

South African Institute of Race Relations NPC
Submission to the
Department of Cooperative Governance and Traditional Affairs
regarding the
Proposed Disaster Management Act Regulations Dated March 29 2022
Johannesburg, 1st April 2022

Introduction

This brief submission on the Proposed Disaster Management Act Regulations dated March 29, 2022, (the Regulations) is made by the Institute of Race Relations (IRR), a non-profit organization formed in 1929 to oppose racial discrimination and promote racial goodwill. Its current objectives are to promote democracy, human rights, development, and reconciliation between the peoples of South Africa.

Content of the Proposed Regulations

Given time constraints, roughly two days, the IRR can comment only on the most important issues raised by the Regulations. All factual claims, specifically scientific claims, have substantiation that can and will be supplied in detail at the request of the Department of Cooperative Governance and Traditional Affairs (the Department).

Mask Mandates

The Regulations aim to extend mask mandates for indoor public places and public transport and to do for a period of 30 days after the State of Disaster has ended. [Clause 2, amending Regulation 67 of the Regulations; Clause 5]

All mask mandates ought to be dropped from the Regulations. According to experts, “experience with the highly transmissible and infectious Omicron variant indicates that the type of cloth mask most worn by the public (which rarely provides a good seal around the nose and mouth) provides little-to-no protection against being infected and does not meaningfully reduce transmission”.

The experts cited are Marc Mendelson, Shabir A Madhi, Jeremy Nel, Glenda Grey, Regina Osih, and Francois Venter.

If the Department cannot produce evidence for the effectiveness of masks in the particular context of South Africa for the duration of time in which the Regulations are intended to take effect, then the Minister can claim no rational connection between extending Mask Mandates for 30 days after the State of Disaster ends and the supposed purpose of managing the transition from the State of Disaster to a state of normal public health.

Medical experts have also identified costs associated with masks in terms of both physical and mental health, which the IRR is able to supply, and which must also be taken into account in assessing the constitutional validity of the proposed Mask Mandates.

Also relevant to this assessment is the fact that Mask Mandates are regularly ignored across the country and cannot adequately be enforced. If the Department cannot provide a specific plan of

action to change the status quo of non-compliance, then the proposal to extend Mask Mandates for 30 days beyond the ending of the State of Disaster – at which point it may be expected that compliance will drop even further – should be removed from the Regulations for want of practical enforceability.

Business Restrictions

The Regulations aim to restrict businesses, including but not limited to restaurants, bars, shebeens, gyms, casinos, and entertainment venues to 50% of the capacity of the venue and to do so for a period of 30 days after the State of Disaster ends. [Clause 3, amending Regulation 69; Clause 5]

Businesses incur major costs as a result of the existing capacity restrictions. Businesses in South Africa should be allowed to make their own choices on how best to provide customers with a safe environment regarding Covid-19, taking two factors into account. First, Covid-19 no longer presents any health threat that could justify the continuation of these constraints. Second, according to experts, South Africa has similar levels of antibody development to combat Covid-19 to countries like England, in which Covid-19 is now less deadly than the common flu.

Religious Restrictions

The Regulations aim to restrict places of worship in venues to 50% of the capacity of the venue and to do so for a period of 30 days after the State of Disaster has ended. [Clause 3, amending Regulation 69; Clause 5]

The same considerations apply as has been set out for businesses above. Compliance with mask mandates has also proved unenforceable in the past and will become even more so once the State of Disaster has ended. Again, therefore, these restrictions should be removed for lack of practical enforceability.

Vaccine Passes

The Regulations aim, among other things, to restrict access to private business premises, such as restaurants, conference centres, and auctions of people who cannot produce proof of vaccination or proof of a negative Covid-19 test and to do so for a period of 30 days after the State of Disaster has ended. [Clause 2, amending Regulation 67; Clause 5]

However, South Africa has the highest rate of people infected, and recovered, from Covid-19 on record in the world. Recovery provides better and longer lasting protection from subsequent encounters with SARS-CoV-2 than vaccination, though it comes at a greater cost. The Department must recognize this power of recovery.

In Germany there has been a “3-G” model, where access to public spaces requires either proof of vaccination or proof of a negative test, as in the Regulations, or proof of earlier recovery, based on scientific facts that the Department should recognise. However, Germany has also abandoned the 3-G requirements at national level because there is insufficient viral spread taking place to justify this limitation of guaranteed individual rights. The same approach should apply here.

Information Gathering – “Before you leave remember why you came”

The transition from the State of Disaster to a state of public health normalcy must include an effort to learn lessons, including from past mistakes. According to Section 17 of the Disaster Management Act the “National Centre” must have information on, inter alia, the effectiveness measures discussed above and proposed in the Regulations during the last month, or a similar period.

Moreover, according to Section 21 (b) of the Disaster Management Act the effectiveness of Mask Mandates and Business Restrictions and Religious Restrictions and Vaccine Passes, inter alia, must already be well known to the Ministry in a transparent and reportable manner through the “National Centre”.

If there is any failure regarding “information gathering” or “monitoring, measuring performance and evaluating disaster management plans and prevention, mitigation and response initiatives” after two years the people of South Africa cannot be made to suffer any extension to the State of Disaster on that basis.

The Way Forward

No further delay can be tolerated in ending the State of Disaster. More than 23 000 (23,014) South African citizens signed a petition tabled by the IRR to end the State of Disaster, Disband the Command Council and put in place measures to prevent any repeat of such an extended abrogation of constitutionally guaranteed human rights.

The IRR submits that there should be no further delay in ending the State of Disaster. Nor can there be any legal authority for extending disaster regulations once the state of disaster has ended, while many of the Regulations proposed are irrational and hence unconstitutional.

South African Institute of Race Relations NPC

1st April 2022