

The Law during a State of Disaster and Human Rights Risks

BY TESS PEACOCK, TIM HODGSON, YANA VAN LEEVE, CIARA QUINN,
AND THANDEKA KATHI
ON BEHALF OF THE C19 PEOPLE'S COALITION

2020

CONTENTS

| | |
|----|--|
| 02 | Introduction |
| 03 | Summary |
| 03 | Release of Resources (Regulation 2) |
| 03 | Restriction on the Movement of Persons and Goods |
| 04 | Prevention and Prohibition of Gatherings (Regulation 3 and 11B(1)(a)(ii)) |
| 05 | Prohibition of Public Transport (Regulation 11C) |
| 05 | Resources by the State During Lockdown (Regulation 11D) |
| 05 | Refusal of Medical Examination, Prophylaxis, Treatment, Isolation and Quarantine (Regulation 4) |
| 05 | Places of Quarantine and Isolation (Regulation 5) |
| 05 | Closure of Schools and Partial Care Facilities (Regulation 6) |
| 05 | Suspension of Visits (Regulation 7) |
| 06 | Limitation on the Sale, Dispensing or Transportation of Liquor (Regulation 8 is overridden by Chapter 2) |
| 06 | Contact Tracing (Regulation 11H) |
| 06 | Emergency Procurement Procedures (Regulation 9) |
| 07 | Authority to Issue Directions (Regulation 10) |
| 07 | Offences and Penalties (Regulation 11 and 11(G)) |
| 07 | Risks Arising from the Implementation of the Disaster Regulations |
| 07 | What Happens if You Get Arrested? |
| 08 | Policing/ Excessive Force |
| 09 | Right to Protest |
| 09 | Concerns Around Limits to Freedom of Expression |
| 10 | Right to Privacy / Tracing Database |
| 10 | Specific Risks Arising from the Disaster Regulations for Vulnerable Groups |
| 10 | Homeless people |
| 10 | Gender Based Violence |
| 11 | Spaza Shops and Informal Traders |
| 11 | Non-Citizens |
| 11 | Social Grant Recipients |
| 13 | Service Delivery |
| 14 | Annexure A: Summary of Key Directions |
| 17 | Annexure B: Important contact details |

INTRODUCTION

On 15 March 2020, the President declared a National State of Disaster in the face of the global pandemic caused by the outbreak of the coronavirus; a nationwide lockdown was implemented a week later on 26 March 2020. The lockdown has been extended until 30 April 2020.

COVID19 is a new virus for which there is no immunity in humans. There is no vaccine and there is also no cure. It is also highly contagious therefore extreme and enforced social distancing measures have been put in place in order to slow down the rate of infection and give time to governments and scientists to come up with an appropriate response plan.

The President declared a national state of disaster in South Africa in terms of section 27 of the Disaster Management Act 57 of 2002 (DMA) and Regulations have since been enacted in terms of the DMA. These Regulations empower Cabinet Ministers to issue “Directions” giving further detail to the Regulations and the government’s response to COVID-19. There are many such Directions like this. It is important to understand that contravention of either the Regulations or Directions during lockdown is unlawful and will sometimes result in criminal liability.

A collection of up-to-date materials can be accessed [here](#).

The law relating to the lockdown, and in particular, the Directions issued in terms of the DMA Regulations, are changing frequently. New directions are brought into effect on a daily basis. We will be updating this document as necessary on the C19 People’s Coalition [website](#) to ensure that it is up-to-date (but please keep in mind that there may be some time delays).

This document includes the following:

- **Summary** of the Regulations and key Directions and which rights they expressly restrict
- Human rights **risks** arising from the **implementation** of the Regulations and Directions
- Specific **risks** arising from the implementation of the Disaster Regulations for **vulnerable groups**.

A declaration of a state of disaster is **not** the same as declaring a state of emergency. A declaration of a state of emergency must be done in terms of section 37 of the Constitution and done in terms of the State of Emergency Act. This is important because a state of emergency permits greater restriction or “limitation” of rights than the declaration of a national disaster. Even in a state of emergency any limitation or restriction of rights would need to: have a legal basis; be strictly necessary to address COVID-19; be proportionate to achieve this necessary objective; be based on scientific evidence; not be arbitrary or discriminatory; be of limited duration; be respectful of human dignity, and be subject to oversight by the courts.

A “disaster” in terms of the Disaster Management Act is when there has been a “progressive or sudden, widespread or localised, natural or human-caused occurrence which causes or threatens to cause death, injury or disease...”. The risk and presence of the COVID-19 Virus in South Africa has been declared a disaster. The aim of the DMA is to ensure an integrated and coordinated response to prevent and reduce the risk of the spread of the Virus.

According to section 27 of the Disaster Management Act the following rights can broadly be limited by Regulations:

- Freedom of movement and residence (section 21 of the Constitution);
- Freedom of assembly, demonstration, picket and petition (section 17 of the Constitution);
- Freedom of expression (section 16 of the Constitution); and
- Indirectly, freedom of trade, occupation and profession (section 22 of the Constitution).

All limitations of rights are still subject to section 36 of the Constitution which requires any limitation to be based in law, proportionate and reasonable and justifiable in an open and democratic society based on human dignity and human rights.

If you think that your rights have been violated or you have observed the rights of someone being violated, please contact the Legal Response Access to Justice Hotline 066 076 8845.

SUMMARY

What follows is a summary of the DMA Regulations:

Release of Resources (Regulation 2)

The Department of Defence, national and provincial Organs of State and local government must make resources available, including human resources and funding, to prevent, limit, contain, combat and manage the spread of COVID-19 and to provide emergency services. The provision of funding must, as far as possible, not affect service delivery or the resources provided for service delivery including access to healthcare, education, social security, food, water, electricity, housing and basic municipal services.

Restriction on the Movement of Persons and Goods

- Stay at Home (Regulation 11B(1)(a))

For the period of the lockdown, every person **must** stay in their residence. A person may only leave for the following reasons: 1) performing an essential service, 2) obtaining an essential good or service, 3) collecting a social grant, pension or seeking emergency, life-saving, or chronic medical attention.

