



Africa Criminal Justice Reform
Organisation pour la Réforme de la Justice Pénale en Afrique
Organização para a Reforma da Justiça Criminal em África

The operation of courts, police and correctional services during COVID-19 lock-down

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Introduction

On 18 March 2020, the Department of Co-operative Governance and Traditional Affairs issued regulations in response to the national lock-down due to the COVID-19 national state of disaster. The period of the lock-down is from midnight on 26 March 2020 until midnight on 16 April 2020. The regulations have subsequently been amended and Ministers have issued Directions, relevant to and in support of their functions. Below we provide an overview of the information available to date on the operation of courts, police and correctional services during the national lock-down.

Will courts be operating during the COVID-19 lock-down period?

Courts will operate during the COVID-19 lockdown period to attend to urgent and essential matters and people will have restricted access.

The Minister of Justice and Correctional Services issued Directions on the functioning of Courts and Justice Service Points (hereafter referred to as 'Court Directions') to provide a guideline of the matters courts will deal with.¹ A Judicial Officer presiding over any matter in court has the discretion to deviate from the Court Directions if the interests of justice so requires.²

Will the public be allowed to visit courts during the COVID-19 lock-down period?

Not all members of the public will be allowed to visit courts.

Courts will be restricted to persons with material interests in a case.³ Security or court officials may also limit the number of persons entering a court for the purposes of enforcing acceptable social distancing.⁴

Persons with material interests in a case are:

- litigants,
- accused,
- witnesses,
- persons accompanying / persons who may be needed to provide support to: children, victims of domestic violence or sexual abuse, people with disabilities, family members,
- representatives of the media.⁵

The following restrictions also apply to visitors entering courts:

- A person who has been in contact with persons from high-risk countries may not be allowed to enter a court during the state of national disaster.⁶
- A person who has been exposed to someone who have tested positive for COVID -19 may not be allowed to enter a court during the state of national disaster.⁷
- A person who entered South Africa a week before, during or after the declaration of the national state of disaster, may not be allowed to enter a court during the state of disaster, unless the person has been screened and found not to be infected with COVID -19.⁸

What will courts deal with during the COVID-19 lock-down period?

Below is an overview of the urgent and essential criminal, civil and family law cases courts will deal with during the lock-down period, as per the Court Directions.⁹ A judicial officer may deviate from any provision in the Court Directions, if the interest of justice so requires.¹⁰

Criminal cases

- If accused persons are in custody (i.e. awaiting trial in a correctional centre or police holding cell) the court will only hear the case if it is a first appearance, a bail application or a matter where special arrangements have been made with the judicial officer.¹¹
- Special arrangements have been made for the continued referral of remand detainees to court for the consideration of their length of detention and bail review as per the Directions to reduce the remand population ('Correctional Services Directions').¹²
- All trials enrolled during the lockdown will be postponed to dates after the lock-down, except for trials where the interests of justice dictate otherwise or where special arrangements have been made with the judicial officers involved in the matter.¹³
- All matters where children are detained in Child and Youth Care Centres will be postponed in absence of the accused.¹⁴
- Where possible, audio-visual facilities available at correctional centres linked to courts will be used to postpone cases where accused persons are in custody.¹⁵

- In all criminal cases where the accused is not in custody, the case will be postponed in the absence of the accused and he/she will be summonsed with a date of next appearance.¹⁶

Civil cases

- Service of process and execution of writs by sheriffs must be limited to cases which are urgent and essential, and includes the following:
 - Service and execution of Court orders relating to COVID -19,
 - Service of domestic violence protection orders,
 - Service of protection from harassment orders,
 - Service of process relating to claims which are prescribing,
 - Service of urgent court process relating to court hearings scheduled during the period of lockdown,
 - Service of urgent court process in family law matters as determined in the Court Directions.¹⁷
- Service and execution of other process by Sheriffs, including evictions, are not essential, and are suspended for the duration of the lockdown.¹⁸
- Heads of courts have the discretion to authorise the hearing of matters through teleconference or videoconference or any other electronic modes.¹⁹

Family law services

The following family law services will continue during the lock-down period:

- Family law service orders due or required to be made in respect of: foster care, adoption, removal of children in need of care and protection, placement of children in child and youth care centres and international child abduction cases.²⁰
- First time maintenance applications and applications to enforce maintenance orders.²¹
- Applications for interim domestic violence orders and protection against harassment.²²

If arrested during the lockdown period, can you apply for bail or do you have to wait until after the lockdown to apply for bail?

