



Submission

to the

**Commissioner Solomon Ayele Dersso, Commissioner Rapporteur for the
Republic of South Africa, African Commission on Human and People's Rights**

on the

Human Rights Situation in South Africa during the COVID-19 pandemic

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1. Introduction

- 1.1. The Centre for Applied Legal Studies (CALs) is a civil society organisation based in the School of Law at the University of the Witwatersrand. CALs is also a law clinic, registered with the Legal Practice Council. As such, CALs connects the worlds of academia and social justice and brings together legal theory and practice. CALs operates across a range of programme areas, namely: Civil and Political Justice, Home, Land and Rural Democracy, Business and Human Rights, Environmental Justice, and Gender Justice.
- 1.2. We would like to thank the Commissioner Rapporteur for the Republic of South Africa and the South Africa Human Rights Commission for providing us with the opportunity to make submissions on the human rights situation in South Africa during the COVID-19 pandemic.
- 1.3. Briefly, our submission will deal with the human rights concerns that have emerged from our efforts to provide legal advice and assistance to the public during this time.

2. Disproportionate use of force by law enforcement

- 2.1. CALs remains concerned by reports of the South African Police Service (SAPS) and the South African National Defense Force (SANDF) using disproportionate force by while enforcing the COVID-19 lockdown. As of 29 April 2020, the Ministry of Police official records indicated that 97 incidents of COVID-19 related police brutality were reported to the Independent Police Investigative Directorate (IPID).¹ The nature of the incidents have ranged from police assaults, police discharging firearms, police corruption, deaths in police custody and deaths due to police action. As of 20 April 2020, the South Africa Military Ombud had received 28 similar complaints against the members of the

¹ See additional reflections on the police response to the lockdown here: <https://pmg.org.za/committee-meeting/30117/?via=homepage-feature-card>

SANDF.² The United Nations has also taken notice of what it has termed a 'toxic lockdown culture' in South Africa. Georgette Gagnon, the Director of Field Operations and Technical Cooperation for the United Nations Office of the High Commissioner for Human Rights reflected that:

"In South Africa we have also received reports of disproportionate use of force by security officers particularly in poor and informal settlements. Rubber bullets, teargas, water bombs and whips have been used to maintain social distancing...As of April 10, 17209 people have been arrested during the lockdown amidst allegations of police abuse".³

2.2. Recommendations:

- 2.2.1. Provide regular statistical updates of the number and nature of complaints against the SAPS, Municipal Police and the SANDF relating to coronavirus lockdown law enforcement;
- 2.2.2. Publicise findings of investigations against and update on measures taken to hold those found guilty of law enforcement brutality and abuse of power accountable;
- 2.2.3. Provide law enforcement with training on how to carry out a humanitarian rather than military response during the coronavirus lockdown.

3. Sexual and gender based violence

During the first week of the national lockdown, over 2300 cases of sexual and gender-based violence were reported to the police.⁴ The situation is no doubt exacerbated by the scarcity of shelters and other places of safety for survivors of sexual and gender-based violence. Those shelters that are in operation are grossly underfunded and thus unable to provide adequate support to survivors.⁵ Most stays in shelters accommodations are capped between three to six months which is argued as

² 'SANDF ombud gets more complaints' *The Cape Argus* 20 April 2020.

³ Listen to the complete press briefing here: <ftp://MVE-PWSU:vo4KeQnm@unis-ftp.unog.ch/PCOHCHR20200427.mp3>

⁴ 'Police Minister welcomes the decrease in serious and violent crimes since the lockdown' available at <https://www.saps.gov.za/newsroom/msspeechdetail.php?nid=25461> accessed on 4 May 2020.

