



10 April 2020

To: THE PRESIDENCY: NATIONAL COMMAND COUNCIL

c/o: Ms Khusela Diko & Mr Mike Louw

Per email: khusela@presidency.gov.za presidentrsa@presidency.gov.za

And To: THE MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS:

DR NKOSAZANA DLAMINI ZUMA, MP

c/o: Ms Mandisa Mbele & Ms Pamela Salusalu

Per Email: MandisaMB@cogta.gov.za & PamelaS@cogta.gov.za

And To: THE MINISTER OF POLICE:

MR BHEKI CELE, MP

c/o Ms Sharon Gaehler and Ms Nonkululeko Phokane

Per Email: GaehlerSMK@saps.gov.za PhokaneN@saps.gov.za

And To: THE MINISTER OF DEFENCE:

NOSIVIWE NOLUTHANDO MAPISA-NQAKULA, MS

c/o Ms Joy Nonzukiso-Peter and Col Mariette Hartley

Per Email: caf@tiscali.co.za joy.peter@dod.mil.za

And To: THE MINISTER OF JUSTICE AND CORRECTIONAL SERVICES:

MR RONALD LAMOLA, MP

c/o Ms Zanele Ndlovu and Mr Bruce Sarela

Per Email: ZaneNdlovu@justice.gov.za & BSarela@justice.gov.za

RE: RECOMMENDATION FOR AMENDMENTS TO THE COVID19 REGULATIONS AND DIRECTIONS

We write to you as the C19 People's Coalition, an alliance of over 190 social movements, trade unions, community organisations and NGOs ("the Coalition"). Information about the Coalition, its members and its programme of action can be found at <https://c19peoplescoalition.org.za/poa/>

The COVID-19 pandemic presents an unprecedented public health threat to South Africa. The Coalition acknowledges the South African government's efforts to curb the spread of the coronavirus. We are encouraged by some of the work that is being done by our security forces and to serve the public at this time. However, we are deeply concerned about the abuses that we have seen.¹

In the first week of the lockdown we have recorded cases of assault, degrading physical punishments, allegations of corruption and deaths as a result of police conduct. We are aware that these are currently being investigated by the Independent Police Investigative Directorate (IPID) and the Military Ombudsman. However, investigation of abuses after they have occurred is not adequate in the current climate.

It is the observation of members of the C19 Coalition that some police, military and security officers, appear to be under the impression that existing laws and standing orders no longer apply during lockdown. This presents a serious threat to the viability of the lockdown and the important public health measures put in place by the government. It also introduces a potential threat to the rule of law. There is therefore an urgent need to emphasise that the role of security forces during this national disaster is primarily humanitarian, and that all standard restrictions and prohibitions that relate to the excessive use of force by law enforcement still apply during a state of disaster. To this end, please see attached as **Annexure A**, proposed amendments to the COVID-19 Regulations which we believe to be necessary. The necessity of these amendments is underscored by the deeply concerning public rhetoric from the Minister of Police, Bheki Cele. As recently as this week, having full knowledge of the reported incidents of abuse of power by some members of the police services, Minister Cele urged police forces to "not be very kind" to communities when enforcing lockdown regulations and to "push them home". He also made the startling suggestion that mere failure to "listen" to police instructions should be construed as "brutality" against the police.² In the current context, we believe that such statements are inflammatory and irresponsible.

We note that this submission follows an initial set of recommendations made on 4 April 2020 by the Coalition. Amongst others, our recommendations included the need to allow for SAHRC accredited human rights monitors to be included as an essential service. As our monitoring and analysis of the

¹ <https://c19peoplescoalition.org.za/no-to-a-militarised-lockdown-yes-to-a-humanitarian-and-public-health-approach/>

² <https://www.enca.com/news/cele-push-them-if-they-dont-listen> and <https://www.sowetanlive.co.za/news/south-africa/2020-04-07-not-listening-to-us-is-brutality-says-bheki-cele-on-lockdown/>

national crisis and the extended lockdown period continues we hope to furnish you with further recommendations in due course on specific issues.

We trust that our recommendations will be given urgent consideration. Should you require any clarification, please do not hesitate to contact us.

Yours faithfully.



Please direct any correspondence relating to this letter to Zelda Holtzmann (zlholtzman@gmail.com) (on behalf of the C19 People's Coalition Anti-Repression Working group) with copy to Michael Power (michael@powersingh.africa).

Please note that the following public interest law organisations have endorsed these recommendations:

- 1. Centre for Applied Legal Studies**
- 2. Centre for Child Law**
- 3. Centre for Environmental Rights**
- 4. Corruption Watch**
- 5. Equal Education Law Centre**
- 6. Lawyers for Human Rights**

- 7. Legal Resources Centre**
- 8. Ndifuna Ukwazi**
- 9. ProBono.Org**
- 10. SECTION27**
- 11. Socio-Economic Rights Institute**
- 12. Women's Legal Centre**

ANNEXURE A

Proposed amendment to the Regulations issued in terms of the Disaster Management Act (as amended):

Amendment of regulation 1 of the Regulations

1. Regulation 1 of the Regulations is hereby amended by the-

(a) amendment to and insertion of the following definitions:

“enforcement officer” includes a member of the South African Police Service, the South African National Defence Force and a peace officer, as defined in section 1 of the Criminal Procedure Act, deployed in terms of the Disaster Management Act 57 of 2002, and who is subject to these Regulations.”

“minimum use of force” means that an enforcement officer shall, at all times, avoid the use of force or, where this is strictly unavoidable, may use only the minimum force which is necessary and proportionate in the circumstances for the purposes of enforcing these Regulations.

2. **Regulation 3 of the Regulations is hereby amended by the-**

(a) amendment to regulation 3(b) to read as follows:

3(b). “if they refuse to disperse, take appropriate action in terms of National Instruction 4 of 2014 and in accordance with the principle of the minimum use of force, which may, subject to the Criminal Procedure Act, include arrest and detention.

3. The following regulation is hereby inserted in the Regulations after Regulation 11I:

11J(1). “Enforcement officers must at all times respect the provisions of National Instructions and Standing Orders of the South African Police Service in enforcing these regulations, including the principle of the minimum use of force.

(2). During the national state of disaster:

(a) all regulations, directions, national instructions, standing orders and operational guidelines pertaining to enforcement officers and their enforcement of these Regulations must be made public and published on the websites of the South African Police Service and the South African National Defence Force.

- (b) A list of operational commanders exercising command-control over enforcement officers and their geographic area of operation must be made public and published on the website of the South African Police Service.
- (c) Every instance in which force is used, or an arrest is effected, by an enforcement officer must be fully documented by the relevant operational commander and reported to the Intergovernmental Committee on Disaster Management and the Parliamentary Portfolio Committee on Police without delay, and published on the website of the South African Police Service on a weekly basis.”

ENDS.