

**Protecting human rights during and after the COVID-19**  
**A response from the Women's Legal Centre<sup>1</sup> on South Africa**  
**June 2020**

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**Impact on human rights**

1. South Africa is a deeply unequal society which sees discrimination across the economy, gender, race as well as access to socio-economic rights and civil and political rights. The COVID-19 pandemic has exacerbated and compounded especially the socio-economic conditions<sup>2</sup> under which women live. On 23 March 2020, the President announced a declaration of a national state of disaster. The National Disaster Management Act came into effect and a national “lockdown” was declared with different rights being restricted.
2. Restrictive measures have been put in place which impacts on the rights of people in the country.
3. The measures were put in place using existing legislation under the Disaster Management Act. This legislation enables the state to declare a national disaster that enables it to invoke an integrated and coordinated policy to reduce and prevent the risks caused by a national disaster. The Disaster Management Act allows for the state of disaster to be declared for a period of four months. The policy adopted allowed for a phasing out or reduction in the limitation of rights through various stages. Stage 5 of the lockdown being the most stringent limitations and then Stage 1 being effectively the end of the limitations and restrictions on rights. At the time of this submission South Africa was at level 3 of the national state of disaster with the country awaiting the peak of the infection rate of the pandemic in the country.
4. The state has indicated that the measures were necessary to address the devastating impact of the pandemic on the country's health care system. The health care system, which is made up of both private as well as public health care institutions would not have been in a position to provide for the needs of those affected by the pandemic had the state not taken active steps to limit / restrict the spread of the pandemic.
5. It is important to note that the state implemented the state of disaster and its measures in order to ensure a state of readiness by the health sector to cope with the high number of

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<sup>1</sup> The Women's Legal Centre is an African feminist public interest litigation centre based in Cape Town South Africa. The Centre works to advance substantive equality for women.

<sup>2</sup> UN Policy Brief on the Impact of Covid-19 on Women. Available: <https://www.un.org/sexualviolenceinconflict/wp-content/uploads/2020/06/report/policy-brief-the-impact-of-covid-19-on-women/policy-brief-the-impact-of-covid-19-on-women-en-1.pdf>

infection and to alleviate to some extent the burden that would be placed on the health care system. In order to do this restriction were put in place in respect of the freedom of movement<sup>3</sup> in so far that a curfew was put in place and further people were only allowed to leave their homes for the purposes of purchasing food, obtaining health care<sup>4</sup> or where they undertake work that was deemed as an essential service.

6. The measures related to the restriction on movement impacted especially women in relationships where there was a presence of intimate partner violence. South Africa has very high rates of violence against women and being forced to remain in a “lockdown” situation exacerbated the prevalence of violence against women<sup>5</sup>.

Another category of women who were discriminated against was women employed in private homes as domestic workers. The state relied on Sectoral Determination Seven, in respect of Domestic Workers to address unemployment insurance benefits to be paid for domestic workers who were dismissed. The state however did not take into account that the majority of domestic workers have not been registered by their employers as such and therefore are unable to access social security benefits where no contribution or registration was effected by their employers.

Another category of vulnerable worker is women who work on farms. These women were at particular risk as they worked throughout the stage 5 lockdown as the agriculture sector and did so without the necessary personal protective equipment. Further seasonal farm workers (who in the exploitative agricultural sector are often not afforded recognition as employees) were not registered as employees and when the government implemented the Temporary Employment Relief Scheme<sup>6</sup> these workers were excluded from this social security benefit as farm owners refused to apply for benefits on behalf of their seasonal farm workers.

The restriction on people’s right to work (where they were not employed in the essential services sector) meant that food security was threatened in many homes. There was delayed in incoherent measures implemented to address food security and the increase of child and

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<sup>3</sup> Section 21 of the South African Constitution guarantees the right to freedom of movement.

<sup>4</sup> Section 11B of the Regulations Relating to Covid-19 under the Disaster Management Act 57 2002.

Available: [https://www.gov.za/sites/default/files/gcis\\_document/202003/43168reg11067gon419.pdf](https://www.gov.za/sites/default/files/gcis_document/202003/43168reg11067gon419.pdf)

<sup>5</sup> <https://www.dailymaverick.co.za/article/2020-05-11-gender-based-violence-during-lockdown-looking-for-answers/#gsc.tab=0> ; <https://health-e.org.za/2020/04/29/covid-19-lockdown-provides-perfect-storm-for-sas-gbv-crisis/> ; <https://mg.co.za/article/2020-04-23-lockdown-escape-strained-services-struggle-to-rescue-abused-women/>

<sup>6</sup> COVID -19 Temporary Employee / Employer Relief Scheme: Directive issued in terms of Regulation 10(8) of the Regulations Relating to Covid-19 under the Disaster Management Act 57 2002.

Available: [https://www.gov.za/sites/default/files/gcis\\_document/202003/43161gen215.pdf](https://www.gov.za/sites/default/files/gcis_document/202003/43161gen215.pdf)

old age social security benefits<sup>7</sup> did very little to address the food security needs of the poor in the country.