⁵ Lisa Vetten *What is Rightfully Due: Costing the Operations of Domestic Violence Shelters* (2018) available at https://za.boell.org/sites/default/files/whatisrightlydue-costingdvshelters_fullreport.pdf

insufficient to break the cycle of abuse. Some shelters have been cited as having discriminatory policies. Many shelters create a barrier of access by refusing to admit survivors with minor male children over a certain ages. Others, expressly refuse access to members of the LGBTIQ+ community, creating an additional layer of vulnerability for this community that has been historically neglected by the state when it comes to making provision for places of safety.⁶ The situation of migrant women who may experience gender-based violence in domestic spaces must also be given urgent attention in this period. It is important that all relevant government departments take deliberate steps on this issue even as the government seeks to tackle the spread of the virus. The government must state unequivocally and unambiguously that every woman who experiences domestic violence, regardless of nationality and immigration status, is free to call the GBV Command Centre.

3.1. Recommendations:

- 3.1.1. Seriously consider increasing the capacity of shelter and other place of safety for people who have survived sexual and gender-based violence by procuring additional accommodation such as hotels and university residences in disuse as well as by hiring additional shelter staff;
- 3.1.2. Monitor and manage discrimination by shelters towards survivors from vulnerable groups such as adolescent and teenage male children, the LGBTIQ+ community and the migrant, refugee and asylum seeker community.
- 3.1.3. Order an Indefinite extension of the periods that survivors can stay at shelters until the current coronavirus outbreak has passed.
- 3.1.4. Provide regular updates on the number of sexual and gender-based violence that are being reported during the lockdown period.

4. Evictions and homelessness

- 4.1. Despite the National government having declared a moratorium on all evictions at the onset of the lockdown, municipalities continue to defy these directions. In the last few weeks three of South Africa's biggest metropolitan municipalities

⁶ Commission for gender Equality *Investigative Report: State of Shelters in South Africa* (2019) available at <http://www.cge.org.za/wp-content/uploads/2014/05/State-of-Shelters-in-SA.pdf>.

have evicted people living in informal settlements within their jurisdiction. These include the evictions in Lawley in the City of Johannesburg, Makhaza in the City of Cape Town and eKhenana in eThekweni. The state has also failed to make adequate, dignified and safe accommodation available for the homeless during the COVID-19 lockdown. The Strandfontein camp for the homeless is a case in point. Homeless people in Cape Town and surrounds were forcefully moved to the camp site, where they were placed in marquees with up to 600 other people with no provision for privacy, dignity as well as health and safety.

4.2. Recommendations:

- 4.2.1. Seriously consider making use of out-of-use hotels and university residences as alternative accommodation for those in need of shelter during the lockdown.
- 4.2.2. Immediately cease all evictions of occupants during the lockdown, whether or not their cases fall under the protection of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 and the Extension of Security of Tenure Act 62 of 1997.
- 4.2.3. Meaningfully consult civil society, experts and organisations of people who are homeless such as the Strandfontein Homeless Committee about the provision of alternative accommodation that adequately provides for both the dignity and health of those needing accommodation.

5. Corporate responses to COVID-19

5.1. Corporates have a negative obligation to respond to the COVID-19 to in a manner that does not adversely impact the rights of the general public. Corporates have a positive obligation to put adequate measures in place to ensure that their employees and communities affected by the business are not prejudiced during this period. The state has allowed the extractives industry to remain operation during the lockdown. This has not only put mine workers, who already suffer from a high burden of respiratory ailments, at risk of contracting COVID-19, but also has put the mining affected communities which

are homes to many of these mine workers at risk too. Despite this, the measures put in place by mining companies to mitigate these risks have been inadequate. With air quality and water scarcity as some of the negative impacts of mining, it is worrying that mining affected communities have not been consulted regarding the reopening of mines and have not been specifically targeted for support by mining companies. We welcome the reports of Competition Commission prosecuting retailers and suppliers that have been taken advantage of the public's desperation by inflating prices of essential goods such as food, medicines and personal protective equipment.

5.2. Recommendations:

5.2.1. Comply with the recent order Association of Mineworkers and Construction Union v Minister of Mineral Resources and Energy and Others (Mining Affected Communities United in Action intervening) matter particularly subparagraph 3.3 which stipulates that before publishing specific guidelines in terms of the Mine Health and Safety Act 29 of 1996, the Chief Inspector of Mining must meaningfully engage with mining affected communities.⁷

5.2.2. Proactively hold retailers and suppliers of essential services accountable for price collusion and price inflation.

