

# Declaring a state of emergency has far-reaching effects for citizens' rights and for businesses

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13 Aug 2021

Many called for President Cyril Ramaphosa to declare a state of emergency, as South Africa recently underwent one of the worst unrests in decades. Hundreds of shops and businesses fell victim to looting that took place mainly in the Gauteng and KwaZulu-Natal provinces. Over 100 people lost their lives and many more have been arrested in connection with the looting.



Source: Somchai Kongkamsri from [Pexels](#)

As a result of the unrests, many shopping centers, warehouses and schools were damaged and set alight. It is on this basis that many pleaded with the President to declare a state of emergency, in order to curb the widespread looting and damage. This decision would also have consequences for intellectual property owners.

## When to declare a state of emergency

According to the State of Emergency Act No. 64 of 1997, it is the President who may declare a state of emergency in the Republic of South Africa or in any area within the country. This is done by a proclamation in the Government Gazette declaring a state of emergency and providing the reasons for same in the proclamation. In addition, this proclamation, which gives the right to a state of emergency, may be withdrawn by the President at any time in a similar manner.

Section 37 of the Constitution states that a state of emergency may be declared only in terms of an Act of Parliament, and only when there is war, invasion or general insurrection, to name a few.

The sole purpose of declaring a state of emergency is to restore peace and order. It is on this basis that many felt that a state of emergency could have saved many businesses from the destruction that occurred recently, as well as spared many lives.

## Disadvantages of declaring a state of emergency

In the event that the President did declare a state of emergency in South Africa, there would have been a limitation on the citizens' rights. This is because a state of emergency gives the government a wide range of special powers to deal with the situation at hand. This could have given rise to restrictions on the movement of people, searching of people's homes without a warrant and the provision of health care services, especially to the most vulnerable citizens.

The decision to declare a state of emergency must weigh up the above factors versus the need to maintain peace and order.

## **Consequences of a state of emergency for intellectual property owners**

It goes without saying that a limitation of rights that may be caused by the coming into operation of a state of emergency, may lead to certain dishonest businesses devising their own methods of creating essential products. This was evident when the stricter lockdown regulations were first imposed in South Africa and we saw a rise in the manufacturing of illicit and counterfeit essential products.

As law enforcement officers are still required to fulfil their duties during a state of emergency (within the ambit of the proclamation) it may still be possible to combat these life-threatening and illegal acts by conducting search and seizure operations and have the offending products removed and ultimately destroyed. This is certainly a positive for citizens who may be exposed to the offending goods. This is also a positive for intellectual property owners, in that, they continue to protect the image and quality of their products and enforce their intellectual property rights.

Once again, the decision to declare a state of emergency has many adverse and positive effects for people's rights and for businesses owners. Was it meant to be (or not to be) a state of emergency in South Africa?

## **ABOUT THE AUTHOR**

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