Movement between provinces is prohibited and movement within provinces is limited to staying in your specific area, suburb or district. Except 1) for essential workers who have to travel to and from work; 2) transportation of cargo from ports of entry to their intended destination, on condition that necessary precautions have been taken to sanitise and disinfect such cargo; 3) for the transportation of the mortal remains, and 4) attendance at a funeral (more on funeral attendance below).



Children can move between co-parents if there is an arrangement to move a child between parents in terms of a court order; parental responsibilities and rights agreement or parenting plan registered with the family advocate; or you are in possession of the birth certificate or certified copy of a birth certificate of the child. Provided that where the child is moving to, no person is known to have come into contact or is reasonably suspected to have come into contact with any person known to have contracted, or reasonably suspected to have contracted COVID-19.

- Funerals (Regulation 11B(8))

You may attend a funeral if you are the biological, adopted or step child, child-in-law, parent or sibling of the deceased or the grandparent, spouse or partner of the deceased or a person closely affiliated to the deceased. Closely affiliated refers to having had a significant relationship with the deceased.

Funerals must be limited to 50 people and no night vigils or evening prayer meetings are allowed. If in order to attend the funeral you need to travel between provinces or metropolitan or district areas, then you will need to get a permit allowing you to travel. A permit can be obtained from your nearest Magistrate's court or police station. In order to get the permit, a death certificate, copy of death certificate or sworn affidavit must be produced. You will be able to write and sign an affidavit at a police station.

Two family members may accompany the vehicle transporting the mortal remains (if travelling across provincial or metropolitan or district boundaries, they will both need the required permits).

- Business (Regulation 11B(1)(b), (c), (d), (e), (f),(g))

Business and other entities may not operate except for those involved in the supply, manufacturing, or provision of an essential good or service. If you can work from home, then you are allowed to continue with your work.

If you are a store providing essential goods, then you must place controls to ensure that customers keep a distance of at least one square meter from each other and you must take hygienic and preventative precautions in respect of COVID-19. Stores may only sell essential goods; the selling of non-essential goods is prohibited. People may buy hardware products and vehicle components if they attest that this is for emergency repair work at home for the provision of essential services. The store must keep a list of these declarations.

On 16 April 2020 it was determined that collieries that supply Eskom and refineries must operate at full capacity. This includes smelters plants and furnaces (Chapter 4). Mining operations must be conducted at reduced capacity of 50% during the lockdown period and at increasing capacity announced through directions. These operations must comply with strict screening and testing requirements, quarantine facilities must be provided for those who test positive and transport must be provided from employee's homes to their respective areas of operations.

- Essential services (Regulation 11B(2), (3),(4A)(b))
- If your institution is providing essential services, then the staff providing those services must be duly designated as essential staff and provided with a permit. Guidelines regarding the permits can be found [here](#).

A list of what constitutes an essential service or good can be accessed [here](#). As of 16 April, a number of essential services were added including call centres for a number of sectors; trades for providing emergency repair work including plumbers, electricians, locksmiths, glaziers and roof repair work; trades for emergency automobile repairs and ICT services to support those delivering essential services. Cabinet members responsible for health and social services and trade, industry and competition may add activities deemed necessary for health and social services and international trade and industrial activities.

Anyone providing an essential service or obtaining essential goods or seeking medical attention, may be subjected to COVID-9 screening by an enforcement officer.

- Border closures (Regulation 11(6))

All borders are closed except for ports of entry for the transportation of fuel, cargo and essential goods. The Minister of Home Affairs may allow border travel for repatriation or for emergency medical attention or a life-threatening condition. Foreign tourists still in the country must remain in their place of temporary residence and may be subject to screening for COVID-19, quarantine or isolation as required.

Prevention and Prohibition of Gatherings (Regulation 3 and 11B(1)(a)(ii))

All gatherings are prohibited (according to the Regulations of Gatherings Act 205 of 1993, a gathering is more than 15 people). If a gathering does take place, an enforcement officer must order the persons to disperse immediately and if they refuse, they can make arrest or detain people.



Prohibition of Public Transport (Regulation 11C)

All public transport is prohibited except for bus service, taxi service, e-hailing service or private motor vehicle usage that is necessary for the purpose of providing or obtaining essential goods or services. Provided that bus services and e-hailing services do not carry more than 50% of their capacity; taxi services do not carry more than 70% of their capacity; private vehicles do not carry more than 60% of their capacity and that all vehicles take hygienic precautions to limit the spread of COVID-19.

Resources by the State During Lockdown (Regulation 11D)

For the lockdown period, an enforcement officer may evacuate anyone to a temporary shelter if such action is necessary for the preservation of life.

The government shall identify temporary shelters that meet hygiene standards for homeless people and temporary sites for quarantine and self-isolation that meets the necessary hygiene standards for people who cannot isolate or quarantine in their homes.



Refusal of Medical Examination, Prophylaxis, Treatment, Isolation and Quarantine (Regulation 4)

A person who has or is suspected to have COVID-19 or has been in contact with a person who has COVID-19 cannot refuse:

- a medical examination,
- to be admitted to a health establishment or quarantine or isolation site;
- to take medicine, have treatment or be isolated or quarantined.

If a person refuses any of the above, that person can be placed in forced isolation or quarantine for a period of 48 hours by an enforcement officer pending a warrant being issued to require a medical examination. A magistrate can issue such a warrant if the person is confirmed to have COVID-19 or is reasonably suspected to have contracted it, or has been in contact with someone who has COVID-19.

Places of Quarantine and Isolation (Regulation 5)

The Minister of Public Works and Infrastructure, the Provincial Executive Council responsible for public works and accounting officers of municipalities must all identify and make available sites to be used as isolation and quarantine facilities. If a person refuses to go to such a facility, a Magistrate can make an order to force that person to go to such a site.

Closure of Schools and Partial Care Facilities (Regulation 6)

Schools and partial care facilities must be closed until 30 April 2020 (closure was extended on 16 April 2020). This closure period may be extended by directions.

