

# Noting the Impact of Lockdown Co-Parenting Regulations on the Wellbeing of Children in South Africa

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Online ISSN  
1727-3781

P·E·R

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## Date Submitted

16 September 2021

## Date Revised

5 August 2024

## Date Accepted

5 August 2024

## Date Published

21 October 2024

## Editor

Prof G Viljoen

## Journal Editor

Prof W Erlank

## How to cite this contribution

Singh A and Msuya NH "Noting the Impact of Lockdown Co-Parenting Regulations on the Wellbeing of Children in South Africa" *PER/ PELJ* 2024(27) - DOI <http://dx.doi.org/10.17159/1727-3781/2024/v27i0a12353>

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## DOI

<http://dx.doi.org/10.17159/1727-3781/2024/v27i0a12353>

## Abstract

The South African government introduced a strict lockdown and related legislation in reaction to the COVID-19 epidemic. During lockdown, the movement of children between co-holders of parental rights and responsibilities of a caregiver, as defined in section 1(1) of the *Children's Act* 38 of 2005, was prohibited. The movement of persons was only permitted in essential cases, leading to children being "stuck" with one co-holder or even a person with no parental responsibilities and rights. A court order was to be obtained for permission for a child to travel, proving that this was urgent and essential. The lockdown regulations on the movement of children covered only those in a formal arrangement and excluded co-parents without court orders and those in the process of divorce. The closure of schools for approximately three months resulted in a significant increase in inter-parental disputes. These conflicts primarily revolved around the regulations stipulating that children could only be relocated to households free from Covid-19.

The regulations completely ignored the child's emotional needs and were so out of line with other countries in similar circumstances. The regulations were also contrary to the *Constitution* and *Children's Act*, which underscore that the best interests of the child are paramount in all matters involving the child as it was not in the child's interests to be with a particular parent or without a particular parent during the lockdown period. This paper aims to identify the issues and effects of co-parenting during the lockdown and present a critique on the circumstances. It is argued that the one-size-fits-all approach introduced by the lockdown regulations was not the most appropriate, as the determining criteria should have been based on what would be best in the child's interest, which should, therefore, be assessed based on a case-by-case analysis.

## Keywords

Co-parenting; lockdown; Covid-19; lockdown; child welfare and freedom of movement; best interests of the child.

## 1 Introduction

Similar to the efforts in other states, in South Africa, to curb the widespread effect of the Covid-19 virus, a national blockade was initiated, and travel bans and restrictions were imposed to "flatten the curve" to attempt to prevent devastation on a scale similar to that found in Italy and Spain.<sup>1</sup> Specific legislation was invoked in response to the pandemic.<sup>2</sup> On 15 March 2020, the South African President had informed the nation that the people would be in lockdown from 26 March 2020. Even though the situation could not at that stage be described as dire, and the detection rate of Covid-19 in the country was low, the National State of Disaster was pronounced, accompanied by one of the most extreme lockdown conditions that followed.<sup>3</sup> The lockdown regulations disallowed the trade of cigarettes, alcohol and limited the movement of people.<sup>4</sup> Travel restraints between constituencies, metropolises and across regional borders were also imposed, and outdoor exercising and working out were banned.<sup>5</sup>

In this paper, the authors are critical about South Africa's statutory response to the Covid-19 disaster, with a particular interest in its aptitude to facilitate parenting, care and protection of children in the mid of stringent lockdown circumstances. It aims to assess how the regulations implemented during the lockdown period affected the overall welfare and psychological state of children, considering the unique circumstances and challenges faced by co-parents during this time. Understanding the impact of these regulations on children's wellbeing is crucial for informing policy decisions, interventions, and support services that aim to promote the healthy development and mental health of children in similar situations.

The article examines how Covid-19 impacted the rights of children and constrained children's protection, thereby exposing them to abuse and neglect in times of emergency. Further, the article evaluates the impact of the lockdown regulations on the wellbeing of children. The methodology employed in this study encompasses the analysis of data from relevant literary sources and the interpretation of the *Constitution*, along with relevant legislation, directives, and regulations. Qualitative data analysis was

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<sup>1</sup> Mkhize "South Africa – The COVID-19 Pandemic" 80.

<sup>2</sup> *Disaster Management Act 57 of 2002*.

