



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

COVID-19 ALERT LEVEL 4: The operation of courts, police & correctional services

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Introduction

On 18 March 2020, South Africa was placed under a national lock-down due to the President declaring the COVID-19 a national state of disaster. This has placed limitations on the operations of courts, police and correctional facilities in the country. This info-sheet provides information available to date (as provided for in Regulations and Directives issued by the relevant ministries) on the operation of courts, police and correctional services during the COVID-19 Alert level 4 national lock-down.

Will courts be operating during the COVID-19: Alert Level 4?

Courts will operate during the lockdown period to deal with certain cases permitted in terms of Alert Level 4.¹ (See Annexure 1 attached)

The Minister of Justice and Correctional Services issued Directions on the functioning of Courts ('Court Directions') to provide a guideline of the matters courts will deal with during Alert level 4.

Who will be allowed to access courts during COVID-19: Alert Level 4?

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

The Court Directions states that entry into the courtroom may only be allowed in respect of permitted services or cases and persons with material interests in a case.²

Courts will be restricted to the following persons with material interests in a case:

- litigants,
- accused,
- legal practitioners and their support staff,
- witnesses,
- family members and persons accompanying children, victims of domestic violence or sexual offences and persons with disabilities
- representatives of the media.³

A person who in the past 14 days has been in contact with, or exposed to, another person who has tested positive for COVID-19 may not be allowed to enter courts during the state of national disaster.⁴

What kinds of criminal, civil and family law cases will courts deal with during COVID-19: Alert Level 4?

The criminal, civil and family law cases courts are permitted to deal with during COVID-19: Alert Level 4 is highlighted below. A Judicial Officer presiding over any matter in court however has the discretion to deviate from the Court Directions if the interests of justice so requires.⁵ A schedule of all other types of permitted court services is attached (Annexure A).

Criminal law

Courts will only deal with the following criminal law cases:

1. Bail applications will be heard at courts subject to the following qualifications:⁶
 - An audio-visual link may be used for unopposed bail applications for a charge listed in Schedule 1, 5 or 6 of the Criminal Procedure Act.⁷
 - An accused person arrested for a petty offence do not need to apply for bail as they will be released and warned to appear in court on a future date.⁸
2. First Court Appearances⁹
3. Guilty pleas¹⁰
4. The courts will only hear trials limited to:¹¹
 - Corruption, Sexual offences, Gender Based Violence and Femicide (GBVF).
 - Serious violent crimes, robbery, murder and Violation of COVID-19 Regulations.
 - Cases where accused persons are in detention. Trials involving awaiting- trial detainees who are being held in Correctional Centres must be prioritised.
 - Finalization of partly heard matters, which can be completed.
5. Proceedings under section 63A of the Criminal Procedure Act, which is a procedure in terms of which a Court may on application by a Head of a Correctional Centre order the release of certain accused on warning in lieu of bail or order the amendment of the bail conditions imposed.¹²
6. All matters where children are detained in Child and Youth Care Centres and Correctional Centres must be brought before court for consideration of continued detention.
7. Applications for leave to appeal, Appeals and reviews.¹³

All other cases not listed above will be postponed to a future date.

Postponements will be made absence of the accused where it is possible to inform accused persons or witnesses of the future trial date.¹⁴

If accused persons are in custody, an audio-visual link or other electronic mode alternatives (teleconference or videoconference) must be used for postponing cases.¹⁵

All other criminal trials enrolled during Alert Level 4 must be postponed to dates in future, excepting trials where special arrangements have been made with the judicial officer hearing the matter.¹⁶

Civil law matters

Civil cases that is not identified as urgent or permitted services in terms of Alert Level 4 may not be dealt with at Courts.¹⁷ Judicial Officers however retain the discretion to authorise the hearing of all matters on a court roll including through teleconference, videoconference or any other electronic mode, which dispenses with the necessity to be physically present in a courtroom.¹⁸ The civil law service permitted include:

- Urgent motion applications
- Urgent civil trials including COVID 19 related cases
- Alternative Dispute Resolution Mechanisms
- Taxations
- Debt Review applications and trials
- Divorce Proceedings, including Rule 43 applications in the High Court and Rule 58 applications in the Regional Court, as well as uncontested interlocutory applications and uncontested trials
- Issue of all court process and proceedings and filing of papers relevant to pending proceedings;
- Applications for leave to appeal, Appeals and reviews
- All uncontested civil actions or motions;
- Ex parte applications;
- Endorsement of powers of attorney.¹⁹