If an accused person qualifies for police or prosecutorial bail, bail will be determined and issued by a police officer or prosecutor.²³ The accused will also be provided the date of his or her first court appearance.

An accused person arrested for a petty offence must be released and warned to appear in court on a future date.²⁴ Unfortunately, it is not clear from the Court Directions or Statutes as to what qualifies as a “petty offence.”

If an accused person does not qualify for police or prosecutorial bail or to be released on warning, he or she will be remanded to court during the lock-down period to apply for court bail.²⁵

What measures are in place to ensure that courts are fully equipped to prevent the spread of COVID-19?

The Court Directions makes provision for safety measures to be taken at courts, court precincts and justice service points during the period of the state of national disaster.²⁶

The Court Directions include, amongst others, the following measures to minimise the spread of COVID-19:

- Deep cleaning and sanitising public spaces.
- Dispensers of alcohol -based hand sanitiser must be displayed prominently in public areas for use by all persons within the court precinct.
- Windows and doors in courts must be open, to ensure that the venue is well ventilated.
- Seating in a court must be arranged to ensure that attendees are seated at least one square metre apart.
- Office managers and heads of courts must ensure that the number of persons at any time in any room is limited with due regard to social distancing and other safety measures.
- All members of the public entering a court must report at the security station (set up for purposes of controlling access to the court), and persons must complete a form and have his or her hands sanitised.
- The above form must request the following information:
 - i. Names and contact details of the person wishing to access the court,
 - ii. Whether the person travelled overseas within the last three weeks,
 - iii. Whether the person displays COVID -19 symptoms such as fever, dry cough, and tiredness,
 - iv. Whether the person has been in contact with any person diagnosed with COVID -19, and
 - v. Whether the person has been tested for COVID -19 and the results are pending or have been received.
- If a person answers "yes" or "not sure" to questions (ii) - (v) above, that person must be taken to a designated area, set apart for isolation and the head of office must be informed immediately and he or she must decide whether access should be granted or refused.

Will the public be allowed to visit friends or family members at correctional centres during the COVID-19 lock-down period?

The Regulations to combat the spread of COVID-19 prohibits visits to all places of detention, including correctional centres and remand detention facilities as of 18 March 2020 for a period of 30 days or longer.²⁷

Are there any restrictions in respect of the placement, movement and release of inmates from correctional or remand facilities during the COVID-19 lock-down period?

The Correctional Services Directions contains the following restrictions in respect of the placement, movement and release of inmates during the lockdown period:

- Day parole approved for sentenced offenders is suspended during the lock-down period, unless the day parolee is rendering an essential service.²⁸
- The transfer of inmates must be referred to the Chief Operations Commissioner of the Department of Correctional Services for consideration.²⁹ The Chief Operations Commissioner has the discretion to allow the transfer of inmates.³⁰ It is not clear from the Correctional Services Directions what criteria is being used to conduct this assessment.
- Sentenced offenders who are illegal foreign nationals and whose sentences will expire during the lockdown period will be released into and detained at temporary deportation facilities at a current correctional centre (designated by the Department of Home Affairs) until after the lockdown period.³¹ They will be released into the facilities of the Department of Home Affairs when the lock-down period ends, for further processing in terms of the Immigration Act No. 13 of 2002.³²

What measures are in place to ensure that correctional centres are fully equipped to prevent the spread of COVID-19?

The Minister of Justice and Correctional Services reported that measures are currently being implemented across all centres to protect and prevent the spread of COVID-19 to inmates, officials and stakeholders.³³

Some of the reported measures that have been implemented to prevent the spread of COVID-19 include the following:

- Prohibiting visitors to all correctional centres for a period of 30 days.
- Implementing infection and prevention control measures in all regions.
- Mass screening of inmates and officials.
- Isolation of officials who travelled out of the country recently.
- Conducting awareness campaigns to inmates, officials and stakeholders to prevent the spread of the virus.
- Sanitizing and cleaning strategic areas across all centres.
- Making available basic hygiene essentials to inmates and officials.
- Disinfecting keys and shackles.
- Providing surgical gloves to all officials handling registers, cash, letters and parcels.
- Installing secured liquid hand washing soap dispensers at all washing points.

- Identifying isolation areas in all centres.
- Implementing responsive inmate movement and control measures.
- Appointing multi-disciplinary committees across all regions to help prevent the spread of the virus.

Will inmates have access to exercise, libraries and their regular amenities during the COVID-19 lockdown?