<sup>3</sup> Section 23(3) of the *Disaster Management Act 57 of 2002*.

<sup>4</sup> GN 318 in GG 43107 of 18 March 2020 (Regulations Issued in terms of Section 27(2) of the Disaster Management Act, 2002).

<sup>5</sup> Coning 2020 AJPSDG 76.

conducted in an inductive thematic manner, which involved identifying and categorising emerging themes and key issues derived from the data. To accomplish this, a structural content analysis technique was employed. This approach entails organising the data into predetermined categories to identify patterns in the presentation and reporting of information. The first part of the article provides a brief overview of the current legal framework which protects the rights of the child in South Africa. In the second section, the lockdown rules and regulations on the movement of children are analysed. An overview of the children's rights related to parenting is preferred. This is followed by a critical examination of the effects of lockdown regulations and the impact thereof on children. The paper culminates in the concluding remarks on the suggested way forward for the feasible realisation of the wellbeing of children, should such a re-occurrence arise in the country.

## **2 Legal framework which protects the rights of the child in South Africa**

The legal framework protecting the rights of the child in South Africa is comprehensive and grounded in both international human rights instruments and domestic legislation. The *Constitution of South Africa*<sup>6</sup> forms the cornerstone of the legal protection of children's rights. Additionally, South Africa is a signatory to various international conventions and treaties specifically aimed at safeguarding children's rights. The *Constitution* explicitly recognises and protects the rights of children. Section 28 of the *Constitution* contains a dedicated Bill of Rights for children, emphasising their right to basic nutrition, shelter, healthcare, and social services. It also guarantees the right to education, protection from maltreatment, neglect, abuse, and exploitative labour practices. The *Constitution* further affirms the principle that in all matters concerning the child, the child's best interests are of paramount importance under section 28(2).

These rights are free of internal limitations in terms of progressive realisation. Socio-economic rights applicable to everyone have internal limitations because the *Constitution* requires that the state must take reasonable legislative and other measures within its available resources to achieve the progressive realisation of these rights. No such limitation applies to the socio-economic rights of children. In addition, the *Constitution* makes provision for children's right to be protected from abuse, neglect and degradation.<sup>7</sup> The *Constitution* also ensures that no child should work when under-age or do work that would interfere with his or her education or

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<sup>6</sup> *Constitution of the Republic of South Africa, 1996 (the Constitution).*

<sup>7</sup> Section 28(1)(d) of the *Constitution*.

development.<sup>8</sup> Children should be jailed only as a last resort and should not have to share a cell with adults.<sup>9</sup> They should not participate in wars and should be protected during conflict.

The *Children's Act* 38 of 2005 is a significant piece of legislation that provides a comprehensive framework for the protection and promotion of children's rights in South Africa. This Act establishes the rights and responsibilities of parents, guardians, and caregivers, and it outlines measures to prevent child abuse and neglect.<sup>10</sup> It also establishes mechanisms for alternative care, adoption, and foster care, ensuring the wellbeing and protection of children who are unable to live with their biological parents. This Act outlines that decisions should be made in the best interests of the child, and that each child has a right to participate in decision-making that concerns him or herself.<sup>11</sup> The Act also changed the age of majority from 21 years to 18 years under section 1 and further obliges governments to ensure substantive equality and equal access to social services for children with disabilities and chronic illnesses. The Act encompasses several provisions, including early childhood development programs,<sup>12</sup> services for partial and foster care,<sup>13</sup> prevention and early intervention services for vulnerable children,<sup>14</sup> protection services for abused children,<sup>15</sup> support groups for child-headed households,<sup>16</sup> and facilities for partial and secure care,<sup>17</sup> as well as adoption.<sup>18</sup>

Other specific legislation aims to protect children from various forms of sexual offences, exploitation, and trafficking and ensure their safety and wellbeing, including the *Criminal Law (Sexual Offences and Related Matters) Amendment Act* 32 of 2007. Sections 15 and 16 of this Act criminalises sexual penetration and sexual violation involving children aged between 12 and 16 years, irrespective of consent.<sup>19</sup> Also, the Act prohibits child prostitution, engaging the services of child prostitutes, and benefiting from the sexual exploitation of a child.<sup>20</sup> It also prohibits primary caregivers, parents, or guardians from intentionally allowing a third person to engage in

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<sup>8</sup> Section 28(1)(e) of the *Constitution*.