If a case does not fall under the permitted services, the case will be postponed and the Registrar or Clerk of the Court must inform the parties and their legal representatives in writing of the new court dates.²⁰

Small Claims Courts may not operate and services are limited to email and telephonic enquiries.²¹ The execution of warrants of execution, including evictions and all attachment and removal of property are suspended.²²

Service of processes and execution of writs and warrants by sheriffs will be limited to the following: domestic violence and protection from harassment orders, urgent court processes in family law matters, court orders relating to COVID-19, urgent court processes relating to court hearings scheduled during Alert Level 4 or any other process in respect of permitted services.²³

Family law services

The following family law services will be permitted:

- Child and spousal maintenance proceedings
- Protection orders in terms of the Domestic Violence Act No. 116 of 1998 or the Protection from Harassment Act No. 17 of 2011
- Foster care applications and hearings
- Care and contact, care and protection proceedings in respect of children, including removal to temporary safe care and placement in child and youth care centres

- International child abduction cases
- International child abduction cases
- Adoptions applications and hearings

Do I need a permit to travel to court during COVID-19: Alert Level 4?

If a lawyer does not represent you, you are allowed to travel to court and must be in possession of documentary proof of the fact that attendance at the court is required.²⁴

Witnesses are allowed to travel to attend court or obtain services at a court or to their legal representatives offices but must at all times have a form of identification and a subpoena or a permit authorising him or her to attend court house or the legal practitioners office.²⁵ The permits must be issued by a court or a person who is either the head of an institution in relation to such person or the legal practitioner representing a party to such proceedings.²⁶

Court officials and legal representatives (i.e. judges, magistrates, legal practitioners and sheriffs, officers of the court) performing permitted services may travel between their residence, offices and courts for purposes of performing such services.²⁷ They should always have in their possession a form of identification and a permit to perform such services issued by the head of institution.²⁸

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

Court officials may limit the number of persons entering a court to comply with safety measures and social distancing requirements.²⁹

There is an obligation on court managers to ensure that all courts have adequate supply of sanitisers and soap for people to wash and sanitise their hands.³⁰

All persons entering a court will be required to wear a cloth facemask or any item that covers the nose and mouth and observe the social distancing requirement of 1, 5 metres in any queue or seating.³¹

Courts will have designated COVID-19 compliance officers for each courthouse or justice service point.³²

The COVID-19 compliance officer must request any person to comply with the Court Directions and COVID-19 State of Disaster Regulations.³³ Persons who refuse to comply compliance officers requests may be removed from the premises.³⁴

Will the public be allowed to visit friends or family members at correctional centres during COVID-19: Alert Level 4?

This is uncertain. The COVID-19 State of Disaster Regulations notes that visits to a correctional and remand facilities will be allowed to the extent and in the manner as directed by the Cabinet member responsible for Cooperative Governance and Traditional Affairs after consultation with the Minister of Justice and Correctional Services.³⁵ The Correctional Services Directions do not provide any clarity on this.

Are there any restrictions in respect of the placement, movement and release of inmates from correctional or remand facilities during COVID-19: Alert Level 4?

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.³⁶
- The transfer of inmates must be referred to the Chief Operations Commissioner of the Department of Correctional Services for consideration.³⁷ The Chief Operations Commissioner has the discretion to allow the transfer of inmates.³⁸ 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.³⁹ 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 2002.⁴⁰

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

The Minister of Justice and Correctional Services reported that measures have been implemented across all correctional facilities to mitigate against the spread of COVID-19.⁴¹

The Department of Correctional Services developed Standing Operating Procedures (DCS Standing Operating Procedures) in line with the Standing Operating Procedures issued by the Department Of Health to prevent the spread of COVID-19 infections.⁴²

Some of the measures that have been implemented to prevent the spread of COVID-19 at all Department of Correctional Services facilities include the following:

- Restricting visitors to correctional facilities.⁴³
- Implementing infection and prevention control measures in all regions.⁴⁴
- Mass screening of inmates and officials.⁴⁵
- 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.⁴⁶
- Training of health officials⁴⁷
- Sanitizing and cleaning strategic areas across all centres.⁴⁸

- Making available basic hygiene essentials to inmates and officials.⁴⁹
- Disinfecting keys and shackles.⁵⁰
- Providing surgical gloves to all officials handling registers, cash, letters and parcels.⁵¹
- Installing secured liquid hand washing soap dispensers at all washing points.⁵²
- Identifying isolation areas in all centres.⁵³
- Implementing responsive inmate movement and control measures.⁵⁴

Will inmates have access to exercise, libraries and their regular amenities during COVID-19: Alert Level 4?

