

Break the gridlock

Practical proposals for ending the national lockdown and for the period thereafter

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1. Introduction

On 21 April 2020, President Cyril Ramaphosa announced that a number of economic and social measures were to be introduced to manage the harm resulting from the lockdown. From the start, AfriForum's point of departure has been that this organisation is in favour of a lockdown to curb the spread of COVID-19. This, however, does not imply giving a blank cheque to the government to centralise power in itself, to limit civil rights on a comprehensive scale, to prohibit neighbourhood watches, to keep people in quarantine camps against their will and to impose economic restrictions that are so comprehensive that people will no longer be able to care for their families.

The aim of this document is to put AfriForum's point of view on the lockdown and its extension, as well as the measures being introduced by the government to manage the harm caused by the lockdown. AfriForum's own priorities under these circumstances are also set out in this document.

In conclusion, a series of practical steps are proposed to terminate the lockdown. In the coming weeks and months, AfriForum will in particular focus on pursuing these objectives.

2. The national democratic revolution and the lockdown

It is important to view the lockdown and the government's reaction to COVID-19 within the context of the governing party's so-called national democratic revolution (NDR). The NDR, comprehensively elaborated on in the governing party's strategy documents, is aimed at putting South Africa on the road to socialism. To achieve this, it is the governing party's aim to concentrate ever more power in the state over time by increasingly acquire more control over the so-called levers of power. By doing this, the governing party envisages to promote radical economic transformation and to drastically reorganise society – with the state firmly established as the so-called custodian of its subjects. These levers include the various state functions and institutions of society. The governing party also makes it clear that this aim (to centralise more and more power in the state) should be achieved by taking note of the balance of power. In short, this means that when there is strong opposition to a specific policy objective of the governing party, this objective is to be pursued more slowly. On the other hand, the governing party foresees that opportunities will present themselves when huge strides may be made in pursuing the NDR by drastically centralising power in the state in one moment. There is no doubt that the government is regarding COVID-19 as an opportunity to take a huge stride in

pursuing the NDR – with some supposed moral justification. This is something the public should take note of and that should be guarded against.

3. Consequences of the lockdown

The consequences of the lockdown are comprehensive. It is especially important to monitor the consequences of the lockdown in three fields, namely the economic consequences, political consequences and community safety. The consequences with regard to people's civil rights will be dealt with in a separate section.

3.1. Economic consequences

The lockdown undoubtedly will have negative consequences for the economy, and most people are going to be poorer following the lockdown. Conservative estimates are that more than a million people are going to lose their jobs as a result of this, and public debt could reach 80% of GDP within two years. Most economists are now predicting a contraction of economic activities of between 5% and 10% for 2020. In a poll that was conducted prior to the lockdown by *sme.africa* and Sasfin among a couple of thousands of small and medium businesses it was found that 62% of business owners were extremely concerned about the continued existence of their businesses. In fact, 4% had already closed their businesses. At the time of the poll, 53% indicated that they probably would be laying off people soon (7% had already done so).

Drastic interventions to curb the spread of the virus do not make sense if one does not consider the consequences such measures are going to have in other fields. The economist Dawie Roodt says economic contraction means that people will not have food to eat and that poverty could result in more deaths. He estimates that up to 300 000 people could die over the next ten years in South Africa because of the higher levels of poverty.

3.2. Political consequences

The political consequences include that confidence in President Cyril Ramaphosa has increased considerably and also that the government under these circumstances has been appropriating more power than ever before. It is particularly notable that the lockdown is being obeyed especially by people who are not necessarily ANC voters. On the other hand, some of the communities who are most inclined to disregard the President's plea for isolation are in areas where the ANC has strong support. Generally speaking, one could say that people who did not

vote for the President are more inclined to obey him in these circumstances than people who did vote for him. The government is also using the circumstances to step up regulation and formalisation, particularly in the informal sector. Initiating or increasing regulation and formalisation during a crisis is a clear indication that the government's priorities still are of an ideological nature.

In terms of the NDR, the governing party is striving to put South Africa on the road to socialism. This is done by centralising power in the state to an increasing extent. In this regard, COVID-19 is providential for the ANC, who has capitalised on this crisis by taking a huge stride in pursuing the NDR.

3.3. Community safety

The lockdown is having a tremendous impact on the safety situation in South Africa. As it is, South African society is exceptionally violent; if distress levels move upwards, one may reasonably predict that violence will also increase. One of the most glaring aspects of the lockdown is that communities are prevented from operating neighbourhood watches to take care of their own safety – even if these neighbourhood watches function in collaboration with the South African Police Service (SAPS).