<sup>9</sup> Section 28(1)(g) of the *Constitution*.

<sup>10</sup> See ch 3 of the *Children's Act* 38 of 2005 (the *Children's Act*).

<sup>11</sup> Section 9 of the *Children's Act*.

<sup>12</sup> Section 78 of the *Children's Act*.

<sup>13</sup> Section 151 of the *Children's Act*.

<sup>14</sup> Section 152 of the *Children's Act*.

<sup>15</sup> Section 155 of the *Children's Act*.

<sup>16</sup> Section 159 of the *Children's Act*.

<sup>17</sup> Section 165 of the *Children's Act*.

<sup>18</sup> Section 231 of the *Children's Act*.

<sup>19</sup> See exceptions applicable in terms of ss 15(2)(a) and 16(2)(a) of the *Criminal Law (Sexual Offences and Related Matters) Amendment Act* 32 of 2007.

<sup>20</sup> Section 17 of the *Criminal Law (Sexual Offences and Related Matters) Amendment Act* 32 of 2007.

a sexual act with a child.<sup>21</sup> Individuals who are aware of the sexual exploitation of a child are legally obliged by section 54 as well as section 110 of the *Children's Act* to report it to the police. Section 18A of the Act also introduces new offences related to the sexual grooming of children, engaging in sexual acts in the presence of children, and displaying or exposing pornography or sexual acts to children.

In the realm of criminal justice, the *Child Justice Act 75* of 2008 specifically addresses the treatment of children in conflict with the law. This legislation recognises the vulnerability and unique needs of children in the justice system, emphasising diversion programs, restorative justice principles, and the rehabilitation and reintegration of child offenders. The Act aims to ensure that children in conflict with the law are treated in a manner that is age-appropriate and takes into account their best interests. Another relevant law is the *Social Assistance Amendment Act 5* of 2010, which gives effect to social security grants that directly benefit children.<sup>22</sup>

South Africa has also ratified several international conventions and treaties pertaining to children's rights. Notably, it is a signatory to the United Nations *Convention on the Rights of the Child* (1989), which sets out a comprehensive framework for the protection of children's rights. The country has also ratified the *African Charter on the Rights and Welfare of the Child*, reinforcing its commitment to regional child rights standards. The *Constitution* under section 39 requires the interpretation of rights to consider international law. As prescribed in international law, the state has various layers of obligations. In terms of section 7(2) of the *Constitution*, the state has a duty to respect, protect, promote and fulfil all the rights in the Bill of Rights. Section 7 of the *Constitution* highlights the additional obligation to "promote" the rights enshrined in the *Constitution*. This duty goes beyond the recognition and protection of rights and emphasises the active role of the government and society in actively promoting and advancing these rights. In addition to these key legislative instruments, South Africa has established specialised institutions and bodies to promote and protect children's rights. This includes the Office of the Children's Ombudsman and the South African Human Rights Commission, which monitor the implementation of child rights and address violations.

### **3 Covid-19 lockdown regulations on the movement of children**

The State of Disaster was declared with limits on the range of public get-togethers, non-citizens entrance to South Africa, and the school closure

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<sup>21</sup> Section 18 of the *Criminal Law (Sexual Offences and Related Matters) Amendment Act 32* of 2007.

<sup>22</sup> Section 7 of the *Social Assistance Amendment Act 5* of 2010.

from 18 March 2020 for an indefinite period, in accordance with the *Disaster Management Act 57 of 2002*. This was 10 days after the first Covid-19 case was reported in the country on 5 March 2020.<sup>23</sup> Although the number of confirmed cases was a mere 61 with no casualties, there were prospects of disease spreading fairly rapidly. The government was concerned that the healthcare system would be overwhelmed and would fail to respond effectively to an amplified number of cases taking into account the economic shortcoming in the country and allied challenges of congested households and compactly populated communities.<sup>24</sup>

The *Disaster Management Act* gave the Minister of Cooperative Governance and Traditional Affairs (COGTA) the mandate to impose particular limitations on citizens' entitlements. This legislation provided for the forming of a National Disaster Management Centre led by the Minister of COGTA, with the duty to provide suggestions on draft law aimed at dealing with the state of disaster. The Minister of COGTA, the National Disaster Management Centre and the cabinet ministers were the main role players in the organisation and management of the Covid-19 disaster.<sup>25</sup> Covid-19 associated laws from the Minister of COGTA and pertinent executives were published in the Government Gazette and used, among other things, to synchronise the movement of individuals and properties and to take care of those who require support services.<sup>26</sup>