It is uncertain whether inmates will be allowed to exercise or access their basic amenities during this period. The DCS Standing Operating Procedures does not address this issue.

Will inmates be allowed to consult their private attorney or legal aid attorney during COVID-19: Alert Level 4?

The provision of physical visits by lawyers to their clients at correctional facilities is uncertain.

The COVID-19 State of Disaster Regulations notes that visits to a correctional and remand facilities will be allowed to the extent and in the manner as directed by the Cabinet member responsible for Cooperative Governance and Traditional Affairs after consultation with the Minister of Justice and Correctional Services.⁵⁵

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.⁵⁶ Telephonic consultations will only be allowed if the matter is urgent and where circumstances and resources permit.

Will SAPS services be available to members of the public COVID-19: Alert Level 4?

South African Police Service (SAPS) services will be operational and officials will be available to deal with all services, emergency call-outs and incidences.

Can the public visit family members or friends detained at a police station during COVID-19: Alert Level 4?

This is uncertain. The COVID-19 State of Disaster Regulations notes that visits to police holding cells will be allowed to the extent and in the manner as directed by the Cabinet member responsible for cooperative governance and traditional affairs after consultation with the minister of police.⁵⁷

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

It has been reported that measures have been implemented by SAPS management to ensure that all officials and police precincts have access to essential hygienic supplies (e.g. gloves and hand sanitisers).⁵⁸

During a portfolio committee meeting on Police,⁵⁹ it was reported that National Instructions to deal with the containment and management of Covid-19 was issued by the National Crime Combating Forum (NCCF).⁶⁰ The National Instructions deals with amongst others: the coordination of efforts during the lockdown restrictions; measures to be taken during the arrest, detention and the execution of policing duties; transport and detainment of suspects; safety protocols in general and during parades and operations.⁶¹

Here are some of the Covid-19 containment and management provisions reported to be in the National Instructions:⁶²

- SAPS officials must keep reasonable social distancing where possible and if unavoidable, must ensure that they wear appropriate protective equipment and sanitize their hands on a regular basis.⁶³
- Vehicles used to transport arrestees must be sanitized before suspects can be loaded and transported to the station.
- A reasonable number of suspects must be transported at all times to avoid the possible exposure to the coronavirus.⁶⁴
- Members are allowed to issue admission of guilt payments, notice to appear in court, and police bail without transporting the suspect to the police station. This applies to all offences where the Senior Magistrate has determined an admission of guilt amount.⁶⁵
- Where there is no admission of guilt amount determined and the suspect has to be detained, the following precautions must be adhered to:
 - Clean blankets and cell mats, not torn before detainment, must be provided
 - The cells and cell keys must be sanitized at all times
 - The suspect must not be detained with other suspects who have not committed crimes other than the violations of the regulations, where practically possible
 - Public visits are suspended
 - Capacity of holding cells must not be exceeded
 - All persons in custody must be sanitized before meals are supplied;
 - Service providers must sanitize hands and wear masks
 - The temperature of suspects must be measured when thermometers are available
 - If a detainee tests positive for COVID-19, the person must be moved to another cell and isolated before the cell is decontaminated and a medical practitioner must be requested

Can a person be arrested for violating COVID-19 State of Disaster Regulations?

The police may only arrest persons for violating the following general provisions in the Regulations:

- A person who convenes a gathering, except a funeral in accordance with the Regulations;
- A person who hinders, interferes with, or obstructs an enforcement officer in the exercise of his or her powers in terms of the Regulations;
- A person who is not confined to his or her residence, except where a person is performing a permitted service;
- A person who is not confined to his or her residence during 20H00 until 05H00, except where a person has been granted a permit to perform an essential service;
- A person who visits any public place or amenity that is prohibited during the lockdown;

- Any person who violates the Regulations on the sale, dispensing or transportation of liquor;
- Any persons who violates the Regulations on tobacco products, e- cigarettes and related products;
- Any persons who violates the Regulations on the prohibition of evictions;
- Retail stores selling goods not provided for under Table 1 of the Regulations.⁶⁶

Any person who contravenes the above 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.⁶⁷

Will legal aid services be available during COVID-19: Alert Level 4?

