

28 April 2020

FOR THE ATTENTION:

TINA JOEMAT- PETERSSON

Chairperson, Portfolio Committee on Police

Per Email: tjoemat-pettersson@parliament.gov.za

**Submission
to
Portfolio Committee on Police
concerning
the use of force by the SAPS in the implementation of Regulations
made in terms of the Disaster Management Act**

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Dear Honourable Chairperson Tina Joemat-Pettersson,

1. We write on behalf of the anti-repression Working Group, one of the working groups of a coalition of civil society united under the name of "[C-19 People's Coalition](#)". The mandate of the anti-repression Working Group is to monitor the inappropriate use of force and abuse of power by the security forces in South Africa during the time of the COVID-19 pandemic, in particular establishing a reporting system for those at the receiving end of this abuse, to ensure that the law enforcement agencies and security forces are held to account and that they refrain from any unnecessary or excessive force in carrying out their duty to enforce the conditions of the current lockdown.
2. The C-19 People's Coalition was formed in direct response to the national crisis; consequently, we are a key stakeholder and interested party entitled to make submissions in terms of the Constitution¹ and Assembly Rules². We therefore wish to engage with the Portfolio Committee on Police ("the Committee") about the manner of enforcement of lockdown regulations ("the Regulations") by the South African Police Service ("the SAPS") and metro police services, and other security agencies.
3. A declaration of a State of Disaster was made in terms of the Disaster Management Act on 15 March 2020, and a national lockdown declared in order to prevent the spread of COVID-19. The lockdown came into effect at midnight on the 26th of March and is now due to run until the 30th of April. We wish to emphasize that a State of Disaster does not suspend the Bill of Rights, which must be respected, protected and promoted by the State.³ President Ramaphosa made a firm commitment to do so in his 9 April 2020 address to the nation that "at all times, we will observe the human rights of all people." Responses to COVID-19, including the lockdown and enforcement of the lockdown, are therefore situated in this humanitarian and health crisis context, which supersedes the usual context within which security forces operate.

¹ Section 59 of the Constitution of the Republic of South Africa Act 108 of 1996.

² Rule of the National Assembly, 2016, Rule 152 and 167.

³ Section 7(2) of the Constitution of the Republic of South Africa Act 108 of 1996.

4. The role of the Committee in terms of Assembly Rule 227 includes maintaining oversight over the exercise of authority by the Minister of Police, the SAPS generally and the Independent Police Investigative Directorate (“IPID”), including in implementing the Disaster Management Act and related Regulations. Pursuant to this, the Committee may monitor, investigate, enquire into and make recommendations in relation thereto.
5. We would like to note that, while the mandate of the Portfolio Committee is primarily concerned with police (including the SAPS and metro police), the problems of misuse of force that have occurred also implicate other agencies that have been deployed during the lockdown including the South African National Defence Force (“SANDF”) and municipal law enforcement agencies. Law enforcement agencies in particular, have been identified as playing a central role in human rights violations during the lockdown, this despite the fact that they are merely mandated with enforcing by-laws. Moreover, observers at the Strandfontein camp (discussed below) have witnessed law enforcement personnel engaged in altercations with SAPS members who are attempting to assist occupants at the camp. We believe that responding to these violations requires a broad engagement with questions regarding the conduct of all implicated security force members – that they often work side-by-side – and that the Portfolio Committee on Police needs to look holistically within the context of COVID-19 responses by security forces. Not looking at this bigger picture means oversight may be compromised.
6. The vision for enforcement of the lockdown, as expressed by President Ramaphosa in his address to SAPS members on 26th March 2020, was that, within the overall mission of “saving lives”, the security services would support and guide people in complying with the lockdown regulations.⁴ You yourself, Honourable Chairperson Joemat-Pettersson, echoed this sentiment when you stated “Compassion was and should be the central pillar of this mission.”⁵
7. However, the SAPS finds itself within a particularly challenging context. Reasons for this include:

⁴ See [address by President Ramaphosa to SAPS members, 26 March 2020](https://www.youtube.com/watch?v=SBlj_OKDR5Q), Ramaphosa address to SAPS 26th March 2020, https://www.youtube.com/watch?v=SBlj_OKDR5Q.

