

Human rights and legal implications

Dr Marietjie Botes

Lockdown Level 5-3 mini report

Introduction

Although the majority of South African citizens indicated a willingness to sacrifice “some human rights”, they may not have contended with the holistic impact that a hard lockdown, such as Levels 5-3 would have on their rights to freedom of movement and association, the right to education and trade, the right to privacy and an increased military presence on the streets.ⁱ

This mini report will briefly discuss the impact that the measures that were implemented by government to respond to and manage the COVID-19 pandemic had, and is still having, on selected issues of human rights. More detailed discussions on the various topics discussed herein will follow in following chapters in this Country report.

Human rights affected by lockdown Levels 5-3

Governance

The South African Government’s swift and decisive COVID-19 action, the most restrictive on the African continent, successfully contained the spread of the virus and was the lockdown generally well respected by citizens, regardless of serious food supply issues in informal settlements, riots and confrontation with security forces.ⁱⁱ However, political affiliation played an important role in people’s willingness to sacrifice human rights. Whilst 78% of African National Congress (ANC) voters remain supportive of governmental lockdown regulations, this support waned to 54% amongst supporters of the opposition party.ⁱⁱⁱ As the lockdown period continued, society became increasingly polarised along socio-economic and political fault lines, which situation found expression in public criticism of the government’s lockdown measures by opposition leaders^{iv} and resulted in a significant decrease of public trust in the government and their willingness to subject themselves to further limitations of their human rights.^v This unwillingness were further exacerbated by the government’s seemingly limited understanding of how the poor access food, housing, transport, employment and other services.^{vi}

On 25 April 2020 the government issued a COVID-19 Risk Adjusted Strategy (RAA) draft framework describing how various services will be phased in to bring different sectors of the economy back to work.^{vii} Classification of sectors followed the Standard Industrial Classifications (SIC) as published by Statistics South Africa,^{viii} and members of the public were invited to submit comments on this schedule which was implemented with effect from 01 May 2020. The RAA acknowledged that restrictions on economic activity must be adapted to epidemiological trends, which will vary in accordance therewith, for example, infection rates may initially resurge after certain economic activities are resumed. This may require reverting to more stringent restrictions in order to arrest further transmission, with proper attention given to mass communicating such restrictions with detailed health protocols for each level of restriction.^{ix} Return to economic activity will be determined on degree of risk based on criteria described in the RAA and as determined by the National Command Council, with the possibility of differentiation between specific geographical areas within certain provinces, based on the fact that Provinces such as Gauteng, Western Cape and Kwa-Zulu Natal were more affected than others. Prioritisation will be given to low risk sectors that would suffer most acutely from a continued lockdown in terms of retrenchments, company failures, or loss of productive capacity and international market share. On the other hand, sectors with a high risk of transmission should not be allowed to resume activity until this risk is reduced, regardless of the potential impact on their sector or their value to the economy.

When the National Joint Operational and Intelligence Structure (NATJOINTS) coordinated the repatriation of South Africans from Wuhan in China and tracked the pandemic, their function migrating to that of a general country response to COVID-19 which “was significant as the National Disaster Management Centre (NDMC) and South Africa's disaster management response is premised on legislation that envisages a different structure and key role-players than what was witnessed in the NATJOINTS”.^x This situation led to the NATJOINTS having a major influence on the drafting of the first Regulations issue in terms of the Disaster Management Act, because of their “very direct and practical interface with the political level principals on a very regular basis on practical implementation of responses even before the National State Of Disaster (NSOD) was declared” and despite the fact that Ministers were briefed by the Ministerial Advisory Committee (MAC).^{xi} In addition the Department of International Relations and Cooperation (DIRCO) performed responsibilities relating to other departments, “such as on immigration matters where no DHA officials were available, actively and consistently interacted with the diplomatic community resident in South Africa and advised through the Office of the Chief State Law Adviser (International Law) within DIRCO at NATJOINTS and Work Stream level on international law implications, diplomatic implications, implications for diplomatic immunities

and privileges, and other aspects.”^{xii} It seems that a lack of funding of various governmental department over years have weakened their ability to adequately respond to the pandemic, that a lack of communication between departments regarding pandemic management developments caused duplication of effort and resources and that many department were expected to perform duties, including high risk duties outside their mandate and policy framework.