7. The economy in the country has been opened prior to the infection rate peaking. Overall, there has been very poor implementation of health and safety standards in various sectors with several chain stores experiencing almost weekly closures reporting infection of frontline staff. There have also been reports of lack of PPE being supplied to workers in various sectors especially in the health care sector with several hospitals having to be closed as they became vocal points in spreading the virus<sup>8</sup>.

The restriction on movement has also restricted access to local health clinics where women access sexual reproductive health. Here in particular there has been concern about women being able to access termination of pregnancy services and contraceptive health services<sup>9</sup>.

It is again worth emphasising that because measures that are being implemented are gender neutral, they have not considered women's lived reality.

8. Overall, the restrictions on the right to work has been the most devastating and because the country was already in a recession this compounded the levels of unemployment and therefore poverty in the country. The impact on the economy and as a result the impact on food security and tenure security over the long run will have lasting devastating impact on the poorest in the country.
9. The state has largely been criticised for prioritising the economic and banking sector over engagement with civil society. The measures implemented at the beginning of the state of disaster was not largely engaged upon and assessed. The state has however become more open about engagement since the initial announcement and has called for input into the regulations under each of the levels declared since level 5.

The R500 billion state economic plan included making the following financial stimulus packages available<sup>10</sup>:

- R200 billion loan scheme to help businesses pay salaries, in co-ordination with major banks, the treasury and the South African Reserve Bank.

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<sup>7</sup> Directive issued on 30 March 2020, in terms of Regulation 10(5) of the Regulations Relating to Covid-19 under the Disaster Management Act 57 2002. Available:

[https://www.gov.za/sites/default/files/gcis\\_document/202003/43182rg11072gon430.pdf](https://www.gov.za/sites/default/files/gcis_document/202003/43182rg11072gon430.pdf)

<sup>8</sup> <https://www.sabcnews.com/sabcnews/labour-department-orders-the-closure-of-eastern-cape-frere-hospital/> ; <https://mg.co.za/article/2020-04-23-staff-at-eight-kzn-hospitals-contract-coronavirus/>; <https://www.news24.com/news24/southafrica/news/kzn-health-department-plans-to-keep-some-wards-open-after-hospital-closed-due-to-covid-19-20200506>

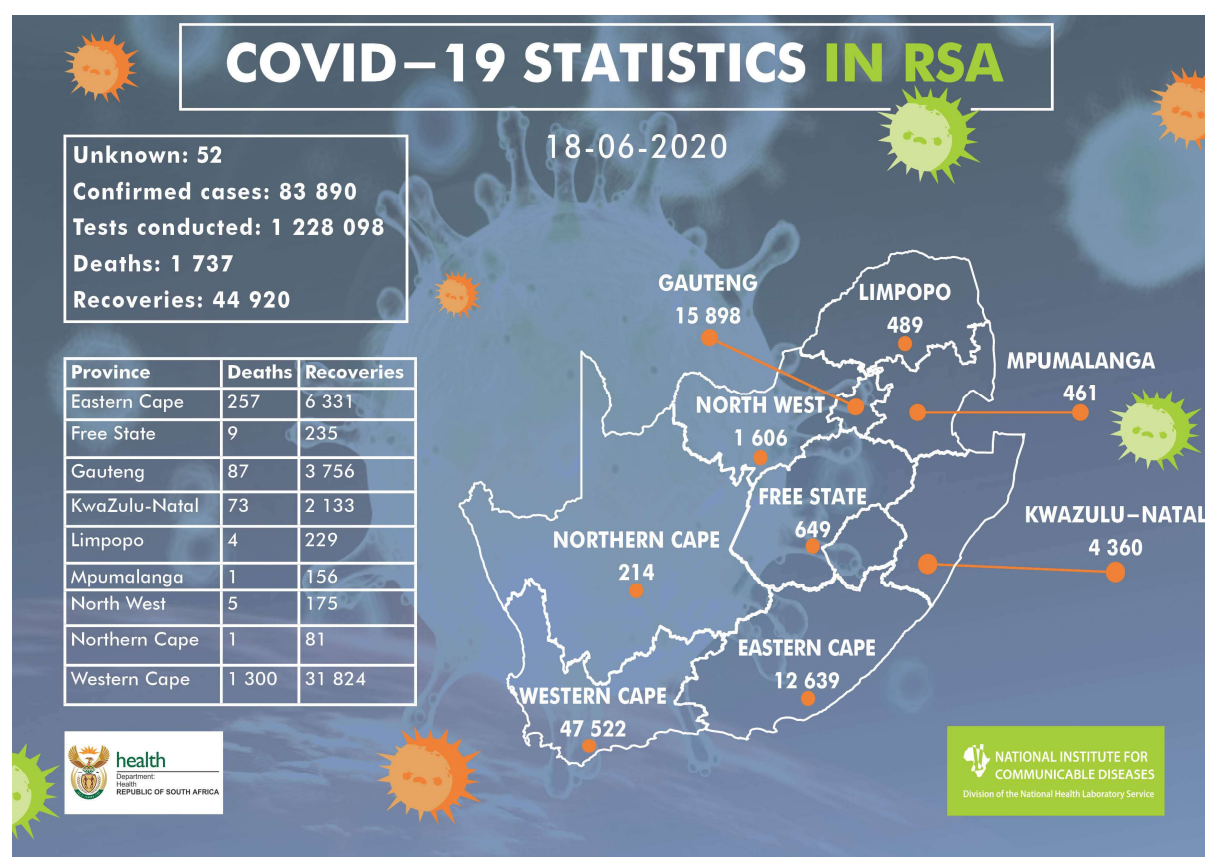
<sup>9</sup> <http://www.hsrc.ac.za/en/news/general/SRHR-covid-19>; <https://srjc.org.za/2020/04/20/re-protecting-safe-access-to-sexual-and-reproductive-health-services-during-covid-19/>

