there has been a breach of the claimants' rights to protection of the law under section 3 (a) of the Constitution.

[93] With respect to the claimant's right under section 6(1) of the Constitution, I am not minded to agree that there was a breach of Section 6(1) of the Constitution of Belize which states that "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law." In applying the test from the **Maha Sabha** case which is cited above in this judgment, have the claimants shown that they suffered some form of differential treatment or disadvantage **by reason of one of the personal characteristics in the general non-discrimination prohibition?** For example by reason of race, place of origin, political opinions, colour, creed or sex? Who is the actual or hypothetical comparator who possessed all of the

characteristics of the claimants except the ground upon which they are alleging discrimination? If a prima facie case of discrimination/differential treatment on one of these grounds is not made out on the evidence before the Court, then the burden does not shift to the defendants to justify the difference in treatment. The claimants have not established a comparator regarding unequal treatment. Prima facie this allegation of a breach of the equality provisions must therefore fail.

[94] With respect to the claimants' right to protection from inhuman treatment, **Section 7 of the Constitution of Belize** states, *"No person shall be subjected to torture or to inhuman or degrading punishment or other treatment."* I will address this later on.

[95] **Section 19(1) (a) of the Constitution**

The evidence is clear that the claimants were given notice of being detained for association with gangs and for other crimes through the letters exhibited to Mr. Jones' affidavit. I am satisfied from the testimony of the claimants that they received this document. Accordingly, there has been no breach of section 19(1) (a) of the Constitution.

[96] **Section 19(1) (c) of the Constitution**

The claimants sought a declaration of breach of section 19(1) (c) of the Constitution. However, they gave no evidence in support of this. It was, however, extracted in the cross examination of Deputy Commissioner Jones that there was no tribunal established as mandated by the Constitution. This evidence therefore came from the defendants themselves. The role of such a tribunal is pivotal in periods of public emergency to safeguard citizens' rights. During a period of public emergency, the Constitution provides this safeguard. Persons detained can seek review of an independent and impartial tribunal, presided over a legal practitioner appointed by the Chief Justice. This is especially critical given that the Regulations restrict bail and habeas corpus (see Regulation 15). Therefore, there was breach of section 19(1) (c) of the Constitution.

**Detention Orders**

[97] The claimants argue that the issuance of the detention orders by the Minister was a breach of the separation of powers. The power of the Minister to issue the detention orders is to be found in **Regulation 18 of the Belize Constitution (Emergency Powers) Regulations, 2020**. **Section 18(9) of the Constitution** gives the Governor General the power to make the regulations for the state of public emergency, which included the regulation empowering the Minister to issue detention orders.

[98] The doctrine of separation of powers is a fundamental constitutional principle that allows for the three arms of government to enjoy certain powers and functions, those being the legislature, the judiciary and the executive. The detention orders, in my view, once used in a legitimate manner are to put in place measures to maintain public order and security.

[99] In any event, the issuance of detention orders, in my view, is not a breach of separation of powers as there is no judicial or legislative function that has been carried out by the Minister in issuing same. There was no usurpation of the role of any other branch of government by the executive branch. The detention orders are subject to legal challenge. The claimants could have filed for judicial review of the decision of the Minister like any other challenge to a public authority, or they could seek constitutional redress as they have by the filing of this matter.

[100] There was no Tribunal set up, hence as I indicated above, that was a breach in itself. Such a tribunal under an SOE is to provide a mechanism for detainees to have a review of their detention. Unfortunately, the claimants were deprived of this access to justice. The absence of this avenue for accessing justice lends further support to the claimants' contention of breach of their right to protection of the law under Section 3(a) of the Constitution. In conclusion, however the actual issuance of the detention order was not of itself a breach of separation of powers.

