

**RAOUL
WALLENBERG
INSTITUTE**

OF HUMAN RIGHTS AND HUMANITARIAN LAW

**Final Papers of the 2021 National
Symposium on Human Rights
Implications of Social, Political,
Economic and Legal Responses
to the COVID-19 Pandemic**

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Final Papers of the 2021 National Symposium on Human Rights Implications of Social, Political, Economic and Legal Responses to the COVID-19 Pandemic

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ISBN: 978-91-86910-71-6

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Foreword

The seven research papers contained herein are the final, peer reviewed papers from the 2021 National Symposium on Human Rights Implications of Social, Political, Economic and Legal Responses to the COVID-19 Pandemic, held at Cresta Lodge, Harare, Zimbabwe, on 7 and 8 October 2021, under the Zimbabwe Human Rights Capacity Development Programme (hereinafter ‘Zimbabwe Programme’).

The overall objective of the Zimbabwe Programme is: *to contribute to enhanced enjoyment of constitutional rights in Zimbabwe, through legislation, policies, practices and decision-making being increasingly informed by international human rights standards and principles*. Its main implementing partners at the time of writing are: Raoul Wallenberg Institute of Human Rights and Humanitarian Law (hereinafter ‘RWI’) at Lund University, Sweden; Centre for Applied Legal Research (hereinafter ‘CALR’) in Harare, Zimbabwe; College of Business, Peace, Leadership and Governance at Africa University in Mutare, Zimbabwe; Faculty of Law at Midlands State University in Gweru, Zimbabwe; Herbert Chitepo School of Law at Great Zimbabwe University in Masvingo, Zimbabwe; Faculty of Law at University of Zimbabwe in Harare, Zimbabwe; Faculty of Law at Ezekiel Guti University in Bindura, Zimbabwe; Council for Legal Education in Zimbabwe; Zimbabwe Human Rights Commission; Zimbabwe Prisons and Correctional Services; and Zimbabwe Anti-Corruption Commission. The Zimbabwe Programme is supported by the Swedish International Development Agency (Sida).

The national symposium is an annual event under the Zimbabwe Programme. It is co-organised by RWI together with the academic partner institutions and CALR, and is a forum where research funded and conducted during the year is packaged and presented before an audience representing diverse sectors of Zimbabwean society, thereby allowing the presenters and participants to in plenary engage in vibrant discussions around the topics at hand and together deliberate on the way forward with regard to critical human rights reform issues. The feedback and experiences shared during the national symposium also aid and feed into the preparation of final papers for publication and dissemination.

With that said, RWI would like to conclude by thanking the researchers for their hard work and determination, which resulted in these final papers that make up this collection. RWI would also like to thank the Swedish International Development Cooperation Agency (Sida) for supporting the research, and thereby ensuring it saw the light of day. Finally, it is RWI’s sincere wish that you, the reader, find these papers thought-provoking and informative as well as an eventual source of inspiration and guidance in your own potential efforts towards furthering the provisions contained in the 2013 Constitution of Zimbabwe and its comprehensive Declaration of Rights.

About the Raoul Wallenberg Institute:

The Raoul Wallenberg Institute, based in Lund, Sweden, is a research and academic institution with offices, programmes and convening power covering 40 countries. RWI combines evidence-based human rights research with direct engagement in close collaboration with its partners to bring about human rights change for all. The Institute is named after Raoul Wallenberg, the Swedish diplomat who saved tens of thousands of Jews and other people at risk in Hungary at the end of World War II.

For more information on RWI, please visit: www.rwi.lu.se

1 International Human Rights Standards and Response to Pandemics: A Critical Evaluation of the Zimbabwe Prisons and Correctional Services (ZPCS) In Light of COVID-19

Prince N. Kunaka and Patricia Shumba Mavhembu*

Abstract

This paper examines the measures adopted by the ZPCS in response to the COVID-19 pandemic in relation to international human rights standards. It establishes that the pandemic brought an unexpected disruption for correctional institutions around the country as they were required to adopt ways of preventing the spread of the pandemic among staff and detainees. Prisons had to swiftly address a variety of problems in response to the pandemic such as overcrowding, finding extra space for isolation or quarantine purposes, ensuring that prison health facilities are well-equipped, maintaining high hygiene standards, and providing personal protective equipment (PPE) to inmates and staff. To address these challenges, international standards such as the Mandela, Bangkok, and Tokyo Rules provided guidance. The pandemic forced the implementation of some of these standards in an urgent and sudden manner, which had budgetary and other implications on correctional services, such as the need to avail infrastructure to facilitate the implementation of these measures. This paper concludes that the continuous implementation of international human rights standards is essential, as it enables correctional services to be better prepared for any pandemic and ensures that the rights of inmates are protected.

Keywords: COVID-19, prisoner's rights, response to pandemics, human rights standards, prisons

1 Background

On 30 January 2020, the World Health Organisation (WHO) declared the COVID-19 outbreak a global health emergency and later, a global pandemic on 11 March 2020.¹ Zimbabwe has not been exempted from the impact of the pandemic, and its prison population has been particularly affected. In response to the threat posed by the pandemic, the President of the Republic of Zimbabwe publicly declared COVID-19 a national disaster on 17 March 2020. This declaration was followed by a 21-day-long national lockdown and regulated by several statutory instruments aimed at containing the pandemic. The COVID-19 regulatory framework, which was gazetted in accordance with the Public Health Act [Chapter 15:17] is Statutory Instrument (SI) 76 of 2020. ZPCS has officially recorded a significant number of COVID-19 cases among both inmates and officers.² This unprecedented situation has resulted in fear and anxiety within ZPCS and surrounding communities. Under these circumstances, preventing the transmission of the virus in prisons is crucial to avoid or at least minimise the incidence of infections and outbreaks.

* Human rights professionals and actors active in Zimbabwe.

¹ World Health Organization, <https://www.who.int/europe/emergencies/situations/covid-19#:~:text=This%20led%20WHO%20to%20declare,pandemic%20on%2011%20March%202020>. (accessed 28 September 2023).

² Health Times, <https://healthtimes.co.zw/2020/06/02/zim-records-first-covid-19-cases-from-prison-inmates> (accessed on 28 September 2023).

Incarcerated people are already particularly vulnerable to the COVID-19 outbreak in comparison to the general population due to the confined living conditions³. Inmates are highly vulnerable to contracting the virus due to their proximity to one another, which increases the likelihood of person-to-person and droplet transmission of pathogens such as COVID-19. In addition to overpopulation, generally, prisoners have inferior health conditions compared to the general population and are frequently exposed to risks such as poor hygiene, weak immune defence due to poor nutrition, and coexisting diseases such as tuberculosis (TB), blood-borne viruses and drug abuse disorders⁴. Considering that prison health is part of public health, the response to COVID-19 in prisons urgently requires a multi-sectorial approach to address the unique challenges faced by this population.

In terms of infrastructure, over 70 per cent of the prisons in Zimbabwe were built during the colonial era with a punitive and retributory design that gave little consideration to good health practices for inmates. Consequently, the ZPCS health system faces a daunting task with COVID-19 since saving lives must be the priority despite minimum resources. While the security structures and procedures are well laid out to prevent prison escapes, there was little or no clarity on how to respond to pandemics in general. Further, perennial institutional capacity limitations such as overcrowding, inadequate health facilities, old infrastructure, limited medical and pharmaceutical supplies, and inadequate basic hygiene provisions such as soap and disinfectants, weaken institutional responses to the COVID-19 pandemic significantly. The pandemic has aggravated the already precarious conditions in prisons, making compliance with various measures outlined in ZPCS prevention and containment protocols and regulations at both the WHO and national levels an extremely challenging task.

In light of that, the ZPCS partnered with the Raoul Wallenberg Institute of Human Rights and Humanitarian Law (RWI) and conducted a joint study to assess the implications of international human rights standards on correctional institutions as provided for in the United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), the United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (Bangkok Rules) and the United Nations Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules) during the COVID-19 pandemic. The primary objective of the study was to assess how the implementation of these international human rights standards, relevant to correctional services, could enhance protection for prisoners and staff during the COVID-19 pandemic, and create safer operating procedures for times of crisis as well as ordinary operations.

The paper first provides an overview of the impact of COVID-19 on correctional facilities considering the vulnerabilities faced by the prison population and briefly highlights COVID-19 in the context of Zimbabwe. In order to establish the background of the research, the paper presents a brief analysis of international human rights standards guiding operations of correctional facilities. This is followed by a discussion of the research findings on responses adopted by the ZPCS after which a conclusion and recommendations conclude the paper.

³OHCHR, https://www.ohchr.org/sites/default/files/Documents/Issues/Executions/HumanRightsDispatch_2_PlacesofDetention.pdf (accessed 28 September 2023)

⁴Penal Reform International, https://cdn.penalreform.org/wp-content/uploads/2013/06/brf-02-2007-health-in-prisons-en_01.pdf (accessed on 28 September 2023)

2 Methodology

This research was based on a framework defined by the objectives highlighted above. The research was carried out jointly by two legal officers from ZPCS who worked in conjunction with a fellow researcher from RWI, based in Kenya. To fulfil the objectives of the study, the approach was both theoretical and empirical in nature. The data was collected between April 2020 and December 2020. Due to the restrictions of movement to contain the COVID-19 pandemic and the changing levels thereof, part of the data was collected virtually through questionnaires developed by the research team. However, when in-person prison visits were conducted, the researchers utilised protective gear according to the COVID-19 protocols. The visits formed part of the empirical research and allowed researchers to do a practical inspection and assessment of ZPCS' response to COVID-19 in light of international standards.

The research is largely qualitative in nature and is complemented by an additional analysis of local and international human rights instruments and frameworks through desktop study, individual interviews, observation, and focus group discussions.

The researchers critically assessed ZPCS reaction to COVID-19 using relevant local and international human rights instruments. The questionnaire had the following inquisitive key thematic areas: the admission procedure, health care, personal hygiene, access to information, contact with the outside world, searches, exercises, leisure and sport, accommodation, releases, diet, clothing, and bedding. All the thematic areas were affected, informed, and directed by COVID-19 regulations and the data collected enabled the researchers to do an assessment of the ZPCS approach. The data was gathered at various prison facilities that differed widely in their structures and characteristics. Such prisons include those that hold incarcerated juveniles, women, inmates with mental and other impairments, maximum security prisons, open prison as well as prison farms.

The thematic areas were examined through the theoretical framework of a human-rights-based approach to managing the COVID-19 pandemic. This approach emphasises the necessity to acknowledge that the COVID-19 pandemic inevitably affects the right to health, life, and human dignity among other rights. Further, the State has a legal obligation to take preventative measures to stop the spread of COVID-19 and take additional steps to treat vulnerable groups without discrimination. Prisons are a unique setting that houses categories of vulnerable groups, and as such, prison health services should strive to provide prisoners with health care that is equivalent to what is provided in the community at large.

The research largely depended on primary and secondary sources of data. Concerning primary data, interviews, and practical visits were conducted. For secondary data, the study utilised applicable provisions of the Constitution of Zimbabwe, the Prisons Act [Chapter 7:11] and Regulations, government briefings, and reports from the Zimbabwe Human Rights Commission (ZHRC). Additional insights were gained from hard and soft law in the form of international and regional human rights instruments. These instruments provide the minimum rules, principles, and declarations on the rights and freedoms of persons deprived of their liberty. It is imperative to state that although soft law is not binding in Zimbabwe, it provides international guidelines. There are also developments to align the Prisons Act to the 2013 Constitution of Zimbabwe.

As highlighted above, the prison institutions that were visited operate under very different circumstances which prompted variations in the selection of interviewees. It is crucial to note

that all key informants at each station were interviewed and the relevance of the persons interviewed was informed by the thematic area to be addressed. The starting point was to interview provincial commanders, officially known as Officers Commanding provinces who provided a narrative from the executive perspective of the COVID-19 response followed by in-depth interviews with other strategic office bearers, including Officers in Charge of prison stations (Station commanders), health staff, rehabilitation officers, kitchen staff, workshop staff, and administration officers, among others.

3 Ethical Considerations

The RWI guidelines emphasise the need to respect the dignity and privacy of the participants and that their rights are respected throughout the research process. They also place emphasis on the following: the need to communicate the research to the participants and get informed consent, the right for participants to remain anonymous, and the need to ask clear questions in a respectful manner.

These guidelines formed the foundation of the research methods and influenced the conduct of the researchers throughout the research. In the field, the researchers first acquired authority from the Commissioner-General of ZPCS to conduct research in all provinces and selected prison stations which was done after communicating clearly and fully the nature of the research by submitting the research proposal. The next step was to make arrangements with colleagues, provincial commanders, officially known as officers commanding provinces, and station commanders, officially known as officers in charge of the prison stations that were identified for the study. To obtain informed consent, the participants were first advised that they had no obligation to be interviewed and that they were free to refuse the interview request. It should be noted that all potential interviewees freely agreed to the interviews and many participants expressed their gratitude for the research itself and the chance to actively participate.

Moreover, the participants were briefed on the purpose of the study, as it was explained that there is a need to assess how the implementation of international human rights standards, in responding to pandemics such as COVID-19 as well as in daily operations, would enhance the protection of the rights of inmates. The research objectives proved tangible seeing as most participants had an idea of the provisions of the international standards, knew the gaps they were experiencing in their provinces and prison stations, and provided possible solutions. Confidentiality of information was stressed throughout the research and was maintained. There will also be selective exclusion of information such as identity throughout this paper.

4 The International Human Rights Standards and COVID-19

The Nelson Mandela Rules include several provisions relevant to the containment of infectious diseases. These rules, for instance, obligate the State to provide healthcare for prisoners.⁵ Additionally, prisoners are not only entitled to health services comparable to those enjoyed by the general community but are entitled to enjoy these services for free. The rules also provide for the prompt attendance of sick prisoners, medical examinations upon admission, and isolation of prisoners with contagious diseases.⁶ These provisions are relevant to this study to the extent that they provide much-needed guidance on the healthcare of prisoners, especially in

⁵ UNODC, *The United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules)*, 2015, Rule 25 (1) <unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf> (accessed 25 March 2023).

⁶ *Ibid.*, Rules 27 and 30.

the wake of COVID-19. The Nelson Mandela Rules also state that prisons should ensure that prisoners are provided with water and toiletries necessary for their health and cleanliness.⁷ The rules also emphasise that prisoner accommodation should meet health requirements, particularly with regard to air quality, floor space, and ventilation.⁸ For instance, there is a clear call for all places where prisoners are required to live and work to have windows large enough to allow fresh air flow.⁹ In addition to these provisions, a prisoner is entitled to have at least one hour of exercise daily in the open air.¹⁰ All these guidelines are particularly relevant to discussions on COVID-19 in prisons due to the fact that the availability of such important requirements as fresh air and water can limit the spread of infection in settings with higher risks of contagious diseases such as prisons. Regarding contact with the outside world, prisoners should be allowed to communicate with friends and family either through writing, telecommunication, or other means as well as receiving visitors.¹¹ While these contact standards are not directly related to the physical health of inmates, they are relevant to this study as they provide for visits that might create threats of infectious diseases such as COVID-19. Thus, restrictions on such rights may be necessary in order to protect inmates and staff from the deadly pandemic. However, it is crucial to explore alternatives such as phone calls in order to alleviate challenges associated with loss of contact between inmates and their families.

The Tokyo Rules advocate for the application of non-custodial measures through the provision of a wide range of pre-trial and pre-sentencing options based on an assessment of established criteria that safeguards the dignity of the offender, while also taking into consideration the nature and gravity of the offence as well as the rights of victims.¹² The Tokyo Rules empower police and prosecutors to impose non-custodial measures such as discharging an offender at the pre-trial stage when proceeding to court is deemed unnecessary.¹³ Accordingly, pre-trial detention should only be used as a last resort in criminal proceedings.¹⁴ Likewise, the Tokyo Rules favour the adoption of a wide range of diverse sentencing and post-sentencing options to avoid unnecessary imprisonment and to help prisoners reintegrate into society.¹⁵ These provisions are relevant to this study as they prompt discussions on the use of imprisonment at the pre-trial and sentencing stages. Further, there is a possibility that what is considered necessary may change in times of crisis, especially given the magnitude of COVID-19 and the added threats posed to both individuals and the judicial system by imprisonment during such times.

The Bangkok Rules are crucial for protecting the rights of female offenders and prisoners. The rules explicitly address the unique needs and backgrounds of women and they are also the first international instrument to address the needs of children in prison with their parents.¹⁶ For instance, in accordance with the Nelson Mandela Rules, these rules require that women and children in prison have access to sufficient water and toiletries for personal hygiene, particularly

⁷ *Ibid.*, Rule 18 (1).

⁸ *Ibid.*, Rule 13.

⁹ *Ibid.*, Rule 14.

¹⁰ *Ibid.*, Rule 23.

¹¹ *Ibid.*, Rule 58.

¹² OHCHR, *United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules)*, 1990, *Tokyo Rules*, Part 3, <ohchr.org/sites/default/files/Documents/ProfessionalInterest/tokyorules.pdf> (accessed 25 March 2023).

¹³ OHCHR, *supra* note 12, Rule 5.

¹⁴ *Ibid.*, Rule 6.

¹⁵ *Ibid.*, Rules 8 and 9.

¹⁶ Penal reform International-Short guide-Bangkok Rules -2013 <https://cdn.penalreform.org/wp-content/uploads/2013/07/PRI-Short-Guide-Bangkok-Rules-2013-Web-Final.pdf>(accessed 28 September 2023)

for pregnant, breastfeeding, and menstruating women, as well as those involved in cooking.¹⁷ These provisions are particularly important during times of crisis, such as the COVID-19 pandemic. Furthermore, the Bangkok Rules highlight the importance of maintaining contact with the outside world for female inmates, as it helps reduce the trauma associated with imprisonment for both inmates and children.¹⁸

5 The Zimbabwe Prison System

The Zimbabwe prison system categorises prisons into four grades based on their level of security.¹⁹ Grade 1 prisons are considered low security and in which prisoner control is primarily achieved through the demarcation of areas and supervision, while housing and locking measures only serve to indicate unauthorised exits. Grade 2 are medium-security prisons that have a perimeter fence of at least two metres and cells of material that can be broken or cut either by the use of instruments or a fair degree of force. Grade 3 prisons have solid walls or double security fences, secure cells, a main gate, an outer security fence, floodlights, and electrical power.

For all the mentioned grades, the carrying capacity of a particular prison facility determines the prison population accommodated there while the security features available determine the classification of inmates. For instance, low and medium-security prison facilities cannot accommodate inmates classified as requiring high security. This situation has resulted in the overcrowding of certain grades of prisons such as maximum-security prisons which cannot relocate inmates requiring high security to prisons without the required security features. The traditional assessment of risk methods are utilised in the assessment and classification of inmates which has resulted in the use of the progressive stage system in the classification of inmates. There is a debate about whether this type of classification is still relevant, especially in the wake of the need to implement and uphold human rights in prison management. Further, perennial challenges such as overcrowding, inadequate health facilities, erratic water supply, shortages of bedding and clothing as well as dietary restrictions often reflect the prevailing economic situation of the country. These issues are common in prison systems in developing countries, including Zimbabwe.

The custodial institutions selected for the study operate under vastly different circumstances. To ensure that there is adequate representation of all types of prisons in this study, careful consideration was given to the selection of prisons that detain individuals under a wide range of circumstances. The research targeted at least two prisons from each category, except for Grade 1, which only had one prison in the entire country, namely Connemara Open Prison.

6 The ZPCS Health Care System

The health care of prisoners is an integral and essential part of every prison facility. ZPCS health care falls under primary health care and is under the direct supervision of the Ministry of Health and Child Care (MoHCC). This ensures that national health programmes are

¹⁷ UNODC, United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders with their Commentary, 2011, Rule 5, <[unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ENG_22032015.pdf](https://www.unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ENG_22032015.pdf)> (accessed 25 March 2023).

¹⁸ UNODC, United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders with their Commentary, 2011, Rules 2,26,28 <[unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ENG_22032015.pdf](https://www.unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ENG_22032015.pdf)> (accessed 25 September 2023)

¹⁹ ZPCS Commissioner General Standing Orders, 2000 (Unpublished)

implemented in all prisons. Primary care is the foundation of prison health services and is the most effective and efficient element of health care in any public health system and, as such, should be available to every prisoner. The constitution of Zimbabwe provides for the right to conditions of detention that are consistent with human dignity, including the provision of medical treatment at the State's expense²⁰.

Further, the research established that incarceration and the loss of freedom is associated with various implications for health care. These include the loss of the social component of health, including the loss of control of their circumstances, the loss of family and familiar social support, and a lack of information and familiarity with their surroundings. The prison environment often poses a threat to mental well-being, especially to the decision-making capacity, and to a sense of personal security and inability to freely choose a professional health care team. All these factors increase the vulnerability of inmates. Generally, prison staff and management should be aware of, and educated in, basic health issues, particularly in factors that determine whether a prison environment promotes health. The staff should also be able to recognise signs of serious illnesses and have a certain degree of knowledge and training in first aid and management of mental health crisis situations.

Healthcare facilities were a common feature in all prisons that were included in the study. Prisoners rely on health care services from admission until release from prison. This includes medical check-ups on admission to prison to screening for contagious diseases. The facilities were staffed by registered general nurses whilst one doctor, a general practitioner, oversaw a province. At all the prisons, there was a food nutritionist present. Other health services that were offered included dental care, physiotherapy, psychiatric, pharmaceutical, environmental health, and post-natal care. To remedy deficiencies in the ZPCS health care system and to fulfil the obligations of the Nelson Mandela Rules, inmates with conditions requiring further medical management are referred to the nearest district or provincial hospitals.²¹

7 The ZPCS Response to COVID-19 – An Analysis

As previously discussed, the thematic areas that determined the framework for this research were the admission procedure, health care, personal hygiene, access to information, contact with the outside world, searches, exercises, leisure and sport, accommodation, releases, diet, clothing, and bedding. These key issues were interrogated in terms of the domestic and international human rights standards and the following chapter discusses the research findings and analysis.

When the COVID-19 pandemic reached Zimbabwe, ZPCS was already facing a variety of challenges including old infrastructure, overcrowding, unreliable transport services, and infectious diseases such as Tuberculosis. This meant that all measures adopted to combat COVID-19 were affected by these perennial challenges.

The first COVID-19 case in a Zimbabwean prison was documented on 20 March 2020 at Plumtree Prison. Due to the risk of the ZPCS becoming a COVID-19 hotspot, given the inherent adverse conditions in prisons such as overcrowding, poor ventilation, and high prevalence of immunosuppressive conditions like HIV and malnutrition, the prison authorities developed two guidelines. The first measure was the drafting of COVID-19 Standard Operation Procedures (SOPs). The SOPs informed the more comprehensive plan called the ZPCS COVID-19

²⁰ Section 50 (5) of the Constitution of Zimbabwe, 2013.

²¹ UNODC, *supra* note 5, Rules 22-26.

Operational Plan²². The operational plan was crafted to operationalise the services' strategies and standard procedures against COVID-19. It was developed by members of the ZPCS COVID-19 National Response Team and its partners, with literature sourced from the Ministry of Health and Child Care Zimbabwe (MoHCC)²³, Africa CDC,²⁴ and the World Health Organization.²⁵

The operational plan provides for several issues that are designed to combat COVID-19 in prisons and these include coordination, communication, surveillance, investigation, case management, prevention, and control. The introduction of the operational plan saw a change of practice in the administration of prisons. However, the intended impact was negatively affected due to challenges related to limited resources within the ZPCS coupled with old infrastructure and overcrowding among other things.

7.1 Admission

The admission procedure is a core element of the administration of prisons and is laid down in the Prisons Act Chapter 7:11²⁶ and other relevant regulations. The procedure was affected by and subsequently combined with the COVID-19 protocols.

All inmates had to sanitise their hands, had a temperature check, and their travel history was recorded to see if they had been exposed to the virus. After all this, new admissions were isolated in separate cells for a period ranging from 14 to 21 days before they could mix with other inmates in prison. Inmates who presented with symptoms of COVID-19 were tested and quarantined if found positive. Inmates of foreign origin, arrested by other government departments such as Immigration and National Parks, were tested through rapid tests before being sent to prison and, if found positive, would be quarantined at designated National Centers depending on the nature of the offence. Generally, screening for communicable diseases continued but the main focus shifted to COVID-19 as per the above screening tool which was introduced to all prison stations, and all new admissions were treated as suspected COVID-19 cases.

There were gaps in the admission procedure, as it was necessary to conduct PCR or antigen tests on all inmates upon admission, rather than relying on peripheral assessments such as temperature tests to detect COVID-19. Inmates may stay in prison for extended periods, and these peripheral tests were inadequate in curbing the spread of the deadly pandemic. Further, isolating inmates upon admission was nearly impossible, as inmates were admitted daily and there was insufficient space in all visited prisons to separate them according to their admission dates.

7.2. Health Care

Health workers at prison stations were trained in testing and handling COVID-19 cases in line with the Nelson Mandela Rules.²⁷ Information for health education on COVID-19 was also

²² ZPCS COVID-19 Operational Plan 2020 (unpublished).

²³ http://www.mohcc.gov.zw/index.php?option=com_phocadownload&view=category&id=16&Itemid=746

²⁴ <https://africacdc.org/covid-19/>

²⁵ <https://www.who.int/publications/m/item/covid-19-strategic-preparedness-and-response-plan-operational-planning-guideline>

²⁶ Government of Zimbabwe. *Constitution of Zimbabwe (No.20)*. 2013, Section 57, <www.constituteproject.org/constitution/Zimbabwe_2013.pdf> (accessed 23 January 2023).

²⁷ UNODC, *supra* note 5, Rules 75 (2) and (3).

developed and health workers raised awareness during the day in the yard and in the cell corridors after lock-up as directed by the SOPs. Additionally, each inmate received at least one cloth face mask, which was manufactured in prison workshops with private entities supporting the organisation's efforts. Inmates showing symptoms of COVID-19 were tested and treated, primarily in prison health facilities and makeshift isolation and quarantine facilities.

There was a clinic offering primary health care at every prison institution that was included in the study. However, most of the health facilities were not fully furnished to ensure that the inmates enjoy the same standard of health that is available to the broader community.²⁸ ZPCS faced resource constraints in terms of capacity to conduct COVID-19 tests and had to rely on random tests from the overwhelmed MoHCC which is why it usually took a minimum of one week to receive the results back. The delay made the management of COVID-19 a challenging task. Moreover, while the creation of make-shift isolation and quarantine facilities was meant to strengthen measures to reduce the spread of the pandemic in prison facilities, there were challenges associated with overcrowding due to daily admissions which undermined COVID-19 measures such as social distancing. Consequently, the conditions and facilities were inadequate to enable the State to fulfil its obligation to ensure the prevention, treatment, and control of the pandemic in terms of the Mandela Rules²⁹.

In addition, there were no conditions that would assure medical service and attention to all in the event of sickness as envisaged in the ICESCR and ACHPR.³⁰ Similarly, the conditions and facilities could not guarantee the realisation of both the prisoners' and officers' right to the enjoyment of the highest attainable standard of physical and mental health. Most prison institutions rely on ad hoc visits by doctors which poses a challenge in the prevention and containment of diseases, especially pandemics of the magnitude of COVID-19.

The supply of drugs was insufficient even before COVID-19, resulting in inmates with chronic conditions often having to rely on supplies from home. COVID-19 added pressure to this situation as there was an urgent need to procure drugs that were identified as addressing some of its symptoms.

The authorities at prisons, which house inmates with mental impairments, faced a lot of additional challenges as they attempted to ensure that inmates complied with the COVID-19 protocols such as social distancing and wearing masks. The irregular supply of medication led to some relapses, which further complicated the situation. The so-called 'new normal' mode of operation was difficult to implement.³¹ Some of the inmates were violent whilst others needed to be assisted with daily practices such as bathing, eating, and taking medication on time. Further, the health facilities at the institutions are yet to be developed to assist inmates efficiently without endangering the lives of Correctional Officers or other inmates, especially in light of pandemics.