⁵ <https://www.news24.com/SouthAfrica/News/police-ipid-to-brief-portfolio-committee-on-alleged-lockdown-brutality-20200416>.

- 7.1. Residual distrust of the police continues to endure from the apartheid period. Police have not managed to convince South Africans that they have moved beyond the repressive style of policing that was a core characteristic of the apartheid period.
- 7.2. Abuses by police, including violence (police brutality) and corruption. Since its inception in April 2012, IPID has received complaints of close to 40 000 cases of alleged violence by police including complaints relating to the misuse of a firearm, torture and assault. In 2017-18 the SAPS paid out R335 485 million in settlement of civil claims relating, *inter alia*, to wrongful arrest, assaults and damage to property by SAPS members.⁶ The allegations of excessive force that are the subject of this submission are therefore not a new phenomenon.
8. The SAPS and other security forces are being asked to police a situation never before seen – a national lockdown. This new legal regime was one that was literally imposed overnight. However, low levels of confidence and trust in the police are partly reflected in a limited orientation towards cooperation with the authority of the police.⁷ In addition, partly related to the intensified poverty and hunger resulting from the lockdown, compliance with the lockdown regulations is very difficult for some people to the point of being virtually impossible.
9. There are certain aspects of lockdown enforcement that pose particular challenges for police and other security agencies. One of these concerns the uncertainty related to changes in lockdown regulations.⁸ Aspects of the regulations have changed on a number of occasions, and the SAPS members have reported that they are not given up to date information on their new roles and responsibilities as the law changes. As SAPS members put it:⁹

⁶ SAPS, Annual Report 2018-19, page 426, https://www.saps.gov.za/about/stratframework/annual_report/2018_2019/saps_annualreport2018_2019v2.pdf, also Gareth Newham, Building Public Trust in the Police, 13 November 2018, https://www.westerncape.gov.za/assets/day_1_session_3_pp_gareth_newham.pdf.

⁷ <https://mg.co.za/article/2020-04-16-covid-19-police-abuses-reveal-systemic-flaws/>.

⁸ Lester Kiewit, 'Frustrated' police resort to force, Mail & Guardian, 2 April 2020, <https://mg.co.za/news/2020-04-02-frustrated-police-resort-to-force/>.

⁹ <https://mg.co.za/news/2020-04-02-frustrated-police-resort-to-force/>.

- 9.1. “Every day, there are new regulations — or they change. Like this week, taxis can drive people all times of the day. Last week it wasn’t the case. We don’t know what we’ll be told next week.”
- 9.2. “There’s confusion. They want us to keep the people off the street, by issuing fines. But then later, we are told to release them on a warning. And people then just go back out on the streets again. Police are frustrated, and then they become hard-handed.”
- 9.3. “Police are going to do one of two things. They are either going to do nothing because they are confused. Or they are going to *moer* people. If I had my way, I say *moer* them. Police should be heavy with them. We must enforce the law in black and white. The people don’t listen, they don’t believe this virus will affect them and they’re walking all over the place.”
10. However, contrary to what is expected of our security services, we have witnessed an increase in the use of violence in carrying out their mandate, which is to secure the safety of all who live in South Africa. This has included, since the declaration of the lockdown, at least four deaths that have allegedly been directly linked to the enforcement of the lockdown and many additional instances of police and security forces brutality:
- 10.1. The death of Collin Khosa in Alexandra on Friday 10 April 2020 was allegedly the result of a brutal and unjustified assault by a group of SANDF personnel after being called as backup by SAPS members. In a letter of demand to the City of Johannesburg, the family sets out in appalling detail what is alleged to have happened.¹⁰ By the time they were done with Collin Khosa, he had to be helped back into his house and was vomiting, losing consciousness and unable to walk. All this because he had been sitting in his yard, having a drink — a lawful act. The identities of the soldiers and police officers are not known. Collin Khosa leaves behind three children. In