The initial three-week national lockdown, which started on 26 March 2020 was extended for another two weeks up to 30 April 2020.<sup>27</sup> The lockdown aimed to control the increase of Covid-19 and protect the physical health of all citizens. All individual movement was restricted to their places of residence, with the exception of those who were providing essential services.<sup>28</sup> Further, transactions were restricted to essential goods such as groceries and medicine. The South African National Defence Force was arranged to administer the lockdown regulations jointly with the South African Police Services.<sup>29</sup> Patrols and roadblocks during this period were normal. The regime advised of particulars of a new risk-adjusted plan on 29 April 2020, which comprised five alert levels from levels 5 to 1, with lesser levels signifying fewer limitations. On 1 May 2020, the strict lockdown which

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<sup>23</sup> Kruger *et al* "South Africa: Legal Response to Covid-19" 4.

<sup>24</sup> Naidu 2020 *Psychological Trauma* 560.

<sup>25</sup> Kruger *et al* "South Africa: Legal Response to Covid-19" 6.

<sup>26</sup> Kruger *et al* "South Africa: Legal Response to Covid-19" 6.

<sup>27</sup> Kruger *et al* "South Africa: Legal Response to Covid-19" 7.

<sup>28</sup> Coning 2020 *AJPSDG* 76.

<sup>29</sup> Heywood 2021 <https://www.dailymaverick.co.za/article/2021-08-26-the-great-covid-19-swindle-part-one-business-as-usual-at-the-gauteng-department-of-infrastructure-development>.

was Level 5 was interchanged with Level 4.<sup>30</sup> This resulted in marginal easing in the limitations, for example, the trade of educational books and stationery was allowed. Restaurant service and selected industries were approved to operate with half the number of their employees.<sup>31</sup> While these changes were commendable, they did not meet the expected standards for the child's best interests. Therefore, notwithstanding the easing of such regulations, South Africa's lockdown was labelled as "one of the most rigid and extreme lockdowns announced anywhere in the world".<sup>32</sup>

When the initial directives regarding lockdown were introduced, there needed to be more clarity as to the transport of children between the homes of co-parents. There was no specific mention of child contact with a parent in a different location.<sup>33</sup> The situation eventually changed when the amended regulations came into force on the 7<sup>th</sup> of April 2020.<sup>34</sup> On 30 March 2020, the Minister of Social Development, Lindiwe Zulu, issued "the R430 SD" directives which explicitly stated:

Movement of children between co-holders of parental responsibilities during the lockdown period is prohibited. This was to ensure that the child is not exposed to any possible infection whilst moving from the primary caregiver premises to the other; (ii) The child must remain in the custody of the parent with whom the child was with, when lockdown period started.<sup>35</sup>

On 16 April 2020, the Minister then signed an updated directive, reversing the initial prohibition as long as certain conditions were met. The law states that:

Movement of children between co-holders of parental responsibilities and rights or a caregiver, as defined in Section 1(1) of the Children's Act 2005 [38 of 2005] is prohibited, except where arrangements are in place for a parent to move from one parent to another, in terms of: (aa) a court order; or (bb) where parental responsibilities and right agreement or parenting plan, registered with the family advocate, is in existence. Provided that, in the household to which the child is to move, there is no person who is known to have come into contact with or is reasonably suspected to have come into contact with, a person known to have contracted, or reasonably suspected to have contracted, Covid-19. The parent or caregiver transporting the child concerned must have

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<sup>30</sup> Van den Heever 2020 <https://www.dailymaverick.co.za/article/2020-04-20-toward-a-risk-based-strategy-for-managing-the-covid-19-epidemic-a-modelling-analysis>.

<sup>31</sup> Van den Heever 2020 <https://www.dailymaverick.co.za/article/2020-04-20-toward-a-risk-based-strategy-for-managing-the-covid-19-epidemic-a-modelling-analysis>.

<sup>32</sup> Habib 2020 *S Afr J Sci* 1.

<sup>33</sup> Nanima 2020 *ESR Review* 10.

<sup>34</sup> Nanima 2020 *ESR Review* 10.