Health

From 27 March 2020 to 16 April 2020, South Africans were required to stay home and were only allowed to leave their homes to obtain food, medicine, fuel or other essential services.^{xiii} The initial ban on the sale of alcohol in an effort to limit trauma visits to emergency rooms and hospitals admissions and free up space for COVID-19 related cases was generally accepted, but evidentiary data supporting an extended alcohol ban was questioned.^{xiv} Cigarette sales were also banned, borders were closed and quarantines enforced on inbound travelers, whilst the National Defence Force was brought in to assist the police in enforcing the lockdown regulations.

On 1 April 2020 the government deployed 67 mobile testing units and 10 000 community health workers all over the country for community screening of COVID-19 with the aim of increasing testing six-fold to 30 000 tests per day nationwide by the end of April 2020.^{xv}

In addition, the Department of Science and Innovation (DSI), the South African Medical Research Council (SAMRC) and the Technology Innovation Agency (TIA), a DSI entity, made 7 funding awards to the value of R18 million to local companies, organisations and researchers in order to ramp up the country's ability to produce locally developed reagents and test kits for COVID-19.^{xvi}

When the government extended the lockdown, previous scientific denialism by leadership regarding HIV made way for leadership decisions that were now informed by scientific evidence.^{xvii} To confirm its scientific foundations, South Africa is also the only African country participating in the global Solidarity trial^{xviii} to assess the therapeutic efficacy of hydroxychloroquine and chloroquine against COVID-19^{xix} with the aim of scientifically informing global policies. However, disregarding the few small uncontrolled trials that have shown conflicting results, preliminary large-scale randomized controlled trials have failed to show any survival benefit of such drug therapy in COVID-19.^{xx} Biovac, a South African biopharmaceutical company that is in partnership with the South African government, is further in advanced discussions with an international vaccine manufacturer that would enable it to locally manufacture COVID-19 vaccines to ensure sufficient supply to South Africa.^{xxi}

Fearing that a COVID-19 cases may overwhelm hospitals at the peak of the pandemic, numerous field hospitals were hastily erected to manage moderate to severe COVID-19 patients in support of local hospitals,^{xxii} including the Nasrec field hospital that was set up in record time.^{xxiii} However, some medical professionals working at the front lines, were of the opinion that field hospitals were a waste of resources and that existing facilities could rather have been upgraded, or for example, that the existing unused space on the Baragwanath hospital premises could be used to erect field hospitals, which would have been close to all the hospital facilities which could easily accommodate up to 150 people on ventilators.^{xxiv} But regardless of bad planning involved with regards to field hospitals there seems to be general consensus that hospital preparation was good, health care workers collaborated well and supported each other and that MACs worked well, despite a slight lack of complete transparency.^{xxv}

A major concern, resulting from so much exclusive focus on COVID-19 is the fact that HIV and TB testing has fallen significantly, together with access to primary health care by carers and children. Globally, as in South Africa, COVID-19 caused a significant degradation of TB management and programs resulting from barriers such as no TB testing being done, no medication or treatment available due to closed clinics, lack of available transport and a general fear of being infected with COVID 19 at clinics.^{xxvi} But the Health Minister appeased the country by confirming that the Department of Health has devised an aggressive catch-up strategy to ensure that the spirit of health-seeking behaviour is recaptures and to capitalise on the infrastructure and public-private partnership gains made during the Covid-19 pandemic and will communicate the details of these programmes as soon as it is rolled out.^{xxvii} Until such time, experts advised that increasing self-administered treatment, treatment literacy, using shorter regimens and scaling up counselling, screening and testing will be crucial for the proper management of TB and HIV.^{xxviii}

