



## PRESS STATEMENT

# CENTRE FOR HUMAN RIGHTS EXPRESSES GRAVE CONCERN ABOUT HIGH LEVEL AND RACIALISED NATURE OF EXCESSIVE FORCE DURING LOCKDOWN

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The Centre for Human Rights, Faculty of Law, University of Pretoria, notes with grave concern the instances of death and other human rights violations due to excessive force during law enforcement in South Africa. We note that these are not isolated instances, but are linked to inequalities based on race.

“The disturbingly high rate of arrest-related deaths, and its structural causes, in particular as far as it relates to racial inequalities, must be investigated and addressed with great urgency and seriousness”, said Frans Viljoen, the Centre’s Director.

### Background

Over the last few weeks, many parts of the world have been ignited by outrage about racial injustice. The spark was the death of George Floyd at the hands of the police in the United States of America (USA), which converged with the on-going ‘Black Lives Matter’ campaign. The ‘Black Lives Matter’-cries are global clamours for racial justice. The emotion and urgency generated by Floyd’s death, and the outpouring of anger about it, relate to three distinct but interconnected issues: the unbiased application of the law; the need for law reform; and the need to better appreciate and understand the link between racial and social justice.

While South Africa and the USA share a history of systemic racial discrimination and a culture of impunity, there are important differences in how these issue resonate. In a democratic South Africa, where political equality has been achieved, the focus falls on the lack of economic power and de facto

discrimination. In other parts of Africa, where race is less defining of societal relations – despite enduring legacies of colonialism – the issues also surface differently.

### **Racial injustice in law enforcement**

Historically vulnerable and under-resourced communities in South Africa have had a tumultuous relationship with the police and security forces. This relationship continues to expose class and racial inequalities in how our most vulnerable communities experience law enforcement.

Over the period of the national lockdown in response to COVID-19 we have seen numerous killings and assaults at the hand of security forces. These killings mostly happen in under-resourced communities. Due to our appalling history of racial injustice, these communities are almost exclusively black. Being black in South Africa places a person at a disproportionate risk not only of being poor, but also of being at the receiving end of excessive violence from law enforcement officials.

### **Collins Khosa**

The death of Collins Khosa after being assaulted by members of the South African National Defence Force (SANDF) at his home in Alexandra caused outrage in South Africa, especially due to a reluctance to admit wrongdoing and concerns about measures to ensure accountability. In a subsequent court case, the Gauteng High Court reiterated what is patently clear in the Constitution: Security forces need to abide by the constitutional values of human dignity, and will be held accountable if they do not. We commend the South African Police Service (SAPS) for complying with the Court's order to develop a code of conduct, but we note with regret that the SANDF has not yet fully complied. This reluctance highlights the extent to which the South African response has from the outset been militarised; and the need to bring this to an end.

The killing of Collins Khosa is not the first time we have seen police brutality in South Africa. The apartheid state was infamous for its securitised nature, deaths in detention, and abusive law enforcement. Regrettably, deaths in police custody or during 'police action' is not something of the past. In the year 2017/2018, the Independent Police Investigative Directorate (IPID) [reported that 759 deaths were linked to the police](#): 201 deaths in police custody, and 558 deaths as a result of police action. Similar statistics in the USA are unreliable, but indicate a much lower incidence of police excess. These numbers are unreliable because incidents are not systematically recorded. Also, the Death in Custody Reporting Act, designed to capture such statistics, has not been applied since its adoption in 2014. The US Bureau of Justice Statistics developed the Arrest-Related Deaths programme to fill this gap. Even if this information is likely to be skewed due to underreporting, the US numbers are much lower (in terms of police related deaths as a percentage of the total population)

than those of South Africa. For 2011, for example, the annual arrest-related deaths in the USA [were estimated at 689](#).