<sup>35</sup> Section 6(m) of GN R430 in GG 43182 of 30 March 2020 (Directions Issued in terms of Regulation 10(5) of the Regulations Made under Section 27(2) of the Disaster Management Act, 2002: Measures to Prevent and Combat the Spread of Covid-19).

in his or her possession the court order or the agreement referred to [above]  
... or a certified copy thereof.<sup>36</sup>

The Directions published on 16 April 2020 vary from the Directions published on 7 April 2020,<sup>37</sup> in that co-holders and/or caregivers that did not possess a court order or registered agreement could nevertheless exercise their contact rights on condition that they had the child's birth certificates or their certified copies thereof.

In the matter of *CD v Department of Social Development*,<sup>38</sup> adjudicated on 8 April 2020 by the High Court in the Western Cape reflected the circumstances that would be regarded as crucial and urgent in lockdown. It concerned two young children, aged ten and seven years of age, who were left with their grandparents in the Free State when the lockdown rules were implemented.<sup>39</sup> Their parents applied for leave of the court to travel from Cape Town to the Free State to pick them up. The children were visiting their grandparents when "the lockdown intervened", and "the children found themselves locked down with their grandparents".<sup>40</sup> The court permitted the father to travel to the Free State to pick up the children and provided the following details: "The advanced age and precarious health of the grandparents had made caring for the children increasingly strenuous; should the grandparents fall ill with Covid-19, they would have been unable to care for the children."<sup>41</sup> The family advocate, therefore, raised the argument that it would be in the best interest of the children to be back with their parents.<sup>42</sup>

This regulation received extensive criticism because it did not permit the children to move amongst guardians with joint parental responsibilities who had no court order or a parenting plan.<sup>43</sup> The further amendment of the lockdown regulations, which became effective on 16 April 2020, allowed the children to move between co-holders of parental responsibilities and rights during the lockdown time. Further, a third alternative afforded was for a co-holder of parental responsibilities to produce a birth certificate or certified copy of a birth certificate of the child to verify an authentic correlation

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<sup>36</sup> GN R455 in GG 43213 of 7 April 2020 (Amendment to the Directions Issued in terms of Regulation 10(8) of the Regulations Made under Section 27(2) of the Act: Measures to Prevent and Combat the Spread of Covid-19).

<sup>37</sup> GN R455 in GG 43213 of 7 April 2020 (Amendment to the Directions Issued in terms of Regulation 10(8) of the Regulations Made under Section 27(2) of the Act: Measures to Prevent and Combat the Spread of Covid-19).

<sup>38</sup> *CD v Department of Social Development* (5570/2020) [2020] ZAWCHC 25 (14 April 2020) (*CD v Department of Social Development*).

<sup>39</sup> *CD v Department of Social Development* para 2.

<sup>40</sup> *CD v Department of Social Development* para 1.

<sup>41</sup> *CD v Department of Social Development* para 1.

<sup>42</sup> *CD v Department of Social Development* para 9.

<sup>43</sup> Sloth-Nielsen 2020 <https://www.ibanet.org/article/69DAFCB7-9478-4890-90F4-79848E9CADBA> 1.



between the co-holders of parental responsibilities and rights.<sup>44</sup> This seemed to address the circumstances of the parents who were still in the midst of divorce proceedings or had separated harmoniously and without fulfilling the prerequisite for a formal agreement or plan. However, the controversy was further exacerbated by the amended regulations of 16 April 2020, which provided no clarity on the movement of children from one province or municipality to another.<sup>45</sup> On the face of it, the movement of children from one province or municipality was no different than transporting a child to the next street. Nonetheless, although restrictions to travel from one province to another were not anticipated, more local movement was potentially permitted, which, however, was required to be supported by a court-issued permit.