Another major concern was the quality and availability of protective equipment for specifically healthcare workers during the pandemic. Only 28% of protective equipment suppliers were licensed by the South African Health Products Regulatory Authority (SAHPRA), South Africa's quality gatekeeper for medical devices, PPE and related products for the healthcare sector^{xxix} with general corruption^{xxx} in the healthcare sector being rife and often unpunished, only adding insult to injury in this regard.^{xxx} Although maritime transport remained the main mode of transport between March and May 2020 for importing medical protective equipment, delays in manufacturing and at harbours due to strict lockdown requirements further add to the complexities in obtaining PPE.^{xxxi} To resolve this issue, the President announced a new initiative being pursued across the African continent, being the Africa Medical

Supplies Portal, a continental online portal that will enable every single African country to access critical medical supplies needed in the fight against the pandemic through this platform where governments can also access services from quality and certified suppliers, with the fundamental difference being that buyers are governments, not individuals.^{xxxii}

Slow turnaround times with regard to community testing and screening, not only resulted in often unusable samples for purposes of testing, but also caused people to abandon their self-isolation and often returned to work fearing longer absenteeism may result in job losses, thereby negating the screening and testing exercise.^{xxxiii} In a first of its kind study, conducted by Hsiao *et al* in the Cape Town Metro, and reported on by the NICD, findings suggest that high levels of community infection are likely to be the main contributor to the observed decline in the epidemic curve.^{xxxiv} This decline may be contributed by so-called ‘herd immunity’, based on average data and simple calculations according to which the Western Cape can be assumed to have near 60% immunity, which approaches herd immunity levels.^{xxxv} Despite the early implementation of a national lockdown and other non-pharmacological interventions, the virus continued to spread in densely populated communities. The survey of the true extent of the epidemic done by Hsiao *et al* is of critical importance to inform policy and to mitigate against a second wave of infection.^{xxxvi} This study further found that the reverse-transcription polymerase chain reaction (RT-PCR) method used to detect viral nucleic acid from upper respiratory tract samples was only employed in relatively narrow infection window, and coupled with the testing strategy of only testing symptomatic patients, an accurate or good estimation of the prevalence of COVID-19 at community level could not be provided, leading to an underestimation of the true extent of infections.^{xxxvii}

The WHO Covid-a9 Strategy Update document was issued with the specific goal of guiding the public health response to COVID-19 at national and subnational levels, tailored to a specific country’s local context. In line with these guidelines as well as the global strategic objectives of mobilisation, control, suppression, reduction and development,^{xxxviii} a National Action Plan in the form of a risk-adjusted health prevention strategy for South Africa has been proposed. This strategy involves a formalised five-level response framework to govern this and all future epidemics with the lowest level activated when an epidemic risk is identified, upon which a set of pre-prepared responses would then be triggered and each subsequent level would be implemented as a result of increases in risk and urgency, with a lockdown to be considered as a last resort.^{xxxix} The 5 suggested levels and accompanying triggers are described as follows by van den Heever:^{xl}