<sup>10</sup> *South Africa's Covid-19 economic stimulus plan — opportunity out of crisis.* (2020). Mail & Guardian. <https://mg.co.za/article/2020-04-21-south-africas-covid-19-economic-stimulus-plan-opportunity-out-of-crisis/>

- R100 billion set aside for the protection of jobs.
- A six-month temporary COVID-19 social grant of R50 billion. This means that child support grant beneficiaries receive an extra R300 in May and from June to October they will receive an additional R500 each month. All other grant beneficiaries will receive an extra R250 per month for the next six months.
- R40-billion had also been set aside for income support for workers whose employers were unable to pay their staff.
- R20 billion for immediate healthcare response.
- R20 billion for municipalities for the provision of emergency water supply, increased sanitisation of public transport and facilities, and providing food and shelter for the homeless.

The scale of the crisis for business was laid out in data released by Statistics South Africa (Stats SA) earlier on Tuesday. The data found that nearly half of the businesses that had been surveyed may not have enough money to continue their operations beyond the current five-week lockdown. Only 29% of businesses said with certainty that they would survive the lockdown.

## Statistical information



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### Infection data at 8 June 2020<sup>12</sup>

Provinces	Total cases	Percentage total
Eastern Cape	6 760	12.8
Free State	391	0.7
Gauteng	6 546	12.4
KwaZulu Natal	3 255	6.1
Limpopo	253	0.5
Mpumalanga	184	0.3
North West	604	1.1
Northern Cape	122	0.2
Western Cape	34 819	65.7
Unknown	57	0.1

<sup>11</sup> [https://twitter.com/nicd\\_sa/status/1273701719126552576/photo/1](https://twitter.com/nicd_sa/status/1273701719126552576/photo/1)

<sup>12</sup> Data as provided by the Ministry of Health via media release dated 9 June 2020

<b>Total</b>	<b>52 991</b>	<b>100.0</b>
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**Age distribution of Deaths data at 8 June 2020<sup>13</sup>**

<b>Age</b>	<b>Deaths</b>	<b>Percentage</b>
0 - 9	2	0.2
10 - 19	3	0.3
20 - 29	16	1.4
30 - 39	65	5.6
40 - 49	136	11.7
50 - 59	277	23.8
60 - 69	320	27.5
70 - 79	218	18.8
80 - 89	95	8.1
90 - 99	27	2.3
Unknown	3	0.3
<b>Total</b>	<b>1 162</b>	<b>100</b>

The state has indicated that because they seek to respect the privacy of those infected with COVID 19 they will not release any personal information related to race. We can find no data specific to the number of persons who are infected with or who have died in care institutions.

10. The Minister of Police, Bheki Cele stated that complaints regarding gender-based violence remained high even at the inception of the Lockdown. Cele provided that, "Over 2 300 calls or complaints have been registered since the beginning of the lockdown on 27 March 2020 until 31 March 2020 and from these, 148 suspects were charged. The figure in relation to calls or complaints between January 2020 and 31 March 2020 stands at 15 924. Once all reports have been consolidated, the figures will be measured against the number of calls or complaints received through the GBV Command Centre in 2019, where the figure stands at 87 920."<sup>14</sup>

<sup>13</sup> Data as provided by the Ministry of Health via media release dated 9 June 2020

<sup>14</sup> <https://www.sabcnews.com/sabcnews/gender-activists-shocked-by-rise-of-gbv-during-lockdown/>

## Protection of various groups at risk and indigenous peoples

11. There have been no specific measures taken save for the expansion of the social security benefits for older persons and for minor children who are recipients of social security benefits. These increased amounts will only be for the duration of the state of disaster.  
Directions was also made for provision of shelter for homeless persons<sup>15</sup> and we will deal with this in greater detail under that section.
12. There has also been no specific identification of vulnerable communities to mitigate discrimination. All measures have been uniform (formalistic) in nature. The following specific provisions have been made:
  - (a) Older persons have received an increase in their social security benefits for the period of the state of disaster;
  - (b) Persons with disabilities have not been addressed
  - (c) LGBTI persons have not been addressed
  - (d) Provision was made for the shelters to be provided for the homeless<sup>16</sup>
  - (e) No provision was made for indigenous peoples
  - (f) In respect of domestic violence the Courts remained open to issue protection orders to survivors, the state launched a hotline telephone number where reports of abuse could be made and the Commission for Gender Equality was designated as an essential service tasked with monitoring the impact of gender based violence
  - (g) No provision was made specifically to address trafficking in persons
  - (h) There are provisions addressing discrimination (but measures taken to support the business sector took affirmative action obligations into account)
  - (i) Slavery and (j) forced labour was not addressed
  - (j) Provision was made for children only in relation to care and contact of children in terms of restriction placed on movement between parents and any other matter related to the best interest of the child.
13. In Cape Town the local government established a shelter for homeless persons which was closed after numerous reports of rights abuses were received and after a Court challenge.<sup>17</sup>

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<sup>15</sup> Directive issued on 9 May 2020, in terms of Regulation 4(5) of the Regulations Relating to Covid-19 under the Disaster Management Act 57 2002.