### **Collins case not isolated**

Collins Khosa was not the only casualty of lockdown violence. IPID on 8 June 2020 [reported to Parliament that 10 people died](#) as a result of police action during the enforcement of the lockdown. IPID provides statistics and not names, but from [media reports](#) we know the something about at least five of the other deaths: **Sibusiso Amos**, from Volsoorus, was allegedly fatally shot on the veranda of his home. **Petrus Miggels**, from Ravensmead, died after allegedly being assaulted by the police. **Adane Emmanuel**, from the informal Dakota settlement in Isipingo, was allegedly assaulted by the police, taken to the police station, and subsequently died in hospital. **Elma Robyn Montsumi**, a sex worker, allegedly hanged herself after arrest by the police. **Ntando Elias Sigasa**, from Naledi township in Soweto, allegedly died as a result of assault by the police. There are many more who have suffered excessive violence but were fortunate to escape with their lives. At the same hearing, IPID reported that it is investigating a total of 376 cases arising from the lockdown period. To these should be added the cases submitted against the SADF, under investigation with the Military Ombud.

Bonolo Makgale, head of the Centre's Democracy and Civic Engagement Unit, noted: "Clearly, police-related deaths have for long been a distressing feature of our society, but has not spurred outrage." As in many other respects, COVID-19 shone a spotlight on pre-existing but enduring underlying societal conditions. The unjustified and publicised deaths of George Floyd and Collins Khosa brightened the spotlight.

### **Law reform**

There is a dire need for both the unbiased application of existing law, and for law reform in South Africa, as in many other parts of the world. There must be an unbiased application of the law. Our law on the use of force too needs to be reformed. The Criminal Procedure Act (section 49(2)) for example makes the use of deadly force possible even if there is no imminent threat of death or serious injury to the arresting officer. This needs to change. To this end, the Centre for Human Rights is working with the South African government to undertake a comprehensive review of the relevant legislation.

### **Social justice**

South Africa has very good laws, embedded in a Constitution that guarantees comprehensive human rights. But we need these laws to become equally meaningful to all of our people. The promises of equal dignity of all South African, including the guarantee of basic socio-economic rights, ring more hollow than before due to the cumulative focus informed by COVID-19 and 'Black Lives Matter' imperatives. COVID-19 and the concomitant lockdown have not been indiscriminate in their effects.

People in least resourced communities – mostly black South Africans – are less equipped to comply with the basics of washing hands and social distancing due to inadequate access to water and congested living conditions, for example in informal settlements. They are therefore at greater risk of contracting COVID-19. They live in areas where complying with strict lockdown measures are hard, and which are most frequently targeted for law enforcement. They therefore bear the brunt of law enforcement excesses. They are most dependent on a continuing informal economy, and were most affected by the inability to earn a daily living. Like COVID-19, the deaths of George Floyd and Collins Khosa lay bare the material fault lines of poverty and privilege, embedded in a history of systemic racism.

### **Centre's call**

The Center therefore makes the following call:

- In the aftermath of COVID-19, government should initiate a national dialogue on the structural causes of excessive violence during law enforcement, focusing on the link between class, race and the likelihood to be the target of such violence.
- We call upon the state to communicate unequivocally and continuously its abhorrence of excessive violence by law enforcement, and to take all necessary measures to stop and eradicate excessive violence by law enforcement. An end to the militarisation of the 'enforcement' of the lockdown should be considered immediately.
- IPID, the Military Ombud, the SAPS and SANDF must investigate all acts of police killing and other forms of brutality speedily and impartially, and bring the perpetrators to justice. In the process, those law enforcement officials who stood by and neglected their duty of care should also be held accountable. It should be noted that IPID indicated that law enforcement officials (including the members of the Johannesburg Metro Police Department) who were present and failed in their duty of care, should also be held accountable.
- All governmental entities must provide full and easily accessible information about all reported, investigated and concluded cases of lockdown excesses.
- Law reform to curb and eradicate excessive force during law enforcement should be expedited.

### **Conclusion**

We cannot breathe freely as a society as long as major parts of us are suffocated not only by unpredictable and biased law enforcement, but also by exclusion from equally benefiting from the opportunities and fruits of our economy. If we fail to build a more humane and equal society, in the

words of Fabricius J in the *Khosa* case, ‘a wasteland and social unrest awaits us all’. Now more than ever, dignity and respect should remain the cornerstone of how we live together.

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