**III. Damages/Inhumane Treatment and Torture**

[101] The claimants all claim compensatory as well as vindicatory damages for violations of their constitutional rights arising from their arrest and detention pursuant to the regulations governing the State of Public Emergency proclaimed on the 06th July, 2020. All claimants deposed to the following paragraphs identified in their respective affidavits:

> ***"Multi-Max Section – Kolbe Foundation***
>
> *40. When I was taken to the prison, I was placed in an overcrowded cell.*
>
> *41. The cell was hot and had a foul smell due to the toilets that were in the corner of the cells, I had no privacy, as there were no partitions in the cells. I had to shower and use the bathroom right in front of my cellmates which made me feel humiliated and embarrassed.*
>
> *42. The cells were infested with mosquitoes, and sand flies and I was constantly bitten by them especially in the night. I found it very difficult to sleep for the entire period at the prison.*
>
> *43. There was a bed in the cell, but it was hard and uncomfortable as it was made out of concrete, and had a very thin sponge, about 1 ½" thick. The hardness caused me to have back pain.*
>
> *44. The conditions that I was subjected to at the prison was depressing, and caused me to be stressed out.*
>
> *45. In addition to the living conditions at the jail, I was worrying that I was going to catch Covid-19 and die in jail.*
>
> *46. I was also worrying that my mother and other family members were going to catch Covid while I was locked up in jail and I would not be able to assist them. This caused me to have many sleepless nights."*

[102] At this juncture, I must comment on the identical nature of the wording of the evidence of each of the claimants in these proceedings. The **Civil Proceedings Rules** dictate that evidence be it by way of affidavit or witness statement must be in the witness' own words. This Court cannot be expected to believe that each of the claimants in this claim, though suffering under similar circumstances, had the same

experiences so much so to express it in the very same way and in the very same words.

[103] Identical evidence by different witnesses must be frowned upon by this Court, especially in circumstances where no explanation is proffered for their sameness. This Court was also keen to note that under cross-examination, many of these claimants found it difficult to answer questions posed to them by opposing counsel on matters which were stated in their evidence.

[104] Credence, for this Court's position is found in an authority emanating from the jurisdiction of Trinidad and Tobago, ***Jamal Sambury v. The Attorney General of Trinidad and Tobago***[12], it was found that the Claimant's evidence was identical to evidence adduced in another related matter. At the assessment of damages, Master Sobion Awai stated at paragraph 18 that:

> *"Apart from the sheer volume of the material that is common to both witness statements, when one analyses it qualitatively, it was clear that this was not mere coincidence. There was a quite deliberate exercise of "cut and paste" undertaken to create the Claimant's witness statement from the earlier statement.* ***To my mind, it was implausible that two persons could experience separate events involving different persons in such an identical manner.*** *Moreover when one looked at the shared grammatical errors, phrasing and sequence of events, the similarities were so startling that the only reasonable conclusion was that the Claimant copied and presented as his own sizable portions of the witness statement of Jamal Fortune."*

[105] This decision of the Master was appealed and the Court of Appeal: **The AGTT v. Jamal Sambury**[13], in the transcript of the hearing, the Justice of Appeal also found it apt to comment on the identical witness statements. Mendonca JA, in the transcript of those proceedings stated that:

> *"Yes. It is unlikely that the Master will accept much of his oral evidence. Let's face it, in these courts throughout everyday people try to mislead the court, none of them as obvious as this. The fact is that they do try to mislead the court … This case has been made relatively simple in that he has just plagiarized somebody else's witness statement in large parts, which would make his evidence as to that totally unreliable."*

[12] CV 2011- 02720
[13] CA Cv 11 of 2014

Smith. J.A also stated:

> *"It was significant that the claimant offered no explanation for this obvious copying and use of another person's witness statement. In the absence of that I conclude that the copying was done deliberately and in an effort to mislead the court …"*

[106] Though this Court is of the view that the claimants' evidence as to the circumstances of their detention cannot be believed as deposed. This Court still holds that the claimants in these proceedings are still entitled to some measure of damages based on my findings above and the constitutional provision. It also has not been disputed that they were in fact arrested and detained.