In addition, there was a need for increased emotional and psychological support coupled with continued contact with relatives. Contact with relatives could have been administered by way

²⁸ *Ibid.*, Rule 24 (1).

²⁹ *Ibid.*, Rule 27 (1)

³⁰ See UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 1966, Resolution 2200A (XXI), Article 12(1); African Union, *African Charter on Human and Peoples' Rights (ACHPR)*, 1981, Article 16(1).

³¹ WHO COVID-19 protocols, [https://www.who.int/emergencies/diseases/novel-coronavirus-2019/advice-for-public#:~:text=Clean%20your%20hands%20frequently%20with,self%20isolate%20until%20you%20recover.\(a ccessed 29 September 2023\)](https://www.who.int/emergencies/diseases/novel-coronavirus-2019/advice-for-public#:~:text=Clean%20your%20hands%20frequently%20with,self%20isolate%20until%20you%20recover.(a ccessed 29 September 2023))

of audio-visual means of communication although it is noteworthy that this is associated with certain security concerns. This could have been applied to all inmates in isolation and quarantine. Of major concern was the treatment of all prisons as homogeneous and universal yet Chikurubi Maximum, Chikurubi Female, Mlondolozhi, Whawha Young Offenders, and Connemara open prison operate under peculiar circumstances by virtue of the categories of inmates that they house and their different requirements.

Inmates with physical disabilities were no exception either. Some inmates had limited access to the required special equipment such as wheelchairs, which resulted in them crawling on the floors exposing themselves to infection by COVID-19. Even those inmates with wheelchairs still had to crawl up the staircase with fellow inmates carrying their wheelchairs as there were no ramps. The inmates also rely on fellow inmates for assistance in terms of bathing, washing uniforms, and toilet use. All this meant that this category of inmates could not maintain social distancing as they relied on high physical contact from their assistants. In line with international provisions, the State has an obligation to ensure that prison infrastructure is accessible, that assisting devices are available, and that inmates from this category are protected from infection as they suffer increased risks.

Given the above, it is commendable that ZPCS developed SOPs and a COVID-19 Operational Plan, disseminated information on COVID-19 to inmates and officers, issued face masks, and created isolation and quarantine centres. However, the observed challenges that were discussed above limited the efforts made by the organisation and undermined a number of international human rights instruments that stipulate that prisoners and all detained persons have the right to enjoy the same standards of health care that are available in the community.³²

7.3 Personal Hygiene

Inmates were educated on the need to exercise high personal hygiene as one of the key measures to prevent the spread of COVID-19. Buckets with soapy water were placed at strategic points such as cell entrances and in the yard where inmates spend their day to encourage regular hand washing for both inmates and officers. Senior prison officers of the rank of Assistant Principal Correctional Officers were deployed to monitor compliance with good hygiene and sanitisation practices at all entry points.

Availability of water and good personal hygiene lead to an adequate standard of living. Some institutions included in the study cited limited water supply which persisted even after the outbreak of the COVID-19 pandemic. Bulawayo Prison and Connemara Open Prison were the only exception with a steady supply of water without any interruption. However, manual hand and feet sanitisation at all prison entry points was observed.

The supply of water at some stations, such as Binga Prison, depends on the availability of electricity. If there is no electricity, which is quite common, then there is no water. The situation is exacerbated by the fact that there is no borehole at the prison facility as it is located on an upland plateau which makes it difficult to build and sustain one. When there is no water, the prison relies on the Zambezi River which is about two kilometres from the station. Most of the dams that supply water to the City of Bulawayo and Gweru had reached uncharacteristically

³² See UN General Assembly, *The Universal Declaration of Human Rights (UDHR)*, 1948, Article 25; African Union, *supra* note 22, Article 16; United Nations, *Convention on the Rights of Persons with Disabilities*, 2006, A/RES/61/106, Article 25; UN General Assembly, *Declaration on the Elimination of Violence against Women*, 1993, Resolution 48/104, Article 3(f).

low levels and some were decommissioned. This resulted in water shortages in the two cities and ZPCS was not exempt. The affected prisons were those at Khami Complex and Whawha Young Offenders. These institutions had to resort to the bucket system to flush toilets. However, some prison facilities saw an improvement in water supply as boreholes were drilled to maintain high hygiene standards in the face of the pandemic. For instance, an organisation donated a water pump to propel water into Mlondolozhi Prison from a nearby borehole. Similarly, electric pumps drive water into Chikurubi Maximum Prison. The supply of soap improved in some institutions as donations were received.

However, these interventions were inadequate, as they did not extend to all prison facilities. As a result, the limited supply of soap and toiletries, combined with the insufficient water supply, affected clothing, bedding, ablution facilities, and overall sanitary conditions. This situation contradicts the Nelson Mandela Rules which provide for continuous access to drinking water for inmates.³³ Furthermore, it undermines efforts to ensure personal hygiene, which is crucial for complying with COVID-19 protocols that demand high levels of hygiene and sanitation.

7.4 Access to Information

Upon admission, inmates should be provided with information about their rights and the various prison regulations, including prison offenses.³⁴ They should also receive health education from the Prison Health Directorate, particularly from the Health Promotions Office, and Environmental Health Office, as well as nurses and doctors during treatment. Health education usually focuses on the prevention of communicable diseases such as TB, HIV/AIDS, and hepatitis B, and the general maintenance of hygiene standards. With increased focus on COVID-19, efforts to provide health education have been intensified.

Information on COVID-19 was scarce at first as WHO researchers had to establish a body of knowledge concerning the virus and the overall nature of the pandemic. The prison health workers continued to rely on official information disseminated through the MoHCC. As a result, there were delays in communicating some of the information, especially about the ways in which the virus spreads, its symptoms as well as relevant medication. However, as information on the pandemic continued to be more available, both inmates and officers got access to information on COVID-19 through the health teams who carried out extensive awareness campaigns in prisons and similar campaigns in officers' residential areas. Informative material in the form of posters, play cards, and brochures from the MoHCC and Civil Society Organisations such as the Voluntary Services Organisation (VSO) were shared with inmates and officers. Consequently, inmates had access to information related to COVID-19 as there was continuous interaction between ZPCS health officers and inmates, but this was not followed with adequate measures due to limited resources.

7.5 Contact with the Outside World

The inmates at the prisons included in this study experienced contact with the outside world in various ways in accordance with the Prisons Act Chapter 7:11³⁵, the Constitution of Zimbabwe,³⁶ and administrative standards. When COVID-19 was declared a public health

³³ UNODC, *supra* note 5, Rule 20.

³⁴ Government of Zimbabwe, *supra* note 20, Section 50 (4) (5).

³⁵ *Ibid.*, Sections 44-52-

³⁶ *Ibid.*, Section 50 (5) (c).

emergency in Zimbabwe all interactions were halted. These included visits from relatives, friends, charity organisations, religious leaders, and private doctors.

During the first 21 days of level 4 lockdown, legal practitioners were also banned from visiting their clients. However, this was mitigated by the fact that courts were closed and that after the first 21 days, inmates had access to their legal representatives as well as to the courts. However, the suspension of visits also meant the loss of psycho-social support for inmates. Juveniles at Whawha Young Offenders were affected as well. Sentiments, expressed by authorities at Whawha Young Offenders, highlighted how difficult it is to manage a young offender without the involvement of parents, guardians, or other relatives.

Equally affected were visiting justices in the form of magistrates, judges, public prosecutors, and the Zimbabwe Human Rights Commission (ZHRC)³⁷ who visit prisons for purposes of assessing detention conditions and assisting inmates with court processes. Deferrals of visiting justices and organisations such as the ZHRC meant that there was no independent assessment of the ZPCS response to COVID-19 as far as inmate's rights are concerned as well as the usual ad hoc checks on the treatment of inmates.

The above findings demonstrate the difficulty of balancing competing rights during a crisis as significant as COVID-19. For instance, while it is important for inmates to receive visitors, it is equally, if not more important for them to be protected from infections such as the deadly pandemic. The findings also raise discussions on the need to employ alternatives such as setting up virtual courts, providing telephone facilities for inmates to communicate with their relatives, and creating a platform for experience sharing with monitoring bodies and other actors within the criminal justice system. It is worth noting that in October 2020, ZPCS and ZHRC held an engagement workshop to discuss compliance protocols that the ZHRC should follow when monitoring prisons during the COVID-19 pandemic and to share experiences on the rights of inmates during this time.'

7.6 Searches

Searches are conducted in terms of Prison Regulations³⁸ for purposes of averting security risks associated with the smuggling of prohibited items such as drugs, communication devices, and objects that could be used for escape or to harm the particular inmate or cellmates³⁹. The types of searches include wards and cells, the search of workshops, the search on return from labour, the search of outgoing parties, and the rub-down search of prisoners leaving workshops. The Nelson Mandela Rules provide for searches of prisoners and cells albeit with emphasis on inherent human dignity and privacy.⁴⁰

At most stations, the frequency of searches was reduced as a measure to control the risk of infection and spread of the COVID-19 virus. Officers feared conducting searches due to the potential exposure to infection, especially due to the limited supply of protective clothing as recommended by COVID-19 protocols. It was found that the situation was under control as

³⁷ The Zimbabwe Human Rights Commission is an independent Commission provided in terms of section 242 of the Constitution of Zimbabwe.

³⁸ Prisons (General) Regulations, 1996 sections 87-96

³⁹ Reyes H. Body Searches in Prison-*ICRC*

https://www.icrc.org/en/doc/assets/files/other/body_searches_in_detention.pdf. (accessed 29 September 2023)

⁴⁰ UNODC, *supra* note 5, Rule 50.

inmates had limited contact with the outside world due to movement and visitation restrictions. This measure helped to minimise the risk of COVID-19 being brought into prison.

7.7 Exercise, Leisure and Sport

Exercise, leisure, and sport are categorised as diversional therapy activities at the prisons that were visited. Inmates participate, for instance, in soccer matches with retired football players, among other sports and exercise programmes. However, due to COVID-19 protocols, these activities were suspended to reduce the spread of the disease, and gatherings in prison yards were banned. Exercise and sport were considered high-risk activities as they increase person-to-person contact and involve heavy breathing, which can possibly spread the virus in the air, especially in the limited space of the prison. This denied the inmates the opportunity to exercise, maintain fitness, and reduce stress while in prison. Studies have shown that frequent exercise can increase Extracellular superoxide dismutase (EcSOD)⁴¹ levels in the lungs and other vital organs, which can help build a defence against deadly complications of COVID-19 or other disease complications⁴²

While inmates were allowed to relax in the prison yards, most of them would occasionally lower their masks to breathe fresh air, which is a necessary practice but violates COVID-19 regulations. The prison regulations and the Nelson Mandela Rules⁴³ advocate for exercise and sports and state that inmates who do not have the opportunity to work outside shall have at least one hour of suitable exercise daily in the open air, subject to good weather.⁴⁴

The suspension of exercise and sport due to limited space and fear of the spread of COVID-19 amongst inmates meant that diversional therapy and natural boosting of the immune system were grossly affected. This called for interventions of the State in terms of improving such issues as the dietary requirements to enhance the inmates' immune systems.

7.8 Accommodation

'During the prison visits, it was observed that most prisons were overcrowded due to limited cell accommodation. In general, it was noted that inmates in most prisons enjoyed better living conditions that largely comply with domestic and international standards on the humane treatment of prisoners. Khami Maximum Prison and Chikurubi Maximum Prison, as well as other prisons under study, were affected by overcrowding despite their modern designs. Although Khami Maximum Prison resembles a modern prison it was affected by overcrowding: At the time of the study, the prison population was above its holding capacity by 13.6 per cent. Similarly, Chikurubi Maximum Prison and other prisons under the study were also affected by overcrowding. While recent renovations improved the ventilation and lighting in the cells at Mlondolozhi Prison, inmates still slept and lived near each other. In all other prisons visited, the ventilation and aeration systems did not meet the required standards, resulting in the closeness and mingling of inmates in the prison yard. This has led to the occasional spread of communicable diseases such as tuberculosis, cholera, and smallpox. These settings violate the

⁴¹ An enzyme that acts as a good therapeutic agent against reactive oxygen species-mediated diseases

⁴² Yan Z, Spaulding HR. Extracellular superoxide dismutase, a molecular transducer of health benefits of exercise. *Redox Biol.* 2020 May;32:101508. doi: 10.1016/j.redox.2020.101508. Epub 2020 Mar 19. PMID: 32220789; PMCID: PMC7109453.

⁴³ UNODC, *supra* note 5, Rule 23 (1).

⁴⁴ Prisons (General) Regulations of 1996, section 67

requirements for adequate accommodation⁴⁵, good cubic content of air, minimum floor space, heating, and ventilation⁴⁶.

COVID-19 exacerbated the existing strain on prison facilities. Despite accommodation shortages, all prisons visited during the study had created makeshift isolation and quarantine facilities in compliance with COVID-19 regulations and guidance which was a necessary and commendable measure. Due to the number of inmates, maintaining social distancing among inmates at night and in the yard was challenging and increased the risk of infection and spread of the virus. However, all the prisons included in the study were regularly fumigated for protection against COVID-19.

While Khami Maximum Prison was better equipped than other prisons, it still fell short in terms of combating and preventing the outbreak of COVID-19. Most of the prisons that were assessed did not have adequate accommodation facilities as their inmate population exceeded their holding capacities with new daily admissions. Especially for prisons holding remand inmates, the limited space and prison cells made it difficult to fully adhere to isolation and quarantine stipulations. This situation posed a threat to the prison health system and the public health system at large.

7.9 Releases

Upon discharge from prison, inmates received more education on COVID-19 to further empower them to prevent the spread of the virus and to adhere to the COVID-19 containment regulations. In accordance with the Nelson Mandela Rules⁴⁷ and COVID-19 etiquette, inmates were allowed to keep their masks upon their release from prison.

Due to the suspension of intercity travel caused by COVID-19, prison stations had to go beyond their usual mandate of releasing inmates upon completion of their sentences. Officers had to assist inmates with transport logistics and issue travel letters to facilitate their return home. At some stations included in the study, officers had to contribute their own money to cover transport fares to enable inmates to travel back home, as visits were suspended and resources from the State and individual inmates were limited.

7.10 Diet

The daily minimum ration of prisoners as prescribed by the Prison Regulations includes bread, milk, fruits that are in season, beans five times per week, vegetables, and meat or fish, two times per week.⁴⁸ The study found that inmates were served three meals a day consisting of porridge in the morning and maize meal with either vegetables or beans for lunch and supper. Khami Medium and Chikurubi Farm prisons had enough vegetables to feed all the prison stations in Bulawayo and Harare provinces respectively. However, food supplies were further complicated by the national lockdown, especially during the first 21 days, which prevented inmates from accessing supplementary food such as meat, fruits, and snacks from relatives. Yet, access to such supplementary food is a benefit for inmates who already have support from friends and relatives. The most disadvantaged group were inmates of foreign origin whose hope of receiving visitors was shattered by both local and international COVID-19 restrictions on

⁴⁵ Section 50 (5) (d) Constitution of Zimbabwe, 2013

⁴⁶ UNODC, *supra* note 5, Rule 13.

⁴⁷ UNODC, *supra* note 5, Rule 24 (2).

⁴⁸ Prisons (General) (Amendment) Regulations, SI 60 of 2012

movement. The inmates of foreign origin held at Beitbridge, Plumtree, and Harare Remand prisons complained about peculiarities of their food preferences. Equally affected by the limited dietary provisions were nursing mothers at Chikurubi Female and Mlondolozhi prisons.

A healthy diet is essential for supporting the immune system, but the food served to the inmates did not meet domestic and international standards for adequate dietary requirements. The Constitution of Zimbabwe addresses the right to food in terms of section 50 which guarantees the provision of adequate nutrition for inmates. The Nelson Mandela Rules reinforce this right, stating that, “[e]very prisoner shall be provided by the prison administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served.”⁴⁹ On the other hand, the ZPCS COVID-19 Operational Plan does not address the issue of diet. Overall, the right to food necessitates greater efforts from the State in order to improve the welfare of inmates.

7.11 Clothing and Bedding

At all the visited prisons, each inmate received one face mask, one set of prison garb, and at least three blankets upon admission. Remand prisoners wore their own clothes. According to the Prison Regulations, male inmates should be provided with two trousers or shorts, two towels, two vests, one jacket or jersey, and two handkerchiefs. Female inmates should be provided with two petticoats, two night-dresses, a comb, and two bras. Prisoners are also entitled to three blankets and a mat or mattress per inmate. Prisoners employed in jobs such as farming, kitchens, or workshops should be provided with appropriate protective clothing.⁵⁰

One major issue observed was the lack of availability of most items specified in the Prison Regulations due to limited resources. Providing only one set of uniforms, without soap and water, presented a significant challenge in maintaining good hygiene and human dignity when an inmate had to wash the issued uniform. However, it should be noted that female inmates at Chikurubi Female and Mlondolozhi prisons were issued with at least two sets of uniforms, unlike their male counterparts. Most of the prisoners at Farm Prisons such as Khami Medium, Marondera Farm, and Mutare Farm had limited access to protective clothing when doing farming activities. The shortage of clothing is not in line with the relevant provisions of the Prisons Act Chapter 7:11 and the Nelson Mandela Rules which stipulate that every prisoner shall be provided with suitable clothing adequate to keep them in good health. It was also challenging to meet the COVID-19 specifications that require frequent changing and washing of clothes.

Generally, at all prisons visited, the inmates slept on the floor as there were no beds or mats. The modus operandi for the inmates was to roll one blanket on the floor to create some comfort and warmth. Sleeping closer to the floor increases proximity to dust and dirt, which increases the risk of respiratory issues such as wheezing, coughing, difficulty in breathing, sneezing, blocked or runny nose, and general irritation. Additionally, people with underlying health conditions that affect blood circulation such as anaemia or diabetes may find that sleeping on the floor may cause them to feel much colder.⁵¹

⁴⁹ UNODC, *supra* note 5, Rule 20 (1)

⁵⁰ Prisons (General) Regulations, 1996 section 50 (b)

⁵¹ Medical News Today, 4 February 2021, <https://www.medicalnewstoday.com/articles/sleeping-on-the-floor#benefits> (accessed 29 September 2023)

The right to clothing and bedding as contained in the Prison Regulations and the Nelson Mandela Rules was not sufficiently addressed. More could be done to ensure that this issue is addressed in accordance with the various human rights standards as well as the COVID-19 protocols.

7.12 Holding Cells at Courts

Inmates are kept in holding cells while awaiting trial. These holding cells are under the management and supervision of ZPCS even though they are located at the courts. In the wake of COVID-19, most holding cells proved to be unsafe as new admissions and remand prisoners would mix, owing to the limited space. This dealt a major blow to isolation practices as there would be a need to isolate both categories of inmates after court processes.

In addition, there was a challenge of non-availability of the holding cells at some court facilities. For instance, at Binga Prison, there are two Courtrooms and no holding cells. The other Courtroom was and is used as a de facto holding cell. As a result, new admissions and inmates from prisons pursuing court processes are being mixed without regard for social distancing. This creates a precarious situation that risks the rapid spread of COVID-19.

7.13 Transport

There were limited vehicles to ferry inmates to Court and in order to maintain social distance in the vehicles some stations would ferry inmates in batches. However, fuel shortages made it difficult to implement this measure, resulting in new admissions being transported alongside other inmates. Some institutions introduced temperature checks and interviews by prison nurses at court to mitigate the risk of COVID-19 transmission. Inmates displaying COVID-19-related symptoms would then be transported to prison in a separate vehicle.

Most officers who reside outside prison camps had no designated transport to ferry them to their workstations, hence they resorted to public transport thereby exposing themselves and inmates to the risk of infection.

7.14 Anxiety Due to Fear of Infection and Delay in COVID-19 Test Results

News that circulated on both official and unofficial media platforms showed how developed countries struggled to contain the virus in terms of mitigating infections and deaths. As a result, there was fear on the part of officers who were aware of the existing challenges within their institutions in terms of resources. When the first COVID-19 cases were recorded in the organisation, nervousness and uneasiness gripped not only the two affected stations but the entire ZPCS community, including inmates. Some officers were scared to even travel to work let alone to work with other officers and inmates due to the contagious nature of COVID-19. The situation was worsened by the delays in immediate access to Personal Protective Equipment (PPE).

When the COVID-19 tests were conducted on inmates and officers, it took a long waiting period of at least one week for the results to be released. The test samples were taken to already overwhelmed laboratories of major referral hospitals such as Sally Mugabe, Parirenyatwa, and Mpilo Central, which caused delays as they had to queue up with other samples. This prolonged waiting period created extreme restlessness and fretfulness among officers and inmates. There

was a need for rapid identification of laboratory-confirmed cases to enhance swift quarantine and minimise the spread of COVID-19.

8 Recommendations

It is recommended that:

- a) The State should align the physical infrastructure of correctional facilities with the concept of humane treatment as expressed in various local, regional, and international human rights standards. This will ensure spatially stimulating living environments based on contemporary priorities of inmate rehabilitation and successful reintegration. Further, the implementation of human rights provisions means that prison facilities will be better equipped to deal with pandemics or other crises while safeguarding the rights of inmates.
- b) In times of pandemics of the magnitude of COVID-19, a range of strategic measures should be introduced. For instance, the introduction of platforms for sharing experiences and ideas could address challenges associated with such diseases for both internal and external stakeholders. Moreover, food should be distributed in rooms or cells instead of a common canteen, and out-of-cell time should be divided by wing or unit to avoid the concentration of prisoners and staff even in open spaces. Despite these provisions and limitations, access of prisoners to the open air should be maintained and not fall below a minimum of one hour per day.
- c) To effectively manage pandemics such as COVID-19 in prisons, there is a need for robust collaborative arrangements among all stakeholders in the justice delivery system as well as the Ministry of Health and Child Care. These sectors have a constitutional obligation to ensure the health and well-being of people in prisons and other places of detention. Such a harmonious concordance will be critical in ensuring a sustainable healthcare delivery system within prisons and places of detention.
- d) ZPCS should either establish shops at prison stations or partner with relevant stakeholders such as local supermarkets to set up online purchasing platforms where inmates can buy food and other necessities.
- e) There is a need for continuous human rights training for correctional officials to familiarise themselves with and implement measures for the promotion and protection of the rights of the inmates both in daily operations and in times of pandemics.
- f) ZPCS should strive to treat each Prison Station in a manner that accommodates its uniqueness. Imprisonment affects inmates differently, and many have special needs or are particularly vulnerable for various reasons.
- g) The State should allocate more resources to prisons to enhance the promotion and protection of the rights of inmates as outlined in the Constitution, the Prisons Act and Regulations, as well as international standards. This includes providing a balanced diet, access to potable water, clothing, bedding, and maintenance of personal hygiene standards.
- h) Concerning access to healthcare services, the State should establish functional prison hospitals and clinics that resemble modern-day health facilities, with adequate medication for most diseases and sufficient protective clothing for healthcare staff. The laboratories in prison hospitals should be upgraded, and every province should have a bio-safety cabinet or efficient microbiological services to facilitate instant tests of microorganisms or specific pathogens such as viruses and bacteria. Prisons should not rely too heavily on the already burdened public hospitals,

- i) The State should consider utilising Information and Communication Technologies (ICTs) in setting up virtual hearings to ensure the continuity of court processes in the event of disruptions. These measures should target all actors within the criminal justice system, from the police and courts to prisons.

2 Locating the Right to Education During COVID-19 Remote Learning for Zimbabwe Rural Learners

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Abstract

Since the architecture and subsequent adoption of the Universal Declaration of Human Rights in 1948, the global community has pledged to safeguard these rights. National and international governments acknowledge that there are circumstances that threaten to upset the balance in the access to inalienable and indivisible rights. The outbreak of COVID-19, coupled with the stringent measures that were implemented to curb the spread of the virus immediately raised concerns about the lack of access to certain rights. For children across the globe, COVID-19 resulted in the closure of physical schools and the introduction of virtual learning, which relied on the use of technology. However, the availability and ability to use these tools were unevenly distributed. In this qualitative study, we argue that rural children in Zimbabwe were disproportionately affected by the introduction of virtual learning. Therefore, our key aim is to explore how indefinite lockdown measures and e-learning approaches affected rural learners' rights to education. The study employed an exploratory design and relied on document review, as well as 30 purposively and conveniently sampled key informant interviews. The interviewees were from the rural education sector, education administrators in the Ministry of Primary and Secondary Education (MoPSE), parents, guardians and learners in Gutu district, Masvingo. In view of the prevailing COVID-19 measures, we used telephone interviews as well as face-to-face interviews. Concerning the latter, social distancing, sanitising and face mask rules were strictly adhered to.

The study established that the Ministry of Primary and Secondary Education collaborated with various non-state stakeholders to introduce a number of virtual learning methods. These included radio and television lessons, Zoom and WhatsApp lessons among others. For the rural-based learners and teachers, the findings indicated that these methods were associated with challenges connected to energy and resource scarcity, poor network coverage and even the cost of data bundles. In the context of this study, all these factors threaten to undermine efforts to ensure access to education rights for children, particularly in rural areas. Therefore, we recommend the provision of essential and sustainable resources to rural schools, teachers, and learners, which can be achieved through strengthened partnerships between state and non-state actors. Additionally, we suggest providing social assistance to marginalised and vulnerable rural learners who cannot afford compatible gadgets such as computers and mobile phones.

Keywords: online, Covid-19, education, human rights, rural learners

1 Introduction

When disasters of any nature strike, existing disparities within communities are markedly widened due to variations in disaster response capacities. Synonymously, the COVID-19 pandemic also brought to the fore a plethora of challenges particularly in the enjoyment of people's fundamental rights and freedoms. In the context of this paper, access to education rights was relentlessly affected as learning institutions were forced to close their doors for physical learning as one of WHO's preventive measures to prevent the spread of the pandemic.

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Subsequently, ‘new’¹ alternate remote learning methods had to be adopted for learning to continue. This study contends that the majority of these virtual learning mechanisms aggravated the element of exclusion for marginalised groups. In Zimbabwe, rural communities are affected disproportionately by these innovations as access to education has been severely compromised.

We argue that the quality of educational facilities is spatially distributed, with urban areas typically providing better educational resources such as high internet penetration while wealthy parents are also able to afford private tutors and for-profit learning platforms. It is therefore crucial to understand what mechanisms have been put in place to allow learners in rural areas to access education during COVID-19 lockdowns. By exploring these questions, we aim to assess the feasibility of this approach in ensuring equal access to the right to education during crisis situations. We also aim to explore how educational inequalities are exacerbated by the imposed lockdown measures and the adoption of online learning. This will shed more light on how practical it is to adopt e-learning in rural areas and ways in which it can either hinder or enhance the enjoyment of the right to education.

The article starts by setting the background to the study and proceeds to analyse the challenges posed by virtual learning in the context of COVID-19. It then covers pertinent aspects such as the justification of the study as well as the research questions that guide the study. The methodology section precedes the central discussion of existing virtual learning methods adopted by rural schools in Zimbabwe. The concluding section discusses the study's findings, draws conclusions, and provides recommendations to address the central issue identified in the study.

1.1 Background

The right to education has been an integral part of many rights-based global, regional and national education instruments for decades. Dating as far back as the 1948 Universal Declaration of Human Rights (UDHR), education, among other inalienable rights, has been enshrined in this instrument as a basic right.² This landmark document has served as the foundation for numerous global norms that aim to promote equitable access to education. Consequently, the UDHR has earned the title “mother text of international human rights.”³ Similarly, the 2015 Sustainable Development Goals (SDGs), particularly SDG 4, seeks to promote many of the people’s fundamental rights, including education. Specifically, target 4.5 of the SDGs emphasises the importance of inclusive and equitable access to education for all individuals, regardless of their geographical location. Target 4.5 aligns with the inherent, indivisible and inalienable elements in human rights. For these reasons, any situation that threatens to disrupt the targeted equilibrium is a cause for concern, and in this context, the central driver for the research.

