

The Law during a State of Disaster and Human Rights Risks: Level 3

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INTRODUCTION

The Corona Virus is a new virus for which there is no immunity in humans, for some people it causes the disease, COVID-19. There is no vaccine and there is also no cure. It is also highly contagious. Extreme and enforced social distancing measures have therefore been put in place globally in order to slow down the rate of infection and give time to governments and scientists to come up with appropriate response plans.

In South Africa, 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 was then extended until 30 April 2020. The lockdown period was governed by government regulations and directions which were enacted, released and amended on a consistent basis. The initial lockdown regulations as amended until 30 April will be referred to as the “Lockdown Regulations” or “Level 5 Regulations”. From 1 May new regulations that dealt with Level 4 were enacted and introduced a phased/levelled approach (these will be referred to as “Level 4 Regulations”). These applied nationally from 1 May until 30 May. On 28 May, the Government issued amendments to the Regulations that now include provisions for Level 3 (reference to “Regulations” generally refers to the regulations that are currently in place that make provision for Levels 3 and 4). The whole country is on Level 3 from 1 June. It is envisaged that different districts could be at different levels in the future.

The National State of Disaster was declared in terms of section 27 of the Disaster Management Act 57 of 2002 (DMA). The Level 4 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.** In terms Regulation 2(3) of Level 4 Regulations all Directions issued by Ministers in terms of the initial Lockdown Regulations continue to apply.

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. Please be aware and double check that things have not changed. Please look at the more comprehensive document under [Level 4 and 5](#) for a detailed description of the human rights risks arising from the implementation of the regulations and directions. This document serves only as a summary of Alert Level 3.

What does the Declaration of National Disaster mean?

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. However, even in a state of emergency any limitation or restriction of rights would need to:

- Have a legal basis;
- Be strictly necessary to address Corona Virus/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 Corona Virus/COVID-19 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 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 in terms of the DMA are, like all limitations of rights, subject to section 36 of the Constitution which requires any such limitation to be: based on a generally applicable 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 unjustifiably limited or you have observed the rights of someone being violated or unjustifiably limited, please contact the **Legal Response Access to Justice Hotline 066 076 8845**.



When can I leave my home?

You must remain at home at all times, except to:

- Travel to and from work
- Attend a school or learning institution once these are opened
- Purchase goods or obtain services that are allowed under Level 3
- Exercise, between 6am and 6pm, and not in groups
- Move children between homes, where permitted
- Attend a place of worship within the same province as your home

You must wear a cloth face mask whenever in public

Movement between provinces

Movement between provinces is prohibited, except for:

- Carrying out work responsibilities or performing any service permitted under Alert Level 3, where a permit has been issued
- Moving to a new place of residence
- Moving to care for an immediate family member
- Members of Parliament performing oversight responsibilities
- Learners commuting to attend schools or institutions of higher learning
- Attendance of funerals, and transportation of mortal remains
- Obtaining medical treatment
- Persons who are returning to their place of residence from a quarantine or isolation facility
- Transportation of fuel, cargo and goods

Gatherings

All gatherings are prohibited, except for:

- Places of worship with 50 people or less, depending on the size of the venue, and following strict health protocols
- Funerals, with specific restrictions
- Workplaces, with social distancing guidelines adhered to
- Agricultural auctions
- Professional non-contact sports matches, but with no spectators

Funerals

You may travel to attend a funeral if you are a:

- Spouse or partner of the deceased
- Child of the deceased, whether biological, adopted or stepchild
- Child-in-law of the deceased
- Parent of the deceased, whether biological, adopted or stepparents
- Sibling, whether biological, adopted or stepbrother or sister of the deceased
- Grandparent of the deceased
- Attendance at a funeral is limited to 50 people and is not regarded as a prohibited gathering
- A permit must be acquired to attend a funeral outside one's metropolitan area

Hotspots

Hotspots will be determined based on the number of active cases per 100,000 in the population, the rate of increase in active cases, and the capacity of the health system.

Special measures will apply in hotspot areas:

- Movement in and out of hotspot areas may be restricted
- Dedicated, multidisciplinary teams will be deployed to contain the outbreak, including epidemiologists, doctors, nurses and community health workers
- Each hotspot will be linked to testing and quarantine facilities, and additional hospital beds where necessary
- All contacts will be traced and isolated to prevent further transmission

Initiation practices are prohibited for the duration of the national state of disaster

All public sporting, entertainment, leisure & exhibition venues are closed to the public & gatherings at these places prohibited, including:

- Conferences and events
- Cinemas, theatres, museums and other entertainment venues
- Gyms and fitness centres
- Beaches, public parks, sports grounds and swimming pools

All borders remain closed except for the transportation of specified goods such as fuel, medical supplies and cargo. or for the purposes of repatriating persons

ALERT LEVEL 3 REGULATIONS ISSUED UNDER THE DISASTER MANAGEMENT ACT : Work-Related

Work Place Protocols

To keep workers safe, employers must:

- Minimise the number of employees at the workplace at any given time through rotation, staggered working hours, shift systems, remote working arrangements or similar measures, to limit congestion in public transport and at the workplace
- Make arrangements for social distancing at work
- Provide sanitiser or facilities for hand-washing
- Sanitise surfaces regularly
- Screen employees for symptoms daily and assist those at risk to seek treatment

Economic Sector

All economic sectors are permitted to operate, except for high-risk activities that remain restricted

What restrictions stay in place?

- Consumption of food and alcohol in restaurants, bars, shebeens and taverns
- Personal care services where social distancing is not possible
- Hotels and accommodation for leisure
- Domestic air travel, except for essential work travel
- Businesses with more than 100 people must try to minimise those at the workplace at any one time
- Employers must implement special measures in order to keep safe that employees over the age of 60 or with comorbidities
- Sector bodies must develop sector-specific protocols in consultation with the Department of Health in sectors that are high risk

What goods can I purchase?

- All retail outlets will be open, with stringent health protocols in place
- Alcohol will be sold under strict conditions, from Mondays to Thursdays between 9am and 5pm
- The sale of cigarettes and other tobacco products remains prohibited

Private Households' Employment

All staff employed by private households may return to work, and employers must take measures to ensure a safe working environment

- ★ *These regulations have been held to be invalid and unconstitutional by the North Gauteng High Court but the order was suspended for 14 days (to give time to government to make amendments by 22 June 2020). However, government has indicated that they will appeal the judgment. This means that the order is suspended and the regulations are fully in place and must be followed.*
- ★ *The National State of Disaster has been extended until 15 July 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	24hr Crisis Line and counselling	0800 428 8364		Food support	
LIFELINE		016 428 8364 (Gauteng) 0861322322 0659899238 (whatsapp)			
CHILDLINE		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			
SCALABRINI CENTRE	Please call me or SMS can be sent anytime, but a response will be given during office hours.	078 260 3536 (phone/please call)		Offering services for refugees, migrants and asylum seekers.	