¹⁰ SAPS members approached Mr Khosa because they noticed an unattended camping chair in the yard and a “half-full cup of alcohol”. When Khosa protested that this was lawful, they became agitated, raided his fridge and ordered him outside. They called for backup, which included a number of vehicles from the SANDF and the Johannesburg Metro Police Department (JMPD). Three more SANDF soldiers arrived and, without inquiring any further details from Khosa, they “manhandled and assaulted Mr Khosa in the following manner. In particular, they: poured beer on top of his head and on his body”. One member of the SANDF held his hand behind his back while the other choked him, he was slammed against a cement wall, he was hit with the butt of a machine gun, he was kicked, slapped and punched in the face, stomach and ribs. He was slammed against a steel gate. https://www.scribd.com/document/456387175/Letter-of-Demand-Khosa-v-Minister-of-Defence-and-Others#from_embed.

addition to a claim for damages, the family is also asking for the brutality to stop. They have asked the President and Minister of Defence to tell them what will be done to ensure an end to police brutality during the lockdown.¹¹

10.2. The death of Sibusiso Amos in Vosloorus, on 29th March 2020 was allegedly linked to intervention (allegedly by the Ekurhuleni metro police and a private security guard)¹² in response to violation of regulation relating to the procurement of alcohol. There have been no clear reports about the exact circumstances of his death but press reports have referred to sjamboks and a shotgun being used during the incident.¹³ Three children were apparently also injured during the police intervention.¹⁴

10.3. Apart from the alleged use of sjamboks in the incident above, a video that was circulated on social media shows a man being sjambokked by a SAPS member in Khayelitsha, apparently on 28 March 2020.¹⁵ Journalists in Hillbrow also captured footage of a plain-clothed SAPS official, who was accompanied by other SAPS members in uniform in an unmarked vehicle, assaulting numerous people in Hillbrow with a sjambok on 30 March 2020.¹⁶ It should be noted that sjamboks are not authorised for use by SAPS members and that their use could amount to torture.

10.4. The Easter weekend saw SAPS members and law enforcement instituting an illegal mass eviction by the City of Cape Town, where rubber bullets and tear gas were fired at community members in Makhaza whose homes were demolished on the Friday and Saturday.¹⁷ Several witnesses, including an observer from the South African Human Rights Commission, confirm that people were fired at without provocation or warning.¹⁸ During the same events a member of Cape Town law enforcement or other police

¹¹ <https://mg.co.za/article/2020-04-16-lockdown-why-the-state-has-won-cases/>.

¹² Theto Mahlakoana, <https://ewn.co.za/2020/03/30/ekurhuleni-metro-cop-security-guard-arrested-for-murder-of-vosloorus-man>.

¹³ <https://www.iol.co.za/news/south-africa/police-brutality-on-the-rise-during-lockdown-46250431>.

¹⁴ <https://ewn.co.za/2020/04/01/ipid-explains-murder-accused-ekurhuleni-metro-cop-s-non-appearance-in-court>.

¹⁵ <https://viewfinder.org.za/police-kill-three-people-in-three-days-of-lockdown-this-is-normal-for-south-africa-data-reveals/>.

¹⁶ https://mg.co.za/article/2020-03-31-police-use-sjamboks-and-rubber-bullets-to-enforce-hillbrow-lockdown/?fbclid=IwAR2Ou6oy6V-YRc6E_yY_Wr2e0mG3Hnv53LSBMIQC1IEknEtEVOaNUVQedhs.

¹⁷ <https://www.news24.com/SouthAfrica/Local/City-Vision/things-heat-up-between-residents-and-authorities-at-mpolweni-20200415> and <https://www.groundup.org.za/article/scores-left-homeless-after-demolitions-makhaza/>.

¹⁸ <https://www.news24.com/SouthAfrica/News/city-officers-shoot-at-khayelitsha-protesters-report-20200413>.

officers also sprayed pepper spray into the back of a locked police van in which Axolile Notywala of the Social Justice Coalition (and another man) were confined.¹⁹

10.5. Journalists are increasingly reporting threatening behaviour directed at them when trying to cover ongoing violence.²⁰ Alleged assaults on community members and the intimidation of a journalist by SAPS and SANDF members were also reported in Masiphumelele in Cape Town on Thursday 9 April,²¹ for example.