- **Level 0:** *Routine surveillance of risks.* When there are no threats, redundant capacity in infectious disease responses needs to be readied. This can involve: the identification of quarantine sites; the maintenance of contact-tracing machinery; and the preparation of a legislative framework for infectious disease outbreaks. This legislation should, inter alia, cater for emergency test development, requisitioning of equipment, rapid contact-tracing frameworks, and preparations for mandatory quarantining of suspected and confirmed cases. Both public and private hospitals should be required to maintain a minimum number of isolation wards.
- **Level 1:** *Trigger – identification of a threat, by which is meant a highly infectious disease with significant morbidity and mortality.* This may involve: the implementation of a central response platform for Government; the development of tests; the identification of possible shortfalls in testing equipment; the preparation of treatment facilities; the maintenance of basic border surveillance; the identification of high risk transport routes; mandatory testing and quarantining for people from high risk zones; the establishment of testing machinery for all persons presenting with symptoms; and where no test has yet been developed, suspected cases should be quarantined for appropriate periods. In all this, it would be important to coordinate with the private health system to agree on aspects that require a joint response.
- **Level 2:** *Trigger – imported infections identified together with first community-based infections.* This would involve: border closures, together with mandatory across-the board testing and quarantining of travellers entering the country; the mandatory wearing of masks (if the disease has an airborne elements; mandatory social distancing; and mandatory (pre-prepared) health protocols implemented at workplaces, transport hubs and bulk transport; the temporary closure of schools and universities; the prohibition of mass meetings of any form (funerals, church gatherings, etc.); and an expansion of the testing framework to be able to detect community-based infections.
- **Level 3:** *Trigger – significant increase in community-based infections, but below 100.* In addition to the level 1 and 2 interventions, implement mass testing and contact tracing, together with the quarantining of suspected cases and those identified as positive. This testing regime supplements the testing of suspected cases introduced from level 1.
- **Level 4:** *Trigger – community-based infections continue to increase exponentially.* This would involve general lockdowns initiated in areas with identified disease clusters; the closure of all non-essential businesses; and the closure of all bulk transport systems.

Information and privacy

Shortly after lockdown an urgent application was brought by an obscure local NGO, directly to the Constitutional Court of South Africa, on the grounds that the country was not facing an emergency situation and that COVID-19 was not harmful to Africans, but to the contrary, characterising COVID-19 as a ‘self-healing disease for Africans’.^{xli} The court dismissed the application and found that these grounds were based on misinterpreted information provided by credible media sources,^{xlii} as well as dubious sources.^{xliii} This case is concerning because it confirmed that scientific falsehoods are being peddled and that such information was or could be misused for misguided political and ideological ends.

In an effort to stop the circulation of fake news about COVID-19 the government issued regulations, making the spreading thereof a criminal offence, but was the government’s response also met with contempt for over zealously limiting people’s freedom of expression, especially after a number of people have been arrested for such contraventions.^{xliiv} However, the government was again widely supported when a man who distributed a fake ‘contaminated COVID-19 test kits’ video on social media was arrested and subsequently charged in terms of Regulation 11(5)(c) of the Disaster Management Act, in relation to ‘publishing any statement through any medium including social media with the intention to deceive any other person about measures by the government to address COVID-19’.^{xliv} Actions like these are welcome, as the spreading of such fake information presented health workers of the Gauteng Department of Health with difficulties when they tried to introduce community-testing initiatives.^{xlvi}

The Electronic Communications, Postal and Broadcasting Directions and more specifically Direction 8 allowed the Electronic Communication Network Service (ENCS) and Electronic Communication Service Licensees, internet and digital sector in general, to ‘track and trace’ people who have been infected or may have been in direct contact with infected persons, using their private cell phones.^{xlvii} This directive triggered concerns about South African gradually becoming a surveillance state that may intercept communications and opening up possibilities for political abuses of state security.^{xlviii}

With the Protection of Personal Information Act (POPIA) not yet fully enacted when lockdown was announced, the Information Regulator issued a guidance note of the processing of personal information in the management and containment of the COVID-19 pandemic and emphasised that the regulations issued by the South African Government in terms of section 27(2) of the Disaster Management Act 57 of 2002 should be implemented in conjunction with the applicable conditions for the lawful processing of personal information as provided for in POPIA to ensure respect for the right to privacy.^{xlix} In addition, retired Constitutional Court judge, Justice Kate O’Regan, was appointed to oversee the electronic

contact tracing database in which the personal information of people infected with COVID-19, or suspected to have come into contact with infected persons, would be aggregated to ensure the protection of those people's privacy and information.ⁱ To protect public health via contact tracing, balancing privacy rights with other constitutional rights is essential. This is not an easy task. The rights of people during an epidemic must be considered in both the textual setting of the South African Constitution and their socioeconomic setting.ⁱⁱ