In December 2019, the first case of this novel and extremely infectious disease was discovered in Wuhan, China but rapidly became a global pandemic. During these first days, COVID-19

¹ We use this term subjectively. We acknowledge the fact that virtual learning tools have been used in many learning institutions within and outside Zimbabwe with varying degrees. Therefore, what may be considered new in certain contexts such as rural schools in Zimbabwe are not elsewhere.

² Article 26 (1) of the UDHR categorically states that “Everyone has the right to education [...]”. It is the assumption of this study that this right is not subject to prevailing conditions which may act as barriers to the access of this right. We argue that the right to education should be constant even in the face of COVID-19 lockdown measures.

³ E. Brems, *Human Rights: Universality and Diversity*. (Martinus Nijhoff Publishers, The Hague, 2001).

was largely viewed as a health crisis but later proved to be an unprecedented crisis with wider implications to all facets of life. As global COVID-19 cases and fatalities continued to rise exponentially, concerns grew about its devastating effects on everyday socio-economic aspects of life. For many countries, the principal concern after its health implications was its impact on economic activities and livelihoods. However, it soon became apparent that COVID-19's effects were even more far-reaching. Therefore, the infringement of certain rights, children's right to education in particular, soon became a topical issue.

A UNICEF policy brief on the impact of COVID-19 on children acknowledges that while “children are not the face of this pandemic, [...] they risk being among its biggest victims”⁴. Besides the generic issues affecting children during a crisis such as loss of food security, compromised health, potential loss of parents or guardians increasing poverty and its related issues, children run the risk of losing an array of their rights to COVID-19. Chief among these rights is the right to education. COVID-19 safety measures such as social distancing and mandatory wearing of face masks were bound to cause a plethora of challenges for any school setup. As a result, many governments were cautious in allowing orthodox or traditional activities to continue in schools. This resulted in the closure of schools for the duration of pandemic, which was not anticipated to last long. At a global level, the UNDP states that 1.2 billion or 68 per cent of all registered learners had been affected by school closures as of June 2020.⁵ In addition, 144 countries were still experiencing total nationwide closures of schools.⁶ This entails that other forms of ensuring continuity of learning had to be devised. In Zimbabwe, teachers, learners, parents and mostly private schools had to play an active role in establishing facilities for virtual education in times of the pandemic. However, we acknowledge that the statistics cited above fail to fully capture the magnitude and variations of the impact of COVID-19 on children in different social classes and geographical spaces.

1.2 Problematizing the Issues

Ideally, access to education should transcend the physical access to encompass access to quality of education. Unfortunately, in many crises, the lack of access to quality education magnifies the marginalisation of children.⁷ COVID-19 and the indefinite closure of schools and the introduction of virtual learning globally and in Zimbabwe undeniably created new challenges and diverse implications for learners in varying social and geographical contexts. The Ministry of Primary and Secondary Education (MoPSE) in collaboration with the Zimbabwe Education cluster in the *Zimbabwe COVID-19 Preparedness and Response Strategy* (May 2020) attempted to address these challenges by developing “Alternative Learning Approaches”.⁸ However, the MoPSE acknowledged that,

⁴ UNICEF, ‘Policy Brief: The Impact of COVID-19 on children’, 2020, p. 26.

www.unicef.org/zimbabwe/reports/policy-brief-impact-covid-19-children (accessed 3 August 2020).

⁵ We acknowledge the fluidity of these figures due to the constantly rising cases of the pandemic. Many countries are expected to experience a second wave of COVID-19 with increased infection rates and related deaths (UNDP, 2020. COVID-19 and Human Development: Assessing the Crisis, Envisioning the Recovery. [NP-UNDP-COVID-19-and-Human-Development-2020.pdf](https://www.undp.org/content/undp/en/home/coronavirus/socio-economic-impact-of-covid-19.html) (accessed 2 August 2020)

⁶ www.undp.org/content/undp/en/home/coronavirus/socio-economic-impact-of-covid-19.html, visited on 3 August, 2020.

⁷ A.R. Benhura and M. Naidu, ‘Delineating caveats for (quality) education during displacement: Critiquing the impact of forced migration on access to education’, 9 (2) *Migration Studies* (2019).

⁸ MoPSE’s objectives comprehensively cover continuity of school, learner and teacher capacitation, safe return to school. The Zimbabwean, 14 May 2020. Education Cluster Zimbabwe COVID-19 Preparedness and Response Strategy. <https://www.thezimbabwean.co/2020/05/education-cluster-zimbabwe-covid-19-preparedness-and-response-strategy/> (Accessed 3 August 2020)

The education sector was already beset with persistent disparities in educational opportunities between children of different gender, socio-economic status, disability status, orphan hood status, and demographic groups. Without a well-resourced response, these disparities are likely to widen.⁹

In the context of this study, rural based communities can be categorised as part of communities where educational opportunities are severely curtailed due to COVID-19 lockdown measures. This calls for renewed efforts to ensure the protection of children’s right to education.

The indefinite lockdowns mean that educators and related stakeholders have to devise new ways to ensure the continuity of lessons in schools. During this period, traditional schooling, as it is known in the world, has become nearly impossible. Many parents and guardians in Zimbabwe have lost trust in the ‘brick and mortar institutions’¹⁰ and would be hesitant to send their children in the absence of some concrete assurance of the children’s safety. For these and other reasons, Zimbabwe and many other governments have ordered that schools would only revert to normal when it was ascertained that COVID-19 had been contained or measures were in place to ensure health safety for all learners and educators.

As Burgess and Sievertsen¹¹ concur, the global lockdowns resulted in many disruptions which include internal and public assessments. However, these disruptions represent only a fraction of the far-reaching effects on the global education system that have resulted from the COVID-19. Closely linked to the inaccessibility of education are a host of secondary effects to the children. Among the leading secondary effects of education inaccessibility are widening inequalities between children from marginalized societies and those from privileged ones. To address this issue, parents, teachers, and learners have improvised new ways to facilitate continuity in learning. Teachers and parents have adapted to lockdown measures in a variety of ways which include home schooling, WhatsApp groups, Zoom meetings and other e-learning tools.¹² While these are relatively accessible for urban dwellers, rural learners generally find these out of reach. Unavailability of electricity (to charge devices), limited network, incompatible mobile phones and exorbitant data prices are some of the multiple challenges that dog e-learning contingency plans. This is particularly evident in schools in the global south which were severely impacted by the COVID-19.¹³ In such a scenario, the aforementioned efforts are rendered ineffective in low-income and impoverished communities.

Indefinite lockdowns immediately invoked debates on how sustainable any efforts towards continuity of learning would be for low-income countries and their respective communities. Kimenyi *et al.*¹⁴ posit that:

⁹ *Ibid.*

¹⁰ Kubatana, ‘The Challenges of E-learning and Homeschooling in Rural Areas’, *Kubatana People’s Opinion*, 2020 <kubatana.net/2020/05/12/the-challenges-of-e-learning-and-homeschooling-in-rural-areas> (accessed 14 August 2020).

¹¹ S. Burgess and H.H. Sivertsen, ‘School, skills and learning: The Impact of Covid-19 on Education’, *Centre for Economic Policy Research*, 2020, <voxeu.org/article/impact-covid-19-education> (accessed 14 August 2020).

¹² S. Sebata, ‘The Challenges of E-Learning and Home schooling in Rural Areas’, *Kubatana*, 2020, <kubatana.net/2020/05/12/the-challenges-of-e-learning-and-homeschooling-in-rural-areas> (accessed 13 August 2020).

¹³ A. Aborode, *et al.*, ‘Impact of Covid-19 on education in sub-Saharan Africa’, 2020.

¹⁴ E. Kimenyi, J. Otieno, and T. Kaye. ‘Building Effective COVID-19 education response plans: Insights from Africa and Asia’, *EdTech Hub*, 2020, <edtechhub.org/2020/06/25/building-effective-covid-19-education-response-plans-insights-from-africa-and-asia> (accessed 24 July 2020).

Governments face the prospect of insufficient resources when emergency funding dries up. Combined with a possible influx of students entering the public school system from private schools due to families' financial constraints, education system funding will be even more stretched.

Common trends proved that humanitarian efforts and funding tend to decrease in the post-emergency phase of any crisis. Similarly, the lengthy COVID-19 crisis may result in donor fatigue and general apathy. When this happens, rural schools, learners and educators will face the brunt of this as they largely depend on external funding. Therefore, governments need to adopt an “approach that balances short-term response with long-term strategic impact”¹⁵. The strategy has to factor in the existing impediments and potential enablers for the attainment of education for the rural child.

1.3 Justification of the Study

Literature on education in Zimbabwe has heralded the success of universal basic education over the years. However, the gains made with regards to inclusive and equitable education remain compromised in face of the COVID-19 crisis.¹⁶ In an effort to mitigate the impacts of school closure, the Zimbabwean government encouraged the use of online education means. As important as this approach has become in ensuring continued access to education for students, its feasibility for rural schools and its learners remains uncertain. Furthermore, the extent to which this approach has increased (in)equality of education access between rural and urban-based learners has not been fully investigated with academic rigor, and only a few commentaries are emerging on this topic. Literature on the implications of online approaches to education amid the COVID-19 pandemic largely focuses on higher and tertiary education, neglecting foundational levels.¹⁷

Studies of this nature can ensure that policy makers adopt measures that largely prevent inequalities being exacerbated in education delivery and attainment in the face of pandemics. There is a need for research that highlights educational (in)equalities emanating from the adopted policies that were meant to mitigate the effects of pandemic. This study is particularly critical as it focuses on spatialized inequalities in the access to education during the COVID-19 pandemic. It stresses the deeply entrenched socio-economic disparities between rural and urban-based learners. Therefore, the significance of the study is that it locates the effects of this contagion on the Zimbabwean rural-based learners in the realm of digitalised learning.

This research is important in enhancing our understanding of the connotations of the in(equality) of education policies in times of crises. By taking a micro-level approach, the research advocates for state of emergency measures that take cognizance of different situations including learners' status, economic class, geographical location, race and ethnic identities. Urgent state responses are necessary to enhance, rather than reduce, access to education for learners. Therefore, this research will provide valuable information to policymakers and

¹⁵ *Ibid.*

¹⁶ World Bank Group, ‘The COVID-19 Pandemic: Shocks to Education and Policy Responses’, *World Bank Group Education*, 2020, <openknowledge.worldbank.org/bitstream/handle/10986/33696/148198.pdf?sequence=4&isAllowed=y> (accessed 3 April 2023).

¹⁷ J. Taru, ‘You can work from home if the situation at home allows: Teaching in times of the pandemic’, *Education International*, 2020, <worldsofeducation.org/en/woe_homepage/woe_detail/16818/you-can-work-from-home-if-the-situation-at-home-allows-teaching-in-times-of-the-pandemic-by-josiah-taru#gsc.tab=0> (accessed 3 April 2023).

educators, cautioning against hastily implementing partial solutions that may perpetuate education inequalities and restrict access to education for the poor.

1.4 Research Question

The main research question is:

In what ways are indefinite lockdown measures and e-learning approaches affecting rural learners' rights to education?

The sub-questions are:

- What role do the central government, schools and other key stakeholders play to facilitate online learning for rural learners?
- What is the state of infrastructure that is essential for the implementation of remote learning in rural areas?
- What are the implications of the adoption and implementation of virtual learning on rural learners?

1.5 Methodology

The study adopted a qualitative research methodology, informed by an exploratory design. The study relied on document review and key informant interviews with 30 purposively and conveniently sampled respondents from the rural education sector, education administrators in the Ministry of Primary and Secondary Education, parents, guardians and learners in Masvingo/Gutu district.¹⁸ While some key informants were reached through telephone interviews, the majority in the study area were interviewed face-to-face by researchers while adhering to the Ministry of Health and Child Care's COVID-19 precautions and guidelines.

Thus, the study respected social distancing by providing respondents with face masks and sanitised them before interviewing commenced. With this methodology, we were able to shed more light on how practical it is to adopt e-learning in rural areas and ways in which this decreases or increases access to education for involved learners. Data collected was analysed on the basis of emerging themes as well as framed with the legal and policy documents that grant and extend the right to education. In doing this, our aim was to draw parallels on existing policies and the reality on the ground.

2 Virtual Learning Measures Adopted in Zimbabwe

In the wake of the COVID-19 pandemic, the MoPSE hastily implemented a number of interventions such as radio lessons to ensure that learning would continue during government lockdowns. On the other hand, parents took up the role of the teacher at home to assist their children with school work. Private companies and NGOs actively rolled out a number of programmes that support virtual education. Similarly, schools and learners with resources have since up-scaled the adoption and use of digital learning platforms such as Zoom, Microsoft

¹⁸ We are aware that gender affects access to education. In a patriarchal society such as Zimbabwe, female learners are more likely to drop from schools than male learners, parents are likely to buy a mobile phone or laptop for male learners than female learners and female learners are burdened by household chores that may leave little time for learning while at home.

Teams and WhatsApp, to mention only a few. This section discusses the roles played by the afore-mentioned education stakeholders in ensuring continuity and accessibility of education by all students amidst the COVID-19 pandemic.

2.1 National Radio and Television (TV) Lessons

The government, through the MoPSE, launched the school radio and TV programme for primary and secondary school children in response to indefinite school closures. With this platform, time tables for all the school levels were created and shared to allow students and educators to tune in the radio and TV so as to keep abreast with syllabus coverage. In explaining this, the Permanent Secretary of MoPSE stated that:

We have come up with a number of strategies that offer alternatives to learning. We have radio lessons and have started with primary learners which is ECD A up to grade seven and lessons have been running on national FM, Power FM, Classic 263 and we have since moved on to community radio to make sure that we reach as many as possible even in our indigenous languages. Some portions are still receiving feedback but I'm aware that there are some parts of the country that still have problems.¹⁹

Indeed, the move was to ensure that learning continues for all learners among primary and secondary students despite their geographical location. While the actual impact of radio lessons is not yet well known in Zimbabwe, a survey of challenges and progress conducted in the United States revealed a significant impact of radio lessons on learning outcomes for rural learners.²⁰ In contrast to Zimbabwe, the study indicates that most rural communities in the US are networked, virtually accessible, and have efficient telecommunication systems. Notwithstanding some flaws associated with radio lessons, the central government has made a significant step to implement radio and TV lessons in the face of indefinite school closures and in a bid to promote education in times of COVID-19 in Zimbabwe. However, there is a clear acknowledgement of the inadequacy of the initiatives in terms of educational equality among learners as some parts of the country do not have access to these virtual radio lessons. With the government having implemented radio and television lessons, limited network coverage in most remote areas in Zimbabwe detracts from equal access to education between rural learners and urban learners and among rural learners themselves.

2.2 Public-Private Partnership for Virtual Education

The GoZ also entered into public-private partnership to promote continuity of education and mitigating the adverse consequences of COVID-19 and the subsequent educational challenges. In this respect, the GoZ entered into partnerships with the biggest telecommunication company in Zimbabwe, Econet Wireless Zimbabwe (EWZ), to provide education support to learners. Courtesy of EWZ's 2014, Ruzivo Digital Learning which is a revolutionary, online interactive digital learning platform targeted at primary and secondary students in Zimbabwe in particular,²¹ enabled students and educators to access textbooks and online reading material for use during the disaster situation. While the Ruzivo platform existed since 2014, it was revamped

¹⁹ Permanent Secretary in the Ministry of Primary and Secondary Education's statement on a ZTV interview

²⁰ E. LeBlanc, *et al.*, *Digital Learning in Rural K-12 Settings: A Survey of Challenges and Progress in the United States* (IGI Global, United States of America, 2019).

²¹ News Day, 10 June 2021. Ruzivo helping students catch up with their studies during school holidays.

<https://www.newsday.co.zw/advertorial/article/30312/ruzivo-helping-students-catch-up-with-their-studies-during-school-holidays> (Accessed 14 August 2022)

and gained prominence for the use by educators and learners during the COVID-19 lockdown era.

In May 2020, EWZ introduced a relatively cheaper COVID-19 Response Student E-Learning Data Bundle Package meant to ease students registered with Zimbabwe's educational institutions' access to e-learning material.²² Positively, schools and higher learning institutions that met the eligibility criteria for applying the e-learning discounted education data bundles significantly eased the process of implementing virtual or online education during the lockdown. This was an important step in the private sector to ensure the enjoyment of the right to education amid the COVID-19 pandemic. However, the study noted disparity in the utilisation of this initiative between the urban and rural learners as the latter faced a number of physical, social and economic barriers that are discussed later in this paper.

Studies show that some governments have partnered with private telecommunication companies in the provision of special telecommunication facilities for online education during lockdown.²³ A study carried out in China revealed similar findings on public-private partnership in which the Ministry of Education has engaged telecom companies such as China Education and Scientific Research Computer Network and China Mobile in the provision of fast and stable internet facilities for students, teachers and parents' access to education material.²⁴ However, a study in Georgia showed that there was limited government support towards private schools' efforts to implement virtual education; instead the focus was on public schools.²⁵ In contrast, this study noted a non-discriminatory effort by the government to reach out to every learner irrespective of the type of school one is enrolled in. This is a positive commitment towards equality for all as enshrined by aforementioned local and international human rights instruments.

Besides partnership with telecommunication companies, the MoPSE partnered with the Education Cluster Coordination Group (ECCG), which is the local education group in Zimbabwe. The cluster targeted vulnerable girls and boys in targeted areas to continue learning during the COVID-19 pandemic through accessing alternative learning programmes at home. The cluster also spearheaded the establishment of learning facilities for the young girls and boys especially those in the rural communities.

2.3 Virtual Learning Measures Adopted by Rural Schools and Parents

Digital tools and virtual teaching methods that have been adopted for the unique circumstances include WhatsApp, Google Classroom, Zoom Meeting, Microsoft Team and Google Docs. For

²² Pindula News, 'Econet Avails COVID-19 Response Students' E-Learning Data Bundle Package', 2020, <news.pindula.co.zw/2020/05/06/full-text-econet-avails-covid-19-response-students-e-learning-data-bundle-package> (accessed 3 April 2023).

²³ Mitra, R. (2020). COVID-19 is killing education budgets: are educational public-private partnerships an answer?. *Journal of Professional Capital and Community*, 5(3/4), 255-264.

Butcher, J. (2020). Public-private virtual-school partnerships and federal flexibility for schools during COVID-19. *Special Edition Policy Brief*.

Bokde, V., Kharbikar, H. L., Roy, M. L., Joshi, P., & Ga, A. (2020). Possible impacts of COVID-19 pandemic and lockdown on education sector in India. *Food and Scientific Reports*, 1(Special Issue), 30-33.

²⁴ W. Zhang, Y. Wang, L. Yang, and C. Wang, 'Suspending Classes Without Stopping Learning: China's Education Emergency Management Policy in the COVID-19 Outbreak', *Journal of Risk and Financial Management*, 2020, p. 55.

²⁵ G. Basilaia, and D. Kvavadze, 'Transition to Online Education in Schools during a SARS-CoV-2 Coronavirus (COVID-19) Pandemic in Georgia', *Pedagogical Research*, 2020.

instance, Google Classroom is a great tool to help teachers in creating specific classes for different subjects, distribute assignments, communicate, and allow students to stay in touch with each other.²⁶ Similarly, Zoom is a video conferencing tool that has become extremely popular for its simple-to-use features and low network bandwidth requirement.²⁷ Equally, Google Docs is an online word processing software where all documents and files can be saved on Google Drive linked to Gmail accounts for free. It is an efficient tool for collaborative writing as well as collaborative brainstorming.²⁸

Although all these platforms are being utilised, results of the study indicate that WhatsApp was the most widely used tool while the rest were used by very few elite teachers and learners. Despite evidence that there was generally little understanding of the manipulation of these digital platforms, some schools and parents have since purchased digital equipment to facilitate online learning of their children such as computers, Wi-Fi-routers and cell phones. As explained by one parent:

When we heard that the opening date of schools is uncertain, I had to buy my son a mini-laptop so that he would access his lessons online. His lessons involve the use of videos so we saw it fit that he has his own laptop than using mine. We had to do as an emergence response despite the high cost of the device

A study in Georgia revealed that the adoption of digital platforms such as Zoom Meetings and Microsoft Teams was generally successful in schools.²⁹ Private schools, and parents in particular, have taken an active role in establishing facilities for online education while the public schools received substantial support from the government to adopt and implement virtual education. EduPage system has been used to engage school teachers, learners and parents via shared links. However, results from a study confirm that teachers and learners from rural communities rarely use e-learning platforms owing to different circumstances such as a lack of proper infrastructure, poor internet connectivity, costly data bundles and the lack of electronic gadgets such as laptops, iPads, iPods and smartphones, as discussed later in this paper.³⁰

Another study revealed that schools in the United States of America have collaborated with parents to design personalised learning plans for each learner in a bid to promote online education.³¹ On the other hand, various districts played an important role by developing a self-direction rubric and a system of goal trackers as tools for learners' self-reflection and own learning. In contrast, this study revealed limited district, government and rural schools interventions towards virtual education despite notable efforts by elite schools to implement afore-mentioned digital learning platforms. With these modern teaching methodologies, the assumption is that teachers are going to have greater autonomy over the subject, and they are able to offer videos, interactive exercises, peer and group assignments and self-assessments, rather than solely relying upon printed resources, schemes of work and dictating notes.

²⁶ R. Sinha, and P. Basu, 'Structural Violence Perspective on the Survival of Families Experiencing Poverty: The Contemporary Indian Family', *Transition and Diversity* (2020).

²⁷ M. Mohanty, and W. Yakub, 'Towards Seamless Authentication for Zoom-based Online Teaching and Meeting', 2020.

²⁸ Sinha and Basu, *supra* note 26.

²⁹ Basilaia and Kvavadze, *supra* note 25.

³⁰ E. J. Sintema, 'Effect of COVID-19 on the Performance of Grade 12 Students: Implications for STEM Education', *Eurasia Journal of Mathematics, Science and Technology Education*, 2020.

³¹ LeBlanc, *et al.*, *supra* note 20.

2.4 Virtual Learning Measures Taken by Non-State Actors

Various NGOs and private education institutions have been instrumental in ensuring access to education during crisis times. Institutions such as Globtorch Online Education (GOE) and Kusasa Education have up-scaled their online education systems to accommodate the emergent need for adopting virtual learning in response to indefinite school closures. Kusasa Education has opened online practice paper that specifically caters for grade seven learners.³²

UNESCO has equally shown commitment to supporting online education in Zimbabwe in this unprecedented disruption of traditional education. Through their ‘Learning Never Stops’ principle, UNESCO seeks to support the MoPSE in refining and populating its existing teacher resource portal. Despite the emergent interventions by some NGOs to pursue learning during lockdown, the role of NGOs in Zimbabwe’s education has generally been insufficient. Studies show limited NGOs’ interventions towards the adoption and implementation of remote education since the advent of COVID-19.³³ Therefore, inadequate support from both the government and non-state organisations to rural schools further accentuated the disparities in access to education between urban and rural schools.

2.5 Accessibility of Virtual Learning Platforms by Rural Schools, Educators and Learners

Although the novel COVID-19 brought some notable opportunities for strengthening Information Communication and Technology³⁴ (ICT) through the adoption of virtual and digital learning in Zimbabwe, the pandemic has generally extended marginalisation of rural school communities, education inequalities and economic hardships among the vulnerable rural learners. The study noted that there are a myriad of challenges faced by rural schools, administrators, learners, teachers and parents in their endeavour to fit into the digital education in times of the COVID-19 pandemic. These include among others, limited power, poor telecommunication, scarcity of resources and knowledge gaps on ICT. Unequal access to learning in times of the pandemic has been exacerbated by geographical location, poverty and limited resources among the rural communities. These socio-economic and environmental factors have compounded to violating the learners’ right to education and aggravating educational inequalities as encapsulated by SDG 4 that seeks to ensure inclusive and equitable quality education.

2.6 Challenges and Implications of Virtual Education on Rural Learners and Other Stakeholders

Several constraints to remote educational instruction for rural learners were noted. These include resource scarcity and high costs of remote learning, knowledge gap on ICT, poor telecommunication systems, power shortages and the burden of household responsibility for rural learners. This section delves on how these obstacles violated the right to education for rural learners in Zimbabwe.

³² Action Aid (2020). Supporting schools and children during COVID -19 pandemic. <https://zimbabwe.actionaid.org/stories/2020/supporting-schools-and-children-during-covid-19-pandemic> (Accessed 7 October 2023)

³³ See M. Teräs, *et al.*, ‘Post-Covid-19 Education and Education Technology ‘Solutionism’, A Seller’s Market Marko’, *2 Postdigital Science and Education*, 2020; See also Zhang *et al.*, *supra* note 24; LeBlanc *et al.*, *supra* note 20.

³⁴ An online system of teaching and learning or e-learning. Kaware, S. S., & Sain, S. K. (2015). ICT application in education: an overview. *International Journal of Multidisciplinary Approach & Studies*, 2(1), 25-32.

2.6.1 Resource Scarcity and Increased Costs of Learning

By its nature, virtual education requires adequate resources to be efficiently implemented such as computers, smart phones, internet and data to mention but a few. The study noted that a basic brand new computer, for instance, ranges between USD 300 to USD 400, which requires at least 100 learners paying their full tuition fees for the school to afford a single computer. Whereas urban learners and teachers can access Wi-Fi, rural schools need to purchase internet and digital tools that demand financial resources. Many rural schools visited for this study are under-funded and incapacitated to fully implement remote education for its learners. Thus, besides the lack of adequate resources to facilitate online education by schools, communities themselves cannot afford to purchase digital equipment and tools required for virtual learning. One teacher contacted revealed the following:

We do not have any problem with switching to virtual education if the government provides the resources to support it. At our school, only the Head's office and the Clerk's office do have computers that are used for administration and not teaching of learners. So without such resources, surely it is impossible for us to easily implement online education. Most schools for example in our zone do not have electricity and only rely on generators that are occasionally switched on due to fuel challenges to do specific admin duties. Solar systems are far reaching for most schools considering little fees collections that most parents cannot even afford. In short, I am saying most schools have scarce resources and funds to implement online education.

One student interviewed concurred with the above teacher as he said:

We do not have smart phones, laptops to aid online education and even radios to listen to the radio lessons we hear of. So I personally do not benefit from virtual education as long as I do not have these requirements. Maybe if our schools provide, we can adopt virtual education successfully.

Thus, virtual learning demands a lot of money from schools, learners and teachers in rural areas to keep abreast with the new education approaches under lockdown measures in Zimbabwe. With poverty datum line soaring to over 21 per cent between February and March 2020,³⁵ resource scarcity presents a major setback for effective implementation and adoption of virtual education among rural teachers and learners. Another study similarly revealed that most rural schools are socio-economically disadvantaged and cannot afford to purchase computers and home-based internet facilities.³⁶ According to UNESCO,³⁷ approximately 90 per cent of learners in sub-Saharan Africa do not have access to household computers, and 82 per cent do not have internet access. A survey conducted by Afrobarometer, prior to COVID-19 from 2017 and 2018, shows that one out of 100 learners was able to access online education in rural schools due to a lack of ICT equipment and facilities.³⁸ This clearly shows the financial implications of lockdown measures on virtual learning for rural school communities. Musarurwa similarly noted that inefficient infrastructure to maintain ICT and inadequate financial resources to purchase sufficient ICT equipment and software compromise the efficacy of ICT

³⁵ Newsday, 27 April 2020. Poverty datum line shoots 21,3%.

<https://www.newsday.co.zw/business/article/47196/poverty-datum-line-shoots-213> (Accessed 14 August 2020)

³⁶ K. DePaul, 'Can Online Learning Mitigate Rural Schools' Biggest Challenges?', *Getting Smart*, 2020, <gettingsmart.com/2020/02/can-online-learning-mitigate-rural-schools-biggest-challenges/> (accessed 13 August 2020).

³⁷ UNESCO. 'Education: From Disruption to Recovery', 2020, <en.unesco.org/covid19/educationresponse> (accessed 23 December 2021).