Suspension of Visits (Regulation 7)

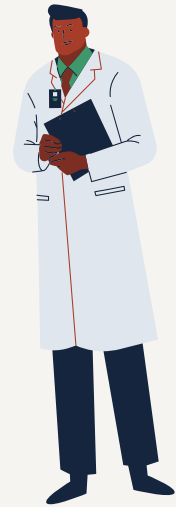
The public cannot visit Correctional Centres, Remand Detention Facilities, Holding Cells, Military Detention Facilities and Department of Social Development facilities, including Child and Youth Care Centres, shelters, One Stop Centres and Treatment Centres. This may be extended by directions.

Limitation on the Sale, Dispensing or Transportation of Liquor (Regulation 8 is overridden by Chapter 2)

The selling and buying of alcohol during the period of the lockdown is illegal as it is not considered an essential food or service. The transportation of liquor is also prohibited except where alcohol is needed to industries producing hand sanitizers and hygiene products.

Contact Tracing (Regulation 11H)

The National Department of Health is allowed to develop and maintain a national database (the Tracing Database) to enable the tracing of persons known or reasonably suspected to have come into contact with someone who is known to have COVID-19. The information in the database will include the person's name, surname, ID number, address and another address where the person can be located as well as phone numbers. It will include their COVID-19 results and the details of any known or suspected contacts of the person who tested positive for COVID-19. The information on the Tracing Database is **confidential**.



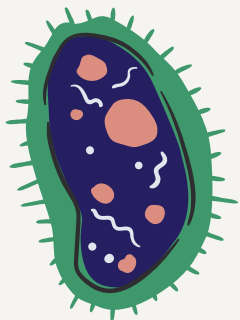
The Director-General of Health may and without your consent, ask an electronic communications service provider (e.g. MTN, Vodacom, Cell C or 8ta) to provide them with the location details or movements of any persons known or reasonably suspected to have contracted COVID-19 and the location or movements of anyone known or reasonably suspected to have come into contact with that person. Nothing older than 5 March may be obtained by the Director-General of Health, the information requested has to be necessary for the purposes of addressing, preventing, or combating the spread of COVID-19 and can only be used for a period of 6 weeks where thereafter it must be destroyed. Your electronic communication cannot be intercepted.

Justice Kate O'Regan has been appointed as the COVID-19 designated Judge and she must receive weekly reports from the Director-General of Health setting out the details of whose locations and movements were obtained. Any person whose information was obtained in this way must be notified within six weeks after the national state of disaster is over. In addition, within six weeks after the national state of disaster, the Tracing Database must be de-identified.

Any person who fails to comply with their obligations in terms of the contract tracing will be guilty of an offence and, on conviction, liable to a fine or to imprisonment for a period not exceeding six months or to both such fine and imprisonment.

Emergency Procurement Procedures (Regulation 9)

Emergency procurement must be done in terms of the emergency provisions of the Public Finance Management Act 1 of 1999 or the Municipal Finance Management Act 56 of 2003. The National Treasury has put measures in place to assist government institutions with procuring preventative items to contain and manage the transmission of COVID-19. This means procurement for these items has been centralised by the national government and authorised suppliers have been identified to supply these items to the government without the need for the usual public procurement process.



Authority to Issue Directions (Regulation 10)

The Ministers of Health, Justice and Correctional Services, Basic and Higher Education, Police, Social Development, Trade and Industry, Transport may all issue directions. Copies of these Directions can be accessed [here](#). These directions apply unless withdrawn by the relevant Cabinet member. Some key Directions are included in the section on the Risks arising from Implementation of the Regulations (see below). A summary of some of the important Directions issued so far is also included in Annexure A.

Offences and Penalties (Regulation 11 and 11(G))

Any person who **convenes a gathering** or fails to close a school or partial care facility, or **hinders, interferes with or obstructs an enforcement officer** in the performance of their duties is guilty of an offence and, on conviction, liable to a fine or to imprisonment for a period not exceeding six months or to both such fine and imprisonment.

If someone intentionally misrepresents that he or she is infected with COVID-19, that person is guilty of an offence. If someone publishes any statement, through any medium, with an intention to deceive any other person about COVID-19, the COVID-19 infection status of a person or any measures taken by the government to address COVID 19, that person is also guilty of an offence. If convicted of these offences, the person is liable to a fine or to imprisonment for a period not exceeding six months or to both such fine and imprisonment.

Any person who intentionally exposes another person to COVID-19 may be prosecuted for an offence including assault, attempted murder or murder.

If you leave your residence for any other reason than allowed above; if you fail to close any business (that is not conducting an essential service); if you sell goods other than essential goods; or if you violate the funeral travel rules, then you will be guilty of an offence and, on conviction, liable to a fine or to imprisonment for a period not exceeding six months or to both such fine and imprisonment. The same is true of all commuter transport services who fail to follow the Regulations.

If information on the tracing database is unlawfully disclosed, or if accommodation facilities do not disclose personal information requested to the Director General of Health, if location data is obtained unlawfully, if the Tracing Database is not de-identified, if electronic communications service providers do not provide the Director General of Health with information requested and if Directions by the Tracing Database Judge are not complied with, then you will be guilty of an offence and, on conviction, liable to a fine or to imprisonment for a period not exceeding six months or to both such fine and imprisonment.

According to these regulations, an “enforcement officer” includes:

- Members of the South African Police Services
- Members of the South African National Defence Force
- Peace Officers, including Magistrate, Justice, Municipal / Metropolitan Police or Correctional Service officials

RISKS ARISING FROM THE IMPLEMENTATION OF THE DISASTER REGULATIONS

- What happens if you get arrested?

The normal rules of bail and arrest apply. If a person is outside of their residence, they must have a legitimate reason to go out i.e. have an essential service permit or be out for the purposes of buying food, medicine or going to the hospital, clinic or doctor.

That person should have all their documents with them (for example, Driver's license, Car license, ID document or permit to drive or be out of the house during the lockdown where applicable). If a person is stopped by the police, they should keep calm, explain why they are out in the street and what their destination is and, if possible, show documents that demonstrate the reason they are out. For example, clinic card, or appointment card, receipt (paper) from the shop or the groceries that were bought.

