

LAWYERS FOR CONSTITUTIONAL DEMOCRACY

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Citizens' Rights

- "Lockdown" is in place and the NCC are in operating without constitutional mandate ● Citizen's rights are under threat ●
How citizens should respond to police action.

The South African Government has unilaterally declared that South Africa is experiencing a state of disaster, and implemented the Disaster Management Act 57 of 2002 (the DMA), due to the COVID 19 pandemic.

It is our submission that the NCC (National Command Council) is operating without a constitutional mandate and without any form of parliamentary oversight. The Declaration of the National State of Disaster has triggered a host of constitutional violations. South Africa is a constitutional republic. Any law passed that is inconsistent with the constitution is invalid and in our opinion *contra bona mores*.

According to data from the best-studied countries and regions, the lethality of Covid19 is on average 0.2%, which is in the range of a severe (flu) and about twenty times lower than originally assumed by the WHO. Up to 80% of all test-positive persons remain asymptomatic. Even among 70-79 year olds, 60% remain asymptomatic. Over 95% of all persons show very mild symptoms at most. The median or average age of the deceased in most countries is over 80 years and only 1% of the deceased had no serious preconditions. The age and risk profile of deaths thus essentially corresponds to normal mortality. As is the case with the seasonal flu, only the sick and the vulnerable need to be isolated. The DMA is generally reserved for national disasters having to do not with pandemics, but with climate related and

human-induced disasters, so the implementation of the DMA is procedurally incorrect. The immediate question that then arises is whether there exists other legislation that caters adequately for a pandemic. If there is, then the declaration of national state of disaster under the DMA may be unlawful, unless there are “special circumstances” that nevertheless warrant the declaration. There exists a piece of legislation known as the International Health Regulations Act, 28 of 1974 (the IHRA) which in our opinion does not infringe on the constitution and can adequately deal with diseases such as COVID 19.

Government is relying on the DMA to enforce the Lockdown, yet Government is using state of emergency regulations, making the whole Lockdown procedurally incorrect, invalid, illegal and unconstitutional. Therefore, there is no lawful reason why the Bill of rights are in any way suspended as the existence of the NCC is in our opinion illegal and operating as an authoritarian structure without any form of constitutional existence. It is our submission that all citizens’ constitutional rights are to be still upheld (without any limitation), including the right to earn a living, the right to freedom of movement, amongst others. Hence the metaphor of the poisonous tree. If the tree (Lockdown) is poisonous so is the fruit of the tree (lockdown/COVID 19 regulations), thus in our opinion rendering all the regulations potentially invalid and illegal and not meeting the relevant constitutional muster.

It is submitted in our opinion -

1. That all citizens still have their ability to invoke constitutional rights (without limitation) and the provisions of the bill of rights

2. Any police officer or law enforcement official trying to arrest a citizen for contravening lockdown regulations is acting in our opinion illegally, outside the ambit of the criminal procedure act and without any form of constitutional mandate and therefore can be potentially charged for assault in a criminal court, and sued for damages in a civil court.

3. It is legally advised **not to pay any AOG** (ADMISSION OF GUILT) fine, but to plead not guilty and run the trial. The state needs to discharge its onus beyond reasonable doubt.

4. We suggest, if need be, that an 'accused' instruct an attorney or apply for legal aid which is available at no cost.

5. If one has already paid an AOG fine, we suggest that an application be made for condonation and that the matter to be sent on special review, for purposes of the conviction being set aside, and that the individual consider instituting a criminal and/or civil case against the arresting officers.

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