[107] The grant of any relief for which the Constitution of Belize provides, includes an order for damages. Unlike other Constitutions in the Commonwealth, the Constitution of Belize expressly gives an aggrieved person an entitlement to damages where there has been a deprivation of his liberty: **section 5 (6) of the Constitution**. The provision states that, *"Any person who is unlawfully arrested or detained by any other person **shall** be entitled to compensation therefor from that other person or from any other person or authority on whose behalf that other person was acting…"* This, therefore, means in this Court's view that in this jurisdiction the award of damages under the Constitution, in cases where there has been an unlawful detention, is more that discretionary in nature. In fact, the use of the word "shall" in **Section 5(6)** suggests that is mandatory. Whilst this Court bears this distinguishing feature in mind, the following authorities provide guidance as to the factors which ought to be considered in awarding damages upon the contravention of a claimant's fundamental right.

[108] In the **Attorney General of Trinidad and Tobago v Selwyn Dillion**[14] , the Court of Appeal h cited with approval the following summary from Rampersad J regarding the applicable principles for the assessment of damages, the court states:

[14] Civil Appeal No. P 245 /2012

*"[20.] ...The main points in summary are as follows:*

(1) *the award of damages is discretionary;*
(2) *the nature of any award of damages is always with the intention and purpose of upholding and/or vindicating the constitutional right(s) infringed and in furtherance of effective redress and relief for the breaches;*
(3) *whether an award of damages is to be made depends on the circumstances of the case, including consideration whether a declaration alone is sufficient to vindicate the right(s) infringed and whether the person wronged has suffered damage;*
(4) *in determining the sufficiency of a declaration and/or the need for damages, the effect(s) of the breach on the party seeking relief is a relevant and material consideration;*
(5) *compensation can thus perform two functions - redress for the in personal damage suffered and vindication of the constitutional right(s) infringed;*
(6) *compensation per se is to be assessed according to the ordinary settled legal principles, taking into account all relevant facts and circumstances, including any aggravating factors;*
(7) *in addition to compensation per se, an additional monetary award may also need to be made in order to fully vindicate the infringed right(s) and to grant redress and relief;*
(8) *such an additional award is justified based on the fact that what has been infringed is a constitutional right, which adds an extra dimension to the wrong, and the additional award represents what may be needed to reflect the sense of public outrage at the wrongdoing, emphasize the importance of the constitutional right and the gravity of the breach, and/or to deter further similar breaches;*
(9) *the purpose of this additional award remains, as with compensation, the vindication of the right(s) infringed and the granting of effective relief and redress as required by section 14 of the Constitution, and not punish the offending party; and*
(10) *care must be taken to avoid double compensation, as compensation per se can also take into account similar considerations, including relevant aggravating factors and is also intended to uphold and/or vindicate the right(s) infringed."* (Emphasis added)

[109] In **Colin Simmons vs The Attorney General of Trinidad and Tobago**[15], Justice Mohammed stated when discussing damages in constitutional motions:

*"77. More recently, Kokaram J (as he then was) at paragraph 76 of Oswald Alleyne v The Attorney General of Trinidad and Tobago added the additional factors which a Court must consider. He stated:*

[15] CV 2018-0006

> *"76. I will only add to those useful principles the following in relation to the assessment of a compensatory award under the Constitution:*
> *• The award must be no more than necessary to give recognition to the value and importance to the constitutional rights and violation caused by their denial. Naidikie v Attorney General, Mukesh Maharaj v Attorney General.*
> *• The Court will require proof of damages, the burden of which lies on the Claimant. The award of compensation is fact sensitive. The quality of evidence required will depend on the facts and nature of the case. Romauld James v Attorney General, Dennis Graham v Attorney General and Central Broadcasting Services.*
> *• Any speculative loss does not automatically deprive the Claimant of his right to compensation so long as the Court can exercise its discretion to make an appropriate award having regard to the nature of the breach and the right that has been violated. Oswald Alleyne v Attorney General, Sam Maharaj v Attorney General.*
> *• Monetary compensation can be awarded by reference to comparable common law measures of damages as a guide. Ramanoop v Attorney General, Oswald Alleyne v Attorney General, Naidikie v Attorney General.*
> *• Where there is evidence of direct loss that is recoverable as a component of compensation. Another component of compensation is to address non-pecuniary matters such as distress and inconvenience. Subiah v Attorney General, Maharaj v Attorney General.*
> *• Another relevant factor in assessment is the seriousness of the breach. The gravity of the constitutional breach can be a factor which warrants an uplift in the award of compensation. Aggravating factors are also to be taken into account. Naidikie v Attorney General." (Emphasis added)*