An arrested person should request police bail so they can avoid waiting to appear before a magistrate. Police bail can be granted for minor offences and agreement on the amount of bail can be made between the parties. According to the Directions, any person arrested for petty offences must be released and warned to appear in court at a future date (Courts, Court Precincts and Justice Service Points Directions, 31 Mar 2020).

If someone is arrested:

- They have the right to be informed of the charges on which they are being arrested (**right to be informed that you are being arrested**).
- During the COVID-19 lockdown period they will be taken to a police station and screened for the virus, if you test positive you will be taken to a quarantine facility.
- They have the right to be brought before a court as soon as reasonably possible, but not later than 48 hours after the arrest.
- In detention they may be searched. They may however not be searched without their consent and a person of the same sex should conduct the search.
- The police have the right to take their fingerprints and take photographs.

General rights when a person is under arrest:

- The police must inform you of the following rights in a language that you can understand.
 - To consult with an attorney of your choice, if you can't afford one, one will be assigned by the state at the state's expense.
 - To be contained in conditions that are consistent with human dignity.
 - To communicate with the person's spouse or partner, next of kin, and chosen medical practitioner.
 - Be presumed innocent until proven guilty.
- There should always be an officer on duty of sufficient rank to make the decision to grant or refuse police bail.

A victim of unlawful arrest or mistreatment while they're in police custody, may be entitled to claim compensation.

- Policing/ Excessive force

Ordinary policing has not stopped; you can still get arrested for allegedly committing a crime. The Constitution sets out the objects of the police force. These include to "maintain public order", to "protect and secure the inhabitants of the Republic and their property" and to "uphold and enforce the law". The police are not authorised to use force unless it is necessary and proportionate to affect their mandate.

National Instruction 4 of 2014 requires that where force is necessary, even for public order policing of gatherings, "minimum force" must be used to "de-escalate conflict" with the aim to "accomplish this goal". The police may never use force unless it is strictly unavoidable and the police are never authorised to use force as a form of punishment.

If you are of the view that police have used force unlawfully, if possible, record the incident with your cell phone. Those who want to lodge a complaint against law enforcement personnel should provide the following: a) Description of the incident, including date, time and place; b) Name(s) of law enforcement

officer(s) involved (visible on name tags on uniforms) and c) Names and contact particulars of witnesses and recordings of the incident (either video or voice, if available). Public order police are required to wear visible name badges. It is also common (and international best) practice for officers engaging with the public to be identifiable (but not necessarily a requirement).

A complaint can be laid with the relevant IPID office (contact details in Annexure B). IPID is responsible for dependent oversight over the South African Police Service and the Municipal Police Services. A victim of unlawful mistreatment, may be entitled to claim compensation.

- Right to protest

Section 17 of the Constitution says that everybody has the right, to peacefully and unarmed, assemble, and to demonstrate, to picket and to present petitions. This is commonly referred to as the right to protest.

The National State of Disaster, and especially the Regulations operating during the lockdown, place considerable restrictions on this right. Gatherings and in-person protests are prohibited for the period of the lockdown and according to Directions, the issuing of permits for marches, protests and the handover of petitions is suspended for the lockdown period (Municipalities and provinces directions, 25 Mar 2020). These include “any assembly, concourse or procession in or on any public road” and in or on any other building, place or premises, whether wholly or partially in the open air, including buildings or premises used normally for sporting, entertainment, religious or cultural purposes.

In addition, there are also a number of Regulations dealing with movement and the supporting directions issued by various ministers limiting the number of people who may congregate (for example, 70% of the carrying capacity in a taxi and no more than 50 people at a funeral etc.).

Although in-person gatherings are prohibited, there are many creative ways in which the right to protest can be exercised without violating the lockdown Regulations and Directions. For example, virtual or online gatherings or meetings can take place; messages of solidarity or protest can be shared electronically, via email, SMS or WhatsApp. A person could stand at their gate, alone or with the members of their household, with a placard (and perhaps encourage your neighbours to do the same), a person could wear a sign when going to the shop for groceries or when on a permitted journey outside of their home to draw attention to a particular issue, posters with messages or pictures could be placed outside of the home or in the window, on the front door or gate. However, law enforcement officials may remove placards or banners appearing on any public street, bridge, public place or street pole or other public property.



- Concerns around limits to freedom of expression

Freedom of expression, like the right to protest, is very important especially in the context of a national disaster and a lockdown. This is because people need to be able to effectively communicate their frustrations and needs to the government.

Concerned about the spread of “fake news” or false information, the lockdown Regulations prohibit the publication of statements “through any medium, including social media” with the “intention to deceive” anyone about: 1) COVID-19; 2) COVID-19 infection status of any person; 3) any measure taken by the Government to address COVID-19.

A violation of this provision can result in 6 months imprisonment and/or a fine. This is quite an unprecedented move in South Africa from a legal perspective. It will be difficult to prove “intention to deceive” and is arguably over-broad as it does not require the state to prove that harm resulted from the conduct. It can also be argued that there are less restrictive means available (for example administrative sanctions) to have achieved the same result. **The implementation of this provision must be carefully monitored.**

- Right to Privacy / Tracing Database

From a public health perspective, the ability to track and trace people will be a valuable tool in containing the spread of COVID-19. There are, however, some obvious limitations on the right to privacy as a result. There is no requirement for prior consent and no requirement that the data be anonymised (although six weeks after the lockdown the database must be de-identified). As explained in the legal Summary section above, there are a number of safeguards that have been included into the Regulations to ensure that the laudable goal of containing the virus is balanced with the right to privacy. The implementation of this provision must be carefully monitored to ensure that this erosion of privacy rights does not persist beyond what is necessary to respond to the pandemic.

SPECIFIC RISKS ARISING FROM THE DISASTER REGULATIONS FOR VULNERABLE GROUPS

- Homeless people

As stated above, the Regulations to the DMA restrict movement and confine people to their “residences” for the period of the lockdown. A person who is outside of a residence and not providing or obtaining an essential good or service, is at risk of arrest for violation of the Regulations by an enforcement officer. Where people do not have a residence, (e.g. homeless people) the government is mandated to identify temporary shelters that meet the necessary health hygiene standards. This places homeless people at risk of arrest if they choose not to stay in a temporary shelter provided by the government.