10.6. On the first day of the lockdown, Friday 27 March 2020, police opened fire with rubber bullets on residents gathered in the streets of Yeoville. One of those nearly injured was a journalist who alleges that police fired at her at close range notwithstanding the fact that the risk of serious injury and death is enhanced dramatically when rubber bullets are used at close range. According to the journalist police fired at her despite her drawing it to their attention that she was a member of the media.²²

10.7. In the Johannesburg CBD, also on the first day of the lockdown (27 March 2020), a woman was shot in the face with a rubber bullet by security personnel. Another woman who had gone to town to buy groceries was shot in the ear and in the arm. SAPS, SANDF and JMPD officials were nearby enforcing the lockdown.²³

10.8. In a report published at the end of March 2020, a woman reported that her husband was assaulted by SAPS members 'even though he had not broken the regulations and was in his own yard'. The man was allegedly assaulted by police using a pipe, in front of his children (the area where the incident took place is not made clear in the report).²⁴ Another report alleges

¹⁹ <https://www.groundup.org.za/article/covid-19-activists-and-cape-town-law-enforcement-clash-khayelitsha/>.

²⁰ <https://www.news24.com/SouthAfrica/News/lockdown-they-missed-what-a-waste-cops-joke-about-shooting-at-news24-reporter-during-lockdown-20200402>, <https://www.iol.co.za/news/south-africa/kwazulu-natal/sanef-alarmed-at-threats-against-news-crew-in-kzn-46272915> and <https://sanef.org.za/sanef-concerned-about-attacks-by-security-forces-during-day-one-of-the-covid-19-lockdown/>.

²¹ Jacques Marais, Daily Maverick, 10 April 2020, <https://www.dailymaverick.co.za/article/2020-04-10-sandf-and-polices-violent-easter-gift-to-masiphumelele/>.

²² Riaan Grobler, <https://www.news24.com/SouthAfrica/News/lockdown-they-missed-what-a-waste-cops-joke-about-shooting-at-news24-reporter-during-lockdown-20200402>.

²³ Chris Gilili, <https://mg.co.za/article/2020-03-27-covid-19-lockdown-chaos-for-homeless-people-left-in-limbo/>.

²⁴ Barbara Friedman, <https://www.capetalk.co.za/articles/379438/woman-describes-how-cops-beat-her-husband-for-being-in-his-own-yard>.

that soldiers assaulted a man and one of his daughters at their home in Eerste Rivier during the night of 2 April 2020.²⁵

10.9. A retired court interpreter alleges that he was assaulted, shot and his phone damaged by police in KwaNobuhle in Uitenhage on 15 April 2020 (the police were part of a convoy of SAPS, SANDF, metro police and traffic officers) after they accused him of photographing them driving past.²⁶

10.10. Numerous videos on social media showed police and soldiers forcing people into doing strenuous exercises, sometimes accompanied by being shoved or kicked, as punishment for alleged contraventions of lockdown regulations.²⁷

11. Additional reports received by civil society organisations and media reports demonstrate a variety of police use of violence and abuse ranging from beatings, to illegal evictions:

11.1. The Women's Legal Centre relays an example in the Western Cape of a SAPS anti-gang unit entering a person's home, undressing the occupant and beating them to the point where the person could not move and neighbours had to call an ambulance, but when told that there were no ambulances available, the neighbours then had to take the victim to a hospital themselves. The family feels that they are unable to lay a charge against the SAPS, particularly since it would require transport money and potentiality being charged with violating the lockdown regulations.²⁸

11.2. Brothers Thando Ndlebe 35, and Lazola Ndlebe 33, live on a street corner in Johannesburg and earn a living as waste pickers. The lockdown prevents them from moving around and the waste centres are closed, so they cannot earn an income at the moment. Three days into the lockdown, the SAPS raided their makeshift tent and used pepper spray to try to get

²⁵ <https://ewn.co.za/2020/04/04/ma-is-pa-still-alive-wc-family-traumatized-after-alleged-assault-by-soldiers>.