Correctional Services reported that all their facilities will function, but certain activities will be suspended, and visitors will not be accepted.³⁴ Further, the Department of Correctional Services is developing standard operating procedures and protocols to ensure that there are systematic procedures for officials to deal with different situations. The exact nature of restrictions placed on inmates is not available, and we await the standard operating procedures and protocols for clarification in this regard.

Will inmates be allowed to consult their private attorney or legal aid attorney during the COVID-19 lock-down period?

The Regulations to combat the spread of COVID-19 suspends visits by members of the public to all places of detention as of 18 March 2020 for a period of 30 days or longer.³⁵

This also applies to visits by private or legal aid attorneys to correctional or remand facilities for consultations with inmates.

In terms of the Correctional Services Directions, inmates may be allowed to consult with their attorneys telephonically with the permission of the Head of Centre.³⁶ Telephonic consultations will only be allowed if the matter is urgent and where circumstances and resources permit.

Will the police be available for call-outs and emergency assistance to members of the public during the COVID-19 lock-down period?

The South African Police Service (SAPS) is regarded as an essential service and will be operating during the COVID-19 lock-down period.

The police service will deal with emergency call-outs and incidences. SAPS will also be vital in implementing the COVID-19 natural disaster measures.

It has been reported that SAPS management are implementing measures to ensure that all SAPS members, particularly those who are in close contact with different communities, are provided with protection against infection by prioritising access to hygienic supplies, such as gloves and hand sanitisers.³⁷

Can the public visit a police station during the COVID-19 lock-down period to report a case or accident or certifying documents, etc.?

Members of the public will be allowed to visit police stations, but walk-ins will be limited to when absolutely necessary. For instance, applications for police clearance, taking of fingerprints, renewals of firearm licences, certifying documents that are not urgent should be postponed till after lock-down.³⁸

Can the public visit family members or friends detained at a police station during the COVID-19 lock-down period?

No. The government issued strict regulations to combat the spread of COVID-19, which includes amongst others, suspending visits by members of the public to police holding cells as of 18 March 2020 for a period of 30 days or further, for as long as the national state of disaster continues.³⁹

What measures are in place to ensure that police stations and police officers are fully equipped to prevent the spread of COVID-19?

SAPS management must ensure that all SAPS members are provided with maximum protection against infection. Essential hygienic supplies (e.g. gloves and hand sanitisers) for police stations have been secured and urgent procurement processes are underway to ensure an adequate supply.⁴⁰

SAPS management has been instructed to ensure that everyone on duty complies with the COVID-19 hygiene protocols.⁴¹ Members of the public visiting police stations are obliged to cooperate with hygiene protocols in place.

Can the police arrest people who violate the regulations gazetted by the government to prevent the spread of COVID-19?

Yes. Violating the regulations to prevent the spread of COVID-19 is considered a crime. Any person who contravenes the regulations shall be guilty of an offence and, on conviction, be liable to a fine or to imprisonment for a period not exceeding six months or to both fine and imprisonment.⁴²

Will the public be able to access legal practitioners during the COVID-19 lockdown period?

Yes. Access to legal practitioners during the COVID-19 lockdown period is an essential service related to the functioning of the courts.

The provision of legal aid by Legal Aid South Africa will be limited to urgent and essential cases during the period of lockdown.⁴³ Existing clients of Legal Aid South Africa are requested to first call the legal advice line (0800 110 110) to determine how urgent their matter is and will be advised on the process that needs to be followed. The Legal Aid South Africa local office can also be contacted with a reference number to speak to a legal practitioner.

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¹ Dir. 2, Directions issued in terms of Regulation 10 of the Regulations under the Disaster Management Act, 2002 published in GN No. 43191 on 31 March 2020. (Hereafter referred to as 'Court Directions')

² Dir. 12, Court Directions.

³ Dir. 2 (a), Court Directions.

⁴ Dir. 2 (c), (d), Court Directions.

⁵ Dir. 2 (a), Court Directions.

⁶ Dir. 2 (f), Court Directions.

⁷ Dir. 2 (e), Court Directions.

⁸ Dir. 2 (d), Court Directions.

⁹ Dir. 3, 5, 8, Court Directions.

¹⁰ Dir. 12, Court Directions.

¹¹ Dir. 3 (c), Court Directions.

¹² Dir. 3, Directions issued in terms of Regulation 10(2) (a) of the Regulations under the Disaster Management Act, 2002 published in GN No. 43225 on 9 April 2020. (Hereafter referred to as 'Correctional Services Directions')

¹³ Dir. 3 (b), Court Directions.