An increase in stock theft, game poaching and crop theft has already been reported in some areas. A distinct increase in housebreaking and looting has also been noted in some areas. At present this is happening mostly in the Western Cape and certain parts of the Eastern Cape. Looters run away with the contents of stores or trucks and simply say they are doing this because they are hungry and are unable to put food on the table. The crisis is also putting much pressure on logistical networks for food distribution by large chain stores. There already is a risk of chain stores being reluctant to deliver food in certain areas for fear of having their vehicles looted. If these stores cannot obtain supplies, the risk arises that more mainstream routes will be targeted by looters.

There also is great concern about the extent of intervention by the South African National Defence Force (SANDF) to enforce the lockdown. SANDF members are equipped with assault rifles, but it appears that – apart from a lack of necessary equipment – they have not been trained to apply riot control in a responsible manner.

Since the beginning of the lockdown it also has become clear that political interference at senior level at the SAPS is having a negative impact on the morale of the SAPS – especially at ground level. An obvious example of this is the gratitude shown by local police stations who had not

been issued with hand sanitisers, when they received such donations from AfriForum – only to be ordered to return all hand sanitisers received from AfriForum.

Previously, South Africa had more than 60 000 police reservists, but today the number barely reaches 5 000. If the SAPS had given the necessary attention to its reservists, it probably would not have been necessary to call in the SANDF to help manage the crisis.

These issues merely give an overview of the crisis the South African security forces are finding themselves in at present, as well as the risks to sustainable community safety in South African. It is of cardinal importance to solve the crisis, especially because communities are prohibited by lockdown regulations from seeing to their own safety.

4. The restriction of civil rights

4.1. Freedom of movement, residence and meeting

Rights

Everyone has the right to freedom of movement. Everyone has the right to enter or leave South Africa and to reside in South Africa. Everyone has the right, peacefully and unarmed, to assemble, to demonstrate, to picket and to present petitions.

Limitations

Municipalities have been instructed to close all public facilities that do not provide essential services. This includes swimming pools, libraries, community halls, recreation centres, museums, galleries, markets, parks and events. Community gatherings, marriages and other festivities are prohibited. Funerals may proceed, but mourners are limited to close relatives and no more than 50 persons. No permits are issued for demonstrations, protest actions and presentation of petitions. Every person is restricted to their dwelling, apart from exclusively for the purpose of performing essential services, obtaining essential goods and services, receiving social grants and pensions or acquiring emergency, life-saving or chronic medical services. Movement between provinces and metropolitan and district areas is prohibited, except for essential workers, the transportation of cargo and human remains, or to attend funerals.

Cases

A bride and bridegroom were arrested in Richards Bay on 5 April together with their 50 guests and the pastor conducting the ceremony, because they had contravened the restriction on marriage festivals.

4.2. Economic activities

Rights

Every citizen has the right to freely exercise their trade, occupation or profession.

Limitations

All businesses and other entities have to cease all activities during the lockdown, excluding any businesses or entities that produce or provide essential goods or services. Retailers and shopping centres have to be closed, except where essential goods are sold. Retailers selling essential items are prohibited from selling any other goods.

4.3. Children, family and education

Rights

Every child under the age of 18 years has the right to family care or parental care or to alternative care when they are removed from their family environment. They have the right to be protected from maltreatment, neglect, abuse or degradation, and may not be detained except as a measure of last resort, in which case they must be detained separate from other detainees over the age of 18 years. A child's best interests are of paramount importance in every matter concerning the child.

Everyone has the right to basic education and access to further education.

Limitations

Schools and partial-care facilities are closed until further notice. Children in child and youth care centres are not allowed to leave or to receive visitors. People in homes for the aged, frail care facilities and facilities for people with disabilities are not allowed to leave or to receive visitors.

Children have to stay in the custody of the parent where they were at the beginning of the lockdown. They are prohibited from moving between the parents, except where an

arrangement was made to take the child from one parent to the other in terms of a court order or an agreement registered with the family advocate. No person of the household to which the child is taken may have the virus or may be suspected of having contracted the virus. The person transporting the child must have a certified copy of the court order or agreement on him or her.

Courts may issue orders on foster care, adoption, removal of children in need of care and protection, placing of children in child and youth care centres, and in international child abduction cases.