[110] In some cases, a declaration articulating the breach of the right will suffice, but in some cases, more will be required. In **The Attorney General v Siewchand Ramanoop** (supra), the Privy Council spoke not just of a mere award of compensation, but the grant of an additional award to fully vindicate the breach of the claimant's right in cases of grave breaches. The Board explained:

> *"18… If the person wronged has suffered damage, the court may award him compensation. The comparable common law measure of damages will often be a useful guide in assessing the amount of his compensation. But this measure is no more than a guide because the award of compensation under section 14 is discretionary and, moreover, the violation of the constitutional right will not always be co-terminous with the cause of action at law*

*19. An award of compensation will go some distance towards vindicating the infringed constitutional right. How far it goes will depend on the circumstances, but in principle it may well not suffice. The fact that the right violated was a constitutional right adds an extra dimension to the wrong. An additional award, not necessarily of substantial size, may be needed to reflect the sense of public outrage, emphasize the importance of the constitutional right and the gravity of the breach, and deter further breaches. All these elements have a place in this additional award. "Redress" in section 14 is apt to encompass such an award if the court considers it is required having regard to all the circumstances. Although such an award, where called for, is likely in most cases to cover much of the same ground in financial terms as would an award by way of punishment in the strict sense of retribution, punishment in the latter sense is not its object. Accordingly, the expressions "punitive damages" or "exemplary damages" are better avoided as descriptions of this type of additional award."* [Emphasis Added]

[111] In Privy Council decision of **Tamara Merson v Cartwright and The Attorney General[16],** Lord Scott summarized the principles expressed in **Ramanoop** in these terms:

*"18... If the case is one for an award of damages by way of constitutional redress - and their Lordships would repeat that "constitutional relief should not be sought unless the circumstances on which complaint is made include some feature which makes it appropriate to take that course. (See para 25 in Ramanoop) the nature of the damages awarded may be compensatory but should always be vindicatory and, accordingly, the damages may, in an appropriate case, exceed a purely compensatory amount. The purpose of a vindicatory award is not a punitive purpose. It is not to teach the executive not to misbehave. The purpose is to vindicate the right of the complainant whether a citizen or a visitor, to carry on his or her life in the Bahamas free from unjustified executive interference, mistreatment or oppression. The sum appropriate to be awarded to achieve this purpose will depend upon the nature of the particular infringement and the circumstances relating to that infringement. It will be a sum at the discretion of the trial judge. In some cases a suitable declaration may suffice to vindicate the right; in other cases an award of damages, including substantial damages may seem to be necessary."* [Emphasis Added]

[16] PC no.61 of 2003

[112] In the award of compensatory damages under the Constitution, the Court can utilise the judicial trends in the award of damages in other common law claims. However, the constitutional court is not bound by same. This Court recognises the importance of constitutional rights and the role of the Court in vindicating same.

[113] The claimants have extensively submitted on judicial trends in Trinidad and Tobago, and by mathematical equation attempted to proffer figures that are commensurate to Belizean currency. This Court rejects such an approach. The award of damages is not a mathematical exercise. As the Court of Appeal of Belize has stated in the authority of the **Attorney General of Belize v. Bennet et al[17], Attorney General of Belize v. Thompson[18], and Attorney General of Belize v. Tillett[19],** (all heard and decided together):

> *"A purely arithmetical approach to the assessment of general damages, even after a process of discounting, may not produce a result that is just and proportionate in all the circumstances."*

[114] The Court of Appeal's pronouncement was made after considering the he decision of the Court of Appeal of England and Wales in the conjoined appeals of ***Thompson v. Commissioner of Police of the Metropolis*** **and** ***Hsu v. Commissioner of Police of the Metropolis[20]*** in which guidance was given as to the amount to be awarded for "basic damages" (in cases which could be described as "straightforward". The decision of the English Court of Appeal elucidates the principle that whilst the Court must have regard for the initial shock of the detention, a reducing scale of damages must be considered in light of the length of the imprisonment.