¹⁴ Dir. 3 (d), Court Directions.

¹⁵ Dir. 3 (a), Court Directions.

¹⁶ Dir. 3 (g), Court Directions.

¹⁷ Dir. 5 (c), Court Directions.

¹⁸ Dir. 5 (d), Court Directions.

¹⁹ Dir. 5 (a), Court Directions.

²⁰ Dir. 8 (a), Court Directions.

²¹ Dir. 8 (b), Court Directions.

²² Dir. 8 (c), Court Directions.

²³ Dir. 3 (f), Court Directions.

²⁴ Dir. 3 (e), Court Directions.

²⁵ Dir. 3 (c), Court Directions.

²⁶ Dir. 11, Court Directions.

²⁷ Regulations 4 (1) and 7 (a) and (b), Disaster Management Act Regulations, 2002 published in GN No. 318 on 18 March 2020, as amended by GN No. 43148 of 25 March 2020, GN No. 43168 of 26 March 2020, GN No. 43199 of 2 April 2020. (Hereafter referred to as 'Regulations')

²⁸ Dir. 2, Correctional Services Directions.

²⁹ Dir. 3, Correctional Services Directions.

³⁰ Dir. 3, Correctional Services Directions.

³¹ Dir. 1 (a) – (c), Correctional Services Directions.

³² Dir. 1 (d), Correctional Services Directions.

³³ Media Statement delivered by Minister of Police, General Bheki Cele and Minister of Justice and Correctional Services, Mr. Ronald Lamola on the Occasion of the Implementation of the Covid-19 Disaster Management Regulations; held on Friday 20 March 2020 at GCIS Pretoria, Available at: https://www.justice.gov.za/m_speeches/2020/20200320-Covid-19-JointMinisterialMediaBriefing.pdf; Remarks by the Minister of Justice and Correctional Services, Mr. Ronald Lamola, 25 March 2020, Available at: https://www.justice.gov.za/m_speeches/2020/20200325-COVID-19.html

³⁴ Media Statement delivered by Minister of Police, General Bheki Cele and Minister of Justice and Correctional Services, Mr. Ronald Lamola on the Occasion of the Implementation of the Covid-19 Disaster Management Regulations; held on Friday 20 March 2020 at GCIS Pretoria.

³⁵ Regulations 4 (1) and 7 (a) and (b), Disaster Management Act Regulations, 2002 published in GN No. 318 on 18 March 2020, as amended by GN No. 43148 of 25 March 2020, GN No. 43168 of 26 March 2020, GN No. 43199 of 2 April 2020.

³⁶ Dir. 4 (1), Correctional Services Directions.

³⁷ Media statement delivered by Minister of Police, General Bheki Cele and Minister of Justice and Correctional Services, Mr. Ronald Lamola on the occasion of the implementation of the Covid-19 Disaster Management Regulations; held on Friday 20 March 2020 at GCIS Pretoria.

³⁸ Media statement delivered by Minister of Police, General Bheki Cele and Minister of Justice and Correctional Services, Mr. Ronald Lamola on the occasion of the implementation of the Covid-19 Disaster Management Regulations; held on Friday 20 March 2020 at GCIS Pretoria.

³⁹ Regulation 7 (c), Regulations 4 (1) and 7 (a) and (b), Disaster Management Act Regulations, 2002 published in GN No. 318 on 18 March 2020, as amended by GN No. 43148 of 25 March 2020, GN No. 43168 of 26 March 2020, GN No. 43199 of 2 April 2020.

⁴⁰ Media Statement delivered by Minister of Police, General Bheki Cele and Minister of Justice and Correctional Services, Mr. Ronald Lamola on the Occasion of the Implementation of the Covid-19 Disaster Management Regulations; held on Friday 20 March 2020 at GCIS Pretoria.

⁴¹ Media Statement delivered by Minister of Police, General Bheki Cele and Minister of Justice and Correctional Services, Mr. Ronald Lamola on the Occasion of the Implementation of the Covid-19 Disaster Management Regulations; held on Friday 20 March 2020 at GCIS Pretoria.

⁴² Reg. 4 (1), 7 (a)-(b) and 11G (a), Disaster Management Act Regulations, 2002 published in GN No. 318 on 18 March 2020, as amended by GN No. 43148 of 25 March 2020, GN No. 43168 of 26 March 2020, GN No. 43199 of 2 April 2020.

⁴³ Dir. 6, Court Directions.