²⁶ Thamsanqa Mbovane, Resident alleges police beat and shot him for filming lockdown operation, GroundUp, 17 April 2020, <https://www.groundup.org.za/article/resident-plans-court-bid-against-police-he-alleges-assaulted-and-shot-him-filming-them/>.

²⁷ <https://citizen.co.za/news/south-africa/social-media/2262188/watch-police-and-sandf-force-soweto-residents-to-do-hard-exercise-as-punishment/>; <https://www.iol.co.za/dailynews/news/kwazulu-natal/watch-push-ups-and-squats-soldiers-slammed-for-abusing-their-power-during-lockdown-45756677>.

²⁸ For more information contact Seehaam Samaai, Director of the Women's Legal Centre (Seehaam@wlce.co.za).

them to leave.²⁹ In another incident, police allegedly burnt the clothes of a homeless man who lived in a park in Johannesburg.³⁰

11.3. Law enforcement have also been used in the widely criticised camp at Strandfontein in the Western Cape, both in terms of bringing homeless people to the camp and then preventing them from leaving, as well as providing the City of Cape Town's "security" on the ground. This includes the firing of rubber bullets on occupants who wished to leave the camp due to the untenable conditions at the camp.³¹ Observers affiliated with the South African Human Rights Commission witnessed law enforcement clash with SAPS members who had been called to the site.

11.4. A couple in Komani (previously Queenstown) reported that they were assaulted by police on 4 April 2020 after being arrested while they were going shopping. They said that police accused them of not respecting the lockdown laws.³² Another report indicates that a man in Mitchell's Plain was arrested by the SAPS for going to buy electricity and groceries.³³

11.5. The situation that faces non-nationals is perhaps even more perilous – there are reports of homeless non-nationals being "rounded-up" by the City of Cape Town's law enforcement and summarily "dumped" in locations far from their dwellings or taken to the camp at Wingfield military base. Civil society organisations have raised concerns regarding the living conditions at Wingfield.³⁴ The site was, similarly to Strandfontein, not ready for occupation – there is no social distancing, over-crowded conditions, and a lack of sanitation facilities including showers, toilets, hand sanitizer, amongst other items needed to live with dignity and to combat the spread of COVID-19.³⁵ Refugees are at heightened risk in terms of COVID-19 transmission and are more vulnerable to oppressive measures implemented in the name of

²⁹ <https://www.newframe.com/in-pictures-covid-19-and-the-new-normal/>.

³⁰ <https://www.goodthingsguy.com/people/covid-19-homeless-destitute/>.

³¹ <https://www.groundup.org.za/article/covid-19-police-use-rubber-bullets-quell-riot-cape-town-homeless-camp/>.

³² Yoliswa Sobuwa, <https://www.therep.co.za/2020/04/07/komani-couple-say-cop-beat-them-up-for-going-to-buy-groceries/>.

³³ <https://mg.co.za/news/2020-04-02-frustrated-police-resort-to-force/>.

³⁴ <https://www.groundup.org.za/article/homeless-immigrants-say-they-were-rounded-city-cape-town-officials-driven-around-and-dumped/>.

³⁵ <https://www.iol.co.za/capeargus/news/watch-cape-refugees-in-middle-of-de-lille-city-squabble-over-ablution-facilities-46094635>.

combatting COVID-19 – which crowded camps without adequate sanitation clearly does not do.³⁶ In addition to forced removals to camps, non-nationals are particularly vulnerable to other challenges, such as members of the SAPS seeking bribes and using threats of closing shopkeepers' shops even though they have permits.³⁷

12. In light of the violence described above, statements made by the Minister of Police likely play a substantial role in this heavy-handed policing approach. This should not be underestimated. As head and leader of the SAPS, what the Minister of Police has said during the lockdown and during the escalation of violence that ensued, is inflammatory and a tacit endorsement of the abuse of power and excessive use of force. Some examples of this are:

12.1. At a COVID-19 National Command Council public update on 27 March 2020, in response to a question about the excessive use of force seen on the first day of the lockdown, the Minister said, *“Oh, you believe they are using more force? Wait, wait until you see more force”*. He then went on to describe the police as still being “very kind”.³⁸