³⁸ S.N. Moyo, and S. Ndoma, 'Limited Internet access in Zimbabwe a major hurdle for remote learning during pandemic', *Afrobarometer Dispatch No. 371*, 2020, <afrobarometer.org/publications/ad371-limited-internet-access-zimbabwe-major-hurdle-remote-learning-during-pandemic> (accessed 23 December 2021).

implementation in Zimbabwe's education system.³⁹ Another study concurs that less than 50 per cent of families in rural areas in Georgia own computers.⁴⁰ Based on the foregoing, rural schools that are often financially stressed find it difficult to implement virtual education under the government's lockdown measures in response to COVID-19 pandemic. Without adequate resources and facilities, virtual education being advocated for by the government of Zimbabwean response to this pandemic will only extend rural-urban inequalities to the right to education.

2.6.2 Knowledge Gap on ICT

Many of the educators highlighted their limited knowledge of ICT. Despite schools greatly embracing ICT, there remains a mismatch between demand for and availability of qualified teachers.⁴¹ The few with skills work at elitist and well-resourced boarding schools. Thus, these teachers and their learners are left behind while those from urban areas and elitist schools are benefiting from virtual learning. As one school administrator explained:

Most learners here do not even know how to use a laptop and even smart phone to access the internet and online lessons. Poverty is the main reason- parents do not afford these things. . . With over 120 schools in this district, less than 40 schools both primary and secondary teach computers. Obviously, this implies that the majority of learners and even teachers in the district do not have access to ICT education and computers in particular. It means a massive expenditure if we even think of training or providing ICT resources to such a large population.

Thus, limited ICT knowledge and tools available to teachers and learners is a major obstacle in the effective adoption of virtual education by rural schools in response to the pandemic. In a way, the paradigm shift towards virtual learning has rather extended the demand for resources from impoverished vulnerable rural communities. Rural schools, learners and teachers require adequate resources and knowledge for ICT. Moreover, rural schools struggle to recruit and retain more suitable teachers, as well as enjoy adequate early childhood services that facilitate effective ICT education post early childhood education.⁴² This means that the adoption of virtual learning has exacerbated education inequalities between the privileged and better resourced urban learners, and resource deprived rural learners. Poverty, information gaps and remoteness of an area compound to posing difficulties in implementing virtual education.⁴³ This emerged from an interview with one school administrator who said:

We are a rural community here where the majority of our learners come from poor families that struggle to just raise basic school requirements such as uniforms. Now, with the inception of this pandemic and as we advocate for equality in access to education, we already are affected because most of our schools and parents can't afford purchasing data, smart phones and many other financially demanding equipment. We hear elite schools have already begun engaging in these virtual lessons. What about ours? You see, we have a serious challenge. With over 120 schools and you have less than 40 schools teaching computers, this implies that the majority of learners and even teachers in the district do not have access to ICT education and computers in particular. It means a massive expenditure if we even think of training or providing ICT resources to such a large population.

³⁹ C. Musarurwa, 'Teaching With and Learning Through ICTs in Zimbabwe's Teacher Education Colleges', *US-China Education Review*, 2011.

⁴⁰ Basilaia and Kwavadze, *supra* note 24.

⁴¹ Musarurwa, *supra* note 39.

⁴² D. Showalter, *et al.*, 'Why rural matters 2015–2016: Understanding the changing landscape', *Rural School and Community Trust*, 2017, <ruraledu.org/user_uploads/file/WRM-2015-16.pdf> (accessed 3 April 2023).

⁴³ LeBlanc *et al.*, *supra* note 20.

Thus, besides extending the rural-urban divide in education, the adoption and implementation of virtual learning presents a massive resource demand and expenditure among rural school communities. It is, consequently, vital to appropriately equip learners and teachers with ICT knowledge and tools for effectively implementing online education under the current lockdown. In China, most teachers had little knowledge of online resources before the lockdown leading to precipitous and inappropriate efforts being undertaken to implement them.⁴⁴

2.6.3 Poor Tele-Communication and Unequal Access to Learning

Most rural communities are located in remote areas where network is either poor or unavailable, thereby depriving learners of the access to education. The geographical location is a major blow given that virtual education can only take place when students and teachers have network accessibility and connection. Results showed that few communities had access to all networks available in Zimbabwe that include Net One, Econet and Telecel. While Econet network has a relatively wide coverage, most areas are plagued by poor network and are relying on the weakest second generation (2G) network which cannot connect some education sites and applications effectively. All communities studied did not have 4G which is highly suitable for efficient connections for virtual education. One key informant responded that:

We only rely on Econet network for data connection. Other networks are not available here so despite being relatively more expensive, we have no option except using Econet data bundles for our local Wi-Fi. However, the network is not constantly strong to withstand some heavy sites and at times it may not be available for 2 days or so. For virtual education, I think our area may not be ideal.”

Clearly the above narrative shows that the inadequacy of telecommunication facilities is one of the barriers to rural learners’ access to virtual lessons during lockdown. This extends rural-urban divide and education inequality with internet access being the main obstacle. According to TechZim, only 2864 schools of the nearly nine thousand schools in Zimbabwe have internet access.⁴⁵ In the same vein, another study established that less than half of the households (43 per cent) owned cell-phones and more than 28 per cent in rural areas had no access to the internet.⁴⁶ Six out of ten (60 per cent) have never been online in their lifetime (Ibid). Another study on the government's policy, revealed that differences in geographical network facilities with most remote areas experiencing poor network coverage and connectivity present a serious obstacle to policy implementation in China.⁴⁷ Approximately 2 per cent of the learners do not have access to online live education⁴⁸ and government ministries, district councils and telecommunication companies in Zimbabwe did not establish adequate infrastructure in rural areas to foster e-learning.⁴⁹ Zhang *et al.*⁵⁰ concurred that the large-scale needs and personal visits on online education platforms such as Ding Talk, Cloud Classrooms and ZOOM demand strong networks which may not be available for remote areas. While affording necessary

⁴⁴ Zhang *et al.*, *supra* note 24.

⁴⁵ V. Muhamba, ‘Only 2864 schools of the nearly 9K in Zim have internet access’, *TechZim*, 2021, <techzim.co.zw/2021/03/only-2864-schools-of-the-nearly-9k-in-zim-have-internet-access/> (accessed 23 December 2021).

⁴⁶ Moyo and Ndoma, *supra* note 38.

⁴⁷ A4AI (2022). Meaningful Connectivity for Rural Communities: Geographic Barriers & Policy Strategies for Digital Inclusion. Alliance for Affordable Internet.

⁴⁸ CCTV News, ‘How to Help the Poor Students Get the Online Courses’, 2020.

<toutiao.china.com/shsy/gundong4/13000238/20200304/37868320_2.html> (accessed 13 August 2020).

⁴⁹ Sebata, *supra* note 12.

⁵⁰ Zhang *et al.*, *supra* note 24.

devices for online education is also a challenge, in some areas, students have to walk long distances to access stable network.⁵¹ One learner interviewed stated:

Our area has poor network such that we walk to certain points to make calls. For internet, you have to go to Gangare which is about 1 kilometre from here. So, I often lag behind in information accessibility and latest trends about our country. Some of my classmates are already doing WhatsApp lessons but I can't join them because of poor network coverage and strength.

Indeed, network challenges pose a massive threat to the right to education for rural learners in Zimbabwe.⁵² Efforts to access remote learning has subsequently caused social structural shifts among rural communities as parents in network deprived areas have sought alternative accommodation for their children. Some families have turned their homes into boarding houses to accommodate such children. Students rent in households near schools and other educational facilities. Away from their parents and guardians, these children are susceptible to other rights violations. Thus, besides education inequality gaps, COVID-19 has exacerbated the vulnerability of rural children to a myriad of dangers such as sexual abuse, loss of morality and peer pressure potentially compromising their right to safety, health and well-being.

2.6.4 Power Shortages

One of the salient challenges faced by rural residents in the adoption and implementation of virtual education is the issue of power shortages. Most rural schools and households do not have electricity to charge or power their devices, such as cell phones, radios, computers, and televisions. One out of every ten schools in the district were found to have electricity. Approximately, 70 per cent of schools in Gutu district do not have electricity. Similarly, the majority of households in which interviews were conducted with parents had no alternative source of electricity such as solar power and relied on power from the nearby shopping centres and neighbours.

The study established that schools that have electricity are boarding schools and a few day schools located closer to power lines, and major service centres including hospitals and growth points. For this reason, most rural schools do not have electricity, subsequently leading to very limited or no investment towards ICT and education by schools, teachers and learners.⁵³ Due to power challenges, some teachers and learners are forced to walk long distances to charge their electrical devices in order to keep themselves abreast with lessons and other correspondences from tutors.

Besides limited power supplies for schools and households, frequent power cuts by authorities were also observed to interfere with rural learners' accessibility to remote learning. Most local network boosters that rely on hydro-electric power do not work efficiently, some losing network transmission whenever there are power cuts. This consequently disrupts remote learning for rural learners living in communities that rely on a single network booster. Strength of network

⁵¹ Michigan State University, Challenges Schools Face in Moving Education Online.

<www.Futurity.Org/Moving-Education-Online-Schools-Internet-Access-2319392/> (accessed 13 August 2020).

⁵² Young, J., & Donovan, W. (2020). Shifting to Online Learning in the COVID-19 Spring. Policy Brief. *Pioneer Institute for Public Policy Research*.

⁵³ S. Isaacs, 'ICT in Education in Zimbabwe: Survey of ICT and Education in Africa', *Zimbabwe Country Report Zimbabwe*, 2007, <openknowledge.worldbank.org/server/api/core/bitstreams/f5cd56a8-e77d-5abd-b195-6edef4adfff0/content> (accessed 3 April 2023).

for internet access and radio and television transmissions are constantly affected. One of the school heads said:

I came to be the head at my school 12 years ago and to date we do not have electricity in our community. This means that even if I want to invest in computer education at my school, I can't due to resource scarcity and particularly power challenges. Our new curriculum advocates for ICT yet most of us in rural areas do not have electricity; do not have computers, Wi-Fi and many other ICT tools that make the government move flawed. Today, we are under lockdown and we have non-starters for online education because we never invested in ICT due to resource scarcity. If we buy computers, where would we charge them? We have real challenges.

Thus, power outage is one of the major challenges for adapting and accessing virtual education in rural areas in Zimbabwe. As long as rural areas are not electrified as their urban counterparts, virtual learning may be difficult to implement in times of COVID-19. It has been established that prolonged school closures have serious adverse effects on children's physical and mental health.⁵⁴ Thus, given the present urban-rural education disparity, lockdown measures present the potential for severe short and long-term implications on the already marginalised rural learners in Zimbabwe.

2.6.5 Burden of Household Responsibility for Rural Learners and Gender Implications

The study also revealed that rural learners bear the burden of household responsibilities that deter them from devoting adequate time to virtual learning. While online education can be done anywhere and anytime, the responsibilities of boys and girls in rural areas, such as herding cattle, cultivation, fetching water among other household chores, disrupt the systematic flow of remote learning. In fact, due to high poverty levels among rural populace, school-aged children take over certain parental responsibilities such as selling commodities including fruits, vegetables, maize and other farm and non-farm products for livelihood. These responsibilities tend to be gendered and girls are often more severely burdened than boys. It is, consequently, very difficult for most rural learners, particularly girls, to balance livelihoods and education demands in times of COVID-19 pandemic. One student stated:

When I'm home, I cannot find adequate time and space to study because I would have many duties to execute such as gardening, land preparation, firewood fetching and many others. I cannot refuse any duty offered by my guardians so I usually study during the night and only when there is a source of light energy. At times, you cannot study at night because either candles are finished or there is no money to venture into alternative sources of light energy such as lamps.

Thus, rural learners may not fully benefit from virtual education under the current socio-economic hardships in Zimbabwe. The study also observed COVID-19 caused more gendered disproportionality. Girls, particularly orphans living with guardians, are relatively more overburdened with household responsibilities such as washing, cooking, vending and gardening among other activities. They have limited time to access virtual learning as their male counterparts under such circumstances. Thus, besides being deprived of the right to education, both girls and boys in rural communities face a myriad of rights violations including the right to live with his or her parents, the right to education and the right to benefit from protection, all of which exacerbate the rural-urban divide.

⁵⁴ S.M. Adlof, *et al.*, 'Identifying Children at Risk for Language Impairment or dyslexia with Group – administered Measures', 60 (12) *Journal of Speech, Language and Hearing Research*, 2017.; S.K. Brooks, *et al.*, 'The psychological impact of quarantine and how to reduce it: rapid review of the evidence', 395(10227) *The Lancet Rapid Review*, 2020, pp.912-920.

Unless rural learners are exempted from such household chores and responsibilities, virtual learning is unattainable for them. A study by Zhang *et al.* confirmed that remote instructions for rural teachers and learners are often associated with distractions such as household burden and childcare for teachers that may interfere with online teaching.⁵⁵ Moreover, it has been noted that both rural teachers and learners may not find conducive environments or spaces for their lessons unlike urban counterparts.⁵⁶ Thus, rural learners are beleaguered with the burden of household responsibilities as compared to urban counterparts giving them less space and time to undertake virtual education under lockdown settings. This also compromises their full access to learning and education as a right.

2.6.6 Opportunities Arising from Adoption and Implementation of Virtual Education

Notwithstanding the adverse implications experienced by rural learners in accessing virtual learning during lockdowns, the advent of COVID-19 has served as an impetus to promote ICT education in rural schools. This is due to the opportunities for virtual education that have arisen as a result of the pandemic. These include strengthening the new curriculum, which strongly advocates for ICT in schools, as well as improved digital learning service provision in Zimbabwe.

2.6.7 Virtual Learning as an Impetus to Implementing Competency-Based Curriculum (CBC) on ICT

The advent of COVID-19, subsequent lockdown and the shift towards virtual learning presents an opportunity to fully implement the CBC in Zimbabwe's primary and secondary education. A review of literature revealed that the latest curriculum of the MoPSE is competency-based, practical-oriented and demands for the inclusion of cross-cutting issues and practical lessons such as driving, computers and agriculture to mention but a few. This was revealed by the then Minister of Primary and Secondary Education, Professor Mavima, commenting on the completion of new curriculum evaluation as he said:

We have enhanced Science, ICT and Mathematics education from infancy level as we strive to provide inclusive and equitable quality education and promote lifelong learning opportunities for all.⁵⁷

Despite the aforementioned flaws that have been associated with lockdown measures and a shift towards virtual education, COVID-19 presents an opportunity for the government to strengthen efforts to implement the CBC that speaks more of ICT. Virtual learning is, therefore, a significant step towards that goal if adequate support is ushered for rural learners, teachers and the entire school community. However, in an earlier discussion, the Progressive Teachers Union of Zimbabwe (PTUZ) viewed the implementation of the new curriculum and emphasis on ICT as a premature and ill-planned move that has not been considerate of the existing ICT gulf between rural and urban schools.⁵⁸ Based on the foregoing, harnessing this opportunity requires multi-stakeholder engagement, systematic planning and accurate needs assessment.

⁵⁵ Zhang *et al.*, *supra* note 24.

⁵⁶ Teräs *et al.*, *supra* note 33.

⁵⁷ *Govt completes new curriculum evaluation | The Herald* April 19, 2018.

⁵⁸ The NewsDay, 'Teachers blast Dokora over 'rushed curriculum'', 2017,

<newsday.co.zw/news/article/82739/teachers-blast-dokora-over-rushed-curriculum> (accessed 13 August 2020).

2.6.8 Improvement in Digital Learning Service Provision

The study also noted that the lockdown measures adopted by governments due to COVID-19 and subsequent closures of schools have resulted in improved service provision by digital platform service providers. In Zimbabwe, this has seen improved private-public partnership and intervention towards digital, virtual learning in times of the pandemic. In response to the pandemic and in an endeavour to foster learning among children, the education sector has seen service providers providing support and solutions, even for free.⁵⁹ Econet Zimbabwe has offered affordable data services for education institutions and learners, a privilege that has never been witnessed in Zimbabwe. However, some scholars criticise the emergency support for virtual and online education by service providers for failing to meet sound pedagogical practices, principles and earlier research.⁶⁰ Similarly, Sintema highlights that prominent experts also question the emergency instructional support offered by digital service providers which is viewed as a market driven move rather than a child education driven move⁶¹. Other scholars feel that these quick-fix efforts potentially lead to negative consequences if implemented without critical analysis.⁶² Nevertheless, the study saw a general improvement in service delivery towards remote education in Zimbabwe that presents an opportunity for rural learners' adoption of digital education systems.

3 Conclusion

The sudden emergence of the novel COVID-19 virus has led to a rapid response approach by the Government of Zimbabwe, the school community and other key stakeholders, in an attempt to ensure that learning would not come to a halt. Some measures taken include the implementation of online and TV lessons, multi-stakeholder partnership to support education, parental support and facilitation among others. However, while the lockdown measures were intended to safeguard the health and safety of everyone, the adoption of virtual education has generally widened the rural-urban education gap and violated children's right to education. Rural learners face a myriad of challenges, such as poor network coverage, lack of power, ICT knowledge gap, resources scarcity and burden of household responsibilities. Notwithstanding these challenges and implications, the adoption of virtual education presents an opportunity to strengthen the implementation of the more pragmatic, competency-based curriculum in Zimbabwe's primary and secondary schools. Besides that, COVID-19 has triggered the upscaling and improvement of ICT-related goods and service provision in the country to accommodate the demands of virtual education.

⁵⁹ Teräs *et al.*, *supra* note 33.

⁶⁰ C. Hodges, *et al.*, 'The Difference Between Emergency Remote Teaching and Online Learning', *EDUCAUSE Review*, 2020, <er.educause.edu/articles/2020/3/the-difference-between-emergency-remote-teaching-and-online-learning> (accessed 13 August 2020).

⁶¹ Sintema, E. J. (2020). Effect of COVID-19 on the Performance of Grade 12 Students: Implications for STEM Education. *Eurasia Journal of Mathematics, Science and Technology Education*, 16(7), em1851. <https://doi.org/10.29333/ejmste/7893>

⁶² See N. Selwyn, 'After COVID-19: The Longer-Term Impacts of the Coronavirus Crisis on Education', Monash University, 2020, <educationfutures.monash.edu/all%2D%2D-present/after-covid-19> (accessed 13 August 2020).; M. St. Amour, 'Privacy and the Online Pivot', *Inside Higher Ed*, 2020, <insidehighered.com/news/2020/03/25/pivot-online-raises-concerns-ferpa-surveillance> (accessed 13 August 2020).

4 Recommendations

Based on the foregoing, the following recommendations may be adopted by the government and other stakeholders to fully realise the impact of virtual education among rural communities in Zimbabwe:

1. Capacity Building for Teachers and Learners on ICT and Virtual Education

This can be done on rolling basis in respect of social distancing and other precautionary measures. Trainings should address key questions, such as what tools will be used, when lessons will take place, and how to evaluate teacher and student performance. Virtual learning programmes should also be cognisant of variations that exist in terms of network coverage, resource access and responsibilities between rural and urban learners, hence flexible schedules should be implemented.

2. Provision of ICT Resources for Rural Schools

The government and other stakeholders should prioritise rural schools in the provision of ICT tools and facilities such as computers, tablets, smart phones, power banks, solar systems, among others. Special budgets can be tailored to meet the resource needs of vulnerable teachers, learners and parents in rural areas.

3. Strengthening Partnership between Government and Non-Governmental Actors

The government should also work with telecommunication companies to improve the coverage of networks for radio lessons, internet lessons and television lessons. That partnership should also extend to ease costs of accessing internet by rural areas and strengthening internet connectivity. Thus special education bundles can be made available for institutions or learners through a verified system of eligibility.

4. Social Assistance Programme

There is an urgent need for government and non-government stakeholders to work together and assist parents, teachers and learners especially in rural areas in times of crisis of this nature. This assistance can help achieve educational equality and ensure that everyone has the right to education.

5. Context-Specific Emergency Response Measures

This will cater to low-income families and communities that are already marginalised due to their geographical location and other socio-economic challenges.

3 The Principle of Proportionality of Human Rights: Analysis of Executive and Regulatory Responses to COVID-19 in Zimbabwe

Joyce Chigome*

Abstract

The world faced unprecedented times due to the proliferation of the deadly coronavirus (COVID-19) which presented unique challenges that are a threat to life and health. Following the declaration of COVID-19 as a global pandemic, Zimbabwe imposed far-reaching restrictive measures to curb the spread of COVID-19. The virus was transmitted through respiratory droplets that passed from one person to another. Therefore, the main aim of the government's response was to enable social distancing as a preventative measure. However, the emergence of COVID-19 resulted in the creation of a diverse spectrum of challenges that have caused untold suffering among the country's population during the pandemic and most probably beyond it. Against this background, the aim of this study was to provide insight into conflicting human rights obligations in view of the proportionality of the executive and regulatory measures taken. The study employed the proportional test on human rights to determine whether the responses by government were proportionate to the limitations placed on human rights and freedoms. This was done by examining whether the responses were necessary, adequate and of proper use. To this effect, the study affirms that the declaration of the state of national disaster in Zimbabwe was necessary and adequate to pursue public health protection. Further, the study found out that the use of restrictive measures was proportionate to the limitations placed on the right to privacy, right to education, right to personal security, freedom of movement and residence, freedom from arbitrary evictions, and the right access to information (in some cases). However, the study found out that some of the measures were disproportionate to the limitations imposed on the enjoyment of rights such as right to work, right to health care, freedom of expression and media, right to equality and non-discrimination and freedom of association. This study therefore concluded that policymakers need to redress the negative effects imposed by the established statutes and regulations. Further to this, since measures were fast tracked, it is important for the legislature to make checks and balances of executive decisions made so as to ensure that the best course of action to redress existing challenges and to guide future action.

Keywords: proportionality, executive and regulatory responses, COVID-19

1 Introduction

The COVID-19 pandemic has presented a novel and unprecedented experience for humanity worldwide, as the number of infections and deaths continues to rise. Notwithstanding its threat to human life, COVID-19 has disrupted and destabilized the economies of many countries across the globe meanwhile it is set to leave far-reaching implications for societies even for decades to come. From the onset, one of the major challenges of COVID-19 has been that very little was known about the disease and its effects on human life. This has compounded decision-making as there was very limited available knowledge to guide government responses. On 11 March 2020, the World Health Organization (WHO) declared COVID-19 a global pandemic.¹ There was widespread adoption of lockdown measures across the world, as most countries

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¹ WHO, 'WHO Director-General's opening remarks at the media briefing on COVID-19', 11 March 2020, <www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>, visited on 10 November 2020.

attempted to swiftly mitigate the spread of the virus. Nevertheless, this was simultaneously confounded by heightened concerns over the protection of human rights as nations responded to the pandemic.

It would be inaccurate to suggest that there were no guidelines available to aid governments in equally responding to the promotion and preservation of human rights during the COVID-19 pandemic. However, the existence of distinct country contexts made it impractical to adopt a one-size-fits-all approach. Therefore, a contextual rights-based approach was necessary to evaluate the implications of COVID-19 responses. One of the most important references has been the International Human Rights Law (IHRL), which governs the obligations of states towards their citizens and other individuals within their jurisdiction. Since it was widely acknowledged that the primary purpose of government responses to COVID-19 were to preserve human life, likewise, it was equally crucial to simultaneously consider the preservation of human rights. This would be particularly useful in addressing and minimizing the need for corrective action to redress challenges in the aftermath of COVID-19. The pandemic has had a profound negative effect on social-economic systems globally as reflected in the closure of businesses, rising unemployment rates, the decrease of economic activity, increases in domestic violence, reduced standards of living, the threat of increased poverty, disruption of educational services, increased health risks as well as heightened threats on other human rights and freedoms.

Against this background, the study sought to establish whether there was proportionality of human rights in the executive and regulatory responses to COVID-19 in Zimbabwe. The principle of proportionality requires that any interference with a human right must be deemed necessary in a democratic society, making it one of the cornerstones of international human rights law. Consequentially, this implies that governments must be able to demonstrate that their interference with any human right meets a pressing social need and is proportionate and adequate to the legitimate aim being pursued.² Hence, restrictive measures must conform to the principle of proportionality and must be appropriate to achieve their protective function. Similarly, the interference with human rights must be justified by reasons that maintain a reasonable relation with the intensity of interference.³ Although there are numerous ways of assessing the impact of responses to COVID-19, this study used the principle of proportionality to human rights to provide government policymakers and defenders of human rights with a framework for assessing whether executive and regulatory responses to COVID-19 align with the promotion and preservation of human rights.

The rest of the paper was organized into six sections. Subsequent to the introduction, the next section of the paper dwelt on the overview of global responses to COVID-19. This was followed by a discussion on the executive and regulatory measures taken to contain COVID-19 in Zimbabwe. Thereafter, the study considered the interface between the principle of proportionality and COVID-19 as well as outlining the constitutional and human rights framework in Zimbabwe. This subsequently led to the discussion of the analysis of how the principle of proportionality interfaces with the executive and regulatory responses to COVID-

² Necessary and Proportionate, 'International Principles on the Application of Human Rights to Communications Surveillance', *Electronic Frontier Foundation (EFF)*, 2013, Article 19. www.eff.org/files/necessaryandproportionatefinal.pdf (accessed 14 October 2020).

³ J. Sieckmann, 'Proportionality as a Universal Human Rights Principle'. In D. Duarte and J. S. Sampaio (eds.), *Proportionality in Law: An Analytical Perspective* (Springer, 2018).

19 in Zimbabwe. The paper ends with a section on conclusions and recommendations of the study.

2 Global Response to Towards the Spread and Containment of COVID-19

This section provides an overview of global responses to the spread and containment of COVID-19. The central aim was to elucidate on the evolution of government responses across the globe following the declaration of COVID-19 as a global pandemic that required a joint response to curb the spread of the virus.⁴ COVID-19 is a highly infectious disease that resulted in an unfathomable number of deaths across the world, comparable to the Spanish Flu era. In March 2020, very little was known about the disease, meanwhile infections and deaths were growing exponentially. This led governments across the globe to implement various forms of restrictive measures in a haste to mitigate the spread of COVID-19. Notably, the pandemic prompted the proliferation of accelerated research in epidemiology leading to ground-breaking achievements such as the development of effective COVID-19 vaccines. What would normally take an average of ten years, was achieved by vaccine developers such as Pfizer and Moderna within ten months. The hope was that COVID-19 vaccines would provide immunity to the virus explaining why some governments in developed countries extended extensive resources and support to vaccine developers. However, since the use of vaccines was still in its infancy as of 2020, governments still had an obligation to safeguard and protect their citizens and individuals living in their countries, especially during an emergency health crisis.

Since the first reported case of COVID-19, there was a surge in the use of legislative initiatives that resulted in total lockdowns and isolation in many countries which spanning several weeks and months in some instances. The first lockdown was imposed in China's Hubei province.⁵ Subsequently, the period 2020 to 2021 saw an increase in the restriction of non-essential movement in several countries across the globe with varying degrees of severity. By April 2020, lockdowns had been implemented in 31 Asian countries, 43 European countries, the United States and 37 other countries in the Americas, Australia, New Zealand and 44 Sub-Saharan African countries, including Zimbabwe.⁶ As of 10 December 2020, a cumulative total of 68,165,877 confirmed cases of COVID-19 have been reported globally, including 1,557,385 deaths.⁷ The region of the Americas and the European region, as documented by the WHO, represented 73 per cent of the total confirmed cases and 79 per cent of the total deaths, respectively.⁸ It is noteworthy that the first series of lockdowns began in developed countries. However, the WHO raised concerns over the notion that some restrictive measures were not ideal for developing countries as this was likely to further exacerbate poverty. The use of lockdowns implied that the greater part of economic activity would be halted, thus rendering poor countries unable to withstand the pressure placed on their economies, especially if the lockdown period were to be prolonged.

⁴ World Health Organization, 'Coronavirus disease 2019 (COVID-19) Situation Report 51', WHO, 2020, <www.who.int/docs/default-source/coronaviruse/situation-reports/20200311-sitrep-51-covid-19.pdf?sfvrsn=1ba62e57_10> (accessed 11 December 2020).

⁵ Pan, Shan L. Cui, Miao, & Qian, Jinfang (October 2020). 'Information resource orchestration during the COVID-19 pandemic: A study of community lockdowns in China', *International Journal of Information Management*. 54: 102143.