The further regulations, which were released on 29 April 2020, stipulated that

movement of children in the same metropolitan area or district municipality would be allowed subject to the co-holders of parental responsibilities and rights or a caregiver being in possession of (a) a court order; or (b) a parental responsibilities and rights agreement or parenting plan, registered with the family advocate; or a permit issued by a magistrate if the documentation in paragraphs (a) and (b) is not available.<sup>46</sup>

Interprovincial intermunicipal travel would be permitted with a document give out by a court. Nevertheless, the home that the child is going to move to had to be Covid-19 free, and written explanations had to be provided to back the request for a permit.<sup>47</sup>

#### **4 The impact of lockdown co-parenting regulations on children**

The regulations basically provided that, as long as a court order or parenting plan was in place, one was permitted to transport one's child to the home of the other parent and vice versa. However, initially, if one did not have a formal arrangement, then, unfortunately, one could not seek the protection of this directive. This was mainly where parents of a child were never married, or they had an amicable divorce, and hence they did not require a parenting plan. Parents who did not care much about the usefulness of a parenting plan, even when it was not mandated by the courts, were left with no remedy in the circumstances. Many stated that they could not have

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<sup>44</sup> GN R465 in GG 43232 of 16 April 2020 (Amendment of Regulations Issued in terms of Section 27(2)).

<sup>45</sup> GN R465 in GG 43232 of 16 April 2020 (Amendment of Regulations Issued in terms of Section 27(2)).

<sup>46</sup> Regulation 17 of GN R480 in GG 43258 of 29 April 2020 (Regulations Issued in terms of Section 27(2) of the Disaster Management Act, 2002).

<sup>47</sup> GN R480 in GG 43258 of 29 April 2020 (Regulations Issued in terms of Section 27(2) of the Disaster Management Act, 2002).

foreseen the current circumstances and considered the lockdown directive to be an admittedly extraordinary example of why it is always wise to have a plan in place.<sup>48</sup> The regulations required parents to carry their parenting plan when travelling with their child to the home of the other parent. In following the directive, parents could be in contempt of court if they had failed to adhere to the terms of a court order.<sup>49</sup> Given that it was permitted to go to the shops for essential items, for the single parent, one had to ensure that they took their child with them. It was hard to know how the police would have implemented this requirement in determining one's destination and enforcing this condition.<sup>50</sup> For some children and some parents, the enforced separation or enforced confinement with one parent had been perceived as being detrimental or even harmful to their wellbeing.<sup>51</sup>

The regulation was also challenged by senior counsel and family law expert Janet McCurdie. The following statement is reflective of her stance. "Pleased to see the relaxation of a harsh legal position, which seemed to completely ignore the emotional needs of the child and was so out of line with other countries in similar circumstances."<sup>52</sup> Section 9 of *Children's Act* and section 28 of the *Constitution*, state that the best interests of the child are of paramount importance in all matters concerning the child. But it may not be in the best interests of the child to be with a particular parent or without a particular parent for the period of the lockdown. The authority of the Minister of Social Development to issue regulations or directives regarding the exercise by parents of their rights in terms of parenting plans/court orders is also questionable. This is because the Minister of Social Development is not authorised in terms of any regulation published in terms of the *Children's Act* to issue directives pertaining to the exercise by parents of their rights of care and contact with their children.<sup>53</sup>

## 5 Concluding remarks

In conclusion, this article sought to evaluate the impact of lockdown regulations on the wellbeing and psychological state of children, with a

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<sup>48</sup> Sloth-Nielsen 2020 <https://www.ibanet.org/article/69DAFCB7-9478-4890-90F4-79848E9CADBA> 1.

<sup>49</sup> GN R455 in GG 43213 of 7 April 2020 (Amendment to the Directions Issued in terms of Regulation 10(8) of the Regulations Made under Section 27(2) of the Act: Measures to Prevent and Combat the Spread of Covid-19).

<sup>50</sup> GN R455 in GG 43213 of 7 April 2020 (Amendment to the Directions Issued in terms of Regulation 10(8) of the Regulations Made under Section 27(2) of the Act: Measures to Prevent and Combat the Spread of Covid-19).

<sup>51</sup> UN 2020 <https://unsdg.un.org/resources/policy-brief-impact-covid-19-children> 2.

<sup>52</sup> Dippenaar 2020 <https://www.sdlaw.co.za/blog/stop-press-child-contact-visits-now-allowed-during-lockdown/> 3.