12.2. At an address in Cape Town on 28 March 2020, the Minister referred to the sentiments of the President in his address on 26 March 2020, he said, *“[The President] has reminded us that there is no skop and donner anymore but he has said those that don't want to listen, we have to push and nudge them towards obeying the law by- I tried to ask him later, he said he's not a police, you are the police. We know what is to nudge. I'm repeating his words, he said 'nudge them towards keeping the law". We are calling on them to keep the law. If they don't, we will make them to keep the law! We will nudge them!”*³⁹

13. The Portfolio Committee has the authority and a duty to provide oversight on the Executive. The Minister's approach to excessive force should be checked and corrected, in the interests of the people of South Africa. As described above, this

³⁶ <https://www.news24.com/World/News/refugee-women-facing-greater-violence-risk-during-coronavirus-crisis-unhcr-20200420>.

³⁷ <https://www.newframe.com/law-enforcers-kill-and-brutalise-during-sa-lockdown/>.

³⁸ 'National Command Council give update on COVID-19 lockdown', SABC News, (27 March 2020), <https://www.youtube.com/watch?v=YLRCSndfpHg>.

³⁹ 'Cele on plans to curb crime during lockdown', eNCA, (28 March 2020), <https://www.youtube.com/watch?v=cFeNO7BfnFg>.

approach has led to confusion and frustration within the SAPS. The mission is humanitarian, not authoritarian.

14. Reports released by IPID at the end of March 2020 caused some confusion about the number of lockdown-related cases that IPID had received. In an attempt to clarify this, on 3 April 2020 IPID reported that during the first week since the lockdown had been declared (27 March–2 April 2020) it had only received 12 cases related to enforcement of the lockdown, including three cases of death as a result of police action, three complaints relating to the discharge of a police firearm, and six cases of assault.⁴⁰ Subsequently IPID have not provided further statistics on the number of lockdown-related cases that it has received.

14.1. There can be little doubt that IPID's figures are not representative of the total number of cases of excessive force by security forces during the lockdown. For a variety of reasons, people do not always report incidents of SAPS members' violence to the IPID. Lawyers for Human Rights, which has a [hotline](#) for assisting people during the lockdown, report that police and military misconduct is the largest bracket (after complaints/questions from essential services workers) of complaints received.⁴¹ There have been 21 calls about police and/or military brutality, and another 4 around general misconduct or possibly unlawful arrest. This is just under a quarter of the total hotline calls that explicitly contemplate a legal issue. The bulk of these have been callers from Gauteng (11) and the Western Cape (10), with the others spread between KZN, Mpumalanga, and Limpopo. This was the largest bracket for the hotline until the Easter weekend, when queries about evictions surged (mostly in respect of the Cape Town area).

14.2. It should also be noted that IPID's mandate only covers the SAPS and metro police. IPID does not accept cases relating to other security agencies that have allegedly been implicated in abuses.

15. It is indeed cause for serious concern that there have been so many allegations against members of the security forces and likely that we currently have no full

⁴⁰ IPID Statement, 3rd April 2020.

⁴¹ For more information contact Michael Clements, Acting National Director and Head: Environmental Rights Programme (michael@lhr.org.za).

picture of the total number of cases. In addition to the deaths, physical injury and trauma that have resulted from these cases, they also indicate that inadequate care has been taken in preparing police and other security forces members for their role in trying to ensure adherence to the lockdown. In addition to the hunger and desperation, which are increasingly reported to be consequences of the lockdown, cases of this kind run the risk of contributing to increasing friction between government and community members with potential consequences in terms of instability.