Food security

A study by Battersby found consistently higher levels of food insecurity than those presented as official statistics.ⁱⁱⁱ To meet their food needs, poor households depend on both formal and informal food retail sources which provide food in affordable unit sizes, on credit, sell fresh produce at lower costs than supermarkets and sell prepared foods for households suffering from income, time, storage and energy poverty.ⁱⁱⁱⁱ However, when lockdown was announced, the only food retailers that were allowed to remain open were supermarkets and spaza shops only allowed to open once lockdown regulations were expanded.^{lv} Confusion about administrative requirement prevailed upon the reopening of spaza shops and did the Minister of Small Business Development at some point retracted his statement that only South African stores would be able to operate after many foreign owned spazas, providing a large chunk of informal food supply, have been most targeted by police for closure.^{lv} Previously the majority of township vendors have operated without any permits, but were now as a result thereof unable to legally operate under lockdown and faced with forceful closures of their businesses by law enforcers.^{lvi} Although support for spazas shops was offered by the government later on the exclusionary condition of being registered with the South African Revenue Service and South African citizenship again excluded access to such support for almost all of the locally and foreign owned spaza shops, leaving great numbers of the population without access to affordable food.^{lvii} Government has subsequently been criticised for biased towards the large-scale formal actors and for pushing towards the formalisation of the informal sector through unmeetable conditions, reflecting historical biases against informality.^{lviii}

Financial and economic implications

Although the details of financial relief packages to South African citizens, loan negotiations with the IMF and World Bank will be discussed in the sector specific chapter (Chapter 5) in this report, South Africa's economic response can be divided into three phases:

- from mid-March when a national disaster was declared and relief measures such as

tax relief, the release of disaster relief funds, emergency procurement, wage support through the UIF and funding to small businesses was made available to mitigate the worst and immediate economic effects on businesses, communities and individuals;

- from 21 April 2020 to stabilise the economy after a steep decline in supply and demand, when a social and economic support package of R500 billion, amounting to approximately 10% of GDP has been announced by the President, focussing on (i) redirecting resources to fund the health response to coronavirus; (ii) providing direct support to households and individuals for the relief of hunger and social distress; and (iii) providing assistance to companies in distress and seeks to protect jobs by supporting workers' wages;
- from emerging from the pandemic to drive the recovery of the economy by stimulating demand and supply through interventions such as a substantial infrastructure build programme, the speedy implementation of economic reforms, and other steps that will ignite inclusive economic growth.^{lix}

To implement the phasing in of this response the government adopted a risk-based strategy as discussed under the heading "Governance" herein above. However, given the protracted nature of the pandemic, it is critical to examine the viability of this strategy that must combine health supportive approach with the maintenance of a viable economy. One thing is certain: crude distinctions such as *save lives versus save the economy* show no sensitivity for the complex set of risks, variables, and protracted struggle to manage and contain the pandemic.

Any economic reform and response to a pandemic is intricately linked to a country's lockdown approach, including the closure of international borders, mass testing and contact tracing, with the defining difference between the two that the former shuts down a substantial part of the economy, while the latter is compatible with continued economic activity. Vulnerable workers and businesses often suffers disproportionate economic losses as a result of a lockdown and the extent to which a government can support these sectors of the population depends on the existence of institutional mechanisms to sufficiently identify compromised individuals and businesses for them to be supported. However, the longer the period for which support is needed, the harder it is to keep businesses open and subsequently raise enough tax revenues to pay the debt required to finance any support for vulnerable individuals.^{lx}