> "In a straightforward case of wrongful arrest and imprisonment the starting point is likely to be about £500 for the first hour during which the plaintiff has been deprived of his or her liberty. After the first hour an additional sum is to be awarded, but the sum should be on a reducing scale so as to keep the damages proportionate with those payable in personal injury cases and because the plaintiff is entitled to have a higher rate of compensation for

[17] Civil Appeal 48 of 2011
[18] Civil Appeal 49 of 2011
[19] Civil Appeal 50 of 2011
[20] [1997] 2 ALL ER 763

> the initial shock of being arrested. As a guideline we consider, for example, that a plaintiff who has been wrongly kept in custody for 24 hours should for this alone normally be regarded as entitled to an award of about £3,000. For subsequent days the daily rate will be on a progressively reducing scale."

[115] This Court is of the view that the award of compensatory damages must be in keeping with awards made locally i.e. in matters emanating from this jurisdiction.

[116] Notably, each of the 13 claimants were detained for a different period and therefore separate individual awards would be made for each claimant in these proceedings.

i. **John Grinage** was imprisoned from 19th September 2020 to 5th October 2020 for a period of 17 days.

ii. **Sheldon Grinage** was imprisoned from 5th September 2020 to 5th October 2020 for a period 30 days.

iii. **Earl Baptist** was imprisoned from 5th September 2020 to 5th October 2020 for a period 30 days.

iv. **Akeem Bermudez** was imprisoned from 9th July 2020 to 28th September 2020 for a period of 81 days.

v. **Michael Flowers** was imprisoned from 5th September 2020 to 5th October 2020 for a period of 30 days.

vi. **Gilbert Belisle** was imprisoned from 9th September 2020 to 5th October 2020 for a period of 26 days.

vii. **Randy August** was imprisoned from 5th September 2020 to 5th October 2020 for a period 30 days.

viii. **Dean Williams** was imprisoned from 5th September 2020 to 5th October 2020 for a period 30 days.

ix. **Ervin Rhamdas** was imprisoned from 9th July 2020 to 5th October 2020 for a period of 88 days.

x. **Herman Solis** was imprisoned from 9th July 2020 to 5th October 2020 for a period of 88 days.

xi. **Lionel Longsworth** was imprisoned from 20th July 2020 to 24th September 2020 for a period of 66 days.

xii. **Harold Usher** was imprisoned from 6th August 2020 to 24th September 2020 for a period of 49 days.

xiii. **Malik Pitts** was imprisoned from 5th September 2020 to 5th October 2020 for a period 30 days.

**Inhuman or Degrading Punishment or Torture**

[117] The claimants submit that there has been a breach of Section 7 of the Constitution. They rely on the evidence given in support of compensation, which I find to be generally unreliable. The defendants made no effort yet again to respond to this allegation.

[118] Nevertheless, based on my observation of the claimants in cross-examination and the evidence they provided, I cannot accept their submission that this right was breached. It is highly plausible that the evidence as to the conditions of their detention was exaggerated. Accordingly, I find there was no breach of section 7 of the Constitution. Even if I had given weight to the evidence regarding conditions, I would not have been minded to conclude that the claimants were subject to inhuman

or degrading punishment or torture. They did not provide evidence of the standard required to establish same.