Available: [https://www.gov.za/sites/default/files/gcis\\_document/202005/43300rg11107gon517.pdf](https://www.gov.za/sites/default/files/gcis_document/202005/43300rg11107gon517.pdf)

<sup>16</sup> <https://mg.co.za/opinion/2020-05-27-the-strandfontein-shelter-touches-a-societal-and-political-nerve/> ; <https://mg.co.za/coronavirus-essentials/2020-05-14-homeless-exposed-to-covid-19/>

<sup>17</sup> <https://mg.co.za/coronavirus-essentials/2020-05-20-the-controversial-strandfontein-shelter-shows-the-importance-of-monitoring-womxns-rights-during-a-crisis/>

There was further issues in respect of food distribution at local community level as the Minister of Social Development attempted to close and restrict operations of community kitchens<sup>18</sup>.

14. Provision was made where the recipient of a childcare grant receives an increased amount for the duration of the state of disaster, but no additional measures have been put in place. The increase is also not in respect of each child per household.
15. No specific provision has been made to address xenophobia and there have been several reports of xenophobic responses from government in support of especially small business funding which was not extended to foreign owned small business<sup>19</sup>. This impacted especially small community-based stores.

### **Social protection**

16. Besides the adjustment to the social security benefits the state established a special COVID 19 unemployment fund, which any adult who is unemployed in the country could apply for. The amount has been heavily criticised as being insufficient. In respect of access to water and sanitation the pandemic has exposed the lack of access to water in different areas across the country. The Department of Water and Sanitation has established an advisory board and is currently delivering containers of water through water trucks to designated areas. The provision of water and proper sanitation remains a major problem in the country not only to households but to various schools across the country. No disaggregated data is publicly available.
17. Provision was made for small business to apply for financial support. Special social security benefits were made for employers impacted by the complete lockdown to apply for unemployment benefits for their staff. Domestic workers were especially impacted because no specific relief was provided to them and because the majority of domestic workers were not registered as employees, they could not benefit from government schemes. The domestic worker sector, construction sector and street vending services were restricted until level 3. The tourism sector remains largely closed and will only open in level 1. Sex work remains criminalised and the declaration and ongoing criminalisation has had a devastating impact on sex workers<sup>20</sup>.

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<sup>18</sup> <https://www.news24.com/news24/southafrica/news/covid-19-soup-kitchens-can-no-longer-be-policed-or-controlled-court-says-20200524>

<sup>19</sup> <https://mg.co.za/coronavirus-essentials/2020-05-29-south-africa-refugees-coronavrus-exclude-law/>

<sup>20</sup> <https://www.dailymaverick.co.za/article/2020-03-06-report-finds-shocking-violence-against-sex-workers/#gsc.tab=0>



## **Participation and consultation**

18. Decision making processes have been driven by an established National Command Council (NCC) which is made up of cabinet ministers, provincial premiers, and various experts from different fields. There has however not been free access to information in terms of how the NCC conducts its business and make decisions.
19. Parliament activities were suspended during the lockdown period in stages 4 and 5. To some limited extent parliamentary committees have begun electronic meetings to ensure oversight of the implementation of measures taken by government. There has not been however any specific focus on reaching out to or creating a platform for women and vulnerable groups to comment and engage with these oversight functions.
20. The state has largely made these decisions internally through the NCC and little information has been made available in terms of how these decisions were being made and what they are based on.

## **Awareness raising and technology**

21. The state through the Department of Health has utilised social media platforms to inform the public. There has also been the launch of a website nationally to provide advice and these information pamphlets and infographics have also been produced by provincial governments. A major issue has been accessing online services to access information as the cost of data is high. Rural communities have been largely left behind in terms of information dissemination. Regular scheduled media briefings have taken place that have been broadcasted live by the various media and news agencies including the national broadcaster.
22. There has been no additional training provided to law enforcement officials or to the South African National Defence Force who have been deployed in the country since March to ensure the enforcement of the lockdown regulations. The deployment of the military has been largely criticized because they have no policing training and there were almost immediately reports of military personnel violating basic human rights of citizens. There have been a number at least seven deaths in the country attributed to the law enforcement of the lockdown by members of the police and military. There has also been a Court judgement finding that human rights have been violated by the police and the military and calling on the Ministers heading up these

sectors to issue directives instructing the members to abide by the law and ensure protection of human rights<sup>21</sup>.

## Internet

23. Access to online platforms and the internet remain limited due to the high cost of data in the country. This has impacted access to education for learners from disadvantaged communities as well as university and college students. The Department of Higher Education has put some plans in place to provide students with limited data access.
24. No specific measures/steps have been taken to restrict access to the internet. The regulations did however make it a criminal offence to spread fake news about the pandemic in any form. This has however gone largely under policed and spread of disinformation around the pandemic continues.