The shelters have to be hygienic and homeless people still have a right of access to healthcare (section 27 of the Constitution) and the right to a clean and healthy environment in terms of section 24 of the Constitution. The Regulations are silent on the minimum health standards required by these sites and the screening for communicable diseases and isolation of people who are brought into these temporary sites. It is not clear at all that setting up large scale temporary shelters is beneficial from a health stand-point and preventing the spread of COVID-19. Homeless people in these temporary shelters (particularly large ones) are vulnerable to the following:

- Contracting communicable diseases (COVID-19, TB etc.)
- Gender based violence
- Targeted harassment and mistreatment from law enforcement officers
- Lack of access to traditional support network and community
- Lack of access to health services (chronic medication, withdrawal and rehabilitation services etc.)

- Gender Based Violence

There has tragically been a rise in gender based violence during the lockdown period. Women and children are particularly at risk. The legal support structures for domestic violence and protection orders and protection from harassment orders are still in place. The Directions make it clear that services of process and execution of writs by sheriffs are limited to cases that are urgent and essential including

COVID-19 related processes, domestic violence protection orders, protection from harassment orders, claims which are prescribing, urgent processes and specific and urgent family law matters (Courts, Court Precincts and Justice Service Points Directions, 31 Mar 2020). The Gender-Based Violence National Command Centre remains operational and an urgent victim response line has been set up (see Annexure B for contact details). Further, Family Violence, Child Protection and Sexual Offences Units are supposed to be reinforced at police stations during the lockdown period.

Details about how to apply for a protection order can be obtained [here](#).

A list of functional shelters nationwide is available [here](#).

- Spaza shops, informal fruit and vegetable traders, and Langanas

There was general confusion about the status of spaza shops and informal fruit and vegetable traders when the Regulations were first published. As of 16 April the Regulations make it clear that spaza shops and informal fruit and vegetable traders are permitted to trade provided they have written permission from the municipality. Any permits that expire during the lockdown period will remain valid for one month after the end of the national state of disaster.

The issuing of such “permissions” or permits has been inconsistent in different municipalities. As a result, the Minister issued a Circular which required all municipalities to begin issuing such permits with immediate effect and provided a template for such permits. Check with your local municipality to find out the permit requirements.

- Non-Citizens

With very few exceptions, such as the right to vote and the right to citizenship, the South African Constitution grants all human rights to “everyone”. This includes, importantly, all social and economic rights such as access to water, education, housing, healthcare and other basic services. These rights may only be limited by a law of general application that is reasonable and justifiable in society based on human dignity and equality.



Like South African law, international law treaties South Africa has signed are also binding on the South African government. These treaties confirm that while non-citizens (whether refugees, asylum seekers or economic migrants) are in South Africa they enjoy a full range of human rights. Even non-citizens' right to work in South Africa is protected in terms of international human rights law and South African courts have confirmed that non-citizens have a right to make a living in terms of their right to dignity.

Non-citizens enjoy a right to equality in South Africa and enforcement officers should not discriminate against or target them based on their nationality.

- Social grant recipients

Households who rely on social grants are particularly vulnerable during this period. Children who would have received meals from schools and partial care facilities, are no longer doing so. It is also estimated that 2.5million women would have lost their informal sector jobs as a result of the lockdown (SALDRU, UCT). As a result, there has been a strong call from many organisations to increase the Child Support Grant to R500. To date this call has not been heeded.

According to the Directions:

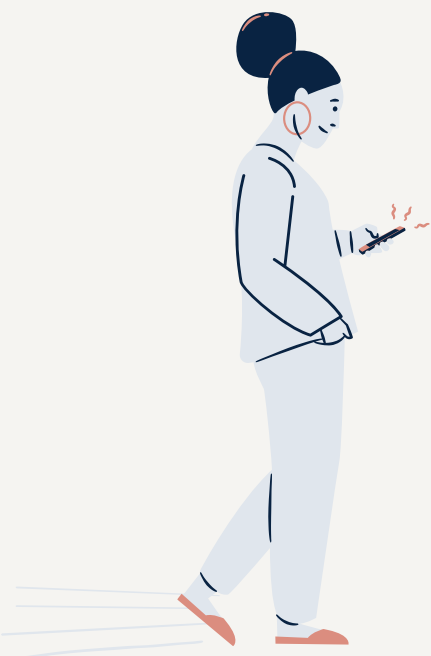
- Payment of social grants must continue unhindered during the lockdown period.
- Temporary disability grants whose date of lapsing fall during the lockdown period must be deemed to have not lapsed during this period.
- Social grants not claimed for three consecutive months may not lapse during the lockdown period.

Grant recipients must carry their ID cards and SASSA cards with them. Older persons and persons with disabilities will be given priority in queues. Queues should be managed according to hygiene standards and staff should have masks and gloves. Grant collection days are also extended and public transport rules relaxed for the collection of grants (buses and taxis are permitted to operate from 5:00 until 20:00).

- Employment

If you get the COVID-19 virus while working or as a result of performing your work, you may be protected by COIDA (Compensation for Occupational Injuries and Disease Act). If you receive confirmation that you have the virus, you can apply for compensation for temporary total disablement for up to 30 days. Where you have been ordered to self-quarantine, you have the right to receive remuneration from your employer for days of absence. In all accepted cases of COVID-19, you have the right to get medical aid for a period of up to 30 days from the date of diagnosis.

If your employer has to stop its operations for a reason directly related to the pandemic (and it is not financially possible for them to keep paying your salary), your employer can apply for you to get a benefit from the Temporary Employee/Employer Relief Scheme (C19 TERS). Only companies registered with the UIF can access this benefit. From C19 TERS/UIF, you have the right to receive a percentage of your salary, the higher your salary the lower the percentage you get (maximum R17,712.00 per month, but never less than R3500 per month). If you have to be quarantined for 14 days due to the COVID-19 pandemic, you may qualify for an illness benefit from UIF. This benefit is de-linked from the other UIF Benefits and other processes and you must be receiving less than your normal wage while on sick leave.