⁶ Oxford COVID-19 Government Response Tracker, (OxCGRT), Blavatnik School of Government, University of Oxford.

⁷ Pan American Health Organization, 'Response to COVID-19 in the Americas January-December 2020. Report, 20 May 2021. Contract No.: PAHO/IMS/PHE/COVID-19/21-0010.

⁸ *Ibid.*

Since the outbreak of the COVID-19 pandemic, the European Union (EU) and European Economic Area (EEA) as well as the United Kingdom (UK) implemented various measures to prevent and control the spread of the highly infectious disease. However, these countries went further by expending effort towards implementing strategies to mitigate the negative effects associated with their responses to COVID-19. To improve their response to COVID-19, the European Centre for Disease Prevention and Control published an interim guide on 17 June 2020, as a framework for monitoring and evaluating COVID-19 response activities in the EU/EEA and the UK. This framework included indicators for various key pillars such as COVID-19 preparedness, prevention, and control activities as well as guidance on data collection and analysis. The main objective of the initiative was to provide a set of standardized indicators to guide sub-national, national and EU-level responses to COVID-19 in the EU/EEA and the UK. WHO member states were also provided with a similar framework, however, there was ambiguity regarding the monitoring and evaluation of the responses to COVID-19 in developing countries such as Zimbabwe. For instance, there was little evidence in Zimbabwe to link strategic and operational responses to a set of triggers that guide activation or deactivation of pandemic emergency responses. In the case of developing countries, there was limited evidence to suggest the existence of a specific scientifically based trigger to guide policymakers' responses, as observed in developed countries. In the latter, these triggers were well communicated to the public so that they would stay informed to enable them to take responsibility to support government efforts in reducing spikes in COVID-19 infections.

During the first wave of COVID-19, countries such as New Zealand and South Korea were among the few that managed to mitigate the spread of the virus. New Zealand relied on three types of measures that included ongoing border controls to prevent the virus from entering the country, lockdown and physical distancing to stop community transmission, and case-based control using testing, contact tracing and quarantine. This resulted in significantly lower case numbers and deaths compared to other developed countries in Europe and North America.⁹ It is believed that countries such as South Korea and Singapore also managed to keep infections and deaths low due to their experience with SARS and their rapid response to the first wave of COVID-19. However, the second wave of COVID-19 has left the greater part of the world in a state of shock as the virus continued to spread rapidly, even in countries that were previously lauded for their successful containment efforts, such as Germany and South Korea. Despite the threat posed by COVID-19, some countries began to face resistance over the use of restrictive measures as people felt their human rights were being infringed upon. Since March 2020, there were 30 major protests in 26 countries across the world including both high and low-income nations such as USA, Germany, Australia, Brazil, Mexico, Malawi and Nigeria.¹⁰

World leaders faced a mammoth task of protecting public health as a human right, as well as other fundamental human rights that were likely to be affected by government responses to COVID-19. The key challenge facing world leaders was that the pandemic seemed to reward those who had crisis leadership skills, while punishing those who failed to integrate people's needs into their responses. In some instances, governments resorted to legislation that banned protests, however, increasing awareness and access to information on why the lockdowns were

⁹ The Conversation, '100 days without COVID-19: how New Zealand got rid of the virus that keeps spreading across the world', *The Conversation*, <theconversation.com/100-days-without-covid-19-how-new-zealand-got-rid-of-a-virus-that-keeps-spreading-across-the-world-1436726> (accessed 6 August 2020).

¹⁰ T. Carothers and B. Press, 'The Global Rise of Anti-Lockdown Protests—and What to Do About It', *World Politics Review*, 2020. <www.worldpoliticsreview.com/amid-the-covid-19-pandemic-protest-movements-challenge-lockdowns-worldwide/> (accessed 16 October 2020).

necessary would have been an alternative approach. Notably, the re-election of the prime minister of New Zealand, Jacinda Arden, is argued to have been partly attributed to the way she managed the spread of COVID-19. Conversely, some have attributed the loss of the US presidential election by Donald Trump to his handling of the pandemic. A potent lesson from the New Zealand case is that responses that take cognizance of human rights as well as saving lives can win elections.¹¹ It is undeniable that COVID-19 will linger in the minds of humanity for some time which is why governments cannot ignore its effects on the enjoyment of human rights.

Concerning global responses to COVID-19, most developed countries did not solely rely on restrictive measures to control the spread of the disease, but also sought ways to reduce the limitations placed by regulations in order to protect the enjoyment of human rights, wherever possible. For instance, during the first wave of COVID-19, the US Congress approved a stimulus package that allowed people who had lost their jobs due to the pandemic to file for unemployment benefits. However many developing countries had heavily constricted fiscal capacities to provide benefits to the populace as had been the case in developed countries. It is against this background that this study saw an urgent need to conduct a rights-based analysis on the proportionality of the measures used to curb the spread of COVID-19 in Zimbabwe. This provided more insight into the importance of implementing appropriate responses especially where governments have limited options to redress the resulting limitations that state responses have on human rights during the pandemic and in its aftermath.

3 Review of Executive and Regulatory Measures Taken to Curb the Spread of COVID-19

Following the official announcement by WHO that classified COVID-19 as a global pandemic, Zimbabwe declared a state of national disaster on 23 March 2020.¹² Under all statutory instruments relating to the management of COVID-19 were published in the Government Gazette. SI 83 of 2020 was the original regulation on measures to curb the spread of COVID-19 and declared a period of 21 days of lockdown exempting essential services.¹³ By 24 August 2020, government had gazetted 17 statutory instruments relating to the management of COVID-19. On 20 August 2020, SI 200 was published consolidating all regulations in previous statutory instruments.¹⁴

The 21-day lockdown consisted of a stay-home order (subject to limited exceptions), ban of large gatherings, closure of all but essential services, suspension of public transport, deployment of national command security for enforcement of the lockdown and an exemption for funerals allowing up to 50 people. The border closure order provided for the automatic extension of permitted residence for foreign nationals and the closure of airports along with restrictions on aerial transportation. The order's scope took effect across the entire country. On 19 April 2020, the lockdown was extended for an additional 21 days until 3 May 2020 in

¹¹ S. Wilson, 'The reward for good pandemic leadership: Lessons from Jacinda Arden's New Zealand reelection', *The Conversationist*, 2020. <www.theconversation.com/the-reward-for-good-pandemic-leadership-lessons-from-jacinda-ardens-new-zealand-reelection-148515> (accessed 30 October 2020).

¹² Statutory Instrument (SI) 76 of 2020 in terms of section 27(2) of the Civil Protection Act [10:06].

¹³ Statutory Instrument 83 of 2020, PPublic Health (COVID-19 Prevention, Containment and Treatment) (National Lockdown) Order, 2020.

¹⁴ Statutory Instrument 200 of 2020, Public Health (COVID-19 Prevention, Containment and Treatment) (National Lockdown) (Consolidation and Amendment) Order, 2020.

accordance with the provisions of SI 93 of 2020.¹⁵ Although the government eased restrictions, the lockdown was extended indefinitely as of 16 May 2020.¹⁶

SI 96 of 2020, the granted a deferral on the obligation to pay rent during the lockdown period to persons occupying rented accommodation for residential purposes. The regulation conclusively presumed that, due to the lockdown, a protected tenant would not be able to pay rent in full or a portion of it regardless of whether it was because of the inability to earn or receive income or other reasons. Similarly, no protected tenant could be asked to vacate a rented property during the national lockdown period. The regulation also provided restraints on the foreclosure of mortgaged property as well as granting deferral of mortgage payments during the lockdown period.¹⁷ However, the regulation stated that post-deferral payment of rental arrears would have to be paid from May 2020 or any month after the extension of the national lockdown. The deferred rental payment could be made in full or in three-month instalments. Similarly, the regulation provided for post-deferral payments of mortgage arrears without interest or penalties for the deferred period.

SI 77 of 2020 declared COVID-19 as a Formidable Epidemic Disease (FED) effectively from 25 March 2020 to 20 May 2020. The regulation prohibited gatherings of more than 100 people while the FED was in force, regardless of whether they occurred inside a building or outside. The penalty for violating this regulation was a fine of level 12 or imprisonment for up to one year, or both. Further to this the regulation permitted enforcement officers to order individuals to submit to a medical examination in instances where there is suspicion of infection or risk of exposure to COVID-19. Other measures included ordering isolation, detention or quarantine as well as disinfection of the individual and their luggage. Enforcement officers were also permitted to order anyone confirmed as having COVID-19 to quarantine for 14 days at home, hospital or places of isolation. In addition, the regulation empowered the Minister of Health to identify and approve centres of quarantine and isolation for temporary confinement as well as treatment of individuals suspected of having been infected.¹⁸ Under this regulation, the Minister could order the closure of schools or regulate or restrict attendance in schools, use curfews to restrict movement of individuals and public traffic, close places of worship or restrict gatherings and meetings for worship purposes among other issues.

Zimbabwe is no exception in having used executive and regulatory measures to curb the spread of COVID-19. However, it is crucial to contextualize the scope of the effects these measures in order to understand the motivation for remedial action to reduce the infringement on the enjoyment of rights. The major contribution of this study is that it responded to the urgent call for contextualized studies that would assess the impact of executive and regulatory responses to covid-19.

4 Framework of Analysis

The framework of analysis is conceptualized from the underlying principles on the principle of proportionality and COVID-19 as well as the constitutional and human rights framework of Zimbabwe.

¹⁵Statutory Instrument 93 of 2020, Public Health (COVID-19 Prevention, Containment and Treatment) (National Lockdown) (Amendment) Order, 2020 (No.3).

¹⁶ US Embassy, 'Zimbabwe: COVID-19 information', 2020, <www.usembassy.gov/covid-19-information-2/> (accessed 2 November 2020).

¹⁷ Statutory Instrument 96 of 2020, Presidential Powers (Temporary Measures) (Deferral of Rent and Mortgage Payments During Lockdown) Regulations 2020.

¹⁸ Public Health (COVID-19 Prevention, Containment and Treatment) Regulations, 2020.

4.1 The Principle of Proportionality and COVID-19

There is a long-standing history urging world leaders to promote and protect human rights and freedoms, especially during emergencies or crises. The principle of proportionality stipulates that any statutes that affect human rights should be proportionate or reasonable, and several constitutional courts, both common law and civil law, have applied the principle of proportionality as a procedure to ensure full respect of human rights. In common law systems, the principle of proportionality is referred to as the “principle of reasonableness” and can be applied to civil law, administrative law, and criminal law, among others, apart from constitutional issues. Regardless of the disparities between the legal systems in different countries and regions, the principle of proportionality has remained potent while transcending borderlines as a guide in reconciling concerns over human rights protection.¹⁹

In democratic systems, the respect for human rights is very critical; however, this does not imply that human rights remain unrestricted at all times. The core of democracy is that the freedom of one person is balanced against another person, hence, the scope of application of a human rights is dependent on its interaction with other rights. Consequentially, exercising human rights has to follow certain rules and limits. Subsequently, limitations on rights must be set when an individual’s freedom is in conflict with public interest considerations. In this regard, a human right can be restricted to ensure public health as well as several other national causes. It is crucial to note that human rights do not exist in isolation as they are in constant interaction with the circumstances in democratic societies where certain values are upheld. The importance placed on human rights will depend on public interest considerations.²⁰

The success of the proportionality principle lies in its capacity to structure value judgments about the adequacy of justifications for government action. In relation to COVID-19, the assessment of proportionality was particularly difficult in the short term because the success of emergency measures could only be known in hindsight. Therefore, any review of the proportionality of COVID-19 responses would be based on the consideration of government choices and plans in the medium-term. This aids to explain why courts around the world allowed a degree of discretion in executive and legislative responses.²¹

4.2 The Constitutional and Human Rights Framework in Zimbabwe

The Constitution of Zimbabwe is the supreme law of the land which contains non-derogable human rights as provided for in international human rights law. Zimbabwe explicitly accepted its human rights obligations through the ratification of several regional and international human rights treaties. On 13 May 1991, Zimbabwe signed and ratified two human rights instruments: the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Zimbabwe is also party to the Convention on the Elimination of All Forms of Discrimination against Women, International

¹⁹ J. Cianciardo, ‘The Principle of Proportionality: The Challenges of Human Rights’, 3 (1) *Journal of Civil Law Studies* (2010).

²⁰ P. Souliotis, *Proportionality and European Convention on Human Rights: A Critical View*. (Leiden University Law School, Master Thesis, 2015).

²¹ L. Hicks and S. Pillai, ‘Proportionality, rights and Australia’s COVID-19 response: Insights from the India travel ban’, *Australian Public Law*, 2021. <auspublaw.org/blog/2021/08/proportionality-rights-and-australias-covid-19-response-insights-from-the-india-travel-ban> (accessed 6 October 2021).

Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Rights of the Child, the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, and the Convention on the Rights of Persons with Disabilities. The only individual treaty body complaints procedure that Zimbabwe has acceded to is the Optional Protocol to the Convention on the Rights of Persons with Disabilities.²²

The ICCPR, Article 4, states that in periods of public emergency that threaten the survival of the nation, the state may derogate from their obligations under the covenant to the extent strictly required by the exigencies of the situation. However, no derogation is permitted from certain absolute provisions such as the right to life and the freedom from torture and cruel, inhuman, or degrading treatment or punishment. The reason is that said rights possess the status of *jus cogens*. States have an obligation, in accordance with rules of state responsibility, to ensure that their legal systems provide effective remedies against violations committed by state officials. However, derogation must be proportional to the crisis at hand and must not be introduced on a disciplinary basis or contravene other rules of international law, including rules and principles of international humanitarian law which seeks to promote human rights in times of conflict. Despite Zimbabwe's commitment to international human rights law, there are concerns about its lack of practice and adherence to prescribed human rights.²³

Regarding the domestication of international human rights law, section 3b of the Zimbabwean Constitution states that any international convention, treaty or agreement acceded to, concluded or executed by or under the authority of the president with foreign states or organizations (a) is subject to approval by parliament (b) shall not form part of our law by or under an act of parliament.²⁴ This means that Zimbabwe is not bound by international human rights law unless the law is legislated by parliament into the local statutes of Zimbabwe. In this regard the incorporation of international law into national occurs through dualism.

Chapter 4 of the Constitution is titled "Declaration of Rights" and provides the fundamental rights and freedoms. In relation to COVID-19, some of the rights and freedoms protected by the Constitution include the right to life²⁵, right to personal liberty²⁶, right to human dignity²⁷, right to personal security²⁸, right to privacy²⁹, freedom of assembly and association³⁰, access to information³¹, freedom of profession, trade and occupation³², freedom of movement and

²² Office of the High Commissioner for Human Rights, 'Ratification status of Zimbabwe', 2020 <http://internet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=195&Lang=EN> (accessed 18 October 2020).

²³ T. Mude, The History of International Human Rights Law in Zimbabwe. 2 (1) *Journal of Social Welfare and Human Rights*, 2014, pp.53-86.

²⁴ Government of Zimbabwe. *Constitution of Zimbabwe (No.20)*. 2013, Section 3b, <www.constituteproject.org/constitution/Zimbabwe_2013.pdf> (accessed 23 January 2023).

²⁵ *Ibid.*, Section 48.

²⁶ *Ibid.*, Section 49.

²⁷ *Ibid.*, Section 51.

²⁸ *Ibid.*, Section 52.

²⁹ *Ibid.*, Section 57.

³⁰ *Ibid.*, Section 58.

³¹ *Ibid.*, Section 62.

³² *Ibid.*, Section 64.

residence³³, political rights³⁴ freedom from arbitrary eviction³⁵, right to education³⁶, right to health care³⁷ and the right to food and water³⁸.

Part 5 of Chapter 4 of the Constitution provides for the limitation of fundamental human rights and freedoms. Section 86 states that:

the fundamental rights and freedoms set out in this Chapter may be limited only in terms of a law of general application and to the extent that the limitation is fair, reasonable, necessary and justifiable in a democratic society based on openness, justice, human dignity, equality and freedom, taking into account all relevant factors.³⁹

Further, 3b of Section 86 states that:

no law may limit the following rights enshrined in this Chapter, and no person may violate them -⁴⁰

- a. the right to life, except to the extent specified in section 48;
- b. the right to human dignity; and
- c. the right not to be tortured or subjected to cruel, inhuman or degrading treatment or punishment.

5 Proportionality and Responses to COVID-19 in Zimbabwe

Regardless of whether governments use state of emergency measures, or other forms of restrictive measures, the responsibility to respect and protect fundamental rights and freedoms remains crucial. The measures taken to deal with COVID-19 have been executive-driven and their legality is enshrined in the Civil Protection Act, 1989 (CPA) the Public Health Act, 2018 (PHA). This section considers rights issues that have arisen in Zimbabwe in relation to the government's response to COVID-19.

5.1 The Legitimate Aim

In principle, the declaration of a state of emergency would require parliamentary approval and formal notification to the UN Secretary-General. However, it is crucial to note that the process of seeking parliament's approval was fraught with its own challenges in particular the limitation of time. The unprecedented rate at which case numbers and deaths were rising, increased uncertainty. Therefore, panic spread among leaders across the world as many resorted to implementing hasty restrictive measures to curb the spread of COVID-19. Some leaders viewed the pandemic as a weapon of war, while others classified it as an invisible enemy, of which little was known, but all converging towards the notion that the situation required immediate and urgent counteractions. To some extent, this rationalized the absence of legislative measures in most countries during the first wave of the pandemic.

This study contends that the declaration of the state of national disaster was necessary and adequate to pursue public health protection, although it undermined parliamentary democracy given the limited practicality of waiting for deliberations in parliament. In Zimbabwe, the

³³ *Ibid.*, Section 66.

³⁴ *Ibid.*, Section 67.

³⁵ *Ibid.*, Section 74.

³⁶ *Ibid.*, Section 75.

³⁷ *Ibid.*, Section 76.

³⁸ *Ibid.*, Section 77.

³⁹ Constitution of Zimbabwe, *supra* note 14, Section 86.

⁴⁰ Constitution of Zimbabwe, Section 86 (3).

influence of partisanship in decision-making has often derailed progress in law-making, hence, the route of declaring a state of emergency would likely have been detrimental to effectively reducing the spread of the disease. While it is understandable that there were concerns over the use of executive powers, this study argues that it seems that accountability was a more pressing hence justifying the use of executive powers as the most appropriate option within the circumstances in which government was operating.

In practical terms, the inability of parliament to fully exercise effective oversight on executive-oriented measures became apparent as some members of the house tested positive for COVID-19. Although virtual meetings could have been done then, there were limitations arising from inadequate infrastructure coupled with lack of readiness to implement processes and procedures to immediately facilitate this option. In a similar manner, the ability of courts to provide essential judicial oversight was also limited due to temporary closures. This restricted access to effectively make checks and balances on the executive and regulatory measures, particularly in cases relating to the exercise of non-derogable and absolute rights. It is against this background, that this study also contends that it would have been difficult to argue against early intervention taken under legitimate aim of promoting public health by saving lives. By 10 December 2020, Zimbabwe had recorded 11219 cases of COVID-19 and 307 deaths, up from 29 known positive cases and 4 deaths as at 22 April 2020.⁴¹

5.2 Right to Personal Security

The entitlement of every person to the right to control and make decisions about their bodies was limited as COVID-19 regulations permitted enforcement officers to order individuals or groups of individuals to isolate, quarantine or to subject themselves to medical examinations where the risk of infection was suspected. In other instances, enforcement officers were empowered to enforce mandatory wearing of masks in public places. While there may be a conflict between exercising the right to personal security and ensuring public health, these measures were deemed essential, as scientific evidence both in Zimbabwe and abroad showed that isolation, quarantining, wearing masks, and testing are effective measures to reduce the spread of COVID-19. In this regard, this study posits that given the precarious nature of Zimbabwe's fiscal balances, limitations on the right of personal security offered an avenue to mitigate the disease without having to resort to extended lockdowns that would have prompted the need for financial stimulus for businesses, vulnerable groups and the unemployed. The decay in the country's health care system compromised the effectiveness of testing and quarantining people in government-designated centres due to limited funding. Notably, individuals who could not afford to pay for COVID-19 tests had to wait for days or even weeks for public funds to be available before they could leave quarantine centres, which further limited their enjoyment of freedom of movement and human dignity. By virtue of having limited capacity to pay for their own tests, it meant that they had to forfeit such rights regardless of whether they eventually tested positive or not.

5.3 Right to Equality and Non-discrimination

Although individuals have the right to fair treatment and to not be discriminated on any grounds, the economic hardships and social divide in Zimbabwe resulted in the violation of this basic right. The COVID-19 pandemic started when the country was already facing great economic

⁴¹ US embassy in Zimbabwe. COVID-19 update information. <www.zw.usembassy.gov/covid-19-information-2> visited on 10 December 2020.

turmoil including high levels of poverty, inflation, unemployment rates, and low wages. Although the government could have assisted vulnerable groups, its fiscal standing obstructed efforts to achieve equality and non-discrimination. Notable relief against COVID-19 came in the form of an allowance made to public sector employees to cushion them against the adverse effects of the pandemic. In principle, Zimbabwe has the world's second largest informal economy with over 60 percent of the population relying on informal activities.⁴² In this regard, it would have been expected to see measures that were responsive to the plight of people working in the informal sector as well owing to the fact that they form a greater part of the country's total population. Therefore, government should have ensured equal and non-discriminatory access to the COVID-19 cushioning allowance.

5.4 The Right to Privacy

In other countries, the right to privacy resulted in concerns being raised on the use of contact tracing and downloading applications to provide authorities with data on the movement of individuals. In Australia, government developed COVIDSafe an in-use contact tracing app to help to keep communities safe during the pandemic.⁴³ Other countries that used contact tracing applications included the US, China, Hong Kong, South Korea and Canada among others.⁴⁴ To quench some of the concerns over privacy in European countries, the Organization for Economic Cooperation and Development (OECD) suggested that data would be deleted once the pandemic was over.⁴⁵

In Zimbabwe's case, personal information was only required for contact tracing purposes in the event of suspected infections resulting from gatherings, such as religious services. Given the limited access to information and communication technology (ICT) and the economic challenges facing the country, Zimbabwe did not have an adequate basis for prompting the use of applications to track people's whereabouts during periods of restricted movement. However, in gatherings where people were asked to provide their personal details, the purpose was to protect attendees and to curb the spread of COVID-19. While this measure was necessary to achieve mitigation, its adequacy depended upon individuals' honesty in providing accurate information. Nevertheless, there are instances where the degree of severity of limiting the right to privacy was apparent in view of the provisions of the Constitution of Zimbabwe, Section 57, it states that:

Every person has the right to privacy, which includes the right not to have-

- (a) Their home, premises or property entered without their permission;
- (b) Their person, home, premises or property searched;
- (c) Their possessions seized;
- (d) The privacy of their communication infringed; or

⁴² Nthuli, G, '*Loading: Data driven analysis of informal market and food supply chains in Zimbabwe*,' 1 October 2020, <www.undp.org/zimbabwe/blog/loading-data-driven-analysis-informal-market-and-food-supply-chainszimbabwe>, visited 12 January 2021.

⁴³ Cartwright, J 2020. *The Government's COVID-19 tracking app is called CovidSafe and is launching today*. In techAU, <www.techau.com.au/the-governments-covid-19-tracking-app-is-called-covidsafe-and-is-launching-today/>, visited 13 January 2021.

⁴⁴ Friedrich Naumann Foundation, '*Safety and privacy in the time of COVID-19: Contract Tracing Applications*,' 20 July 2020 <www.freiheit.org/turkey/safety-and-privacy-time-covid-19-contract-tracing-applications/>, visited 13 January 2021.

⁴⁵ OECD, '*Tracking and tracing COVID: Protecting privacy and data while using apps and biometrics*,' 23 April 2020, <www.oecd.org/coronavirus/policy-responses/tracking-and-tracing-covid-protecting-privacy-and-data-while-using-apps-and-biometrics-8f394636/>, visited 13 January 2021.

(e) Their health condition disclosed.⁴⁶

In February 2021, Zimbabwe's high court granted an interim order against the country's mobile operator (Econet), declaring that the daily messages to its subscribers on COVID-19 cases and deaths were "illegal, wrongful and unconstitutional." This came after the company was sued by Sikhumbuzo Mpfu for sending unsolicited text messages which traumatized him having lost his father to COVID-19. The high court then declared this a violation of section 53 and section 57 of the constitution of Zimbabwe.⁴⁷ Although the courts intervened to protect the individual's privacy, the unsolicited messages from the operator also seemed to fill in the void on limited access to information regarding the country's progress. However, there were instances where media houses were reported to have had access to information of patients suffering from COVID-19 limiting the individuals' right to privacy.⁴⁸ Notwithstanding this, government has since gazetted the Data Protection Act 5 of 2021 which had not been passed into law when the former occurred.

5.5 Freedom to Demonstrate and Petition

Following the surge in demonstrations and petitions to ease lockdown restrictions across the globe, the desire to exercise this right in the midst of the pandemic was justified as other institutions, such as courts and the parliament, could not offer avenues to resolve calls for effective remedy to violation of human rights. Following the implementation of all lockdown measures in Zimbabwe, parliamentary democracy has been hindered by the temporary closures resulting from an increase in COVID-19 cases. However, most demonstrations occur outside buildings, so enforcing mask mandates and social distancing rules could have allowed people to express their grievances while minimizing the risk of transmission. In theory, it meant that the executive and/or government agencies had ultimate power to establish any measure without recourse due to the limitations imposed on the freedom to demonstrate and petition. Although restrictions were justified particularly in the first wave of COVID-19, this study contends that the limitations on the freedom of demonstrations and petitions were not necessary particularly beyond the period when government began easing restrictions.

As rights-based issues often end up being engulfed in political conflicts, the WHO highlighted the need for political leaders to view COVID-19 just as a health pandemic affecting human rights. With reference to Zimbabwe, it is argued that to some extent the pandemic was used to protect the self-interests of the powerful elite through selective application of lockdown regulations and passing of laws to silence critics. This conclusion was derived from an analysis of media statements by officials from the ruling party on the pandemic in Zimbabwe over the period 2020-2021.⁴⁹

⁴⁶ Constitution of Zimbabwe amendment No. 20 of 2013, Section 57

⁴⁷ High Court of Zimbabwe Case No. HC96/21, held at Harare in a matter between Sikhumbuzo Mpfu and Econet Wireless Private Limited.

⁴⁸ Article 19, 'Zimbabwe: Briefing on attacks against journalists,' March-2020- July 2021, <www.article19.org/wp-content/uploads/2021/11/Covid-Response-Africa_Zimbabwe.pdf> visited on 15 August 2021.

⁴⁹ Mutekwe, P. and Vanyoro, K.P, (2021). Politicizing 'COVID-19': an analysis of selected ZANU-PF officials 2020-2021 media statements on the pandemic in Zimbabwe. *Acta Academia* 53 (2), pp. 12-37.

5.6 Freedom of Expression and Media

The study argues that there was a limited basis to justify excessive measures such as the implementation of prison sentences of up to 20 years for the distribution of so-called 'fake news,' and questions how this restriction would effectively curb COVID-19 to ensure public health. In other countries, governments implemented measures to prevent the spread of fake news on COVID-19, particularly, on social media. This was because fake news had the power to affect people's compliance with the regulations. However, in the case of Zimbabwe, it is unclear how this regulation would effectively contribute to public health directly or indirectly. Given the deteriorating socioeconomic conditions in the country, it may be precarious for leadership to presume that law enforcement officers always act in good faith regardless of their often poor working conditions, low wages and the history of corruption in law enforcement systems. This background, raises questions whether the regulation sought to serve an alternate purpose beyond the need to protect public health. As observed in similar situations, prior to the pandemic, such regulations may be used to control the behaviour of the general population and leave them susceptible to abuse from enforcement agents without adequate basis to call for recourse on matters related to infringement of their rights.