During the early stages of lockdown it seems that South Africa, like many other countries during the pandemic, was not geared for a pandemic and that government lacked sufficient capabilities to

introduce the most effective strategy in this regard and that the need for urgent action forced government to scale up the measures required to prevent infections from getting out of control.^{lxi} When the hard lockdown was extended for a further two weeks, government was criticised for not optimally using the initial lockdown period to sufficiently ramp up the testing and contact-tracing regime, and moreover that the narrow testing regime that was indeed adopted to identify imported infections rather than community-based outbreaks, was not an indication of the success of the lockdown or a true reflection of the infection rate.^{lxii} Any further delays in the processes necessary to effectively trace and manage infected persons will inevitably result in further variations of lockdown, including the economic and social consequences brought about by it. Moreover, although a supplementary budget for an additional R21.5 billion ear marked for health was made available, a lack of spending strategy raised serious concerns about the meaningful impact this money would have, considering that it must be divided between provinces, the national department of health and the budget doesn't offer any strategy or strategic targets when it comes to testing.^{lxiii}

South Africa's testing regime, referred to as a 'chasing' regime has also been criticised for being limited to mainly people who travelled internationally or had contact with such travellers or someone diagnosed with COVID-19, effectively ignoring community-based outbreaks, possibly due to a lack of capacity and bottlenecks at the National Health Laboratory Services.^{lxiv} In addition, there is a stark contrast of Covid-19 tests processing times between the private sector, where tests are usually processed within a day or two, as opposed to the public sector where test may take up to a week, sometimes weeks, or may even take so long as to render the samples unusable before they could be tested.^{lxv}

Considering the above it clear why and that a proper health strategy is critical for the determination of lockdown periods and its subsequent economic consequences and must be aimed towards a safe and realistic reopening of the economy.^{lxvi} Subsequently a generalised lockdown approach applied within the South African context may benefit relatively affluent communities, whilst it may exacerbate infection rates in communities suffering from overcrowded conditions, reliance on social grants and food parcels for which queuing is necessary and shared ablutions which make these neighbourhoods effectively "unlock downable".^{lxvii}

Although a lockdown may be a viable prevention strategy, different approaches must be followed for different contexts, especially in country like South Africa with its deep divide between relatively affluent areas and townships or informal settlements. The ideal is then to follow a risk-based strategy that is

fully compatible with the local domestic socio-economic context and actively pursue the safe re-opening of the domestic economy, in addition to a lockdown dependent approach.^{lxviii} Such a model also allows for the management of any resurgence of the pandemic.

Consequence of a protracted and complex pandemic such as COVID-19 that resulted in border closures, restricted movement and closed businesses will have significant long-term consequences for any economy. While economic considerations should not be given precedence over health risks, economic failure, including unemployment levels that shift many people into poverty will have serious short and long terms consequences impacting all forms of human rights. Government attempted to alleviate some of these economic burdens by targeting the poorest for social protection grants, but government needs to urgently also provide care and support to those at the borderline of poverty, such as the vulnerable middle class, to reduce their likelihood of slipping into poverty, putting further pressure of government resources in general.^{lxix}

The following five strategic considerations have been proposed for the implementation of a risk-adjusted approach:

- the health prevention strategy must be compatible with the opening of the economy;
- social programmes aimed at income protection, such as social grants and unemployment insurance, must be implemented at scale to simultaneously address social protection needs and the need for domestic economic demand stimulation;
- non-health-related economic strategies need to address the shocks to both the demand and supply sides of the domestic economy;
- those parts of the strategy that require ongoing rapid decisions and the deployment of resources need to be supported by an all-of-government command structure that is fit-for-purpose;
- all parts of the strategy require rapid feedback on performance and constant useful public communication.^{lxx}

Gender Based Violence (GBV)

Many were worried that victims of GBV violence would be stuck indoors with their abusers during the respective lockdown phases and although the exact number of reported cases involving sexual and GBV differ, it is widely confirmed that the number of these cases far outstrip COPVID-19 cases causing a serious and life threatening epidemic in the midst of a pandemic.^{lxxi} The government GBV and femicide command centre alone recorded more than 120 000 victims in the first three weeks of lockdown, whilst

a call centre in Tshwane alone received between 500 and 1 000 calls a day.^{lxxii}