- Livelihoods

The virus has caused a global recession and it is predicted that in South Africa millions will lose their jobs, businesses will close and food poverty and insecurity will increase. The social consequences of the lockdown are going to be unprecedented. The government has thus far implemented a Tourism Business Relief Fund; COVID-19 Temporary Employee/Employer Relief Scheme (C19 TERS); Unemployment Insurance Fund support; SMME Debt Relief Fund; the Sukuma Relief Programme (already oversubscribed); the Oppenheimer SA Future Trust; exceptional tax measures through SARS; various debt relief from Financial Institutions; and the COVID Business Rescue Assistance War Room (information about these efforts can be accessed [here](#)).

It is widely considered that this will not be enough. There is therefore a strong lobby group for the increase in the Child Support Grant as well as

the restarting of the school nutrition programme and a call for the distribution of food parcels. The Western Cape governments have shown support for reopening of the school feeding scheme and the Western Cape and Gauteng governments have tried to provide the infrastructure to support the distribution of food parcels. Both have hotlines where people can apply for food parcels. These will be difficult times and we hope that all sectors of society will be mobilised (financially and otherwise) to alleviate the burden on the poorest.



- Evictions

On 26 March 2020, the Minister of Justice issued Directions which indicate clearly that during lockdown: “all evictions and execution of attachment orders, both movable and immovable, including the removal of moveable assets and sales in execution is suspended with immediate effect”. This is consistent with the call from the United Nations Special Rapporteur on the Right to Housing for a “ban” on all evictions during COVID-19 lockdowns and quarantines worldwide. This was bolstered by an amendment to the Regulations on 16 April which prohibits evictions from any residence whether it is formal or informal or a farm dwelling (Regulation 11CA).

Any person who evicts anyone is guilty of an offence and, on conviction, liable to a fine or to imprisonment for a period not exceeding six months or to both such fine and imprisonment (Regulation 11G). In terms of the South African Constitution and South African law no eviction is lawful without a court order. And during lockdown a court will not contemplate granting such an order given this Direction. It does not matter how these evictions are achieved (i.e. through actual removal or disconnection of basic services). It does not matter how long a person has been living where they are being removed from. If a person has been living in a rudimentary structure that has been constructed even, for example, a single day before, and that person has no other home, removing them from that home amounts to an unlawful eviction under the Directions.

- Service Delivery

The Constitution protects the right to water of a sufficient quality and quantity for use in cooking, cleaning and for purposes of hygiene. This includes a right to sufficient water to effectively combat COVID-19 by regularly and vigorously washing hands. In the initial announcement of a lockdown in South Africa, President Ramaphosa made it clear that emergency water would be made available to those who currently do not have access to water.

According to the Directions, Municipalities are to:

- Ensure that communities are provided with the necessary means to prevent transmission;
- Provide potable water and sanitation services to high population density settlements, rural communities, informal settlements;
- Provide other appropriate means, like water tankers, boreholes and storage tanks in water constrained communities that have limited access to municipal water supply;
- Ensure that, in collaboration with the relevant stakeholders, water and sanitation is available at public facilities and public transport points;
- Prepare awareness campaigns on awareness and prevention of COVID-19
- Ensure that municipal offices, clinics etc. are equipped with the appropriate prevention gear e.g. masks, sanitisers etc.;
- Ensure the relevant protocols are followed when disposing of hazardous waste;
- Close public facilities that don't provide essential services;
- Monitor social gatherings; and
- Identify quarantine sites within their jurisdictions (Municipalities and Provinces Directions, 25 Mar 2020).

The hotline for water related issues can be found in Annexure B.



ANNEXURE A: SUMMARY OF KEY DIRECTIONS

- All sporting, arts, cultural and religious events organised or held in a stadium or venue are suspended until the Minister directs otherwise (*Sports, Arts and Culture Directions 9 Apr 2020*)
- **Day parole** granted to sentenced offenders is suspended during the lockdown period (*Correctional Services and Remand Detention Facilities Directions, 9 Apr 2020*)
- **Grocery stores** are permitted to operate during lockdown, provided:
 - They have permits issued by their local municipalities;
 - No person may stay overnight in a grocery store;
 - They only sell food and basic necessities;
 - They enforce social distancing; and
 - They disinfect and sanitize trading spaces (*Small Business Development Directions, 7 Apr 2020*)
- **Persons working** during lockdown must at all times carry a permit (containing a stamp or authorised signature) to perform essential services and a valid form of identification (*Small Business Development Directions, 7 Apr 2020*)
- **Hotels, lodges, guest houses, game reserves and holiday resorts** are closed to the public unless they are necessary to provide quarantine to tourists who were already at the establishments at the time of lockdown and these persons are to remain in the establishment for the duration of lockdown. In these instances, employers must ensure employees have the necessary protective equipment and are trained on COVID-19 protocols. These establishments are prohibited from offering services to other people other than those quarantined (*Tourism Directions, 2 Apr 2020*)
- Only **approved hotels** near the large airports are permitted to host airline crew for cargo flights bringing essential supplies or those authorised for the evacuation of international tourists organised through their respective embassies (*Tourism Directions, 2 Apr 2020*).
- There is restricted access to the court building during lockdown.
 - Only persons with a material interest in the case will be permitted into the court building (litigants, accused, persons helping vulnerable members of society such as disabled persons or children);
 - Entry into the court may only be allowed for urgent or essential matters;
 - The number of persons entering courts will be limited by court management;
 - A person who has recently been out of the country may not be allowed into the court (unless the matter is urgent or essential and the person has been screened and is not infected with COVID-19);
 - A person who has been in contact with a COVID-19 infected person may not be allowed to enter the court; and
 - Interpreters must be sourced within the province in which the case is heard (*Courts, Court Precincts and Justice Service Points Directions, 31 Mar 2020*)
- **Criminal trials** enrolled during lockdown must be postponed to after lockdown (except in exceptional cases where the interests of justice require a special arrangement) (*Courts, Court Precincts and Justice Service Points Directions, 31 Mar 2020*)
- No detainees awaiting trial may be brought to the court unless for a first appearance, bail application or a case in which special arrangements have been made with the judge (*Courts, Court Precincts and Justice Service Points Directions, 31 Mar 2020*)
- **Persons arrested for petty offences** must be release and warned to appear in court at a future date (*Courts, Court Precincts and Justice Service Points Directions, 31 Mar 2020*)
- **Criminal cases** where accused persons are not incarcerated may not be placed on the roll during lockdown and summonses will be issued for new trial dates (*Courts, Court Precincts and Justice Service Points Directions, 31 Mar 2020*)
- **Civil cases** that are not urgent and essential services may not be placed on the court roll during lockdown (*Courts, Court Precincts and Justice Service Points Directions, 31 Mar 2020*)