DW Akademie issued a statement citing concerns over media freedom violations in Zimbabwe in the period leading to July 2020. Notably, more than 25 violations against journalists and media workers were registered with the Media Institute of Southern Africa (MISA) over the period March to June 2020 following the implementation of regulatory measures. Likewise, more cases were reported before and during the public protest held on 31 July 2020.⁵⁰ Zimbabwe was ranked 126 out of 180 countries in the Reporters Without Borders 2020 World Press Freedom Index.⁵¹ However, this is not entirely isolated to the COVID-19 era as the limitation of freedom of expression and media have inherently been part of the country. In this regard, it becomes difficult to delineate the proportion of limitations that would have otherwise not happened in the absence of COVID-19. In this regard, this study contends that redressing the concerns over limitations on freedom of expression and media in Zimbabwe lies beyond government responses to COVID-19.

5.7 Freedom of Movement and Residence

Given the belief that COVID-19 originated in Wuhan, China and spread throughout the rest of the world, this study concurs that prompt action was necessary to close borders and air travel during the lockdown period. Scientific evidence from New Zealand shows that the country reaped massive benefits of low case numbers and deaths due to early interventions of closing borders.⁵² In this regard, the closure of all borders into Zimbabwe was necessary especially because the country shares a border with South Africa which, at the time, was among the countries with the highest infection rates in the world.⁵³ This response is consistent with the

⁵⁰ DW Akademie, 'Statement: Concerns over media freedom violations in Zimbabwe,' <www.m-akademie.dw.com/en/statement-concerns-over-media-freedom-violations-in-zimbabwe/a-54434788>, visited on 14 August 2021.

⁵¹ International Media Support, 'Statement on escalating media and human rights violations in Zimbabwe,' 28 August 2020, <www.mediasupport.org/news/statement-on-escalating-media-and-human-rights-violations-in-zimbabwe/>, visited 15 August 2021.

⁵² Binny, R. N. Baker, M.G., Hendy, S. G., James, A., Lustig, A., Plank, M. J., Riddings, K. M. and Steyn, N (2020). 'Early intervention is key to success in COVID-19 control,' <[www.doi.org/10.1101/2020.10.20.20216457](https://doi.org/10.1101/2020.10.20.20216457)>.

⁵³ Institute for Security Studies, 'Dialogue could have averted COVID-19 border chaos,' 19 January 2021, <www.issafrica.org/iss-today/dialogue-could-have-averted-covid-19-border-chaos>, visited 14 August 2021.

need to mitigate the spread of COVID-19 since data also showed that the surge of local infections was linked to the influx of people from South Africa who had been granted permission by the government to return to Zimbabwe.⁵⁴ Moreover, there were instances of reports of individuals discharging themselves into communities from quarantine centres, thereby, undermining the effectiveness of quarantining to curb the spread of the virus. After the government eased the lockdown restrictions and permitted movement in non-essential services, there was a surge in infections in Bulawayo attributable to the movement of people from South Africa. Although the lockdown was effective in regulating the movement of people, the context in which it was applied led to a series of violations against fundamental human rights such as the access to food and water and the right to work.

The majority of the population is dependent on the informal economy, however, they were unable to work during the lockdown and thus could not afford to buy food. In other instances, the decay in municipal infrastructure and mismanagement of public funds has resulted in restricted access to water, particularly, in many high-density suburbs in urban areas. Moreover, since people had to stay home, this exacerbated health risks associated with poor sanitation as most families stay in crowded houses due to poverty. These prompted sentiments where people felt that either way they were doomed to die of hunger or COVID-19, or other causes related to the implementation of lockdowns. This has become a global concern even in high-income countries. While it may be understandable that the initial lockdown was prompted by the novelty of COVID-19, the continued extension of the lockdown resulted in unprecedented suffering as most informal workers and traders are in the trade to survive.

The continued extension of the lockdown period also affected small businesses that had to rely on emergency relief aid to sustain their businesses, but the government was ill-prepared to provide such relief. The initial lockdown and its extensions had a direct effect on companies' revenue streams resulting in reduced capacity to pay taxes, regardless of the fact that government relies heavily on the said taxes. To some extent, this will put pressure on the government to seek out punitive ways of raising taxes during the prolonged pandemic or its aftermath, thereby increasing the burden on tax payers. There was a significant increase in reported calls and reports of gender-based violence across the globe as well as in Zimbabwe during the strict lockdown period.^{55 56} This study suggested that, since there was a huge increase of right-based research on COVID-19 to help governments across the world to respond accordingly,^{57 58 59} Zimbabwe could have found alternative responses with fewer restrictions on human rights than repeated lockdowns.

⁵⁴ Jokwiro, A.. COVID-19: Which way for Zimbabwe, 11 June 2020. <www.heral.co.zw/covid-19-which-way-for-zimbabwe/>, visited 20 January 2021.

⁵⁵ UNWOMEN, 'The shadow pandemic: Violence against women during COVID-19,' <www.unwomen.org/en/news/in-focus/in-focus-gender-equality-in-covid-19-response/violence-against-women-during-covid-19>, visited on 20 August 2021.

⁵⁶ Legal Resources Foundation, 'A call to action: GBV in the context of COVID-19 pandemic,' <www.lrfzim.com/a-call-to-action-gbv-in-the-context-of-covid-19-pandemic/>, visited 13 August 2021.

⁵⁷ KPMG, 'Zimbabwe - Measures in response to COVID-19,' 14 August 2020, <www.kpmg.com/xx/en/home/insights/2020/04/zimbabwe-government-and-institution-measure-in-response-to-covid-19.html>, visited 10 August 2021.

⁵⁸ Human Rights Watch, 'Human rights dimensions of COVID-19 response,' 19 March 2020, <www.hrw.org/news/2020/03/19/human-rights-dimensions-covid-19-response>, visited on 14 January 2021.

⁵⁹ UNAIDS, 'Rights in a pandemic,' 2020, <www.eu.docworkspace.com/d/sIB2Y0ujjAfP9h6kG> visited on 10 August 2021.

5.8 Access to Information

Following the declaration of the state of national disaster, the government used audio, visual and print media to inform the Zimbabwean population of what the emergency measures were and where they apply as well as the expected timeline. Although routinely updates were scarce, more information concerning COVID-19 became increasingly available. However, there seems to be complacency regarding the use of executive powers as the government announced that some lockdown measures would remain in effect for an indefinite period of time to regulate the day-to-day life, without articulating how such a response would match the needs of different phases of the pandemic. Similarly, there is limited information relating to safe reopening of the economy which is equally important as the pandemic is still ongoing.

5.9 Right to Education

The government closed schools following the declaration of the state of disaster in March 2020 and only allowed physical learning to resume on 9 September 2020. Although very little was known, it is commendable that the government decided to close schools early as there is a possibility that students could have been asymptomatic transmitters of the virus. Although there was limited concern about the initial government responses to curb the spread of COVID-19 in the education sector, the existing inequalities were exacerbated as some families had access to digital technology while others did not. Although the government attempted to reduce the adverse effects resulting from the closure of schools, the use of radio classes and online learning proved to be insufficient to close the digital gap among learners.⁶⁰ Zimbabwe has inadequate electricity supply and low internet connectivity in many areas, coupled by high costs of data. Government encouraged the use of digital platforms to provide remote-learning services while radio lessons were implemented as part of the education sector response strategy. Concerns were that students would have to live in households where they had access to mobile phones or computers as well as radios in order to benefit from the use of these methods to ensure continued learning. However, this significantly left portions of the population in rural areas. Notably, the use of WhatsApp became widespread in urban areas however its proliferation in rural areas was limited. To this end, this exacerbated the digital divide between rural and urban learners in Zimbabwe during COVID-19. When schools opened in September 2020, there was a surge in infections among students and teachers in some schools which resulted in other students returning home to isolate among non-infected family members. However, there is limited evidence on the existence of a trigger threshold that would guide the government on whether it was necessary to keep schools open.

This study argues that in September 2020, the ministerial orders given were insufficient as the reopening of schools would have benefited from more consultations with parents, teachers and civil society organizations in view of converging towards participatory approach. That would have led to the safe reopening of schools on the basis of keeping the government accountable and in cognizance of the right to protect access to education.

⁶⁰ Learning passport, 'Zimbabwe's Learning Passport Case Study: Transforming learning for children through the learning passport,' 14 June 2021, <www.learningpassport.org/stories/zimbabwes-learning-passport-case-study> visited on 21 August 2021.

⁶¹ Nyede, S. and Ndoma, S, 'AD371: Limited internet access in Zimbabwe a major hurdle for remote learning during pandemic,' 30 June 2020, <www.afrobarometer.org/publication/ad371-limited-internet-aaccess-zimbabwe-major-hurdle-remote-learning-during-pandemic/>, visited on 20 August 2021.

6 Conclusions and Recommendations

The pandemic required immediate and firm decision-making especially owing to the unprecedented nature of the health crisis. Although the government was quick to introduce laws and policies to reduce the spread of COVID-19, the limitations in the country's health system and ailing economy raised a number of concerns relating to the protection of human rights. The proportionality analysis undertaken in this paper enabled the determination of whether executive and regulatory responses violated the rights protected by the Constitution and the human rights framework in Zimbabwe. To this end, government actions were examined based on whether there was reasonable proportionality between limitations on individual liberties and the need to ensure public health by curbing the spread of COVID-19.

By January 2022, the government had already started easing COVID-19 restrictions owing to the reduced risk and threat of the virus to public health. Nonetheless, the measures taken during the severe periods of the spread of COVID-19 in Zimbabwe are likely to prolong and exacerbate the consequences arising from the restrictions placed on certain individual freedoms and liberties. Some of the severe repercussions include the likelihood of increased poverty emanating from prolonged periods of inability to work due to restricted movement, increased challenges relating to trade, entrepreneurship and work in general, increased challenges for students with learning difficulties and those who could not access online classes due to the lack of personal or state-provided digital resources.

One of the key lessons from the government response to COVID-19 is that, various shortcomings in the country's health system and the limited role played by the State to assist an ailing economy, could have been averted. Policymakers need to introduce new laws that will increase funding towards capital expenditure in the public health system and to provide resources to establish an emergency fund that can be utilized to assist the economy in times of emergency. Similarly, there is need for policymakers to call for a national programme to assess children's learning needs especially concerning foundational skills to determine whether any interventions are required instead of assuming that the country will be able to compensate for the time lost during lockdowns. Similarly, policymakers should call for a significant shift in public health spending towards primary health care to curb the challenges imposed by the relegation of other public health concerns amid the pressure on resources following the outbreak of COVID-19. These recommendations are expected, in part, to alleviate some of the limitations imposed on human rights due to the executive and regulatory responses to COVID-19 in Zimbabwe.

While it is understandable that quick decisions had to be made following the outbreak of COVID-19, there is need for government and other stakeholders to come up with a national guiding framework to assist decision-makers in the advent of a national disaster of a similar nature in the future. In conclusion, there is a need to advance the practical implementation of remedies for rights breaches through the combined efforts of human rights defenders, legislators and the responsible administrative authorities in the government.

4 COVID-19's Impacts on Women with Disabilities' Access to Sexual Reproductive Health and Rights (SRHR) In Zimbabwe

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Abstract

The impacts of the COVID-19 pandemic are devastating across the whole world. In spite of the impacts being universal, their effects are not the same across different social divides, with the worst effects being felt by citizens in low-income countries. Evidence suggests that human rights have been grossly violated in consequence of many radical efforts to combat the rapid spread of the virus. Various strategies that aimed to combat the spread of COVID-19 have led to the subversion of other commonly ignored rights such as sexual reproductive health rights (SRHR). Thus, this study examines women with disabilities' access to SRHR and services during the outbreak of COVID-19. Women with disabilities were selected because they are a common group, but their rights are usually ignored in many disaster reaction strategies. Collection of data in this study was done through the use of telephone interviews, secondary data sources and minimum face-to-face interviews. Only a few respondents were interviewed in person in an effort to reduce the chances of virus transmission. We discovered that women with disabilities SRHR are grossly violated mainly because of the government's reactionary strategies that lack careful consideration. The 'total lockdown' and the stay-in-house guideline, among other stringent restrictions, have consequently exposed women to various sexual health and reproductive challenges. Commonly noted challenges range from inaccessibility to basic sanitary products such as pads to increased cases of rape and other forms of sexual violence. Furthermore, accessing health services through clinics and accessing means for justice from the police and courts were among other major challenges which negatively impacted their SRHR. However, to cope with said obstacles, some improvised and relied on their social capital to reduce their vulnerability during the lockdown. We concluded that women with disabilities and their access to SRHR remains a widely unrecognised problem in Zimbabwe that must be addressed especially in light of their increased vulnerability during outbreaks of disasters.

Keywords: women with disabilities, SRHR, COVID-19, human rights, lockdown

1 Introduction

COVID-19 is a novel pandemic which devastatingly affected the whole world during the greater part of 2020 and continues to do so until today.¹ Despite its universality, its impacts are not uniform across different socioeconomic divides based on gender, age and economic development, *inter alia*. Concerning gender, human rights groups highlighted that COVID-19 disproportionately affected women, in particular, their access to SRHR. Anecdotal evidence proved that in low-income countries (LICs) such as Zimbabwe, the main group to be negatively affected by the COVID-19 restrictions and consequent repercussions on SRHR welfare are women with disabilities. Women with disabilities' vulnerability to COVID-19 is aggravated by their fragile physical, emotional and psychological impairments.² As a result of said inaccessibility, women with disabilities are more prone to the risk of depression and anxiety

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¹ UNDP, 'Continuation of sexual and reproductive health services is vital in the face of COVID-19', 2020. <www.pacific.undp.org/content/pacific> (accessed 30 January 2023a).

² UN Zimbabwe, 'Weekly UN in Zimbabwe Update', Issue VIII, 2020. <reliefweb.int/report> (accessed 30 January 2023).

than others.³ Drawing insights from these incidences confirms that the continued marginalisation and rejection of women with disabilities and their access to SRHR disregards their fundamental human rights.

Women with disabilities in Zimbabwe are common, albeit in different ways.⁴ On a downscaled focus, the UN Women estimated that one in every five women in Zimbabwe lives with disabilities.⁵ Nevertheless, long-standing evidence emerging from other sources suggests that the actual number on the ground surpasses that figure.⁶ Researches proved that some people with disabilities are concealed from the general public, hence making them and their experiences less visible. As a result, women with disabilities often experience severe suffering, marginalisation and deprivation before, during and after the outbreak of ‘known’ and ‘unknown’ disasters such as COVID-19. Worryingly, their vulnerability is reflected in the gross infringement of their human rights and well-being, especially compared to non-disabled people.

On the discourse of human rights, disability and COVID-19, it is prudent to underscore the significance of access to SRHR for women living with disabilities. Ideally, prioritising women with disabilities’ right to SRHR during COVID-19 and beyond acts as a catalyst for the realisation of gender equality and human rights. Integrating gender equality and human rights is the *summum bonum* for the realisation of comprehensive human development as established by the SDGs and the Human Development Index.⁷ Against this background, this paper examined the impacts of COVID-19 on women with disabilities’ access to SRHR in the Masvingo urban area. We chose to focus on women with disabilities since they face significantly higher risks of their human rights being violated due to their gender in addition to their disabilities. Due to these characteristics, women with disabilities are worst affected during the outbreak of disasters. Again, framing women with disabilities as ‘fragile’ does more harm than good since it frames them as helpless victims.

In this paper, we first scrutinise the direct and indirect impacts of the total and partial lockdowns on the diverse and complex conditions of women and how that affected the accessibility of SRHR. Herein, we explore the implications of the stay-at-home mandate and the social and physical distancing on women’s sexual reproduction rights. Secondly, we examine the innovative strategies which they utilised to access services related to their SRHR during the time of the surging pandemic. Lastly, we scrutinise the role of the government, Community Based Organisations (CBOs), Civil Society Organisations (CSOs) and other non-state actors in protecting and safeguarding women with disabilities’ access to SRHR.

2 Underpinning the Discourse of SRHR

SRHR are an important part of modern discourses on human rights and security as a prerequisite for Agenda 2030’s human development strategy.⁸ Despite its importance being

³ World Bank, ‘How the World Bank Group is helping countries address COVID-19 (coronavirus)’, 2022. <www.worldbank.org/en/news/factsheet, 02 November, 2020> (accessed 30 January 2023).

⁴ Australian Bureau of Statistics, ‘Disability, Ageing and Carers, Australia: Summary of Findings’, 2020. <www.abs.gov.au/statistics/health/disability> (accessed 30 January 2023).

⁵ UN Zimbabwe, *supra* note 2.

⁶ UNFA, ‘Introducing a new copyright on human body’, <www.unfpa.org> (accessed 18 June 2020).

⁷ UNDP, *supra* note 1.

⁸ Girls Not Brides, ‘Child Marriage and Sexual and Reproductive Health and Rights’, 2018. <www.girlsnotbrides.org/documents/873/PO47765-Girls-Not-Brides-5.-Child-Marriage-and-SRHR-lr.pdf> (accessed 30 January 2023).

emphasised in recent years, it has taken a considerable time for it to become visible and prioritised at international health and human rights platforms.⁹ Over the years, the little attention/scholarly work that was dedicated to related topics was primarily focused on sexual reproductive health alone. World health practitioners and main human rights actors took more than twenty-five years attempting to create a functional and acceptable definition but failed to make a significant breakthrough.¹⁰ The multi-dimensional consideration by the International Conference on Population and Development (ICPD) yielded an acceptable overlapping definition which tried to bridge the gap between sexual reproductive health and rights.¹¹ The ICPD's definition is highly rated as adequate because of its integrative approach that links sexual reproductive health and human rights. The Guttmacher-Lancet Commission further expanded the sexual reproductive health and the SRHR into four interrelated and important factors namely, sexual rights, sexual health, reproductive rights and reproductive health.¹² The holistic definition states that “[s]exual reproductive health is a state of physical, emotional, mental and social well-being in relation to all aspects of sexuality and reproduction, not merely the absence of dysfunction or infirmity”.¹³

The definition has brought novel perspectives to the broader scope of SRHR. This move stands as an example that marks the move away from the general concerns about women's sexuality. Lately, SRH used to be only confined to basic family planning issues.¹⁴ The new approach brought about a cross-cutting and multi-structured system which is critical in tackling adolescent sexuality, gender-based violence (GBV), abortion, as well as diverse sexual orientations and gender identities holistically.¹⁵ Above all, such an inclusive approach is paramount and must be integrated into broader national gender policy frameworks, policies, partnership agreements and intervention programs.

2.1 COVID-19 Nexus Women with Disabilities' SRHR

The current projections of COVID-19 are anticipated to be a severe setback for women with disabilities whose SRHR and needs are already widely neglected in Zimbabwe.¹⁶ The risks for women with disabilities are anticipated to continue surging since the government is pre-occupied with fighting the spread of the pandemic rather than managing women's sexual and reproductive care during the crisis. Although the government's speedy reactions are commendable in fighting the pandemic, the neglect of women with disabilities' SRHR directly contradicts its constitutional mandate as well as multiple international pacts and agreements.¹⁷ At the national level, the Zimbabwean Constitution of 2013, Section 22 states mandates all government departments to design and implement programs which protect and sustain their

⁹ J. Bossuyt, S. Thijssen and S. Desmidt, 'Sexual and reproductive health and rights: Opportunities in EU external action beyond 2020', *ECDPM* 2019. <ecdpm.org/work/sexual-and-reproductive-health-and-rights-opportunities-in-eu-external-action-beyond-2020> (accessed 30 January 2023).

¹⁰ A.M. Starrs *et al.*, 'Accelerate progress - sexual and reproductive health and rights for all: report of the Guttmacher-Lancet Commission', 391 (10140) *The Lancet Commissions* (2018).

¹¹ N. Kanem, 'The battle for sexual and reproductive health and rights for all', 27 (1) *Sexual and Reproductive Health Matters* (2019) p.323.

¹² Starrs *et al.*, *supra* note 10, p.2642.

¹³ *Ibid.*

¹⁴ K. Areskoug-Josefsson *et al.*, 'Education for sexual and reproductive health and rights (SRHR): a mapping of SRHR-related content in higher education in health care, police, law and social work in Sweden', 19 (6) *Sex Education* (2019) p. 720.

¹⁵ Starrs *et al.*, *supra* note 10, p 2642.

¹⁶ UN in Zimbabwe, *supra* note 2.

¹⁷ Women's Action Group, 'Promotion of SRHR', <www.wag.org.zw/about/promotion-of-srhr> (accessed 31 January 2023).

welfare in a manner which is acceptable to them. In lieu of this point, women with disabilities' SRHR should be prioritised especially during outbreaks such as the unprecedented COVID-19 pandemic. Despite the provisions of the Constitution, the majority of low-income countries like Zimbabwe failed to swiftly prioritise the provision of SRHR for women with disabilities. It has been noted that the growing ignorance is affecting the full performance of health care providers, legal and social welfare professionals as well as the police in ensuring the fulfilment of SRHR.¹⁸ For instance, Zimbabwe's Civil Protection Unit (CPU) which deals with disaster protection and management has not yet included women with disabilities' SRHR in national disaster processes.¹⁹

On another note, Zimbabwe's ignorance on observing women with disabilities' SRHR rights during disasters such as COVID-19 is a direct violation of regional, continental and international agreements. In theory Zimbabwe, among other African countries, has a growing and registered record of supporting the SRHR through various policies. The following are enshrined in writing:

1. The Protocol to the African Charter on Human and People' Rights – dedicated to the Rights of Women in Africa – 2008.
2. Solemn Declaration on Gender Equality in Africa – 2004.
3. Ratification of the Agenda 2063 which offered strong commitment to observation of SRHR by AU head of states and government at AU summit held on the 15th of January in Addis Ababa.
4. Maputo Plan of Action (MPoA) of 2016 under the continental theme of: Universal Access to Comprehensive Sexual and Reproductive Health Services in Africa.

Despite efforts to join the continental counterparts on SRHR issues, Zimbabwe's domestic commitment remained relatively low. Moreover, the attention committed to women with disabilities' SRHR during disasters such as Covid-19 remained insufficient. Studies proved that a lack of political will and commitment from government leaders is the major obstacle preventing the successful provision and protection of women with disabilities' SRHR before and during outbreaks of disasters.²⁰ Furthermore, inadequate resources, persistent discrimination against women and girls with disabilities and the unwillingness to publicly address sexuality issues exacerbates the marginalisation.

In Zimbabwe, some constitutional provisions directly correspond with the UN's Universal Declaration of Human Rights (UDHR) and the United Nations Population Fund (UNPF). The Constitution and international legislation evidently mandated the government to ensure the inclusive rights of its citizens without prejudice, discrimination, stereotypes and rejection. On paper, the government subscribed to the growing international commitments to reduce trends of gender and disability biases. To this effect, Zimbabwe willingly ratified the United Nations Convention on Rights of People with Disabilities (UNCRPD). Through this pact, it agreed to join other member states in the provision and protection of the rights of people with disabilities. Inherently, the ratification also ought to ensure special care for women with disabilities. Though the UNCRPD's considerations apply generically to all people with disabilities, it became an implied objective of the member states to devote specific efforts to women with disabilities' SRHR. In this regard, for instance, Zimbabwe should advance their response by

¹⁸ Areskoug-Josefsson *et al.*, *supra* note 14, p. 720.

¹⁹ T. A. Ghebreyesus and N. Kanem, 'Defining Sexual and Reproductive Health and Rights for All', 391(10140) *The Lancet Commissions* (2018) p 2583.

²⁰ Starrs *et al.*, *supra* note 10.

designing context-specific policy frameworks and emergency intervention strategies which cater to the complex circumstances of women with disabilities. The hope is that the presence of such policies will prove invaluable for maintaining women with disabilities' SRHR even during times of unforeseen and unknown disasters such as COVID-19.²¹

2.2 Sustainable Development Goals Nexus Women with Disabilities

The growing body of evidence shows that SRHR are quickly becoming a decisive factor affecting the overall sustainability of people's health and socioeconomic development.²² Meanwhile, it is also exemplifying the persistent gender equality and insufficient care for women's well-being. Ensuring full SRHR, especially for women with disabilities, represents promising progress towards their sexual empowerment.²³ The empowerment is critical in fulfilling of the SDGs' requirements on sexual reproduction health and rights.²⁴ The ratified document includes the following SDGs and their relevance for sexual and reproductive welfare as presented in Table 1 below. It shows two important goals and laid out targets for improving overall health and, more specifically, SRHR.

Table 1- SRHR linked SDGs²⁵

Goal	Target
SDG Goal 3 – Health and Wellbeing	Target 3.7 – By 2030, ensure universal access to sexual reproductive health-care services, including for family planning, information and education, and the integration of reproductive health into national strategies and programmes.
SDG Goal 5 – Gender Equality	Target 5.6 – Ensure universal access to sexual and reproductive health and reproductive rights in accordance with previously negotiated UN agreements.

Though the targets lack solid ground for encompassing SRHR agenda, they remain relevant and encouraging. Their direct call for the sexual empowerment of women is unmatched in fighting negative family and community attitudes, cruel religious beliefs and unforgiving cultural practices, *inter alia*.²⁶ Combatting harmful practices such as gender-based violence (GBV) including forms of sexual violence such as rape, intimate partner violence (IPV) and non-partner penetrative sexual violence (NPSV) is of paramount importance.²⁷ This may empower them to enjoy their rights with dignity and confidence like other women during times of disasters.

²¹ Women's Action Group, *supra* note 17.

²² Starrs *et al.*, *supra* note 10, p. 2642.

²³ Areskoug-Josefsson *et al.*, *supra* note 14, p. 720.

²⁴ United Nations, 'The Sustainable Development Goals Report', 2018, <unstats.un.org/sdgs/files/report/2018/TheSustainableDevelopmentGoalsReport2018-EN.pdf> (accessed 31 January 2023).

²⁵ <https://sdgs.un.org/goals>

²⁶ T. Rugoho and F. Maphosa, 'Challenges faced by women with disabilities in accessing sexual and reproductive health in Zimbabwe: The case of Chitungwiza town', 6 *African Journal of Disability* (2017).

²⁷ R. G. Grose *et al.*, 'Sexual and Reproductive Health Outcomes of Violence Against Women and Girls in Lower-Income Countries: A Review of Reviews', 58 (1) *The Journal of Sex Research* (2020).

3 Problem Statement

Burgeoning literature has some gaps in policies and practices on how to manage SRHR issues during outbreaks of disasters. The available disaster management strategies from departments such as the CPU are preoccupied with the general human welfare during times of disasters. The adoption of the ‘one size fits all’ approach has led to some disadvantaged groups of the society to remain marginalised during the times of need such as during the outbreak of the novel COVID-19. The existing gaps in the literature show the government’s ineptness in enforcing the agreements which they made at the domestic, regional and international level. This study unpacks the rights, dignity and wellbeing of women during the novel COVID-19. It, consequently, investigates positions of CSOs, CBOs and the government concerning their commitment to enable women with disabilities’ access to SRHR during the pandemic. Lastly, the study offers possible policy recommendations which could be adopted by the government to ensure the fulfilment of SRHR of women with disabilities during times of known and unknown future disasters.

4 Material and Methods

In this study, data was collected using qualitative research methods. We used qualitative data collection tools and non-probabilistic sampling techniques for the selection of research participants. In compliance with the government and WHO’s health and safety measures on COVID-19, we relied primarily on digital and secondary data sources, online research and limited face-to-face interviews. We minimised field visits in order to reduce possible transmissions between the researchers and the respondents. The data collection tools are presented as follows:

1. Secondary/digital sources: We reviewed secondary data sources which focused on women with disabilities and their access to SRHR before and during the COVID-19 pandemic. We relied on both peer-reviewed and grey literature on timely developments concerning COVID-19.
2. Face-to-face interviews – Due to the need to reduce direct contact with interviewees, we conducted ten face-to-face interviews with women with disabilities who were selected based on purposive and snowball sampling techniques.
3. Virtual and telephone interviews – We conducted key informant interviews using Skype, WhatsApp and telephone. We used these tools to interview key participants, namely, a representative from the following government and non-government organisations;
 - (a) Social Welfare Department
 - (b) Civil Protection Unit (CPU)
 - (c) Coordinator of Organisations for People with Disabilities (OPDs) in Masvingo
 - (d) Coordinator for Institute for Community Development (ICOD)

Sampling technique: We selected our research participants using purposive and snowball sampling techniques. We purposively selected women with disabilities as the starting point considering their precarity in accessing SRHR services. Secondly, after identifying some of the women with disabilities, we were referred by them to their colleagues with more or less similar impairment conditions.