**Judicial Trends**

[119] Though the Court notes that there are not many authorities on the quantum of damages to be awarded for such periods, this Court found that the following cases were helpful and these were used as a guide:

i. In 2015, the Court of Appeal awarded three (3) litigants the sum of $30,000.00 for the period of 11 months imprisonment- **Attorney General of Belize v. Bennet et al** and two (2) other appeals (supra).

ii. In 2010, the Supreme Court of Belize awarded the sum of $20,000.00 for false imprisonment for an 18-day period – **Gilbert Hyde *v. A.G.* et al**[21] , The Court of Appeal in **Attorney General of Belize v. Bennet et al** and two (2) other appeals (supra) found that this sum was likely to be high but there was however no appeal by the Attorney General of this decision of Hafiz J.

iii. In 2021, the Supreme Court of Belize awarded the sum of $10,000 for false imprisonment for a period of fifty-two (52) hours – **Martin v. Attorney General of Belize and Ors**[22].

iv. In 2023, the Supreme Court of Belize awarded the sum of $10,000.00 to each claimant for false imprisonment for an approximate period of sixty (60) hours - **Cantun et al v. Attorney General of Belize and ORS**[23].

[120] This Court therefore awards as follows:

i. **John Grinage** who was imprisoned from 19th September 2020 to 5th October 2020 for a period of 17 days is awarded the sum of $12,000.00.

[21] Supreme Court 88 of 2009 (unreported)
[22] Claim no. 819 of 2019
[23] Claim no. 603 of 2021

ii. **Sheldon Grinage** who was imprisoned from 5th September 2020 to 5th October 2020 for a period 30 days is awarded the sum of $15,000.00.

iii. **Earl Baptist** who was imprisoned from 5th September 2020 to 5th October 2020 for a period 30 days is awarded the sum of $15,000.00.

iv. **Akeem Bermudez** who was imprisoned from 9th July 2020 to 28th September 2020 for a period of 81 days is awarded the sum of $22,000.00.

v. **Michael Flowers** who was imprisoned from 5th September 2020 to 5th October 2020 for a period of 30 days is awarded the sum of $15,000.00.

vi. **Gilbert Belisle** who was imprisoned from 9th September 2020 to 5th October 2020 for a period of 26 days is awarded the sum of $15,000.00.

vii. **Randy August** who was imprisoned from 5th September 2020 to 5th October 2020 for a period 30 days is awarded the sum of $15,000.00.

viii. **Dean Williams** who was imprisoned from 5th September 2020 to 5th October 2020 for a period 30 days is awarded the sum of $15,000.00.

ix. **Ervin Rhamdas** who was imprisoned from 9th July 2020 to 5th October 2020 for a period of 88 days is awarded the sum of $25,000.00.

x. **Herman Solis** who was imprisoned from 9th July 2020 to 5th October 2020 for a period of 88 days is awarded the sum of $25,000.00.

xi. **Lionel Longsworth** who was imprisoned from 20th July 2020 to 24th September 2020 for a period of 66 days is awarded the sum of $20,000.00.

xii. **Harold Usher** who was imprisoned from 6th August 2020 to 24th September 2020 for a period of 49 days is awarded the sum of $18,000.00.

xiii. **Malik Pitts** who was imprisoned from 5th September 2020 to 5th October 2020 for a period 30 days is awarded the sum of $15,000.00.

**Vindicatory Damages**

[121] The award of vindicatory damages has a recent history. The Judicial Committee of the Privy Council succinctly gives this history in the decision of **Dennis Graham v. Police Service Commission and The Attorney General of Trinidad and Tobago**[24]. At paragraph 15, the Board held that such an award is not required in every case of a breach of a constitutional right. In addition, it was held that vindicatory damages were distinguishable from exemplary damages in common law. At paragraph 15, the Board stated:

> *"VINDICATORY DAMAGES*
>
> ***[15]*** *The award of vindicatory damages for breach of a constitutional right in the law of Trinidad and Tobago has been considered in a number of authorities of the Judicial Committee.* ***It is to be distinguished both from compensation pure and simple, and from exemplary or punitive damages at common law; and it is by no means required in every case of constitutional violation.*** *So much appears from what was said by Lord Nicholls of Birkenhead in Ramanoop (supra):*
>
> > *"18 When exercising this constitutional jurisdiction the court is concerned to uphold, or vindicate, the constitutional right which has been contravened. A declaration by the court will articulate the fact of the violation, but in most cases more will be required than words. If the person wronged has suffered damage, the court may award him compensation. The comparable common law measure of damages will often be a useful guide in assessing the amount of this compensation. But this measure is no more than a guide because the award of compensation under section 14 is discretionary and, moreover, the violation of the constitutional*