## Accountability and justice

25. The South African Human Rights Commission and Commission for Gender Equality have been appointed to monitor human rights abuses. Neither have release comprehensive reports.
26. Court operations were effectively suspended during level 5 and 4 of the lockdown and the only cases that could be brought was matters concerning the directives issued under the state of disaster, matters related to children and then also matters related to gender based violence. These restrictions were eased on 1 June 2020<sup>22</sup> although there are still restrictions in the type of matters that the Court can deal with as well as access to the Courts. The police remain operational and can only detain suspects / accused persons where they have committed serious offences. Several police stations have however been closed periodically because of members testing positive and quarantine measures being implemented.
  - (a) *Complaints in relation to arbitrary arrests and detention can be made to the Independent Police Investigative Directorate, which is an independent body tasked with monitoring police abuse of power.*
  - (b) *The Courts have remained open to issue protection orders (interdicts) under the Domestic Violence Act as well as the Protection from Harassment Act. In addition, a state-run hotline*

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<sup>21</sup> Khosa v Minister of Defence & Military Veterans & Others.  
Available: <http://www.saflii.org/za/cases/ZAGPPHC/2020/147.pdf>

<sup>22</sup> Directive issued on 2 June 2020, terms of Regulation 4(2) of the Regulations Relating to Covid-19 under the Disaster Management Act 57 2002. Available:  
[https://www.gov.za/sites/default/files/gcis\\_document/202006/43383gon623.pdf](https://www.gov.za/sites/default/files/gcis_document/202006/43383gon623.pdf)

*was introduced to allow victims to report abuse and request intervention. Because there are restrictions on movement however and permits are required for movement it have become more difficult for women to travel to their nearest Court to apply for these orders.*

*(c) The Sexual Offences Act and Trafficking in Persons Act remains in place to address cases of sexual violence and exploitation. Although the prosecution of these matters have been delayed because of pressures of the pandemic on the justice system which is only partially operational.*

*(d) The Equality Courts and Equality Act is equipped to dealing with racial discrimination, but new cases could not be launched during the level 5 and 4 lockdown. It remains unclear whether new cases of racism and discrimination can be launched during level 3.*

*(e) All eviction matters have been postponed and Courts were restricted under level 5 from hearing eviction matters. Under level 4 this was relaxed and Courts were given discretion to hear evictions matters. This position still stands and although the eviction can be ordered the eviction cannot be executed by the Sherriff of the Court. This has not stopped unlawful evictions and demolition of shelters by local government<sup>23</sup>.*

27. No specific mechanisms have been put in place to address these forms of discrimination during the pandemic. Anyone affected would have to rely on the existing Promotion of Equality Act<sup>24</sup> legislation and mechanisms.

28. The Courts remained open to issue interdicts for women to protect them from gender-based violence but access has been hampered by the lockdown and restriction on movement.

29. Homeless persons who refused to move the shelters provided by local government in the Cape metropole were fined and many were forced into shelters. There were several deaths reported of persons inside of their homes where police / military brutally enforced the restrictions on movement. There were also reports that where people were forced to erect informal structures after being unlawfully evicted these were being demolished without Court order by local government<sup>25</sup>.

30. All gatherings of people were restricted except for funerals where numbers were restricted in respect of mourners. All other gatherings were prohibited which restricted the Constitutional rights of people in respect of assembly<sup>26</sup> and freedom of movement<sup>27</sup>. There have also been

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<sup>23</sup> <https://mg.co.za/article/2020-04-13-khayelitsha-residents-evicted-twice-during-lockdown/>

<sup>24</sup> The Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000

<sup>25</sup> <https://www.groundup.org.za/article/covid-19-shack-demolitions-continue-durban-despite-lockdown-plea/>

<sup>26</sup> Section 17 of the Constitution gives everyone the right to peacefully, and unarmed to assemble, to demonstrate, to picket and to present petitions.

<sup>27</sup> Section 21(1) of the Constitution guarantees “Everyone the right to freedom of movement”

restrictions placed on religious gathering<sup>28</sup> impacting on religious freedom guaranteed under the Constitution<sup>29</sup>. There have been several protests and there has been reported arrests of activists<sup>30</sup> or use of force on the part of law enforcement<sup>31</sup> at community level for breaching lockdown regulations.

31. There have been no investigations although some Committees have invited relevant stakeholders to come and report to parliament as an oversight mechanism. This related to issued of Defence force violence in communities<sup>32</sup>.
32. There have been several reports of health care violations at health institutions where staff members were not provided with PPE and where patients not infected with the virus contracted it while they were in hospital<sup>33</sup>.
33. There has thus far been no litigation on this issue and no official inquiries have been initiated.
34. The High Court has found that people who test positive to the virus cannot be forced to quarantine in state facilities or hospitals as the directive in respect hereof has been declared unconstitutional as it restricts freedom of movement.