16. The instances of police violence described above have almost exclusively been directed at people in the most vulnerable and impoverished communities, and are reminiscent of policing in the apartheid-era during the State of Emergency in the 80's. This is a violation of the SAPS' Constitutional mandate,⁴² their duties under the South African Police Services Act ('the SAPS Act'),⁴³ the Regulations, Orders and Instructions issued in terms of the SAPS Act, SAPS Code of Conduct and other legislation⁴⁴.
17. Section 13(3) of the SAPS Act states clearly that 'Where a member who performs an official duty is authorised by law to use force, he or she may use only the minimum force which is reasonable in the circumstances.' This and other provisions are in line with international principles, as embodied in the key UN Basic Principles for the Use of Force and Firearms by Law Enforcement Officials,⁴⁵ which states that, 'Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall ... Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved'⁴⁶ The international community also provides guidance in relation to the use of force, stipulating that it should always be in line with the principles of legality, necessity and proportionality. For example, according to policing expert David Bruce, 'strengthening police communication skills, and encouraging police

⁴² Section 214 of the Constitution, and in particular Section 205(3), which states that the objects of the police service are to prevent, combat and investigate crime, to maintain public order, to protect and secure the inhabitants of the Republic and their property, and to uphold and enforce the law.

⁴³ Section 13 of Act 68 of 1995, in particular subsection (3)(b): "Where a member who performs an official duty is authorised by law to use force, she or he may use only the minimum force which is reasonable in the circumstances.

⁴⁴ Including the Gatherings Act of 1993, which mandates that the use of force must not cause serious injury or death, and must be necessary and proportionate, and National Instruction 4 of 2014.

⁴⁵ <https://www.ohchr.org/en/professionalinterest/pages/useofforceandfirearms.aspx>.

⁴⁶ UN Basic principles on the use of force and firearms by law enforcement officials, Section 5(a), <https://www.ohchr.org/en/professionalinterest/pages/useofforceandfirearms.aspx>.

to de-escalate confrontations or use superior numbers where possible, rather than relying on pure physical force.’ However, Bruce goes on to note that, ‘Other than in policing units responsible for crowd control, police training focuses overwhelmingly on firearm proficiency and lethal force. As a result, many of those who are authorised to apply “minimum force” have a poor grasp of how to do so.’⁴⁷ In addition to the issue of inadequate training on the use of force, is the related issue of SAPS members confusion on what the Regulations demand of them, as described above.

18. It is our submission that the current situation is not the result of a “few bad apples” but is rather systemic and, under the current circumstances, therefore requires an urgent and systematic response, which will be expanded upon below. The surge in the use of violence in enforcing the lockdown regulations can reasonably be seen as a manifestation of existing problems within the SAPS, but also located within extraordinary circumstances. Both of these elements must be addressed in order to address security forces use of excessive force during lockdown.
19. The situation requires an urgent and decisive response to ensure that there is no further escalation of violence and that the security forces, in particular the SAPS, strictly adhere to their mandate under the Disaster Management Act, the regulations and those given by the President on conditions of the lockdown and the purpose of the enforcement of the lockdown.
20. The COVID-19 crisis can be seen as an opportunity to reimagine and create a policing service that works with communities and feels supported by them.
21. We therefore welcome the fact that the Portfolio Committee on Police has convened this meeting with the principle focus being the management of the lockdown by the various security forces and related allegations of heavy-handedness.⁴⁸
22. We believe that the role of the Committee should include holding both the SAPS leadership and the Minister of Police to account in ensuring compliance with the spirit of the President’s comments, the Constitution and the law.

⁴⁷ <https://mg.co.za/article/2020-04-16-covid-19-police-abuses-reveal-systemic-flaws/>.

⁴⁸ <https://www.dispatchlive.co.za/news/2020-04-16-parliament-wants-police-ipid-to-answer-to-brutality-allegations/>.

23. In line with the above, we, as a civil society coalition, urge that the Committee call for the following to be addressed as a matter of urgency:

23.1. That all members of security services involved in enforcing the lockdown should be visibly identifiable when performing their duties. This includes SAPS members, SANDF members, municipal law enforcement, and other security agencies involved in enforcement of the lockdown. A consistent problem with many of the incidents in which security force members are allegedly implicated is that it is extremely difficult to identify the members involved. The absence of clear means by which members can be identified is a problem that consistently undermines the potential for meaningful accountability. In addition to name tags, security force members should be allocated short numbers and letters that are printed in large font and clearly visible on their uniforms from 10 metres away, and that can quickly be used to identify them. The SAPS National Commissioner, the Chief of the SANDF, and the heads of municipal law enforcement services and other security agencies should be held directly responsible for ensuring that there is compliance by security force members with these measures.