6. Detainees in Correctional Centres and Immigration centres

6.1. Detainees are at increased risk of contracting the coronavirus due to the unsanitary conditions at South Africa's Correctional Centres including over-population, poor ventilation and high burdens of respiratory infections such as Tuberculosis. The number coronavirus infected detainees thus continue to rise. The latest figures indicate that 90 detainees incarcerated in South Africa's Correctional Centres have tested positive for the coronavirus, while two have

⁷The Court order can be found here: [https://www.wits.ac.za/media/wits-university/faculties-and-schools/commerce-law-and-management/research-entities/cals/documents/programmes/bhr/in-court/J%20427%20-2020%20AMCU%20v%20Minister%20of%20Mineral%20Resources%20and%20Energy%20%20Others%20\(Order%20with%20annexures\).pdf](https://www.wits.ac.za/media/wits-university/faculties-and-schools/commerce-law-and-management/research-entities/cals/documents/programmes/bhr/in-court/J%20427%20-2020%20AMCU%20v%20Minister%20of%20Mineral%20Resources%20and%20Energy%20%20Others%20(Order%20with%20annexures).pdf) and the judgement here: <https://www.wits.ac.za/media/wits-university/faculties-and-schools/commerce-law-and-management/research-entities/cals/documents/programmes/bhr/in-court/Judgment.pdf>

died from complications of COVID-19. No data is available on the number of infections at South Africa's immigration detention centres. The president is said to be still considering the whether to release of specific categories of detainees including remand detainees, potential parolees and detainees incarcerated for petty offences. However, everyday the President delays to make this call, is a day too late. Despite considering releasing the number of remand detainees, law enforcement continues to arrest and charge people who are accused of violating the lockdown regulations. 4500 people have been remanded over the lockdown period for violation of the regulations.

6.2. Recommendations:

- 6.2.1. Embark on the immediate, widespread and ongoing COVID-19 screening and testing of incarcerated persons;
- 6.2.2. Urgently take measures to decongest correctional centres in South Africa by releasing incarcerated persons who fall into the following categories: remand detainees, people who have been sentences for petty or minor offences, persons convicted of offences that do not pose a threat to society and whose sentences will end in the upcoming months and persons who qualify for parole.
- 6.2.3. Ensure access to medications that have been cited as risks for severe COVID-19 disease such as antiretrovirals, hypertension regulators and insulin.
- 6.2.4. Release people accused of non-violent lockdown regulation violations on warnings.

7. Access to support for migrants, refugees, asylum seekers and undocumented persons

7.1. At least two members of the executive have publicly directed that only South African citizens ought to be prioritized for COVID-19 relief and support. The first, Minister of Small Business Development, Khumbuudzo Ntshavheni, directed that only small to medium businesses owned by South Africans would receive the department's support. When called on to explain her utterances to

the parliamentary portfolio committee, The Minister later clarified that businesses owned by foreign national would only receive 30% of the department's monetary support while 70% would go towards prioritising South African Owned businesses because 'the right to trade is a preferential right'.⁸ The second was Minister of Finance, Tito Mboweni, who similarly asserted that only business who employ south Africans will be assisted with the hospitality support fund.

7.2. Recommendations:

- 7.2.1. Provide Coronavirus lockdown relief and support equitably to all people within the republic without making any distinction such as citizenship status;
- 7.2.2. Ensure that non-nationals are not discriminated against in the government's provision of food aid and other essential services to those who may be in need.
- 7.2.3. Issue permits to operate during the coronavirus lockdown to all qualifying businesses regardless of citizenship status.
- 7.2.4. Explicitly protect asylum seekers whose papers were not processed before the national lockdown.
- 7.2.5. Emphatically make a commitment that no undocumented migrant will be prosecuted when they present themselves for screening, testing and treatment, or excluded from these services.

⁸ See additional reflections from the Minister and Deputy Minister here: <https://pmg.org.za/committee-meeting/30114/?via=homepage-feature-card>