In a challenge to the directives brought in the North Gauteng High Court the all of the Disaster Management Regulations were deemed to be unconstitutional<sup>34</sup>. The state indicated that it would be taking this judgement on appeal to the Supreme Court of Appeals. The Western Cape High Court issued an order declaring that the Minister of Social Development did not have the authority to close or restrict access to community food kitchens when there was suggestions that such directives would be introduced.<sup>35</sup>

### **Questions by the Special Rapporteur on the right to food**

1. An effort was made by the Minister of Trade and Industry, Mr Ebrahim Patel not to halt or disrupt food supply chains domestically when the total lockdown was announced and implemented. This was of particular importance as we saw a large number of people attempt to stockpile in preparation for the lockdown, leaving shelves empty during a time when the

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<sup>28</sup> <https://www.iol.co.za/the-star/news/human-rights-commission-disturbed-by-police-action-during-mosque-raid-47298401>

<sup>29</sup> Section 15 of the Constitution.

<sup>30</sup> <https://www.dailymaverick.co.za/article/2020-05-14-eastern-cape-water-activists-free-after-lockdown-arrest-and-they-vow-to-continue-the-fight/#gsc.tab=0>

<sup>31</sup> <https://www.groundup.org.za/article/city-officers-shoot-khayelitsha-protesters/>

<sup>32</sup> <https://www.parliament.gov.za/press-releases/committee-told-report-investigation-death-mr-collins-khoza-still-be-submitted-ministry>

<sup>33</sup> <https://www.medicalbrief.co.za/archives/covid-19-among-staff-and-patients-forces-closure-of-third-private-hospital/> ; <https://www.iol.co.za/capeargus/news/four-tygerberg-hospital-departments-closed-due-to-covid-19-concerns-49170172>

<sup>34</sup> De Beer and Others v Minister of Cooperative Governance and Traditional Affairs (21542/2020) [2020] ZAGPPHC 184. Available: <http://www.saflii.org/za/cases/ZAGPPHC/2020/184.html>

<sup>35</sup> <https://mg.co.za/politics/2020-05-21-disaster-vs-separation-of-powers/>

vast majority of South Africans did not have access to cash for panic buying. A speech given by the Minister on 27 March 2020 detailed how food production was kept going through the initial 21-day lockdown period; with workers on farms, food factories and the logistics industry still reporting for duty in order to ensure the provision of food security and for the purpose of restocking stores<sup>36</sup>.

In general, the measures taken by the national government (imposed on provincial and local government level as well) were to shutdown the country, including all economic activity which was not considered as essential. Grocery stores and a limited number/ class of retail stores could remain open to provide essential services and sell essential goods. Strict social distancing and hygiene measures were imposed and expected to be maintained in these outlets, such as only allowing a certain number of customers in a store at a time, social distancing markings for queuing outside stores and hand-sanitizing at entrance/ exit points.

Certain sectors/ markets were hard hit as they were unable to continue business. One such sector was the informal food economy. Informal traders in street markets and local street vendors whose livelihoods were sustained by selling fresh fruits and vegetables on a daily basis were gravely affected as markets were closed and individuals forced to stay home during the entire lockdown period, even as South Africa moved from total lockdown to different staggered stages of lockdown. On 29 May 2020, the City of Cape Town and traders settled that they would be able to trade under lockdown level 4<sup>37</sup>.

2. The national South African government ventured to address the issue of access to food for vulnerable groups by slightly increasing the amount given to individuals who were recipients of social grants from the South African Social Security Agency (SASSA). SASSA already had a large database of individuals who were receiving disability grants, old age grants and child grants etc<sup>38</sup>.

SASSA also introduced a new social relief grant known as the special COVID-19 Social Relief of Distress grant, which amounts to R350. This grant was aimed at providing assistance to individuals who are citizens/ permanent residents or refugees registered with the Department of Home Affairs in South Africa; living within the borders of South Africa; over 18; unemployed; not receiving an income; not receiving any other social grant; not receiving any unemployment insurance benefit or not qualifying to receive any unemployment insurance benefit; not receiving a stipend from the National Student Financial Aid Scheme; not receiving any other governmental COVID-19 response support; and not resident in a government funded or subsidized institution. The list of criteria that individuals have to meet in order to qualify for this grant, as is evidenced by the above, is quite long. Further, applications for this particular grant were initially only processed online – alienating a large sum of the population who really needed and could benefit from the grant<sup>39</sup>.

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<sup>36</sup> <https://www.gov.za/speeches/minister-ebrahim-patel-trading-during-coronavirus-covid-19-lockdown-27-mar-2020-0000>

<sup>37</sup> <https://www.timeslive.co.za/news/south-africa/2020-06-05-city-of-cape-town-gives-grand-parade-informal-traders-green-light-to-operate-lrc/>

<sup>38</sup>

<https://www.sassa.gov.za/newsroom/Documents/Minister%20Zulu%20Statement%20on%20COVID%2019.pdf>

<sup>39</sup> <https://www.gov.za/coronavirus/socialgrants>

3. The Department of Social Development also continued in some instances, and began in other instances, to distribute food parcels and run feeding schemes for vulnerable groups such as the elderly and children. However, their efforts did not go to great length to target specific groups of vulnerable individuals, such as sex workers, rural women, homeless LGBTQIA+ youth etc<sup>40</sup>.