5 Presentation of Findings

In the following subsections we present the study's findings.

5.1 Accessing SRHR During 'Lockdowns'

The study reflected the serious disregard of women with disabilities' access to SRHR services by the responsible authorities during the outbreak of COVID-19 in Masvingo urban. The disregarding of rights varied across different women and their diverse disabilities. However, it was noted that the majority of women with disabilities in Masvingo urban are *bona fide* members of various OPDs. All the local OPDs are also affiliates of the Federal of Organisations of Disabled People in Zimbabwe (FODPZ) which is the mother organisation for all other formal disability organisations. It was noted that there is a close connection of the local OPDs to the supra-international governing institutions such as the UN and its agencies namely the UNDP, UNFPA, UNICEF and UN Women. In spite of the solidarity amongst the local OPDs and international institutions, results indicated that no practical attention was given to local women with disabilities' access to SRHR services during the outbreak of COVID-19. One of the respondents in the study expressed that:

[...] kubva pakanzi chirwere ichi chauya hatina kana mumwe zvake akatitsvagawo maererano nezveutano hwedu sevanhu vakaremara. Chavaita chete kufundisa vamiririri vedu kuti tisabatwa nacho, manje vazhinji varikurwara vari mudzimba umu
(Since the outbreak of the pandemic, none of our OPDs and the government never helped us the disabled with SRHR services. They only educated our representatives on preventing infection and as a result, majority of our friends are suffering in their homes).

The commonly mentioned hindrance to women with disabilities and their access to SRHR services is largely blamed on the reactionary strategy implemented by the government after the global outbreak of COVID-19. The abrupt response by the State on enforcing the 'lockdown' has led to a significant disruption of citizens' life and rights with the greater impact being felt by women with disabilities in the areas of health, sexuality, security and well-being. The following selected measures are noted to have disproportionately affected their access to sexual reproductive rights and welfare during the COVID-19 outburst:

- (a) Restricted or forbidden movements of non-essential workers into the town's CBDs.
- (b) A ban on intercity and intra-city movements.
- (c) For travelling either locally or intercity, one has to obtain a permission letter from the Zimbabwe Republic Police (ZRP) – obtained from Masvingo ZRP Central which is the CBD.
- (d) Conversion of community based local clinics into isolation centres for COVID-19 patients.
- (e) Restricted operation of businesses between 9 a.m. and 1:30 p.m.

Evidence from the study confirmed that the strict adherence to these restrictive conditions have had an immense impact on the accessibility of sexual and reproductive services, especially for women with disabilities. Firstly, the restricted movements have confined them to their houses without any opportunity to go out. The stay-at-home mandate threatened women's human rights as it resulted in a significant increase of cases of rape and other forms of sexual violence. Most participants highlighted their increased vulnerability and risk of being sexually assaulted since they often lived with their perpetrators. Most perpetrators are the guardians of women with disabilities. In the study, two middle-aged participants revealed experiences and suffering from

STIs after they have been sexually abused by their caregivers. One respondent indicated that she was waiting for the end of the ‘lockdown’ to report her case. The other respondent indicated that she did not report the matter due to her fear of being victimised. In narration of her traumatic experience, she expressed that:

Kubva zvandakabatiwa chibharo andina kumhangara nyaya yangu, dambudziko nderekuti akaita izvi ihama saca ndinotywa kudzingwa pamba apa kunze uku kwakavharwa uye dambudziko ravapo nderekuti ndorapiwa sei nekuti ndakapiwa chirwere chenjovera

(Since I was raped I didn't report the case because this was done by my close relative and I fear being chased away and I can't go anywhere and the other problem is that I don't know how to get treated of the STIs I was infected with).

Restrictions on accessing both legal support and health services related to SRHR exacerbated the challenges faced by survivors of sexual violence. In such cases, the physical access to sexual reproductive services such as review checks for those infected with STIs and routine window period checks for potential HIV and AIDS infections proved problematic. In addition, the move by the government to convert the majority of local clinics into COVID-19 isolation centres affected women with disabilities significantly. The challenge to balance the physical accessibility of the short-term, emergency infrastructure to accommodate both the general public and people with disabilities deserves considerable attention. Adding to this problem is also the issue of distance. Long distances left many with no option but to ignore the need for accessing SRHR services altogether. These conditions were not only hard for survivors of sexual violence, but also for all women with disabilities considering that SRHR services including the provision of sanitary pads, birth control pills and antenatal, for expecting mothers, were difficult to access. These incidences showed that women with disabilities' deprivation of accessible SRHR and justice was apparent. Concerning justice, the delay or denial of justice on aggravated sexual violence against women with disabilities during the COVID-19 lockdown violated their right to justice. In reality, the state security agents, particularly the police, were preoccupied with defending national health security ahead of other delicate matters such as SRHR. The study revealed that SRHR were given peripheral attention and were treated as ‘soft security rights’. In lieu of this, the closure of courts and non-operation of rights-based pressure groups and CSOs undermined efforts of raising the alarm on human rights abuses. The failure to provide help from the police and courts has seen some dying in silence with no prospects of reporting said human rights violations.

Apart from the above-mentioned problems, some noted injustices were also experienced in the clinics and hospitals. Some respondents described situations in which they did not receive disability-inclusive health services due to a lack of training of the staff which only aggravated the already precarious situation they were in due to the Covid-19 pandemic. Well-noted cases showed that victim-blaming was rampant and affected people either decided not to seek help at hospitals at all or having to exhaustively explain the problems they faced and experienced. The presumed bigger vision of the government that ought to keep people safe from the COVID-19 virus seemingly took priority over the rights and needs of women with disabilities.

5.2 Livelihood Loss and Inaccessibility of SRHR Services

Participants in the study highlighted that the outbreak of COVID-19 and the subsequent lockdown has worsened their conditions in terms of SRHR. Most of them who survive on informal or roadside-selling were failing to buy reproductive essentials such as contraceptive pills and sanitary pads. The loss of income has, consequently, increased their dependency on other people including relatives, friends and church mates. One sinister issue raised was that

some people are taking advantage of this vulnerable state to use these essentials as bait for sexual exploitation. Most women with disabilities were the victims of sexual exploitation.

5.3 Government and CSOs' Roles for Women with Disabilities' SRHR

Despite the government having a legal mandate to protect and safeguard the rights of the disadvantaged, their action on women with disabilities' access to SRHR services is highly insufficient. One of the key informants from the Department of Social Welfare confirmed the government's committed efforts for ensuring rights. However, he explained that due to the urgency of the COVID-19 outbreak, the government failed to consider it as a critical issue. Though they acknowledged it as fundamental, they expressed that the extreme emergency measures were necessary to minimise the loss of life and had to take priority over various other rights. Furthermore, the Civil Protection Unit (CPU) also highlighted the lack of preparedness in responding to rights-based intervention strategies. In their line of operation, their focus is on responding and managing disasters which occasionally affect large groups of people. To date, the area of operation does not involve 'soft rights' of specific groups of people with complex conditions such as women with disabilities.

Some participants criticised the absence of CSOs, CBOs and active OPDs who focus directly on the SRHR rights during disaster outbreaks as particularly problematic. The conducted data showed that one of the nominal income-generating activities, before the lockdown, was attending meetings organised by CSOs. The mentioned meetings were organised by CSOs including the Women Coalition of Zimbabwe (WCZ), the Institute for Community Development (ICOD), the National AIDS Council (NAC), Leonard Cheshire and the National Peace and Reconciliation Commission (NPRC). Participation in these meetings would earn them attendance fees and transport money ranging between USD 2 and USD 5. Though the money was not enough to sustain them, it was crucial to supplement the costs of food and other consumable reproductive essentials. Unfortunately, the ban on public meetings due to the COVID-19 outbreak has also disrupted other sources of income which used to help them to cover their daily expenses.

Some respondents expressed that the government did nothing to help them during the COVID-19 outbreak. One key informant from the OPDs stated that the government has failed due to its well-known ineptness since the downfall of the economy which started in 2000 and lasts until to date. Since then, the welfare of the country and the population at large had to rely heavily on help from international donors and philanthropic CSOs. Likewise, during the COVID-19 outbreak, CSOs have been helping vulnerable social groups including women with disabilities through the provisions of other non-SRHR services and support. Fieldwork based data revealed that, in April, some women with disabilities confirmed receiving small food hampers from CSOs. In April, May and June, Zion Christian Church (ZCC), offered food to disadvantaged persons with disabilities. The food was distributed through the Department of Social Welfare who provided the data base list of persons with disabilities. It was confirmed that an individual received the following:

1. 5 kg of mealie-meal
2. 750ml bottle of cooking oil
3. 2kg of rice
4. 2kg of flour
5. 500g of Soya mince

Though this support was vital, the respondents emphasised that it was not enough for them to feed themselves and their children after the loss of their livelihoods. Furthermore, though food availability is a critical topic that naturally deserves the attention it received, challenges emerged due to the fact that SRHR were ignored entirely. As expressed by the participants, while the right to food was at least fulfilled to some extent, the right to health in terms of SRHR remained widely unaddressed.

It was also observed that CSOs and OPDs did not play significant roles in relation to the SRHR and welfare of women with disabilities during the pandemic. Firstly, they confirmed that their operations were stalled by the government's stringent measures when it comes to their work. The closure of businesses and barring the operation of non-essential staff including those from CSOs and OPDs affected their direct engagements with women with disabilities. The government's emergency response disrupted the operation and possible intervention strategies which could have alleviated the worst repercussions of the COVID-19 outbreak for women with disabilities. Moreover, CSOs and OPDs were simply not prepared for the sudden outbreak of the pandemic and were neither financially nor organisationally equipped to ensure women with disabilities' access to SRHR. Secondly, some of the human-rights-based groups were preoccupied with educating and disseminating information to women with disabilities concerning SRHR rather than providing health care services. Despite this gap in humanitarian aid, educating women with disabilities on SRHR awareness and survival during COVID-19 remained critical. The ICOD Zimbabwe, for instance, engaged in educating women with disabilities' about COVID-19 under the presumption that they will use the knowledge in coping and adapting to the challenges associated with their SRHR. Though the intervention was noble, unfortunately, all the engagement efforts were done virtually in compliance with the restrictive laws. This strategy left most of the affected people underserved due to a wide range of factors. The major problems highlighted that were include the following:

- (a) Lack of electronic gadgets to receive the virtual education and information – radios, televisions, smartphones, computers – and lack of Wi-Fi or data packages to access the internet.
- (b) Some women with visual impairments could neither see nor read the information in written form.
- (c) Women with hearing impairments could not hear the programs – especially those on televisions and radios.
- (d) When on lockdown at home, the majority of women with disabilities could not rely on the support they need and usually receive from trained personnel from OPDs such as interpretation services for sign and coded languages.
- (e) Suffering from isolation – some were isolated in places where able-bodied family members were always present and the affected person's right to access of information was never prioritised.

Having noted that, some key informants expressed that the slow re-opening of businesses in Zimbabwe and abroad is allowing them to apply for relief funds in the area of women with disabilities and SRHR. A key informant from one of the rights-based OPDs revealed that they have suspended many other projects only to concentrate on women with disabilities' SRHR. He expressed that:

Due to the urgency of this ignored matter, we are busy applying for the Rapid Relief Funds which are given by the donor funding community, and I hope we will win some funds through grants for us to quickly

intervene and help in ensuring the full women with disabilities access to SRHR services and enjoyment of their rights during these difficult times.²⁸

As noted, winning the funds for them to implement intervention will enable them to defend the rights of women with disabilities. Consideration of their rights is paramount in safeguarding the realisation of all-encompassing rights which state as good measures of human development. In other cases, taking women with disabilities' welfare into consideration is the sine qua non for reducing gender inequalities for all women. Thus, embracing the leave no one behind principle represents a promising step towards inclusive human rights considerations.

5.4 Women with Disabilities' Agency on Infringed SRHR

Despite the existing hardships and constrains faced in realising SRHR rights, women with disabilities successfully utilised improvised coping strategies. The main survival strategy which was adopted by women with disabilities was the use of social capital. Concerning social capital, women with disabilities survived through well-established relationships with their guardians, friends, church members and members of CSOs and CBOs. At the family level, many women with disabilities survived through the support and assistance from available family members since their other livelihoods strategies such as selling and begging were inaccessible due to the lockdown. Furthermore, some churches contributed to safeguarding the survival of their disabled church members during the COVID-19 lockdown. One woman with visual impairment responded, "*Hama dzangu dzekucheche dzakandichengeta chose munguva yekuomerwa iyi, andingacheme nezvandaitirwa*" (My church mates helped me a lot during the difficulty times and I can't complain).

Though the help received by women with disabilities were not always directed towards their SRHR needs, they managed to convert some of the goods to acquire SRHR essentials. For instance, a visually impaired women confirmed selling or exchanging some extra clothes she received from church donations to buy her sanitary wares and hiring a car to visit the hospital for regular check-ups. She explained that selling or exchanging her extra essentials has helped her to stop using other unhygienic materials such as worn-out clothes as sanitary pads. She complained that the worn-out clothes are problematic and unsafe for her health. On a related note, another responded expressed that she used the money she got from philanthropists for transport to the hospital to collect her ARV drugs during the lockdown. The help they got was commendable and urgently needed to reduce their vulnerabilities and continued loss of their daily health welfare and rights.

6 Discussion

The outbreak of COVID-19 threw many people into suffering. The worst affected were the disadvantaged populations of society including persons with disabilities. In Zimbabwe, women with disabilities have historically been stigmatised as fragile and vulnerable which led to harmful misconception. Furthermore, being a woman is itself a disadvantage within a patriarchal society that is built on institutionalised gender-based discrimination. Under such conditions, women are usually treated as 'second class' citizens or 'big children' and, with this status, disabilities add to the already precarious status of said women. Needless to say, in Zimbabwe, SRHR has never been considered as important human security issue. The SRHR are/were lowly embraced in the broader human rights discourse. A combination of these cross-cutting factors has thus left a gap within the government's objectives and its strategies of

²⁸ A response from one of the key informants in the study.

ensuring women with disabilities' SRHR rights as they prioritise fighting the spread of COVID-19. This, however, will never guarantee the achievement of the leave no one behind commitment as set out as the prime target of the Agenda 2030 goals.

Although there is evidence supporting the fact that women with disabilities' rights are continuously being violated and neglected before disasters, the government lacked goodwill in considering SRHR as a serious human right concern. As a result, women with disabilities experienced obstacles from three fronts, namely, challenges associated with their disabilities, Covid-19 related restrictions and State-ordered regulations. Critical to note here is the government's low or no effort in ensuring the SRHR of women during disasters. These scenarios augur well with the findings of a study regarding the role of the State and its relationship with the welfare of the displaced people in the Chingwizi transitory camp in Mwenzezi, Zimbabwe.²⁹ He noted that, after the flood disaster, the displaced also became 'victims of the state' due to bad decisions made during and after the disaster. Similarly, in Zimbabwean urban areas such as Masvingo, the government's lockdown strategies and silence on SRHR has made women with disabilities state victims. The exclusion of women with disabilities from the definition of people in need of 'essential services' had devastating implications for their human rights. As a result, the majority were exposed to complex and multi-layered problems of having to balance their basic survival as well as ensuring their access to health welfare compared to other citizens.

Based on these observations, the state and non-state actors are blamed for their low or no action on women with disabilities' SRHR during the COVID-19 outbreak. Most of them concentrated on raising COVID-19 awareness campaigns and SRHR but lacking the needed practical action to ensure the availability and accessibility SRHR services for women with disabilities. Though practical action and care was minimal from the concerned stakeholders, we noted that women with disabilities have agency.³⁰ They utilised their agency in coping with their SRHR during the COVID-19 outbreak. However, we noted that the majority of the coping strategies were not sustainable considering the evolving nature of the pandemic. As a result of this, women with disabilities' SRHR remains a peripheral issue in the discourse of human rights and welfare.

7 Conclusion

Observations made from the study reflected a multitude of issues in the domain of women with disabilities, COVID-19 and SRHR. The predicted and experienced impacts of COVID-19 showed extreme effects on the rights of women with disabilities on SRHR. Women with disabilities observed their SRHR being ignored and overlooked with minimal help from the State and other active stakeholders in the realm of human rights and welfare. The major blame for the neglect of women with disabilities' SRHR is cast on the government for designing COVID-19 reaction strategies, decisions and actions that prioritised other aspects. The direct approach of considering all the citizens as a homogenous group which will experience similar impacts showed a lack of care and political will. Furthermore, ignorance or non-compliance with the domestic and international agreements and pacts on disabilities and human rights leads to accusations that put the blame on the government and label it as a failed 'duty bearer'. The consequences of such deliberate negligence is disastrous for the SRHR welfare of women with

²⁹ Hove M. 'When Flood Victims Become State Victims, Tokwe-Mukosi Zimbabwe', *Democracy and Security Journal* (2016) Vol 3.

³⁰ D. K. Lal, 'Book Review: Seeing Like A State, How Certain Schemes to Improve the Human Condition Have Failed', 5 (1) *The Independent Review* (2000).

disabilities. We, therefore, concluded that women with disabilities' access to SRHR is a denied right due to which they are placed in a highly disadvantaged position based on their disabilities, the pandemic itself, and the state-orchestrated victims of their condition, COVID-19 and the State. Under these conditions, women with disabilities' SRHR will remain among unmet goals set out by the Agenda 2030's SDGs.

8 Recommendations

Our recommendations are as follows:

- 1) The government as the 'duty bearer' should scale up their constitutional mandate of safeguarding the SRHR of vulnerable social groups in line with domestic, regional and international pacts and agreements before, during and after disasters.
- 2) On intervention, the government ministries and line departments such as the Social Welfare and Civil Protection Unit should embrace gender-sensitive rights-based approaches to avoid marginalisation of vulnerable and often-ignored and disadvantaged populations.
- 3) Before intervention, the government should consider multi-sectoral stakeholder meetings and consultations in order to provide inclusive human rights considerations and improved welfare during disasters.
- 4) CSOs and OPDs should raise awareness through advocacy on prioritising women with disabilities' SRHR in line with their varying complex disabilities.

5 COVID-19, Human Rights, and the Informal Sector: Exploring the Implications of the Lockdown on the Informal Sector in Masvingo Province, Zimbabwe

Stephen Basure Hardlife, Lloyd Nhodo and Fadzai Chipato*

Abstract

The COVID-19 global epidemic had adverse effects on all facets of human life, particularly in the Global South. This prompted most governments to implement a multitude of measures to ensure the security and safety of their citizens. Based on the recommendations of the World Health Organization (WHO), many governments, including the government of Zimbabwe unilaterally imposed a total lockdown. This lockdown restricted human mobility under the ‘stay-home policy’. Although the imposition of the universal lockdown was a necessary measure, very little was done to consider the negative ramifications of it on the rights of vulnerable communities, whose livelihoods are almost entirely dependent on mobility. The ensuing study, therefore, focused on the institutional responses to COVID-19 and their implications on the rights and livelihoods of vulnerable sections of society in the informal sector. It also examined how these actors deployed agency to navigate the everyday realities under the lockdown measures. The study employed a qualitative methodology and relied on unstructured interviews, key informant interviews and secondary sources of data. It was also based on a comparative analysis of the experiences in urban localities of the Masvingo province, specifically in Masvingo and Chiredzi. The integrated approach served as the theoretical framework for analysis of the findings. The study established that the lockdown infringed on the rights of people in the informal sector, including their right to work, right to equality and non-discrimination, as well as the rights of different groups, such as women, children, and people living with disabilities. The study concludes that the weaponisation of the law in medical emergencies contradicts the protection of people’s rights.

Keywords: human rights, informal sector, COVID-19, lockdown restrictions, livelihoods

1 Introduction

COVID-19 is not only a public health crisis, but the measures taken to mitigate the spread of the disease have implications for people's rights. The lockdown measures have been used to continually keep the informal sector suppressed since it is viewed as one of the key drivers of COVID-19 infections.¹ The level 2 lockdown measures, reviewed by President Emmerson D. Mnangagwa’s administration, have largely restricted the operation of the informal sector, while simultaneously imposing challenging conditions for its reopening. These measures have directly and indirectly infringed on the rights of people in the informal sector. Rights compromised by the lockdown measures include the right to property, the right to work and protection from unemployment, the right to equality and non-discrimination, rights of women, children, and persons with disabilities (PWDs).

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¹ Level 2 lockdown gazetted in Statutory Instrument 110/2020 –Government of Zimbabwe, (2020) Public Health (COVID-19 Prevention, Containment and Treatment) (National Lockdown) (Amendment) Order, 2020 (No. 8), <<https://www.veritaszim.net/sites/veritas>>, accessed on 8 October 2021.

The informal sector can be considered the largest employer in Zimbabwe², which also houses many marginalised and vulnerable groups of society including persons with disabilities, the elderly, women, and children. The informal sector serves as a livelihood refuge for many individuals who have been marginalized by the mainstream economy. Hence, working in the informal sector implies a sense of precarity and vulnerability. This vulnerability extends beyond livelihoods to include a lack of protection for their rights. Accessing legal recourse is often difficult since the idea of informality is often confused with illegality. Thus, most people in the informal sector are seldom able to stand up and defend their rights.

This study focused on the implications of the lockdown on the informal sector from a human rights perspective. The concept of a lockdown implies a situation of emergency in which people's rights are purportedly compromised for 'the greater good'. In this case, preserving life and controlling infections appear to be the primary objectives of the mission and, thus, relegating everything else to a secondary position. Nonetheless, in the pursuit to safeguard the greater good, minorities and the vulnerable groups are often ignored and disregarded, resulting in the achievement of the goals of the lockdown at the expense of some sections of the population. Thus, the study sought to investigate how responses to COVID-19 impact people's rights within the informal sector. Specifically, it examined how the government's response to the pandemic affected vulnerable groups in the informal sector. Evidence was drawn from the Masvingo and Chiredzi metropolitan centres in Masvingo province, which were selected due to their high proportion of the informal sector.³ These areas are frequently overlooked in literature because of their geographic location and classification as small cities, even though Masvingo is the oldest urban locality in Zimbabwe.

Drawing from the background and thematic issues outlined above, the study poses several research questions. The major question we interrogated was: How do COVID-19 lockdown measures affect the rights of people in the informal sector? Additionally, the following sub-questions were examined concerning the impact of COVID-19 responses on the informal sector:

1. What are the implications of lockdown measures on people facing bifurcated marginalisation (women, children, PWDs, and the economically marginalised) in the informal sector?
2. How do institutional responses and policies enforced during the lockdown affect the rights of individuals facing bifurcated marginalization

The questions analyse the effects of the lockdown on the rights of people facing multiple forms of marginalisation. In addition, they explore how these people were affected by the lockdown measures, considering their physical, and socio-economic well-being.

1.1 Contextualizing the Informal Sector

The informal sector is commonly defined as being comprised of small-scale enterprises that are not regulated by the government institutions and, therefore, do not contribute to the Gross

² Statistics show the informal economy constitutes 60, 6 percent of the economy- L. Medina, M.F Schneider. 'Shadow economies around the world: what did we learn over the last 20 years?'. (International Monetary Fund 2018), <<https://www.elibrary.imf.org/view/journals/001/2018/017/001.2018.issue-017-en.xml>>, accessed on 8 October 2021.

³ Of 80-90 per cent of Masvingo town is comprised of the informal sector, A. Chigwenya, 'Contestations for urban space: informality and institutions of disenfranchisement in Zimbabwe — the case of Masvingo City', 85(5) *GeoJournal*, (2020) pp.1277-1289.

Domestic Product (GDP) of the country.⁴ The informal sector includes family management, labour-intensive practices, use of indigenous resources, and reliance on skills and knowledge outside of the formal education system.⁵ This broad contextualization of the informal sector applies to many countries, including Zimbabwe. It is noteworthy that the government of Zimbabwe recognises the presence of these informal enterprises. Yet, laws and policies do not provide a clear framework for integrating these enterprises into the economy which is partly due to the country's pursuit of neoliberalism and modernisation that overshadows the importance of informal enterprises.⁶ Institutional reforms have inadvertently affected the advancement of these enterprises.⁷ This often leads to human rights abuses such as the destruction and confiscation of property, arrests, and other repressive actions by the state.

The continued rise in informality is attributable to high unemployment rates⁸, rural-urban migration, and urban poverty.⁹ Additionally, decades of economic crisis have resulted in the shrinking of the formal economy, forcing people to turn to the informal sector as a survival strategy. The informal sector is heterogeneous, that is it presents different characteristics within itself. Paradza classifies the informal sector in Zimbabwe into five categories, which include street vendors, enclosed markets, roadside operators, private sector premises and based on location.¹⁰ The study acknowledges this categorization, although it narrows its focus to street vendors and covered markets. Focusing on these two categories helps to eliminate the ambiguities associated with informal sector contextualization and narrow down the study to a specific category of informal traders. This paper argues that this group is the most affected by the lockdown measures, and it is largely composed of women, children, the elderly, and PWDs. Often, these groups of people are unable to fulfil the minimum vending requirements, as these would require substantial deductions from their income.

1.2 Legal and Institutional Framework Guiding the Informal Sector

The available legislation permits the operation of the informal sector under restricted conditions which are difficult to meet considering the vulnerability experienced by informal traders. Some of the identified legal and institutional frameworks are Hawkers License Act, Environmental Act, Town planning and Zoning, Company registration requirements, and taxation regimes.¹¹ However, for this study much attention is given to the Hawkers License Act because it offers an opportunity for informal traders to operate in designated points after obtaining the license. Most vendors do not possess the said license and are frequently subjected to police harassment and confiscation of goods. It should be noted that despite these obstacles, vendors often resort to paying bribes to the council police so that they are able to maintain their operations.¹² In

⁴ I. Chirisa, 'The geography of informal sector operations (ISOs): A perspective of urban Zimbabwe', 2:4 *Journal of Geography and Regional Planning*, (2009) pp.66–79.; L. Shinder, 'Zimbabwe's informal sector', *March Monthly Labor Review*, (1998), pp.72–73.; J. B. Miller, 'Living Outside the Law: How the Informal Economy Frustrates Enforcement of the Human Rights Regime for Billions of the World's Most Marginalized Citizens', 5:1 *Northwestern University Journal of International Human Rights*, (2006) p.1-27.

⁵ *Supra* note 4.

⁶ Chigwenya, *supra* note 3, p.1281

⁷ *Ibid.*, p.1277.

⁸ Chirisa, *supra* note 4, p.3

⁹ Chirisa, *supra* note 4, p.3.

¹⁰ G. Paradza, 'The retail and service informal sector challenge to urban design in Zimbabwe', in A. Brown and C. Davidson (eds.), *Responsive design and plan implementation*, (Department of City and Regional Planning, Cardiff).

University: Cardiff, 1999).

¹¹ Chigwenya *supra* note 3, p.1282.

¹² Chigwenya *supra* note 3, p.1281.

some cases, this has become a cyclical pattern of arrest, bribery, and return to the streets. The above background on legislation and institutions illustrates that the operational environment for informal traders was already challenging before lockdown restrictions. The right to the city and the right to urban space were being violated even before the COVID-19 pandemic, and measures have further exacerbated an already precarious situation for the traders.

2 COVID-19 and Human Rights

COVID-19 poses a significant threat to human rights across the world. The stay-at-home measures have been associated with various forms of human rights abuses. These abuses are prevalent both at the micro and macro level, with reports of abusive relationships at the household level and the government being complicit in violating human rights in the name of enforcing these measures at the national level.¹³ Furthermore, COVID-19 has deepened social, economic, and political inequality.¹⁴ The United Nations emphasises that human rights should be at the forefront of the fight against COVID-19.¹⁵ The UN advocates prioritizing human rights in the response to the pandemic to ensure inclusivity under the much-known slogan ‘leave no one behind’.