4.4. The law and the courts

Rights

Everyone has the right to a fair public hearing in a court to settle a legal dispute. A person who has been arrested has the right to be brought before a court within 48 hours and to be charged or to be informed of the reason for the detention to continue, or to be released. A person detained has the right to be informed of the reason for being detained and to consult with a legal practitioner. They have the right to challenge the lawfulness of the detention and to be released if detained unlawfully. They have the right to communicate with and be visited by their family, religious counsellor and medical practitioner.

Limitations

Access to courts and court areas is permitted only for urgent and essential cases. The sheriff may serve and execute orders only in urgent and essential cases. This includes orders concerning COVID-19, protection orders for domestic violence and harassment, and claims that are prescriptive. Eviction orders are suspended for the duration of the lockdown.

No awaiting-trial detainees in correctional centres and police detention cells may be brought before any court or into any court area, except for a first appearance, a bail application or a case where special arrangements have been made with the legal officers involved in the case. Attorneys are allowed to travel to court only for cases that have been classified as urgent. They may, however, go to a police station to arrange for police bail following confirmation by the investigating officer.

4.5. Freedom of expression

Rights

Everyone has the right to freedom of expression, including the press and other media, as well as the freedom to receive or impart information or ideas.

Limitations

Intentionally pretending that a person has been infected with the coronavirus is a crime. It is a crime to publish any communication with the intent to mislead any other person regarding COVID-19, regarding the COVID-19 infection status of any person or regarding any measures announced by the government to address COVID-19. An offender may be fined and/or imprisonment of six months may be imposed.

Cases

A man was arrested in Cape Town on 7 April for having made and distributed a video in which he alleged that the government was going to send 10 000 workers to conduct door-to-door tests for COVID-19. He advised people to refuse these tests because the test instruments could be infected with the virus.

4.6. Privacy

Rights

Everyone has the right to privacy, which includes the right not to have their person, home or property searched, their possessions seized or the privacy of their communications infringed.

Limitations

The Director-General of Health has the power to force internet and cell phone service providers to disclose the location and movements of any person who has been infected with COVID-19 or is reasonably suspected of being infected with COVID-19, or anyone with whom they have been in contact. This information may be used only by authorised staff to address, prevent or fight the spread of COVID-19. A report containing the names of persons being monitored must be submitted to a retired judge. The information must be destroyed after six weeks. Every person who has been monitored must be informed thereof within six weeks following the end of the national state of disaster.

4.7. Safety and human dignity

Everyone has inherent dignity and the right to have this dignity respected and protected. Everyone has the right to freedom and security of the person, which includes the right not to be deprived of freedom arbitrarily or without just cause, not to be detained without trial, to be free from all forms of violence from either public or private sources, not to be tortured in any way, and not to be treated or punished in a cruel, inhuman or degrading way. Everyone has the right to bodily and psychological integrity, which includes the right to make decisions concerning reproduction, to security in and control over their body and not to be subjected to medical or scientific experiments without their informed consent.

Limitations

A person suffering or is suspected of suffering from COVID-19, or who has been in contact with a carrier, may not refuse consent to a medical examination. This includes the taking of any bodily sample, admission to a health establishment or a quarantine or isolation site, or mandatory prophylaxis, treatment, isolation or quarantine.

Cases

There have been reports of the SAPS using brutal measures to enforce the lockdown. The Independent Police Investigative Directorate (IPID) has received complaints of people being assaulted and killed by the SAPS. By 26 March, IPID had recorded 14 assaults, one rape and eight deaths owing to police action.

4.8. Checks and balances

The limitation of basic civil rights as set out above, taken together with the fact that parliament, the courts and chapter 9 institutions are not able to function properly, has the effect that most of the checks and balances, aimed at holding the government accountable, currently are ineffective. The most important balance at present is civil society. This is precisely where institutions such as AfriForum can play an important role.

5. AfriForum's point of view

AfriForum sees COVID-19 as a pandemic that has to be taken seriously. Therefore, AfriForum is in favour of measures being put in place to curb the spread of this virus. However, AfriForum is

concerned about the devastating consequences that a lockdown may have for community safety and the economy – and therefore the welfare of people in general. In addition, AfriForum is opposed to unnecessary state intervention. The President and the Cabinet have stressed repeatedly that this crisis should be used to bring about a restructuring of society on the basis of the ideological objectives of the governing party. Exploitation of a pandemic in order to concentrate more power in the state and, in a manner of speaking, to drive ideological objectives in the form of a "national democratic revolution", is immoral and reckless and has to be opposed.

6. AfriForum's core priorities

In the circumstances, AfriForum has identified the following core priorities for the organisation:

6.1. AfriForum Network

The AfriForum Network may specifically be employed to offer support to businesses that find themselves in a tough financial position owing to the lockdown. Members are also encouraged to support businesses on this network.

