



PRESS STATEMENT

MANDELA MONTH TALK QUESTIONS IF SOUTH AFRICAN GOVERNMENT'S COVID-19 RESPONSE HAS STRUCK RIGHT BALANCE BETWEEN RESPECTING RIGHTS AND CURBING THE PANDEMIC

24 July 2020

“You can’t use a hammer to tighten a screw. The government failed to get the balance right and is relying too much on regulation and not enough on education.”

– Justice Zak Yacoob, Former Judge, Constitutional Court of South Africa

As part of Mandela Month, during which we remember the birth date of Nelson Rolihlahla Mandela on 18 July 1918, the Centre for Human Rights, Faculty of Law, University of Pretoria, in collaboration with Leading Like Mandela Institute and the Thembekile Mandela Foundation, hosted the first in a series of online Mandela Talks.

The first Mandela Talk was a contemplation on the best way in which to approach the constitutional implications of the COVID-19 regulatory framework. Some of these regulations impose significant restrictions on rights, but are aimed at realising other rights. How should such contending claims be balanced? What has been the approach of our courts to this? Is this the right approach in the context of the pandemic? Are there issues related to the pandemic that should not be dealt with by courts, but are best dealt with by administrators or the legislature?

The Talk was chaired by Ms Abigail Noko (Head, Regional Office Southern Africa, UN High Commissioner for Human Rights) while Prof Frans Viljoen (Director, Centre for Human Rights) and Dr Liaqat Azam (Director, Leading Like Mandela Institute) provided welcoming and introductory remarks. Dr Azam emphasised that President Mandela’s example should inspire each of us, during this challenging time, to ask ourselves how we could make a difference. The introductory speakers noted

that celebrating Mandela Month this year sadly coincided with the passing of Madiba's daughter, Zindzi Mandela, and of one of Nelson Mandela's close anti-apartheid allies and stalwart of the struggle, Andrew Mlangeni.

In his presentation, Justice Johann van der Westhuizen (Former Judge, Constitutional Court of South Africa) explained that all rights may be limited, but only if the limitation (such as a COVID-19 regulation) is in line with section 36 of the Constitution. He explained that the "rationality" test should not be viewed in isolation, but as the part of the section 36-test. The "rationality" test inquires whether there is a credible connection between the specific means (such as a regulation banning the sale of alcohol) and the desired ends that these measures are designed to serve (such as the prevention of more infections, or saving lives). He observed that the pandemic highlighted that this was a case of the "chickens that have come home to roost": After years of neglect, it is difficult to manage societal problems with laws in a society where the law itself has routinely been disregarded. Justice van der Westhuizen also called on South Africans to realise that asserting their rights has to take into account the need to respect the rights of others.

Ms Okyerebea Ampofo-Anti (Partner, Ampofo-Anti Consulting and Sessional Lecturer, Media Law and Ethics, University of Witwatersrand) focussed on recent case law and developments as a result of the pandemic. She highlighted that the COVID-19 pandemic exposed a gap between government's intentions and society's willingness to work with government for the better protection of all. She indicated that much work was needed for government to convince the people to join its journey of decisions and to make sure that the population is on board. Ms Ampofo-Anti criticised attempts to extend the ban on the *sale* of alcohol to take repressive measures against anyone *drinking* alcohol. She also linked the violence of the security forces that led to the death of Collins Khose to their overzealous attempts to punish the use of alcohol.

Adv Mohamed Shafie Ameerma (Commissioner, South African Human Rights Commission) reflected on Mandela's legacy and noted that although the inequalities and other societal problems in South Africa are exposed by the pandemic, all is not lost. He urged South Africans to collectively lead like Mandela by becoming active citizens, joining hands and working towards a collaborative partnership. Commissioner Ameerma concluded by quoting Nelson Mandela: "A new world will be won not by those who stand at a distance with their arms folded, but by those who are in the arena, whose garments are torn by storms and whose bodies are maimed in the course of the contest."

Justice Zak Yacoob emphasised that the state of South Africa's economy is dire, and urged the government to better focus its efforts on the rights of the most marginalised, in particular very poor people. In his view, government's primary objective should be to educate its citizens to become more

responsible during the pandemic (wearing masks, maintaining social distancing and looking out for each other). While the state must do all it can to curb the spread of the coronavirus and save lives, it has overregulated, with the policing of citizens taking precedence over the education of the people, leading to infringements of their rights. He remarked: *“You can’t use a hammer to tighten a screw. The government failed to get the balance right and is relying too much on regulation and not enough on education.”* He also highlighted the importance of curbing corruption, as a way to restore trust in the government. A necessary starting point, in his view, is that government must admit to having been engaged in inexcusably plundering the resources for which there now is such a dire need.

The webinar was concluded by a poll where participants could air their views on whether the government is striking the right balance with regards to its handling of the COVID-19 pandemic.

- The poll results can be [viewed here](#).
- A recording of the webinar can be [viewed here](#).
- [Click here](#) to be notified of upcoming Mandela Talks and other events hosted by the Centre for Human Rights.

For more information, please contact:

Prof Frans Viljoen

Director

Centre for Human Rights, University of Pretoria

frans.viljoen@up.ac.za

www.chr.up.ac.za

Yolanda Booyzen

Communications and Advocacy Manger

Centre for Human Rights, University of Pretoria

yolanda.booyzen@up.ac.za

www.chr.up.ac.za