



14 April 2020

**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](mailto:ZaneNdlovu@justice.gov.za) & [BSarela@justice.gov.za](mailto:BSarela@justice.gov.za) & [jjeffery@justice.gov.za](mailto:jjeffery@justice.gov.za)

**And To: THE PRESIDENCY: NATIONAL COMMAND COUNCIL**

c/o: Ms Khusela Diko & Mr Mike Louw

Per email: [khusela@presidency.gov.za](mailto:khusela@presidency.gov.za) [presidentrsa@presidency.gov.za](mailto:presidentrsa@presidency.gov.za)

**And To: OFFICE OF THE CHIEF JUSTICE**

Per Email: [enquiries@judiciary.org.za](mailto:enquiries@judiciary.org.za)

**And To: CHAIRPERSON: SOUTH AFRICAN LEGAL PRACTICE COUNCIL**

c/o: Ms Kathleen Matolo-Dlepu

Per Email: [matolo@dlepu.co.za](mailto:matolo@dlepu.co.za)

**And To: LAW SOCIETY OF SOUTH AFRICA**

c/o: Professional Affairs

Per Email: [kris@LSSA.org.za](mailto:kris@LSSA.org.za)

Dear Minister Lamola

**RE: URGENT REVISION TO DIRECTIONS REGARDING ISSUING OF ESSENTIAL SERVICES PERMITS FOR LEGAL PRACTITIONERS**

1. The undersigned organisations are public interest law clinics providing free legal advice and support services to poor and marginalised communities across South Africa.
2. We refer to the Regulations under the Disaster Management Act, 2002 (“**the Lockdown Regulations**”)<sup>1</sup> and the directions issued by yourself on 31 March 2020 thereunder (“**the directions**”).<sup>2</sup>
3. We appreciate the difficult task that has confronted the government in responding to the coronavirus pandemic and we support efforts at curbing the spread of the disease.
4. However, we are deeply concerned that the directions, as it currently stands, significantly impede the ability of legal practitioners to provide meaningful and effective legal representation in certain circumstances, particularly in urgent matters where fundamental rights are limited or threatened.
5. In this regard, we refer to the letter dated 3 April 2020 directed to your office by the Chairperson of the Western Cape Provincial Council of the South African Legal Practice Council (“**the WC Provincial Council’s letter**”) and attached as Annexure A. We echo the concerns raised by the Chairperson and support the request for an urgent revision of the directions in order to ensure that there is sufficient clarity, and effective access to and administration of justice during this period of a declared national lockdown.
6. We note in particular our concern regarding paragraph 9(1)(c) of the directions, which provides that an essential services permit may only be issued to a legal practitioner if

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<sup>1</sup> Published under GN 318 in *Government Gazette* 43107 on 18 March 2020 as amended by GN R398 of 25 March 2020, GN R419 of 26 March 2020 and GN R446 on 2 April 2020.

<sup>2</sup> Published under GN 440 in *Government Gazette* 43191 of 31 March 2020 (replacing the directions initially issued on 26 March 2020).

he/she is “appearing in a matter enrolled for hearing and is classified as urgent in terms of these Directions”—

- 6.1. There are a variety of urgent and crucial matters to which legal practitioners are required to attend that do not necessarily involve an urgent attendance at court for an enrolled matter, but which actually need to occur in order to be able to bring a necessary urgent application. This includes, for example:
  - 6.1.1. the need to consult with clients whose rights are threatened under the current national lockdown;
  - 6.1.2. arranging for affidavits and other process to be drafted and commissioned, in light of the fact that various police stations are now declining to provide commissioning service during the lockdown period;
  - 6.1.3. assisting clients who are arrested under the Lockdown Regulations and held in custody at a police station, and those who require representation at bail hearings;
  - 6.1.4. attending at our organisations’ offices to access files, authorities, and printing and scanning facilities for purposes of preparing an urgent application;
  - 6.1.5. travelling between municipal areas (and on the rare occasion, between provinces) in order to assist clients in far-flung areas.
- 6.2. At present, legal practitioners in our organisations are unable to effectively provide legal representation to clients as they are unable to obtain permits to travel for these purposes. In some cases this has already impacted the ability to launch urgent applications in order to challenge rights violations under the Lockdown Regulations. This has severe implications for access to and administration of justice, and impedes our ability to respond to clients’ immediate and urgent needs.
- 6.3. We reiterate that most persons who seek legal assistance from our organisations are indigent. Our clients have very limited or no means at all to travel to seek legal assistance, and to communicate with us telephonically or electronically, and it is critical for our legal practitioners to be able to travel to the client/client community to investigate, take instructions, and to act.

7. We also urge the Minister to amend direction 9(1)(a) of the directions, which requires the Provincial Director of a Provincial Legal Council to issue an essential services permit to a legal practitioner.
- 7.1. As the Western Cape Provincial Council’s letter highlights, this requirement places a “near-impossible task” on the provincial Councils as they deal with many simultaneous applications.
- 7.2. Moreover, there is no evident reason for distinguishing between the permit authorisation requirements of legal practitioners and other categories of essential service providers in terms of the Lockdown Regulations, who only require a permit to be authorised by the “head of an institution”.<sup>3</sup>
- 7.3. The requirement as it stands obstructs the ability of legal practitioners to efficiently and effectively attend to urgent matters as provided for in the directions.
8. We trust that you share our commitment to the need for meaningful access to justice, particularly during these challenging and unprecedented times. As the national lockdown has been extended until the end of April, we believe it urgent and essential that the Minister amend the directions taking into account the concerns raised.

Sincerely,

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<sup>3</sup> Regulation 11A of the Lockdown Regulations defines “head of an institution” as “the accounting officer of a public institution and the chief executive officer or the equivalent of a chief executive officer of a private institution”.

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