Yes. However, Legal Aid South Africa is restricted to service permitted during Alert level 4 and they must have a permit to perform such services.⁶⁸ (Please see permitted schedule attached hereto)

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Annexure 1: Permitted services in terms of Alert Level 4

A. Criminal law
<ol style="list-style-type: none"> 1. First Court Appearances; 2. Postponement in absentia where is possible to inform accused persons / witnesses of future trial date; 3. Bail applications; 4. Proceedings under section 63A of the Criminal Procedure Act; 5. Consideration of the continued detention of children awaiting trial in detention in Child and Youth Care Centres and Correctional Centres on a case by case basis; 6. Postponements of trials through audio-visual link; 7. Guilty Pleas; 8. Trials limited to: <ol style="list-style-type: none"> a) Corruption, Sexual offences, Gender Based Violence and Femicide (GBVF), b) serious violent crimes, robbery, murder and Violation of COVID-19 Regulations c) Cases where accused persons are in detention; d) Finalization of partly-heard matters which can be completed; 9. Applications for leave to appeal, Appeals and reviews.
B. Civil law
<ol style="list-style-type: none"> 1. Civil matters dealt with online, telephonically or in writing; 2. Urgent motion applications; 3. Urgent civil trials including COVID 19 related cases; 4. Alternative Dispute Resolution Mechanisms; 5. Taxations; 6. Debt Review applications and trials; 7. Divorce Proceedings, including Rule 43 applications in the High Court and Rule 58 applications in the Regional Court, as well as uncontested interlocutory applications and uncontested trials; 8. Issue of all court process and proceedings and filing of papers relevant to pending proceedings; 9. Applications for leave to appeal, Appeals and reviews; 10. All uncontested civil actions or motions; 11. Ex parte applications; 12. Endorsement of powers of attorney.
C. Family law
<ol style="list-style-type: none"> 1. Child and spousal maintenance proceedings 2. Protection orders in terms of the Domestic Violence Act No. 116 of 1998 or the Protection from Harassment Act No. 17 of 2011 3. Foster care applications and hearings 4. Care and contact, care and protection proceedings in respect of children, including removal to temporary safe care and placement in child and youth care centres 5. International child abduction cases 6. International child abduction cases 7. Adoptions applications and hearings
D. Services of the Offices of the Master Of The High Court
<ol style="list-style-type: none"> 1. Reporting and issuing of letters of appointments in all deceased estates matters;

<ol style="list-style-type: none"> 2. Reporting and issuing of appointments in all Insolvency matters; 3. Lodgement of requisitions by way of e-mail; 4. Examination of L&D accounts in all deceased estates matters lodged by e-mail; 5. Examination of L&D accounts in all Insolvency matters lodged by e-mail; 6. Reporting and issuing appointments in only urgent Trust matters for the benefit of COVID-19 relief measures lodged by e-mail; 7. Reporting and issuing appointments in only urgent curatorship matters lodged by email; 8. Receiving of applications and payments of funds from the Guardian’s Fund; 9. Issuing of letters of executorship and endorsement of powers of attorney.
<p>E. Services of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs Of State</p>
<p>Services as determined by the Chairperson of the Judicial Commission of Inquiry into allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State.</p>
<p>F. Special Tribunal Appointed in terms of the Special Investigating Units and Special Tribunals Act, 1996</p>
<p>Services as determined by the President of the Special Tribunal.</p>

Endnotes

¹ Item 5, Directions issued in terms of Regulation 4(2) of the Regulations under the Disaster Management Act, 2002 published in GN No. 43268 on 4 May 2020. ('Court Directions')

² Item 4, Court Directions.

³ Item 4, Court Directions.

⁴ Item 7, Court Directions.

⁵ Item 39, Court Directions.

⁶ Annexure 1, Court Directions.

⁷ Item 9, Court Directions.

⁸ Item 15, Court Directions.

⁹ Annexure 1, Court Directions.

¹⁰ Annexure 1, Court Directions.

¹¹ Annexure 1, Court Directions.

¹² Annexure 1, Court Directions.

¹³ Annexure 1, Court Directions.

¹⁴ Annexure 1, Court Directions.

¹⁵ Item 8, Court Directions.

¹⁶ Item 12, Court Directions.

¹⁷ Item 18, Court Directions.

¹⁸ Item 18, Court Directions.

¹⁹ Annexure 1, Court Directions.