<sup>53</sup> Dippenaar 2020 <https://www.sdlaw.co.za/blog/stop-press-child-contact-visits-now-allowed-during-lockdown/> 3.

particular focus on the circumstances and challenges faced by co-parents. The debate surrounding the one size fits all approach of lockdown regulations has highlighted significant concerns about its appropriateness, particularly in relation to the best interests of children. While the intent behind implementing uniform measures was to curb the spread of the virus and protect public health, it is argued that a more nuanced and case-specific analysis should have been employed. One of the main contentions is that children's interests are diverse and multifaceted, and a blanket approach fails to account for the unique circumstances and needs of each child. The impact of lockdown measures on children's physical and mental wellbeing, educational attainment, social development, and overall quality of life varies greatly across individuals. Factors such as age, socioeconomic background, living conditions, access to technology, and support systems play crucial roles in shaping a child's experience during the pandemic.<sup>54</sup>

By adopting a case-by-case analysis, authorities would have been better equipped to tailor interventions that appropriately balanced the risks of the virus with the specific needs of children. This approach would have involved evaluating factors such as the child's living environment, vulnerability to the virus, ability to adhere to safety guidelines, access to educational resources, and mental health support. Such assessments would have enabled a more targeted and effective response, ensuring that children receive the necessary protection and support while minimising unnecessary disruptions to their lives. Moreover, a case-specific approach could have accounted for the evolving nature of the pandemic and the varying levels of transmission and impact across different regions. Localised decision-making, based on up-to-date data and expert analysis, would have allowed for more precise measures that reflect the specific risks and challenges faced by children in different areas. This localised approach could have prevented undue hardship for children residing in areas with low infection rates or limited resources, where stringent lockdown measures may have been unnecessary or disproportionate. While the implementation of lockdown measures during the pandemic was an extraordinary response to an unprecedented crisis, it is crucial to learn from this experience and refine future approaches. Recognising the importance of prioritising the best interests of children, policymakers and authorities should consider adopting a more individualised and context-specific approach when faced with similar challenges in the future. By doing so, we can better protect the wellbeing and development of children while effectively addressing public health concerns.

The findings emphasise the crucial role of co-parents in mitigating the challenges faced by children during lockdown periods. Providing emotional

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<sup>54</sup> Bukola, Bhana and Petersen 2020 *Journal of Child & Adolescent Mental Health* 48.

support, stability, and a nurturing environment are essential components for promoting children's wellbeing. Guardians and caregivers need to remain attentive to children's needs, ensuring they have access to education, healthcare, and a safe space to express their emotions. The involvement of community structures and the government is vital in addressing the unique circumstances and challenges faced by children. Collaborative efforts among local organisations, schools, and community leaders can establish support systems tailored to meet children's specific needs, thereby ensuring they receive the necessary resources for their mental health and emotional wellbeing. It is crucial for the government to allocate resources and develop policies that prioritise children's wellbeing. This includes investing in education, healthcare, and social services tailored specifically for children. The government can also establish helplines and support networks to provide assistance and guidance to both children and their caregivers during pandemics. By prioritising children's welfare and incorporating their unique circumstances into decision-making processes, societies can provide the necessary support to ensure their wellbeing during challenging times.

## **Bibliography**

### **Literature**

Bukola, Bhana and Petersen 2020 *Journal of Child & Adolescent Mental Health*

Bukola G, Bhana A and Petersen I "Planning for Child and Adolescent Mental Health Interventions in a Rural District of South Africa: A Situational Analysis" 2020 *Journal of Child & Adolescent Mental Health* 45-65

Coning 2020 *AJPSDG*

Coning R "South Africa's National Response to COVID-19, with Specific Reference to Sub-Level Governance in Provinces" 2020 *AJPSDG* 74-89

Habib 2020 *S Afr J Sci*

Habib A "More Eyes on COVID-19: Perspectives from Political Science: Insights from the Political Management of COVID-19" 2020 *S Afr J Sci* 1-3

Kruger *et al* "South Africa: Legal Response to Covid-19"

Kruger P *et al* "South Africa: Legal Response to Covid-19" in King J *et al* (eds) *The Oxford Compendium of National Legal Responses to Covid-19* (Oxford University Press Oxford 2021) doi: 10.1093/law-occ19/e6.013.6

Mkhize "South Africa – The COVID-19 Pandemic"

Mkhize Z "South Africa – The COVID-19 Pandemic in South Africa: Early Lessons for Public Governance" in Paul J, Fabienne M and Reddy P (eds) *Good Public Governance in a Global Pandemic* (International Institute of Administrative Sciences Brussels 2020) 79-84