Community-based organisations filled in the gaps, running community soup kitchens where needed and noting particularly at-risk individuals or families to assist with food aid. Such social assistance was not initially recognized as an essential service and thus there had to be mobilization to raise awareness and create conditions that would be conducive for community-based organisations to continue to provide humanitarian aid in their respective areas. In the Western Cape, a network of women community leaders and women's community-based forums partnered with the Women's Legal Centre to find a suitable reading of the Directions issued by the Department of Social Development to the South African Police Services (SAPS), who were enforcing the directions not to allow any gathering of people quite stringently without consideration of the impact that would have on food security<sup>41</sup>.

4. The agricultural sector was declared an essential service during the level 5 lockdown period under the National State of Disaster. This meant that farm workers were required to work during the period and have done so throughout the pandemic spread. There have been serious concerns about health and safety measures being inadequate and that because labour centres were closed during the lockdown women working on farms were vulnerable to exploitation as they had nowhere to report abuse to<sup>42</sup>. Seasonal farm workers were not able to submit their unemployment insurance claims during their off season as the labour center's in there are were all closed. These closures therefore led to food insecurity amongst the very people who produce food for others<sup>43</sup>.
5. School based feeding schemes ensure that learners are able to access at least one basic meal per day<sup>44</sup>. During the closures of schools these feeding schemes in most of the provinces were suspended. Although some of the schools have subsequently re-opened there is uncertainty around whether the Department of Basic Education will re-introduce the feeding schemes that were stopped during the lockdown<sup>45</sup>.

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<sup>40</sup><https://www.gov.za/speeches/minister-lindiwe-zulu-coronavirus-covid-19-economic-and-social-measures-29-apr-2020-0000>

<sup>41</sup> <https://www.dailyvoice.co.za/news/soup-kitchen-woman-jailed-despite-having-a-permit-47017540>

<sup>42</sup> <https://mg.co.za/coronavirus-essentials/2020-06-05-women-farmworkers-call-for-labour-centres-to-be-opened/>

<sup>43</sup> <http://www.cwao.org.za/Press-release-TERS-benefit-extended.html>

<sup>44</sup> <https://www.vukuzenzele.gov.za/school-feeding-scheme-keeps-children-class>

<sup>45</sup> <https://www.iol.co.za/news/politics/feed-all-learners-during-lockdown-dbe-taken-to-court-over-school-nutrition-programme-49311298>

***Questions by the Special Rapporteur on the right to adequate housing***

1. The South African Constitution is the supreme law of the country and provides that no person may be evicted or have the property demolished without a valid court order. This includes persons in both formal and informal settlements and we have two legislations dealing with the manner in which evictions must take place namely the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act (PIE) and the Extension of Security of Tenure Act (ESTA).

During our national state of disaster and lockdown our government declared a prohibition on all evictions that were scheduled to take place. Eviction orders may be granted and obtained but no eviction may be executed until after the lockdown has ended. This was a measure of protection and tenure security provided to people during the pandemic as evictions that would result in homelessness will create further economic and health chaos during this time.

We are currently in level 3 of our national lockdown at which evictions are still prohibited. This can be seen from the Disaster Management Act regulations dealing with level 3 of our lockdown.<sup>46</sup>

2. Our Constitution and housing policies and laws as mentioned above already provide for the provision of basic services and that essential services such as water cannot be cut off when people do not pay their rentals. However, we find that often landlords unlawfully restrict access to water and electricity as a means of punishment when people are unable to pay their rentals. Due to the economic impact on so many people who have been retrenched during the pandemic and lockdown there are many people who are unable to afford their full rentals and have no alternative accommodation at this time. Many of these are people who have had their access to electricity restricted during this time but have had no access to lodge complaints as there has been a severe restriction on movements and offices being closed as well as a restriction to access to police services and stations.
3. No specific regulations have been put in place to consider these realities and this remains a gap within the regulations and policies put into place during this pandemic. The prohibition on eviction would extend to migrant and domestic workers too but because this class of workers work in precarious positions, it is unlikely that they will report and unlawful eviction as they would be dependant on their employment still or would be afraid of victimisation by the employer. So regulations put in place which do not give consideration to certain vulnerable groups and their lived reality remain the biggest gap during this time and will essentially allow for many human rights violations of marginalised groups.
4. The local government in the Western Cape has specifically created a site to house homeless persons during the national lockdown. This was implemented at the beginning of lockdown when homeless persons were gathered and housed in one person tents under a bridge in the Cape Town CBD. They were provided with food and had security officials patrol the site. These homeless persons along with other homeless persons who were picked up at different sites

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<sup>46</sup> [https://www.gov.za/sites/default/files/gcis\\_document/202005/43364gon608s.pdf](https://www.gov.za/sites/default/files/gcis_document/202005/43364gon608s.pdf)



were then taken to a site in Strandfontein which was the designated site for homeless persons during lockdown.

The site was said to be erected to provide homeless persons with shelter during the pandemic and to curb the spread of the virus among this vulnerable group in society. However, our local government interpreted these regulations in a very strict manner and created a site which in effect placed an already marginalised and vulnerable group in a further state of vulnerability and destitution by placing people in overcrowded tents with insufficient access to decent food or sanitation services. People who lived at the site were not screened properly or treated for COVID 19 according to health regulations. They were living in tents with no regard for social distancing. The site also had no regard for the safety of womxn<sup>47</sup> and in fact there were reported incidents of rape and discriminatory behaviour by officials towards trans womxn who were living at the site. The site was later closed without consultation by the persons who lived in the site and instead, people were dumped under a bridge and left to fend for themselves.