23.2. That the National Commissioner of Police, the Chief of the SANDF, and the heads of municipal law enforcement services and other security agencies provide improved training and other support to security force members in line with examples of good practice about working in a cooperative manner with communities in order to encourage compliance with the regulations.

23.3. That the SAPS National Commissioner, the Chief of the SANDF, and the heads of municipal law enforcement services and other security agencies provide updated instructions to security force members as soon as regulations or other laws change.

23.4. That written guidelines be provided, that are binding on all security force members, indicating that:

23.4.1. Their principle role is to assist community members in complying with regulations, including, by providing them with information about regulations that are currently in force. To this end they should work

with community leaders, and other community members, in a cooperative manner that encourages compliance with the regulations;

23.4.2. That force may only be used when it is strictly necessary for a lawful purpose and when it is proportionate to the harm that they seek to stop or prevent; and

23.4.3. That security force members who witness acts of excessive force, corruption or other wrongdoing by their colleagues or members of other security forces have a duty to report this to their commanding officers (or another appropriate official in the event that a commanding officer may be implicated), and to provide members with the information needed to do this.

23.5. That the Minister of Police retract his pronouncements that encourage the excessive use of force in enforcing the lockdown.

23.6. That a centralised system should be established for collating information on all allegations of wrongdoing by members of security forces related to enforcement of the lockdown. Further that there is reporting back to the Committee on steps that are being taken to hold members allegedly implicated in wrongdoing accountable for their actions. That the IPID provide fortnightly reports on all cases related to abuses allegedly committed in respect of enforcement of the lockdown by security forces.⁴⁹ The IPID should clarify, on a case-by-case basis, what progress has been made with investigations, and what conclusions it has reached when investigations are finalised. Where there is a delay of ten or more working days in finalising a complaint, reasons should be provided for such a delay. In addition, that the IPID intensify its education campaign and encourage people who have experienced abuse by SAPS and other security force members, to report this to the IPID.

⁴⁹ The need for this measure is related partly to the fact that the Independent Police Investigative Directorate (IPID) only has jurisdiction in respect of the SAPS and metro police but not the SANDF or other official agencies, such as traffic police, that may be involved in the enforcement or regulations related to the various phases of the lockdown.

- 23.7. In light of the prohibition against evictions during lockdown,⁵⁰ that SAPS members be prohibited from assisting with evictions, either private evictions or mass evictions ordered by the State, under the guise of “land invasion” or other evictions called by another name.
24. We therefore urge the Committee to request the President, the Minister of Police, the Minister of Defence, the National Commissioner and the head of the SANDF, and all other officials who are in charge of security forces to urgently take the necessary steps to put these measures into effect. The National Commissioner and all other components of government who manage security agencies must be held accountable for ensuring that these measures are fully implemented.
25. In addition we would like to motivate that the Committee should engage with other relevant committees of Parliament about the issues raised in this meeting towards coming up with a comprehensive response that addresses not only the alleged SAPS role in abuses but also that of the SANDF and other law enforcement agencies (notably the City of Cape Town and eThekweni Municipality law enforcement).
26. The C-19 People’s Coalition has written to President Ramaphosa about similar matters and have called for the appointment of a retired Judge with oversight over all security personnel. For your information, please see attached the letter (marked as “Annexure A”).
27. Please direct any queries or requests for additional information to the contact persons whose details appear on the cover of this submission.

⁵⁰ Regulation 440 on the 31 March 2020, which read as follows:

5(d) “Service and execution of other process by Sheriffs, including evictions, are not essential, and are suspended for the duration of the lockdown.”

This therefore makes any evictions during lockdown unlawful. The definition of “eviction” in the Prevention of Illegal Evictions Act, is:

“to deprive a person of occupation of a building or structure, or the land on which such building or structure is erected, against his or her will”

This includes a shack or similar structure that a person has slept in. Arriving after a structure has been built and the owner has been staying there, and then breaking down the structure as a purported ‘land invasion measure’ is unlawful. Doing so during a pandemic precisely runs counter to the entire premise of the Disaster lock down provisions.