In 2018 the first Presidential Summit on Gender-Based Violence and Femicide was convened in response to mounting pressure from women's groups, civil society and the public at large to identify key interventions to address, not just gender-based violence and femicide, but the wider challenges women and children face with regards to safety and security, poverty, access to economic opportunities, and the contestation of their rights in a climate where patriarchy and chauvinism are widely prevalent.^{lxxiii} This Summit concluded with the signing of a Declaration that government, business, labour, and civil society would collaborate to conceptualise, drive, and implement concrete measures to eradicate gender-based violence and femicide.^{lxxiv} Parties to the Declaration called for a multi sectoral structure to be constituted to coordinate the implementation of a National Strategic Plan on Gender-Based Violence and Femicide and resolved to establish an Interim Steering Committee be established to lead the process of establishing structures, developing programmes, and mobilising resources and build the capacity of the state to respond to this crisis. In addition, an Emergency Response Action Plan to address gender-based violence and femicide has been developed and presented to Parliament where it was approved during a special joint sitting on the 18th of September 2019 with the aim of implementing the following interventions over the following 6 months:^{lxxv}

- urgently respond to victims and survivors of GBV
- broadening access to justice for survivors
- changing social norms and behaviour through high-level awareness raising and prevention campaigns
- strengthening existing architecture and promoting accountability
- the creation of more economic opportunities for women who are vulnerable to abuse because of poverty.

There was also hope for the constitution of a Gender-based Violence and Femicide Council by April 2020.^{lxxvi}

COVID-19 may have caught government off guard to the extent that most of the planned interventions and structures were not yet fully functional when it was tested to its limits. However, to demonstrate this commitment government recently introduced proposed amendments to critical pieces of legislation to tighten perceived legislative loopholes^{lxxvii} and made R1.6 billion available for the Emergency Response Action Plan to combat GBV and femicide. For example, the Criminal Law (Sexual Offences and Related Matters) Amendment Act now creates a new offence of sexual intimidation,

extends the ambit of the offence of incest, and extends the reporting duty of persons who suspect a sexual offence has been committed against a child.^{lxxviii} The Criminal and Related Matters Amendment Bill tightens the granting of bail to perpetrators of gender-based violence and femicide, and expands the offences for which minimum sentences must be imposed.^{lxxix} These and other proposed amendments also oblige the Departments of Social Development, Basic Education, Higher Education and Health to provide certain services to survivors where needed, and to refer them for sheltering and medical care.

Unfortunately, the sad reality is that many survivors of gender-based violence have lost faith in the criminal justice system, have difficulty in obtaining protection orders, suffer as a result of lax bail conditions for suspects, are exposed to police not taking domestic violence complaints seriously and are concerned about inappropriate sentences given to perpetrators.^{lxxx} This environment of cynicism and mistrust must be urgently and actively addressed by government.

Education

As a result of the lockdown, the education sector had to stop all face-to-face activities and find novel ways to continue educating South Africa's school learners and tertiary students, which proved to be an almost impossible task considering that only 37% of South African households having consistent access to the internet through cell phones or computers.^{lxxxi} Although most private schools could immediately move their teaching online, the number of learners who could continue learning from home attending public schools was far lower and were these learners often limited to radio or television broadcasts, or textbooks and worksheets distributed to them.^{lxxxii} The pandemic has subsequently exposed a deep divide in digital access and literacy.

Over and above educational concerns, and considering that children seem to be suffering from a milder disease course and better prognosis than adults^{lxxxiii} Deaths were extremely rare. after it was determined that the mortality risks of schools reopening are extremely small for most children, it must be noted that prior to the pandemic 2.5-million children experienced hunger and rapid surveys conducted by StatsSA and the Human Sciences Research Council showed increases in hunger since the lockdown, since many workers lost their income and children no longer received free school meals.^{lxxxiv} In addition, where menstruating girls were provided with sanitary products at school, school closures, poverty and lack of basic services will lead to unmet menstrual health and hygiene needs, further resulting in restriction of mobility, a reduction in school participation causing stress and anxiety.^{lxxxv}