²⁰ Item 19, Court Directions.

²¹ Item 17, Court Directions.

²² Item 21, Court Directions.

²³ Item 20 (a)-(f), Court Directions.

²⁴ Item 34, Court Directions.

²⁵ Item 35 (a) (c), Court Directions.

²⁶ Item 35 (c), Court Directions.

²⁷ Item 30, 31, 32 and 33, Court Directions.

²⁸ Item 30, 31, 32 and 33 Court Directions.

²⁹ Item 4 and 6, Court Directions.

³⁰ Item 36, Court Directions.

³¹ Item 37, Court Directions.

³² Item 38, Court Directions.

³³ Item 38, Court Directions.

³⁴ Item 38, Court Directions.

³⁵ Regulations 25, 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, GN 43258 of 29 April 2020. (Hereafter referred to as 'Regulations')

³⁶ Item 2, 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. (Correctional Services Directions')

³⁷ Item 3, Correctional Services Directions.

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- ³⁸ Item 3, Correctional Services Directions.
- ³⁹ Item 1 (a) – (c), Correctional Services Directions.
- ⁴⁰ Item 1 (d), Correctional Services Directions.
- 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, 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
- ⁴² Standing Operating Procedures for Preparedness, Detection and Response to Coronavirus Disease 2019 (COVID-19) in the Department of Correctional Services, 16 March 2020. (DCS Standing Operating Procedures) Available at: http://pmg-assets.s3-website-eu-west-1.amazonaws.com/200429SOP_FOR_COVID_19_DCS.pdf
- ⁴³ Regulation 25, Items 3.10-3.12, DCS Standing Operating Procedures.
- ⁴⁴ Items 3.6, 3.13 and 3.4.4, DCS Standing Operating Procedures.
- ⁴⁵ Items 3.4.1 and 3.8, DCS Standing Operating Procedures.
- ⁴⁶ Item 3.2, DCS Standing Operating Procedures.
- ⁴⁷ Item 3.3, DCS Standing Operating Procedures.
- ⁴⁸ Items 3.4.5, 3.4.9 and 3.7, DCS Standing Operating Procedures.
- ⁴⁹ Items 3.4.6 and 3.4.7, DCS Standing Operating Procedures.
- ⁵⁰ Items 3.4.8, DCS Standing Operating Procedures.
- ⁵¹ Item 3.4.7, DCS Standing Operating Procedures.
- ⁵² Item 3.4.6, DCS Standing Operating Procedures.
- ⁵³ Item 3.14, DCS Standing Operating Procedures.
- ⁵⁴ Items 3.8, 3.9, 3.10, 3.11 and 3.12, DCS Standing Operating Procedures.
- ⁵⁵ Regulation 25.
- GN 43258 of 29 April 2020. (Hereafter referred to as 'Regulations')
- ⁵⁶ Item 4 (1), Correctional Services Directions.
- ⁵⁷ Regulation 25.
- ⁵⁸ 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.
- ⁵⁹ Parliament of the Republic of South Africa *Management of the National Lockdown by the South African Police Services*, 22 April 2020, Cape Town: Parliament Research Unit p.2. Available at: http://pmg-assets.s3-website-eu-west1.amazonaws.com/200429Research_Unit_SAPS_Management_of_lockdown_22_APRIL_2020.pdf.
- ⁶⁰ National Crime Combating Forum (NCCF) Instruction 3 of 2020 *Guideline on the Implementation of the Regulations in terms of Section 27(2) of the Disaster Management Act 2002: Containment and Management of Covid-19*; Parliament of the Republic of South Africa *Management of the National Lockdown by the South African Police Services*, 22 April 2020, Cape Town: Parliament Research Unit p.2.
- ⁶¹ Parliament of the Republic of South Africa *Management of the National Lockdown by the South African Police Services*, 22 April 2020, Cape Town: Parliament Research Unit p.2 -5.
- ⁶² Parliament of the Republic of South Africa *Management of the National Lockdown by the South African Police Services*, 22 April 2020, Cape Town: Parliament Research Unit p.2 -5.
- ⁶³ NCCF Supplementary Instruction 2; Protocol for the management and containment of COVID-19 within the SAPS.
- ⁶⁴ NCCF Supplementary Instruction 9.
- ⁶⁵ NCCF Supplementary Instruction 9.
- ⁶⁶ Regulation 31.
- ⁶⁷ Regulation 31.

⁶⁸ Item 23, Court Directions.