[24] [2011] UKPC 46

*right will not always be co-terminous with the cause of action at law.*

*19* ***An award of compensation will go some distance towards vindicating the infringed constitutional right. How far it goes will depend on the circumstances, but in principle it may well not suffice.*** *The fact that the right violated was a constitutional right adds an extra dimension to the wrong. An additional award, not necessarily of substantial size, may be needed to reflect the sense of public outrage, emphasise the importance of the constitutional right and the gravity of the breach, and deter further breaches. All these elements have a place in this additional award. 'Redress' in section 14 is apt to encompass such an award if the court considers it is required having regard to all the circumstances. Although such an award, where called for, is likely in most cases to cover much the same ground in financial terms as would an award by way of punishment in the strict sense of retribution, punishment in the latter sense is not its object. Accordingly, the expressions 'punitive damages' or 'exemplary damages' are better avoided as descriptions of this type of additional award."*

***[16]*** *It is helpful also to have in mind the judgment of the Board delivered by Lord Scott of Foscote in Merson (supra) in which, after citing a passage from Ramanoop including the paras set out above, this was said:*

*"18 These principles apply, in their Lordships' opinion, to claims for constitutional redress under the comparable provisions of the Bahamian constitution. If the case is one for an award of damages by way of constitutional redress – and their Lordships would repeat that 'constitutional relief should not be sought unless the circumstances of which complaint is made include some feature which makes it appropriate to take that course' (para 25 in Ramanoop) – the nature of the damages awarded may be compensatory but should always be vindicatory and, accordingly, the damages may, in an appropriate case, exceed a purely compensatory amount. The purpose of a vindicatory award is not a punitive purpose. It is not to teach the executive not to misbehave. The purpose is to vindicate the right of the Complainant, whether a citizen or a visitor, to carry on his or her life in the Bahamas free from unjustified executive interference, mistreatment or oppression. The sum appropriate to be awarded to achieve this purpose will depend upon the nature of the particular infringement and the circumstances relating to that infringement. It will be a sum at the discretion of the trial judge. In some cases a suitable declaration may suffice to vindicate the*

> *right; in other cases an award of damages, including substantial damages, may seem to be necessary."*
> *Plainly the statement that "the nature of the damages . . . should always be vindicatory" does not imply a rule that a distinct vindicatory award should be made in every case of constitutional violation; as the balance of the passage shows, it merely serves to indicate the overall purpose of any award of damages in constitutional cases.*
>
> ***[17]** Applying the learning to the present case, their Lordships are satisfied that no additional award of vindicatory damages was called for. The constitutional breach found by Deyalsingh J was in the nature of a want of procedural fairness – a failure to accord a right to be heard. There was no question of bad faith or deliberate wrongdoing. By contrast, as Mendonça JA observed (para 95), the judge's finding suggested no more than administrative error. The PSC, moreover, twice backdated the Appellant's seniority, though not to the extent for which he contended. And on 16 March 2004 they indicated that consideration would be given to his "relative seniority when next promotions to the office of Assistant Commissioner of Police are being made". In all these circumstances, the Board finds no error of principle in the response of the Court of Appeal to the claim for an additional award, and rejects the Appellant's submission to the contrary." (Emphasis added)*

[122] The learning expounded above explains that vindicatory damages are not awarded in every case where there is a breach of a constitutional right. They are awarded in cases where the Court finds that the actions of the State's agents and/or servants were egregious and there is a need to vindicate the aggrieved person's right, to reflect the sense of public outrage, emphasise the importance of the constitutional right and the gravity of the breach, and deter further breaches.