- **The Chief Registrar or clerks of court** are to inform litigants and their legal representatives of new court dates (*Courts, Court Precincts and Justice Service Points Directions, 31 Mar 2020*)
- Services of process and execution of writs by sheriffs are limited to cases that are urgent and essential including COVID-19 related processes, **domestic violence protection orders, protection from harassment orders, claims which are prescribing, urgent processes and specific and urgent family law matters** (*Courts, Court Precincts and Justice Service Points Directions, 31 Mar 2020*)
- **Legal aid** is limited to urgent and essential cases during lockdown (*Courts, Court Precincts and Justice Service Points Directions, 31 Mar 2020*)
- **Legal practitioners** required to travel for litigation purposes must secure a permit (*Courts, Court Precincts and Justice Service Points Directions, 31 Mar 2020*)
- **Family law** services will be limited to the following: orders of court to be made on foster care; adoption; removal of children in need of care and protection; placement of children in child and youth care centres; international child abduction cases; certain maintenance matters; interim domestic violence protection orders; and interim protection against harassment orders (*Legal Directions, 26 Mar 2020*)
- **All evictions** are suspended for the duration of the lockdown (*Legal directions, 26 Mar 2020*)
- **Payment of social grants** must continue unhindered during the lockdown period (*Social Development Directives, 30 Mar 2020*)
- **Temporary disability grants** whose date of lapsing fall during the lockdown period must be deemed to have not lapsed during this period (*Social Development Directives, 30 Mar 2020*)
- **Social grants not claimed** for three consecutive months may not lapse during the lockdown period (*Social Development Directives, 30 Mar 2020*)
- The Electronic Communications Network Service providers are to provide **location-based services** to support and assist and combat the spread of COVID-19 (*Electronic Communications, Postal and Broadcasting Directions, 26 Mar 2020*)
- **The SA Post Office** must make its national address system available to assist authorities to track and trace infected individuals and those who have been in direct contact with infected persons (*Electronic Communications, Postal and Broadcasting Directions, 26 Mar 2020*)
- If an employer closes its operations for a period of three months or less as a direct result of COVID-19 and suffers financial distress, the company qualifies for a **Temporary Relief Benefit** to cover the salaries of employees for the duration of the closure (*COVID-19 Temporary Employee / Employer Relief Scheme Directive, 26 Mar 2020*)
- **Municipalities are to:**
 - Ensure that communities are provided with the necessary means to prevent transmission;
 - Provide potable water and sanitation services to high population density settlements, rural communities, informal settlements;
 - Provide other appropriate means, like water tankers, boreholes and storage tanks in water constrained communities that have limited access to municipal water supply;
 - Ensure that, in collaboration with the relevant stakeholders, water and sanitation is available at public facilities and public transport points;
 - Prepare awareness campaigns on awareness and prevention of COVID-19
 - Ensure that municipal offices, clinics etc are equipped with the appropriate prevention gear eg. masks, sanitisers etc.;
 - Ensure the relevant protocols are followed when disposing of hazardous waste;
 - Close public facilities that don't provide essential services;
 - Monitor social gatherings; and
 - Identify quarantine sites within their jurisdictions (*Municipalities and Provinces Directions, 25 Mar 2020*)

- The issuing of permits for **marches, protests and the handover of petitions** is suspended for the lockdown period (*Municipalities and Provinces Directions, 25 Mar 2020*)

ANNEXURE B: IMPORTANT CONTACT DETAILS

| Organisation | Telephonic | Contact Info | Times | Advice on the Following Issues |
|---|--|---|--|--|
| ACCESS TO JUSTICE LEGAL SUPPORT HOTLINE | Hotline only | 066 076 8845 | | Phone this number if you think that your rights are being violated/ you have observed a rights violation during the 21 day lockdown |
| CENTRE FOR APPLIED LEGAL STUDIES | Walk-in consultations temporarily suspended | 073 325 5311matimba.hlungwani@wits.ac.za | Mon -Fri 9h00 -17h00 | Various issues including, but not limited to evictions, access to water, electricity, sanitation, corporate accountability broadly, sexual violence, issues affecting mine affected communities, protests, prison conditions and access to information |
| CENTRE FOR CHILD LAW | Walk-in consultations temporarily suspended | 012 420 4502centreforchildlaw@up.ac.za | Mon – Fri 8h00 -16h30 | Legal issues related to children’s rights and wellbeing |
| CENTRE FOR ENVIRONMENTAL RIGHTS | No walk-in client consultations. | 021 447 1647 info@cer.org.za | Mon – Fri 8h00 -16h30 | The right to a healthy environment, including pollution, degradation and climate change caused by coal mines and coal power; supporting mining-affected communities, activists and defenders. |
| CORRUPTION WATCH | Walk-in consultations temporarily suspended. | WhatsApp and ‘Please Call Me’ line: 072 013 5569 011 242 3900 tsietsik@corruptionwatch.org.za shalatim@corruptionwatch.org.za mzwandileb@corruptionwatch.org.za | Mon – Fri 8h00 -16h00 | Reporting corruption, advising whistle-blowers. |
| EQUAL EDUCATION LAW CENTRE | Walk-in consultations temporarily suspended. | | Mon – Fri 8h00 -16h00 | Advice on the right to basic education and education related matter. |
| LAWYERS FOR HUMAN RIGHTS | Walk-in consultations temporarily suspended. | Jhb: +27 66 076 8845 Pta: +27 72 155 6384 Dbn: +27 78 315 1269 Musina: +27 72 369 8780 Upington: +27 54 331 2200* “Please call me” messages will be returned sharone@lhr.org.za | Mon – Fri 8h30 -17h00 | Legal advice and representation to people and communities across six strategic programmes, including refugee and migrant rights, land and housing rights, environmental justice, gender equality, penal reform, and strategic litigation. |
| LEGAL RESOURCES CENTRE | Walk-in consultations temporarily suspended. | 011 038 9709 Jhb: lucien@lrc.org.za CT: sherylle@lrc.org.za Dbn: Sharita@lrc.org.za Makhanda: cameron@lrc.org.za | Mon – Fri 9h00 -16h00 | General human rights and public interest matters. |
| NDIFUNA UKWAZILAW CENTRE | Walk-in consultations temporarily suspended. | 081 832 9363 disha@nu.org.za | Tues: 9h00 -17h00 (remainder of the week calls answered depending on attorney availability). No after office hours availability | Urban housing issues, particularly evictions, tenant-landlord disputes & displacement |