There have been numerous complaints from homeless persons while at the site and ultimately organisations engaged with the local government and department of health to address these issues. These engagements have led to further litigation against the local government the way they chose to address homelessness during this pandemic.

### **Social Distancing for Disadvantaged Communities**

5. Social distancing and self-isolating is a privilege for a good portion of the South African population that live: with more than two people in one bedroom RDP<sup>48</sup> houses; live in informal settlements in which the homes that are characterised by poor infrastructure, are in very close proximity of each other and densely populated; homeless people that live in homeless shelters and on the streets. To make matters worse, many of these areas are plagued with inadequate toilets and access to clean running water.

The inception of the pandemic in South Africa, exposed the government's flawed and general lack of efficient measures to effectively redress socio-economic inequality. In a panic to plaster the problem, the Minister of Human Settlements, Water and Sanitation announced a "de-densification" process for 29 earmarked informal settlements that were considered to be densest.<sup>49</sup> This process would essentially forcefully evict people living in informal settlements

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<sup>47</sup> 'womxn' is an inclusive term used to identify all womxn who identify as such including transgender womxn.

<sup>48</sup> 1994 Reconstruction and Development Programme that aimed redress Apartheid's imbalances by providing land and housing to all our people and access to safe water and sanitation for all.

<sup>49</sup> Poplak R. 'De-densifying' and 'decanting' — how the government hopes to contain Covid-19 in informal settlements. (2020). The Daily Maverick. <https://www.dailymaverick.co.za/article/2020-03-27-de-densifying->

and relocate them into temporary homes where they would be able to self-isolate and quarantine.<sup>50</sup> Fortunately, community leaders and civil society organisations explicitly declined the offer and called for sufficient service delivery. In Apartheid style, national government deployed the South African Defence Force, to ensure that the people in informal settlements, townships and any other densely populated areas would adhere to the social distancing regulations.

Refugees, asylum seekers and immigrants that were homeless were placed in designated emergency shelters for foreign nationals. One such shelter established by the City of Cape Town lacked any gender divisions in the tents, the people placed in the tent exceeded those prescribed by social distancing measures, there were no on-site medical personnel, and there provinces such as Limpopo, local government has merely identified homeless shelters that immigrants may go to if they want to but has not provided any specific emergency shelters for foreign shelters or compelled homeless people to social distance in a shelter.<sup>51</sup>

Homeless people in Cape Town metropole were rounded up by law enforcement and placed in emergency shelters. The most disastrous being the Strandfontein shelter which placed over 2000 people in a tent that according to social distancing measures should have only housed 600 people.<sup>52</sup> The city searched and removed homeless people with particular attention to those that lived on the streets of affluent areas; once on the site people could not leave and were not provided with any personal protective equipment. Little to no security measures to protect vulnerable groups within the shelter, exacerbated the trauma of a woman that was raped at the camp and did not receive adequate support and assistance from local government.<sup>53</sup> With controversy looming and a pending court case by the South African

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[and-decanting-how-the-government-hopes-to-contain-covid-19-in-informal-settlements/#gsc.tab=0](#) (Accessed 12 June 2020).

<sup>50</sup> Washinyira T, Luhanga P. *Covid-19: Plans to move thousands from informal settlements met with scepticism*. (2020). GroundUp. <https://www.groundup.org.za/article/covid-19-plans-move-thousands-informal-settlements-met-scepticism/> (Accessed 12 June 2020). Poplak R. 'De-densifying' and 'decanting' — how the government hopes to contain Covid-19 in informal settlements. (2020). The Daily Maverick. <https://www.dailymaverick.co.za/article/2020-03-27-de-densifying-and-decanting-how-the-government-hopes-to-contain-covid-19-in-informal-settlements/#gsc.tab=0> (Accessed 12 June 2020).

<sup>51</sup> Chiguvare B. *Covid-19: Homeless, unemployed and stuck in South Africa*. (2020). GroundUp. <https://www.groundup.org.za/article/covid-19-homeless-unemployed-and-stuck-south-africa/>

<sup>52</sup> Cogger J. *The Strandfontein shelter touches a societal and political nerve*. (2020). Mail & Guardian. <https://mg.co.za/opinion/2020-05-27-the-strandfontein-shelter-touches-a-societal-and-political-nerve/>

<sup>53</sup> <https://mg.co.za/coronavirus-essentials/2020-05-20-the-controversial-strandfontein-shelter-shows-the-importance-of-monitoring-womxns-rights-during-a-crisis/>

Human Rights Commission, the site closed down and the homeless people were merely dropped off at random locations in Cape Town.<sup>54</sup>

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<sup>54</sup> Cruywagen V. *City of Cape Town defends 'dumping' of homeless under bridge*.(2020). Daily Maverick.  
<https://www.dailymaverick.co.za/article/2020-05-25-city-of-cape-town-defends-dumping-of-homeless-under-bridge/#gsc.tab=0>