[123] In **Merson v Cartwright (supra)**, Lord Scott considered, at paragraph 18:

> ***"The purpose of a vindicatory award is not a punitive purpose.** It is not to teach the executive not to misbehave."*
> [Emphasis Added]

[124] At paragraph 17, **Subiah (supra)**, the Honourable Justice of Appeal Archie (as he then was) quoted liberally from **Merson (supra)** and considered as follows:

> *"In my view, that is the proper approach. For that reason also, the latter proposition must be approached with caution. **It will only be in the rarest***

***cases that one can envisage a justification for the deterrent and public outrage factors outweighing the compensatory element especially if one bears in mind that the compensatory element takes account of aggravating factors****…"* [Emphasis Added]

[125] Whilst vindicatory damages may not be awarded in every case that there is a constitutional breach, I find that the state of affairs in this case warrants an award of vindicatory damages. The absence of explanation by the Crown in these proceedings has caused this Court to find that the actions of the officers in arresting and detaining the claimants to be oppressive and high-handed. As such, this Court awards to each of the thirteen claimants named above the sum of $7,000.00 as vindicatory damages.

**Interest**

[126] I am not inclined to award interest on the said sums.

**Conclusion**

[127] It would be remiss of me not to mention that last week another court delivered a ruling on the Proclamation of a State of Public Emergency (July to October 2020) in Claims No. 819 of 2023 and 818 of 2023. The learned judge dismissed those claims. While I note this ruling, this court is of coordinate jurisdiction and I am not bound by that decision.

[128] This Court therefore orders as follows:

i. It is declared that the prevailing circumstances at the time of the Proclamation, promulgated in Statutory Instrument No. 97 of 2020, published in the Belize Gazette Extraordinary on the 6th day of July 2020, declaring a state of emergency in the Southside of Belize City did not warrant the declaration of a state of emergency;

ii. It is declared that the actions of members of the Belize Police Department as agents of the State by arresting and detaining the claimants for "Gang

related Activities" contrary to the Crime Control and Criminal Justice Act, without reasonable suspicion; which led to their incarceration for different periods from on or around July 6th, 2020 to October 5th, 2020, was contrary to sections 3(a) and 5(1)(e) of the Constitution specifically relating to the Claimants' right not to be unlawfully deprived of their liberty;

iii. It is declared that the actions of members of the Belize Police Department as agents of the State by arresting and subsequently detaining the Claimants for periods between July 6th, 20202 to October 5th, 2020, without reasonable suspicion and without conducting enquiries which led to their incarceration was contrary to Regulation 11 and Section 3(a) of the Constitution specifically relating to the Claimants' right to protection of the law which is premised on fundamental justice and the Rule of Law;

iv. It is declared that the State failed in its Constitution duty to provide judicial oversight in relation to those detained during the State of Emergency and as a consequence violated Section 19 (1) (c) of the Belize Constitution;

v. It is declared that the prevailing circumstances during the State of Emergency period (July 6th, 2020, to 6th August 2020) did not warrant the extension of the State of Emergency for an additional two months.

vi. That the claimants each be paid compensatory damages as follows:

a. **John Grinage** - the sum of $12,000.00

b. **Sheldon Grinage** the sum of $15,000.00

c. **Earl Baptist** - the sum of $15,000.00

d. **Akeem Bermudez** - the sum of $22,000.00

e. **Michael Flowers** - the sum of $15,000.00

f. **Gilbert Belisle** - the sum of $15,000.00

g. **Randy August** - the sum of $15,000.00

h. **Dean Williams** - the sum of $15,000.00

i. **Ervin Rhamdas** - the sum of $25,000.00

j. **Herman Solis** - the sum of $25,000.00.

k. **Lionel Longsworth** - the sum of $20,000.00

l. **Harold Usher** - the sum of $18,000.00.

m. **Malik Pitts** - the sum of $15,000.00

vii. Each claimant be awarded the sum of $7000.00 as vindicatory damages.

viii. Costs of this claim be paid to the claimants to be assessed by this Court in default of agreement.

**Nadine Nabie**

**High Court Judge**