| Organisation | Telephonic | Contact Info | Times | Advice on the Following Issues |
|---|--|---|---------------------------|---|
| PROBONO.ORG | Walk-in service temporarily suspended, face-to-face consultation where warranted by appointment only | WhatsApp or call: Labour, Family and Wills: 067 754 3959 Housing, Deceased Estates and Refugee: 067 754 1885 Children: 067 739 8774 General Enquiries: 067 754 6334 | Mon – Fri 8h00 -17h00 | Refugee and asylum, housing, labour, family law, wills and deceased estate, children’s rights |
| SECTION27 | Walk-in client consultations temporarily suspended. | 060 754 0751 067 419 6841 komane@section27.org.za mahlathi@section27.org.za | Mon – Fri 8h00 -17h00 | Access to health and basic education and HIV discrimination related issues. Providing advice on human rights violations in health institutions against vulnerable groups such as, women, children, the elderly, refugees and migrants |
| SOCIO-ECONOMIC RIGHTS INSTITUTE OF SOUTH AFRICA | Walk-in consultations temporarily suspended. | Call or send “please call me”: 072 226 4648 / 071 301 9676 083 720 6600 sanele@seri-sa.org | Mon – Fri 11h00 -15h00 | Housing including evictions, sales in execution of residential property and access to basic services. Rights of informal and precarious workers. Freedom of expression and protest. |
| WOMEN’S LEGAL CENTRE | Walk-in client consultations suspended with immediate effect until 20 April 2020 (4 weeks). Working on remote access for clients via WhatsApp, telephone, email and social media | WhatsApp, call or “please call me”: 0794218197 info@wlce.co.za | Mon – Fri 9h00 -17h00 | Legal issues relating to women’s rights (i.e. violence against women, women’s rights to housing, land and tenure, sexual health and reproductive rights, relationship rights, women and the workplace) |
| INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE (IPID) | Walk-ins into any police station (this is advised against due to social distancing needed) | Gauteng: 076 455 5718; Limpopo: 078 871 4811; KwaZulu-Natal: 079 895 2741; Mpumalanga: 072 881 4196; Northern Cape: 064 624 8203; North West: 078 163 6874; Western Cape: 073 890 1269 | Mon – Fri 7h30-16h00 | A complaint against the police during this time should be lodged through IPID |
| ATHLONE HOUSE OF STRENGTH (WC) | Telephonic counselling | 021 862 9983 | | GBV services during the lock down |
| BADISA (WC) | Telephonic counselling | 021 957 7130 | | GBV services during the lock down |
| NATIONAL SHELTER MOVEMENT | | Bernadine 082 903 8739 (WC) Joy 071 906 3949 (WC) Rudo 083 428 1640 (GP) Zubeda 083 289 9818 (GP) Fisani 079 310 9633 (MP) Sabera 072 446 3337 (KZN) Sarah 072 144 7171 (FS) 081 247 6056 (EC) Rina 072 348 6526 (NW) Rose Clair 080 021 2321 (NC) Rosaline 073 888 8738 (NC) | | GBV services during the lock down |
| SEX WORKERS EDUCATION & ADVOCACY TASKFORCE (SWEAT) | | 021 448 7875 | | Support for sex workers |
| MOSAIC (WC) | Telephonic counselling | 021 761 7585 | | Legal aid |

| Organisation | Telephonic | Contact Info | Times | Advice on the Following Issues |
|--|--|---|--|---------------------------------|
| GAUTENG PROVINCE | | 0800 428 8364 | | Food support |
| LIFELINE | | 016 428 8364 (Gauteng) 0861322322 0659899238 (whatsapp) | | |
| CHILDLINE | 24hr Crisis Line and counselling | 080 055 5555 | | |
| WOMEN ABUSE HELPLINE | Toll-free helpline | 0800 150 150 | | |
| MOBIE G | | www.mobieg.co.za | Mon-Thurs from 19:00 Sun from 18:00 | Live chat counselling for teens |
| NISAA | Telephonic counselling | Batsi 083 303 1291 Yvonne 063 083 6061 Nokwethu 011 850 0637 | | |
| SOUTH AFRICAN DEPRESSION AND ANXIETY GROUP (SADAG) | 24 hour helpline | 0800 456 789 SMS: 31393 | | |
| SADAG SUICIDE CRISIS LINE | 24 hour helpline | 0800 567 567 | | |
| TEARS GBV | SMS help line | *134*7355# | | |
| IMPORTANT GOVERNMENT CONTACT DETAILS | National Institute for Communicable Diseases | 0800 029 999 | | |
| | South African Police Service: | 0860 010 111 | | |
| | Department of Home Affairs: | 0800 601 190 | | |
| | Gender-based Violence Command Centre | 0800 428 428 or *120*786# (for call-back) | | |
| | National Crisis Line | 0861 322 322 | | |
| | Department of Water Affairs | 0800 200 200 | | |
| | Reporting Undue Price Increases | 0800 141 880 | | |
| | Department of Tourism | 0860 868 747 | | |
| | Support to SMMEs in Distress: | 0860 663 7867 | | |
| | Presidential Hotline: | 17737 WhatsApp: 060 012 3456 | | |