6.2. Safety

The projects of AfriForum's community safety division are prioritised.

6.3. Community projects

AfriForum is now concentrating on offering support to communities, making a tangible difference in this regard.

6.4. Communicating hope

AfriForum's communication outputs are aimed mainly at giving people hope. To achieve this, communication is focused mainly on three fields.

- a. Firstly, AfriForum communicates about the practical actions used in the community to make a difference.
- b. Secondly, AfriForum focuses on giving its members context on what is happening now.
- c. Thirdly, AfriForum processes information on the coronavirus and equips its members with reliable information on the state of affairs.

6.5. Practical plans for the future

AfriForum conducts research, firstly, to ascertain what scenarios could possibly unfold in the future because of COVID-19 and the lockdown. Secondly, the organisation is being prepared for these different scenarios. This includes ascertaining what is going to happen in the world – but also in South Africa – and making recommendations on how AfriForum and its members should prepare themselves for these changes.

6.6. Organisational sustainability

In the circumstances, AfriForum should in particular focus on adapting its management model to the circumstances, better applying technology and working more efficiently, and also ensuring that staff are applied effectively.

7. Breaking the lock

In view of the issues highlighted above, it now is important to break the lock. AfriForum proposes to launch additional practical suggestions in this regard in the weeks ahead. This may be done using the five proposals AfriForum is now pursuing.

7.1. A balanced solution

Opinor pointed out that COVID-19 should be viewed within the context of other threats and that measures to combat COVID-19 should consider the existing realities regarding mortality in South Africa. In this connection it is important that measures should take account of the difference in the impact that COVID-19 has on different age groups. In 2017, for example, 828 children in South Africa died as a result of malnutrition. It is estimated that about 22 children in this age group could die as a result of COVID-19. On the other hand, approximately 90% of the deaths attributable to COVID-19 is estimated to be in the 50+ age group. A reaction to COVID-19 therefore should protect vulnerable people – and especially older people – but should consider the fact that younger people are considerably less vulnerable to the virus.

7.2. Reactivating the economy

One cannot merely pay lip service to reactivating the economy. Active steps have to be taken to end the limitations on people's economic freedoms so that people can work again, generate an income, pay their employees, receive a salary and ultimately feed their families and pay taxes. It

is important not to view the economy as simply an abstract concept. Furthermore, people should realise that a contracting economy means that people will be unable to put food on the table, resulting in more rioting and deaths.

Reactivating the economy requires in the first instance that the artificial distinction between essential and non-essential goods and services be abolished and that healthy people who want to work be allowed to work. It is not necessary for the government to apply micromanagement to companies, because the private sector on a large scale has shown support for the idea that measures have to be put in place to curb the spread of the virus by, for example, making sanitisers available and allowing employees to work from home.

7.3. Re-introduction of civil rights

In view of the governing party's objective of increasingly centralising power in the state and, consequently, increasingly limiting the public's freedom, there is a rational fear that, once the lockdown has been lifted, the state will be reluctant to fully restore the public's rights following the drastic limitation of their rights. The government, firstly, should now commit to full restoration of civil rights. Secondly, the government should also now begin with a process of relaxation in this regard. In as far as people's freedoms are limited and their rights are violated, AfriForum will continue litigating and launching lobbying campaigns in this regard.

7.4. Empowering communities

Communities should be empowered to see to their own interests. The most glaring violation of the freedom of communities probably is the fact that they are prevented from taking care of their own safety by means of neighbourhood watches. While it is the state's ideological instinct to vest more power in the state and, in a manner of speaking, to limit the freedoms of communities, it is not only easy but also necessary to allow communities the necessary freedom to take care of their own affairs without micromanagement being applied by the state.

7.5. Bringing an end to state dependency

It is clear that the government's handling of the crisis is aimed at making people more dependent on the state in these circumstances, instead of liberating people to take care of their own interests in a self-reliant way. This may be seen especially in the government's continued insistence on black economic empowerment, which is achieving exactly the opposite of empowerment for the black community and, instead, is promoting state dependency. This may also be seen in, for example, the increase in state subsidies, social grants and the needless state

regulation of the economy. The opposite now has to be done: People should be spurred on to work for an income. To facilitate this function, people should enjoy more freedom instead of being micromanaged. State-approved discrimination aimed at giving benefits to certain categories of people also promotes state dependency and should be stopped. In addition to these actions, drastic steps should now be taken to reduce the size of the state, which will also limit the expenditure of the state.