Naidu 2020 *Psychological Trauma*

Naidu T "The COVID-19 Pandemic in South Africa" 2020 *Psychological Trauma: Theory, Research, Practice, and Policy* 559-561

Nanima 2020 *ESR Review*

Nanima RD "From Regulations to Courts: An Evaluation of the Inclusive and Exclusive Criteria on Children with Co-caregivers in the Era of Covid-19" 2020 *ESR Review: Economic and Social Rights in South Africa* 10-14

### **Case law**

*CD v Department of Social Development* (5570/2020) [2020] ZAWCHC 25 (14 April 2020)

### **Legislation**

*Child Justice Act* 75 of 2008

*Children's Act* 38 2005

*Constitution of the Republic of South Africa*, 1996

*Criminal Law (Sexual Offences and Related Matters) Amendment Act* 32 of 2007

*Disaster Management Act* 57 of 2002

*Social Assistance Amendment Act* 5 of 2010

### **Government publications**

GN 318 in GG 43107 of 18 March 2020 (Regulations Issued in terms of Section 27(2) of the Disaster Management Act, 2002)

GN R430 in GG 43182 of 30 March 2020 (Directions Issued in terms of Regulation 10(5) of the Regulations Made under Section 27(2) of the Disaster Management Act, 2002: Measures to Prevent and Combat the Spread of Covid-19)

GN R455 in GG 43213 of 7 April 2020 (Amendment to the Directions Issued in terms of Regulation 10(8) of the Regulations Made under Section 27(2) of the Act: Measures to Prevent and Combat the Spread of Covid-19)

GN R465 in GG 43232 of 16 April 2020 (Amendment of Regulations Issued in terms of Section 27(2))

GN R480 in GG 43258 of 29 April 2020 (Regulations Issued in terms of Section 27(2) of the Disaster Management Act, 2002)

### **International instruments**

*African Charter on the Rights and Welfare of the Child* (1990)

*Convention on the Rights of the Child* (1989)

### Internet sources

Dippenaar 2020 <https://www.sdlaw.co.za/blog/stop-press-child-contact-visits-now-allowed-during-lockdown/>

Dippenaar S 2020 *Stop Press! Child Contact Visits Now Allowed During Lockdown* <https://www.sdlaw.co.za/blog/stop-press-child-contact-visits-now-allowed-during-lockdown/> accessed 22 July 2024

Heywood 2021 <https://www.dailymaverick.co.za/article/2021-08-26-the-great-covid-19-swindle-part-one-business-as-usual-at-the-gauteng-department-of-infrastructure-development>

Heywood M 2021 *The Great Covid-19 Swindle (Part One): Business as Usual at the Gauteng Department of Infrastructure Development* <https://www.dailymaverick.co.za/article/2021-08-26-the-great-covid-19-swindle-part-one-business-as-usual-at-the-gauteng-department-of-infrastructure-development/> accessed 22 July 2024

Sloth-Nielsen 2020 <https://www.ibanet.org/article/69DAFCB7-9478-4890-90F4-79848E9CADBA>

Sloth-Nielsen J "Family Law under the Threat of Covid-19" 2020 *International Bar Association* <https://www.ibanet.org/article/69DAFCB7-9478-4890-90F4-79848E9CADBA> accessed 12 February 2021

UN 2020 <https://unsdg.un.org/resources/policy-brief-impact-covid-19-children>

United Nations 2020 *Policy Brief: The Impact of COVID-19 on Children* <https://unsdg.un.org/resources/policy-brief-impact-covid-19-children> accessed 22 July 2024

Van den Heever 2020 <https://www.dailymaverick.co.za/article/2020-04-20-toward-a-risk-based-strategy-for-managing-the-covid-19-epidemic-a-modelling-analysis>

Van den Heever A 2020 *Toward a Risk-Based Strategy for Managing the COVID-19 Epidemic: A Modelling Analysis* <https://www.dailymaverick.co.za/article/2020-04-20-toward-a-risk-based-strategy-for-managing-the-covid-19-epidemic-a-modelling-analysis/> accessed 22 July 2024

## List of Abbreviations

AJPSDG	Africa Journal of Public Sector Development and Governance
COGTA	Cooperative Governance and Traditional Affairs
ESR	Economic and Social Rights in South Africa
S Afr J Sci	South African Journal of Science
SAMJ	South African Medical Journal
UN	United Nations