In the thick of a recession, lockdown and pandemic, early childhood development (ECD) policies may not receive any priority from government who is focussed on managing the pandemic. With childcare and early education facilities closed, children are deprived of social and cognitive stimulation beyond their homes.^{lxxxvi} In addition to the risks faced by children during their early years when brain architecture is still rapidly developing and highly sensitive to environmental adversity, South Africa's 2016 Progress in International Reading Literacy study (PIRLS) showed that 78% of children in Grade 4 could not read for meaning in any language.^{lxxxvii} Considering that ECD forms the foundation of at least 7-11 of the 17 Sustainable Development Goals, being poverty, hunger, health (including child mortality), education, gender, water, sanitation, and inequality, maintenance and strengthening of ECD is critical to achieving these goals.^{lxxxviii} Subsequently access to adequate broadband, digital public goods that support learning, digital literacy and regulations that ensure children's privacy, data protection and safety online are critical steps to ensure a long-term recovery socio-economic recovery from this pandemic.^{lxxxix}

Sadly, and despite the 4IR, some of the major concerns in the 2011 NDP Diagnostic Report, was that "despite significant growth in the ICT sector over the past 15 years, there was not nearly sufficient progress towards the primary policy objectives of universal and affordable access to the full range of communications services".^{xc} Although telecommunication networks are fairly well developed in the urban and semi-urban areas with remaining, but considerable gaps in rural areas, the government must urgently develop a transversal digital policy that is far more comprehensive than one focusing on artificial intelligence (AI), machine learning, blockchain and drones alone (although these would be important forward looking parts), rather than focusing narrowly on the potential and dangers of so-called 4IR technologies.^{xcii}

Some pockets of excellence were visible in South Africa during the lockdown and had access to and the ability to use a variety of 4IR tools for education where educational activities switched to remote (online) learning.^{xciii} Historically access to education, particularly at a higher education level, has always been challenging as a result of limited numbers of spaces available. In this regard the COVID-19 pandemic may have presented an opportunity to assess successes and failures of deployed technologies, costs associated with them, and scaling these technologies to improve access in future.

Freedom of movement

In a constitutional democracy any form of 'lockdown brutalities' are unjustifiable. The death of Collins Khoza after an altercation with members of the South African National Defence Force (SANDF) and the

Johannesburg Metropolitan Police Department (JMPD) caused a public outcry,^{xciii} but resulted in a shameless revealed that the soldiers ‘cannot be held liable for this death as there is no link between the injuries he sustained due to their actions and him dying’.^{xciv} Khoza’s family had to approach the North Gauteng High Court to obtain an order that the members of the SANDF are indeed responsible for Khoza’s death, including a declaration that members of the security forces must respect and protect rights to dignity and life, not commit torture, and only resort to minimum force to enforce the law.^{xcv} The court further held that the Ministers of Defence and Police must develop and publish a code of conduct and operational procedures regulating the conduct of their members, including that of the metropolitan police departments in giving effect to the state of national disaster Regulations and Directives.^{xcvi}

In addition, the South African Military Ombudsman received at least 33 complaints from the public of excessive force, physical abuse and brutality against the military during the Covid-19 lockdown, and the Independent Police Investigative Directorate (IPID), which monitors police abuse, has registered 39 cases of complaint against police wrongdoing, with six incidents of “death as a result of police action” during the first week of the lockdown.^{xcvii}

It is worrisome that with a sheer declaration of a national state of disaster under the Disaster Management Act, security forces have been reigning on terror and violating human rights.

ⁱ Bohler-Muller N. Davids Y.D. Roberts B. and Bekker M. Human rights remain essential during the Covid-19 crisis. 5 May 2020. Maverick Citizen. <https://www.dailymaverick.co.za/article/2020-05-05-human-rights-remain-essential-during-the-covid-19-crisis/> (accessed 14 October 2020).

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