According to the UN, Human Rights COVID Guidance the COVID-19 response should focus on access to health care that goes beyond the medical dimension. The focus should be on both the intermediate and long-term rights and it emphasises the need to consider gender, vulnerable people, and the elderly. Against this backdrop, this study recognizes the significance of the social differentiation among informal traders in Masvingo and Chiredzi urban areas and takes these differences into account. The guidance further elaborates that some rights must not be restricted even during an emergency, as affirmed by the Universal Declaration on Human Rights: “All human beings are born free and equal in dignity and rights”.¹⁶ Some of the rights that are under threat due to COVID-19 include basic social, political, civil, and economic rights. Although these rights are vital, this paper focuses on the rights that relate directly and indirectly to study. The key rights discussed in this research include the freedom of movement and association, right to property, the right to work and protection from unemployment, the right to equality and non-discrimination, and rights of women, children, and persons with disabilities.

2.1 Conceptual Framework

The conceptual framework, visualized in Figure 1 below, elaborates on an integrated approach to COVID-19 and human rights. While COVID-19 is primarily a public health pandemic that impacts the basic right to health, it is also related to other sectors, including social and economic

¹³ M. Gavin, ‘The Authoritarian Politics of COVID-19 in Zimbabwe’, *Council on Foreign Relations*, 2020, <www.cfr.org/blog/authoritarian-politics-covid-19-zimbabwe> (accessed 8 March 2023); Human Rights Watch, ‘Women Face Rising Risk of Violence During Covid-19: Leave No Woman Behind in Governments’ Response’, *Human Rights Watch*, 2020, <www.hrw.org/news/2020/07/03/women-face-rising-risk-violence-during-covid-19> (accessed 8 March 2023).

¹⁴ A. Guterres, ‘We are all in this Together: Human Rights and COVID-19 Response and Recovery’, *United Nations*, 2020. <www.un.org/en/un-coronavirus-communications-team/we-are-all-together-human-rights-and-covid-19-response-and> (accessed 17 October 2021).

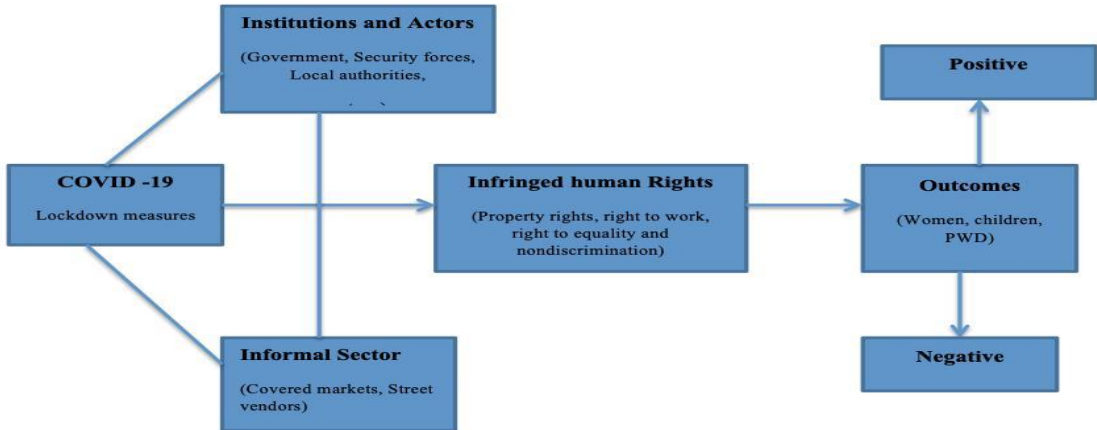
¹⁵ United Nations, ‘COVID-19 and Human Rights We are all in this together’, *United Nations*, 2020, <www.un.org/victimsofterrorism/sites/www.un.org.victimsofterrorism/files/un_-_human_rights_and_covid_april_2020.pdf> (accessed 8 March 2023).

¹⁶ United Nations, ‘Universal Declaration of Human Rights’, *United Nations*, <www.un.org/en/universal-declaration-human-rights/> (accessed 8 March 2023).

rights.¹⁷ The argument presented in this study is that the COVID-19 human rights analysis cannot be treated in isolation, since the violations initiated by the stay-at-home measures, and the enforcement of these measures cuts across different sectors. Furthermore, the resultant outcomes of these human rights affect vulnerable groups in society disproportionately more. Given this conceptual framework, the informal sector forms a significant part of the economy and livelihoods for most vulnerable populations. Therefore, the lockdown measures not only affect the right to movement but also socio-economic rights.

The application of mechanisms to deal with COVID-19 are repressive and directly result in human rights violations. The outcomes of these violations are particularly intense among the different groups in the informal sector where the most vulnerable are located. However, the informal traders exercise agency as they devise coping mechanisms leading to both positive and negative outcomes. In the informal sector, human rights abuses have always been part of the narrative since the informal economy exists outside the law where observance of human rights is always difficult.¹⁸ COVID-19 restrictions have intensified the situation since they have provided an opportunity for the government and its agencies to utilise the law to suppress or regulate the informal economy. However, what is deemed acceptable by the authorities may not necessarily be in the best interest of the marginalised individuals' livelihood. In response to the lockdown restrictions, individuals find themselves both as victims and perpetrators of human rights violations. For instance, due to the lockdown, vendors require more labour to carry out hawking activities. They end up violating their children's rights by enlisting them to work and complement household requirements. Therefore, human rights violations become a vicious cycle of deprivation, where human rights violations in one area become the basis of further violations elsewhere. To maintain orderliness in cities, the government sometimes enforces regulations that disadvantage marginalised individuals whose existence is rooted in the informal economy. However, they have a right to the city and to sustain a livelihood, just as the city authorities have a responsibility of maintain order in urban spaces.

Figure 1 – Conceptual Framework



Source: Authors

¹⁷ A. Kasznar, 'Indigenous peoples in the Amazon and COVID-19: the long-term importance of realizing indigenous rights in achieving the human right to health', *Raoul Wallenberg Institute*, 2020, <rwi.lu.se/blog/indigenous-peoples-amazon-covid-19/#_ftn5> (accessed 8 March 2023).

¹⁸ Miller, *supra* note 4, p.21

As noted in Figure 1, a relationship already exists between the State and the informal sector. Such a relationship is associated with human rights implications due to the inherent conflict between the authorities' enforcement of city regulations and the informal traders' need to earn a livelihood. Hence, in trying to ensure orderliness in the pursuit of livelihoods, city authorities have implemented covered markets. However, these markets are frequently insufficient in meeting the demands of those operating within the informal economy. At the same time, they are often located far from the city centre since they are considered an unwanted element which can only be established at the outskirts of the city. This regulation gives rise to street vending as people in the informal economy try to strategically position themselves where they can increase sales. This scenario has often resulted in confrontations with city authorities who frequently chase vendors and confiscate their merchandise. Against this backdrop, the COVID-19 pandemic has provided an opportunity for the authorities to utilise the emergency to regain control over the informal economy. The consolidation of said control over the informal sector has implications on different rights of people as noted in Figure 1 above. The violations have further implications on the different groups who are within the informal economy as exemplified by the impact on women, children, the economically marginalized and PWDs.

3 Context of Case Studies

This section gives a brief description of the two study sites where we conducted fieldwork. It explores dynamics and characteristics of the informal sector in the two field sites.

3.1 Masvingo

The informal sector was highly prevalent on the streets of Masvingo CBD before the lockdown restrictions. According to Chigwenya,¹⁹ 80-90 per cent of the city space was occupied by the informal sector. On a typical working day one would encounter vendors selling fruits, vegetables, mobile airtime, shoes, second-hand clothing, and other goods on the pavements outside major supermarkets and wholesale outlets. As previously highlighted in this paper, these informal traders operated in constant fear of the city council security officers, who would at times raid and confiscate their goods, often resulting in arrest. Informal traders sell their products on the street pavements, although there are two designated covered spaces where informal enterprises operate. Those are namely the flea market and the Chitima market, previously known as Grace Mugabe market. The Civic centre market is a covered market that is located near the commuter omnibus station and in proximity to the Masvingo city council offices. This market mainly trades in clothing items and a variety of other basic commodities. The Chitima market, located at the periphery of the city between the Mucheke River and the railway line, resembles the well-known Mbare Musika in Harare and the Sakubva Market in Mutare that offer a wide range of products.

3.2 Chiredzi

Similarly, to Masvingo town, prior to the COVID-19 pandemic, vendors also occupied street pavements in Chiredzi town. Additionally, two main enclosed markets are designated by the council where vendors operate and trade. These include the flea market and another market popularly referred to as '*kumagarage*' or '*musika wemabanana*' (Banana Market). The flea market is located near the town centre opposite the Vehicle Inspection Department (VID) while

¹⁹ Chigwenya *supra* note 3, p.1281

the other market is situated in Tsovani high-density township. These markets offer a diverse array of goods, ranging from vegetables to clothes and hardware materials.

4 Methodological Reflections

The study examines Masvingo province in the southern part of Zimbabwe, with a focus on Masvingo urban and Chiredzi urban. A qualitative methodology was utilized to collect data, allowing an in-depth understanding of COVID-19 and its human rights implications in the two urban localities. The selection of participants was done using snowball sampling for informal sector operators and purposive sampling for key informant interviews. Snowball sampling allowed the researchers to be directed to information-rich sources that are involved in the informal sector. While purposive sampling guided the researchers to informants that work directly or indirectly with the informal sector, including but not limited to those that enforce COVID-19 restrictions. Twelve key informant interviews were conducted with officials from the local authorities and civic organisations to determine their position on the lockdown and its impact on vulnerable sections in the informal sector. Additionally, 60 respondents were interviewed from both Masvingo and Chiredzi urban. These respondents were categorised according to age, gender, type of vulnerability, and type of informal operation *Shown in Table 1*. The observations were also conducted to assess the state of areas where people in the informal sector operate, thus complementing the main data gathering technique. To corroborate the data gathered through primary methods, the researchers also used secondary sources of data, which included online media, social media, newspapers, memos, reports, flyers *inter alia*.

Table 1: Biodata of respondents

Characteristic		Unstructured Interviews		Percentage (%)	
		Masvingo	Chiredzi	Masvingo	Chiredzi
Gender	Male	25	28	42	47
	Female	35	32	58	53
Age	18-24 years	10	13	17	22
	25-34	22	24	37	40
	35-44	20	18	33	30
	44 and Above	8	5	13	8
Type of Informal Operation	Covered Markets	34	29	57	48
	Street Vending	26	31	43	52

More women than men were interviewed in both towns and this disparity is attributable to the nature of the informal sector in Zimbabwe as it is mostly comprised of women. The challenges and vulnerabilities that women propel them to engage in the informal economy. The dominant age group in the informal sector is between the ages of 25-34 years. This group of young people has completed their tertiary education and is not absorbed in the formal economy. The informal sector offers a livelihood option for them. In Masvingo, about 57 per cent of the interviewed traders operate on the covered markets and 43 per cent are street vendors. Nearly half of the interviewed persons in Chiredzi town had stalls in the flea market.

5 COVID-19, Informality and Human Rights

The main observation of this study is the limited activity in the informal sector since the inception of the COVID-19 lockdown measures. In both urban centres, the initial months of the lockdown, namely from the end of March to May, witnessed stringent conditions on the operations of the informal sector. We observed that in Masvingo and Chiredzi town, the formal trading places of the informal sector were closed until August, with most people resorting to various illegal selling points to try and make a living. Street vending, a common feature of the informal market, was also pushed into invisibility, though some street vendors adopted for covert methods of selling their merchandise. Most street vendors resorted to an individualistic marketing strategy, approaching people in the street, and advertising their products through conversations. Some would carry a single item of their merchandise and move around the streets until it is sold, then return to pick up other products.

An interesting development has also been the proliferation of the informal trading within homes and streets, as informal traders attempted to sell their goods in places where more people were accessible. It should be underscored that the lockdown measures resulted in people being confined to their homes, therefore, trading at home and at street corners in high-density areas offered a coping mechanism to the restricted operating environment. We observed a shift from vending on the street verandas in town to the high-density suburbs of Mucheke, Runyararo, Rujeko, and Tshovani where almost every home has erected stalls that continued their operations. The vendors, however expressed concern about the intense competition in the sector which has inadvertently reduced the profit margins for traders. They also explained that there was the emergence of new players, which increased the competition on trading. Teachers and other professionals who were staying at home also started venturing into the informal sector, mainly as a means of protecting themselves from the adverse economic conditions and negative effects of the lockdown.

In addition to the competition that was threatening their informal enterprises, it was also revealed that police raids in the high-density suburbs were now a common feature in the area. The police raided people's homes demanding receipts and invoices proving they had imported the goods that they were selling. It is noteworthy that the products that are sold by most of the informal traders are mainly trafficked by a network of smugglers from South Africa. These observations point to various potential violations of people's rights within the informal sector. The right to work and earn a living is heavily compromised by the restrictions. Whereas the lockdown is within the reasonable and acceptable practice to contain the spread of COVID-19, the selective enforcement of restrictions within the informal sector raises concerns of social justice. If large corporations and registered businesses are allowed to operate with minimal restrictions, the informal sector could be opened applying the same standards. The state-vendor relations in Masvingo reinforce the position of critics who argue that the lockdown in Zimbabwe has political motivations. It is believed that the ever-increasing number of informal traders in Zimbabwe is seen as a threat to the legitimacy of the state and is symptomatic of a state failure.²⁰ This explains the heavy-handed response of the state and its repressive apparatus to lockdown violations, particularly by vendors in the urban localities in question.

²⁰ S. Gukurume and M. Oosterom, 'The impact of the Covid-19 lockdown on Zimbabwe's informal economy', *Institute of Development Studies* (2020). <<https://www.ids.ac.uk/opinions/the-impact-of-the-covid-19-lockdown-on-zimbabwes-informal-economy/>>, Visited on 8 March 2023.

5.1 Informal Sector Restrictions in Masvingo

During the early weeks of the lockdown, the city of Masvingo embarked on the demolition of covered markets, mainly the Chitima Market and the Civic centre market, which are the major operating areas of the informal traders in the city. The city council also proceeded to demolish illegal structures which were used for informal business activities in and around the city as well as residential areas. Most of the affected structures were those near Mucheke bus terminus and structures that had been erected at major shopping centres in residential areas. Taking advantage of the lockdown, the council managed to demolish most informal structures with virtually no resistance. For some vendors, this was a traumatic experience since they were only informed about the impending demolitions a few moments before the council started taking down the structures. At the Chitima market, some traders expressed sorrow over the loss of materials they used to create shades, whilst others alleged that their merchandise had been stolen during the demolition period. One informant said:

I was informed that the council was pulling down the market and I had to rush to my stand. I managed to take my timber and tents which I was using for sheds, but others were not so lucky since they received the information late. Passers-by could simply salvage some materials from the destroyed stalls. It was a huge loss. However, although we cry over the destroyed markets, our base for livelihoods has also been destroyed.²¹

At Mucheke bus terminus, a small industry had been established with various people selling and manufacturing construction and household products as well as automotive-related businesses. Most of these people were barred from accessing their former workspaces, with all unregistered structures having been removed. The lack of a traditional place to conduct livelihood activities became a major point of contention among informal traders. The destruction of market chains impacted the ability of informal traders to earn a living immensely. The council later explained that it destroyed the previous illegal structures and was now in the process of upgrading and constructing new market stalls for the traders. However, the pace at which these stalls were being constructed was so slow that it has taken almost five months to open part of the newly built market stalls. As one respondent noted, out of the approximately 180 stalls which were occupied by people, the council managed to re-open an initial 80 stalls with the new designs. The respondent further expressed concern over the reduction of operating space to one square meter, which the council rented out for USD 20 per month. Hence, since the re-opening in mid-August, occupancy rates have remained critically low. The attempt to formalize the informal often further pushes the informal sector onto the periphery of the economy. The process of regularisation and taxation may have a detrimental impact on already marginalized populations and exacerbate their impoverishment as they rely on the precarious and fragile informal sector for their livelihoods.

Another impediment to the operation of the informal traders in Masvingo was the difficulties in obtaining formal letters which would be used for an exemption to travel into the CBD where they could conduct business. For formal businesses, this was comparatively easy since they could write letters for their employees and stamp them, something which was difficult to attain for informal traders. Only recently in August, when the government eased restrictions on the informal trading, movement became easier for few informal traders. The government required all informal traders to be registered and only those who were registered could acquire travel exemption documents from the city council. Hence, the few people who had managed to occupy the initial 80 stalls were the only ones who could acquire documents, which allowed them to pass police checkpoints. Rather than effectively addressing the spread of COVID-19, these

²¹ Fieldwork, Masvingo Urban (2021)

measures ended up exposing people to greater risk of infection, as traders resorted to selling their goods at unregulated and unauthorised locations.

To sustain their livelihoods, many informal traders exploited new avenues of continuing their trade within the constraints of the restrictions. These included selling merchandise in their front yards and offering their products in local neighbourhoods. Policing and implementing lockdown measures in neighbourhoods has proven difficult which, consequently, allowed some informal traders to move around more freely to sell their products. To diversify their income streams and increase profits, some traders have even involved family members, especially children who were seen going door to door selling anything from vegetables, clothing, and other groceries. In fact, with the closure of schools, parents have taken advantage of the situation and utilized their children to help manage front yard stalls and to contribute to selling their merchandise.

We observed an increase in urban agriculture in Masvingo and Chiredzi where all open spaces have been turned into small vegetable gardens. Interviews with respondents above the ages of 44 revealed that their age prevented them from competing with new trends of marketing on social media. They argued that even when the lockdown ends it would be challenging to engage in the informal economy again. One respondent explained that:

I am contemplating on going back to the village. It is better over there because we do not have to buy and pay rentals. The only problem is we do not have enough land to engage in farming.

The findings highlight the repercussions of the COVID-19 pandemic, revealing how restrictions expose the underlying problems within the system. The lack of social security to compensate for lost jobs leaves these informal traders often with no option but to return to their villages. We argue that going back to the countryside will cause a decrease in production because the land is already limited in rural areas. Also, the climate crisis has impacted agriculture production as land availability is already very limited in rural areas. The infringed rights fall within the realm of social cultural or third generation rights which put emphasis on the social economic rights. It should be underscored that, in Zimbabwe, emphasis has been on civil and political rights, widely disregarding social and economic rights for informal traders during lockdown.

Another group of people which is often overlooked in the informal sector is the group of workers. The general perception is to equate the informal sector people with individual entrepreneurs, hence ignoring people employed by others in the informal sector. This group was hit hard by the COVID-19 restrictions since their livelihoods solely depended on commission or wages earned whilst they sold the merchandise of their employers. Though the employers could fall back onto some limited capital, the retreat of the informal economy into the suburbs and homes made informal sector employees redundant overnight. Most of them did not possess enough capacity to resort to other livelihood options. Hence, the lockdown negatively impacted their right to earn a living.

5.2 Chiredzi Experiences

The scenario in Chiredzi urban differed from that observed in Masvingo in several respects. Whereas the restrictions induced by the lockdown were almost similar in terms of movement and operational dynamics, Chiredzi Town Council did not embark on a demolition mission of illegal and covered markets. One respondent attributed this to previous conflicts with the people as the council once had violent confrontations with the informal traders after demolishing illegal

structures. Hence, the covered markets which existed were mostly those which were on the land which the council had allowed. However, due to the lockdown, a proliferation of front yard and roadside stalls could be seen as informal traders adapted to the COVID-19 induced effects. Even after the reopening of stalls, occupancy levels remained extremely low as informal traders to adjust to the new economic conditions. Most informal traders also criticised the effects of restricted movements on their ability to acquire products for resale as well as raw materials for those who were involved in small-scale productions of goods. Although locally they could manoeuvre and exploit policing loopholes, some found it difficult to acquire goods sourced from outside of Chiredzi Town. For those living outside town, police checkpoints on roads leading to the CBD posed a significant challenge. Nevertheless, the majority of those who lived in the suburbs close to town did not have major difficulties since they did not have to pass through any checkpoint. Obstacles only emerged when they wanted to travel outside city limits to procure goods for resale.

6 Human Rights Implications of the Lockdown in Masvingo Urban

In this section we explore different rights as well as how they have been affected by lockdown measures. We look at four major rights which include the Right to Work and Earn a Living, Equality and Non-discrimination, the Rights of Children and Property Rights.

6.1 The Right to Work and Earn a Living

The lockdown had the effect of making the lives and livelihoods of many informal traders precarious. Even after the partial reopening of the economy, informal traders stayed home as the government halted all informal sector activities. Council actions of destroying market stalls also compounded the problem since even after the reopening of markets, informal traders are struggling to revert to their normal business activities. New demands induced by COVID-19 and the opportunity taken by councils to enforce bylaws further compromised informal traders' ability to work. Considering that informality constitutes an important component of alleviating poverty and unemployment issues, stifling the ability of informal traders to work affected their right to work and earn a living. The demand for documentation as a precondition for travel also hampered the efforts of informal traders to move freely in their quest to sustain their livelihoods. The pandemic provided an opportunity for councils and the government to weaponise the law in ways, which violate the universal human rights of individuals. While it was vital and necessary to try and curb the spread of COVID-19, it was also imperative for the government to do so in a manner, which is not discriminatory and destructive to people's ability to earn a living. Moreover, the clampdown on the informal sector was a direct attack on the livelihoods of many people who were earning a living from the informal market. As one trader highlighted:

Our situation is different. We do not have any employers or social security. If I do not work, I cannot put food on my table unlike civil servants who are paid whilst they are staying at home. I cannot just sit at home and watch my family starve. This business is what keeps me going.

This situation pointed to the common scenario where, for some informal traders, their business served as the sole source of income and means of survival. The lockdown placed them into a state of livelihoods precarity, characterised by unease and a lack of a concrete livelihood base. Depriving people of an opportunity to earn a living whilst there was a partial system in place that allowed the formal system to continue operating could be interpreted as a violation of people's right to work and earn a living. Zimbabwe is a signatory to the International Covenant on Economic, Social and Cultural Rights (ICESCR), which recognises people's right to work

and earn a living.²² However, the COVID-19 induced lockdown could be interpreted as directly affecting that right.

6.2 Equality and Non-discrimination

The restriction of people's movement as well as resumption of certain economic activities constituted a case of discrimination and inequality before the law. Whereas formal businesses were allowed to operate, informal traders were unjustifiably confined to the homes. Although a swift glance at the formal business operations would have revealed numerous violations of COVID-19 guidelines, there were no cases of them being regulated or even terminated whereas informal businesses were not even given the opportunity to resume their operations even if they would fulfil the relevant guidelines. Hence, it appeared as if there was a prejudice towards the informal sector whilst at the same time, they were unjustly blamed for being key actors in the spread of COVID-19. Freedom of movement was more difficult for people within the informal settings than those in the formal sectors. This also showcased a dimension of discrimination since the basis upon which the informal sector could not move freely, was the assumption that their economic activities lay outside the regulated taxable formal business. Even the basis for lifting the ban on operations of the informal sector made it requisite that they must be registered, hence pay rents and taxes from the proceeds of their business. Thus, it can be argued that the idea was more of an economic decision rather than a genuine desire to control the spread of COVID-19.

6.3 The Rights of Children

The closing down of the space for the informal sector has resulted in a worrying trend of child labour in both urban spaces. The rise of child labour flourished since the lockdown provided fertile ground for the resurfacing of the practice. The two major ways in which children ended up being used in informal trade was through manning front yard stalls as well as hawking around the suburbs. As noted earlier, the lockdown also meant the closure of schools thereby leaving children confined to their homes entirely. However, to some informal sector families, this has added a pool of labour where children had to help contribute to the household income. The closure of markets meant that informal traders had to go to where the customer is, hence, the need to move around suburbs selling their merchandise. The researchers have observed several children who move around the suburbs selling different products and looking for casual jobs. Children ranging from the age of seven to sixteen have been utilized to maintain household livelihoods. Some children could be seen pushing wheelbarrows or carrying loads of firewood on their heads as they walked around different suburbs. This could be seen to be a violation of children's rights since they had to do strenuous tasks to supplement household income. Some of the children also walked an average of six kilometres a day circling the neighbourhoods and shouting to be heard by homeowners. However, most informal traders argued that they needed all household members to be involved since the situation was making it difficult for them to ensure the income they used to get before the lockdown. Moreover, customers used to go to their stalls to buy but now they were the ones who had to seek out clients door by door in the suburbs. The issue of child rights, consequently, became a battle between survival and morality. As much as it goes against the interest of the child, the need for survival preceded any consideration of rights.

²² United Nations (General Assembly). "International Covenant on Economic, Social, and Cultural Rights." *Treaty Series*, vol. 999, p. 171, (1966).

6.4 Property Rights

The way stalls were destroyed in Masvingo urban had implications on informal traders' rights to property. Although the council was in the process of replacing the old stalls with their standardized planned stalls, the destruction affected several informal traders as their merchandise and structures were destroyed. Traders could have recouped some of the material they used in constructing their stalls if they had been given ample time to evacuate the area. Moreover, a few had left part of their products, which they also lost when the destruction started. During the early stages of the lockdown, some informal traders also reported losing their merchandise to security forces who found them selling at undesignated points in the neighbourhoods. This illustrates the infringement on property rights where informal traders' property was destroyed. The findings are not only specific to Masvingo city seeing as, at the beginning of the lockdown in March, small-scale farmers in Mbare and Sakubva markets had their produce burnt by the police.²³ This clampdown is also part of Zimbabwe's historical trajectory where, prior to the pandemic, incidents such as the Operation Murambatsvina resulted in the loss of property that was labelled illegal settlements by the State.²⁴ The lockdown intensified the suppression of property rights and infringed on the rights of people. The struggle between illegality and survival leaves informal traders operating in illegal zones. Many of our respondents had to choose between fearing COVID-19 or starvation because of constrained livelihoods. In this case, many of them opted to survive. This observation is in line with Gukurume and Oosterom's argument that, in the Zimbabwean context, poor residents fear hunger more than COVID-19.²⁵

Much as the COVID-19 pandemic and the said restrictive measures affected all citizens operating in the informal sector in Masvingo and Chiredzi, the researchers observed that women were adversely affected more than men. This observation is in line with the historical evidence in the informal sector as a livelihood strategy in Zimbabwe. While we noted the significant increase in men in the informal economy, traditionally this sector has been dominating by women.²⁶

7 Conclusion

This paper illustrated how COVID-19 restrictions have impacted people's rights in the informal sector. The lockdown measures implemented by the government have resulted in the loss of income for informal traders who are mostly women, thus impacting the rights of women. The outbreak of COVID-19 and the associated restrictions intensified human rights abuses in the country where informal traders' property has been destroyed, and they were unable to sustain themselves. The usual vending spots and markets were closed due to the implemented measures to limit the transmission of the virus. Confronted with these impediments some informal traders

²³ P. Zamchiya, D. Mavhinga, T. Gwinji, A. Chamunogwa, and C. Madhuku, 'Zimbabwe's COVID-19 lockdown: Ensuring the right to food for the poor.' *Future Agricultures Consortium*, 2020, <www.future-agricultures.org/blog/zimbabwes-covid-19-lockdown-ensuring-the-right-to-food-for-the-poor/> (accessed 8 March 2023); E. Mwandiringana, and F. Chipato, 'COVID-19 and the Peasantry: Some Reflections from Zimbabwe', *Peasant's corner*, 2020, <peasantscorners.wordpress.com/2020/04/15/covid-19-and-the-peasantry-some-reflections-from-Zimbabwe/> (accessed 8 March 2023).

²⁴ Human Rights Watch, Human Rights Consequences of Operation Murambatsvina (2005).

<https://www.hrw.org/legacy/backgrounder/africa/zimbabwe0905/5.htm> (Accessed, 7 October 2021).

²⁵ Gukurume and Ooestrom, *supra* note 20.

²⁶ Wadzanai, S., J. Zhou, and I. Chirisa. *Informal economy and social vulnerability in Zimbabwe*. Ed. Rangarirai Machemedze. Friedrich Ebert Stiftung Zimbabwe, (2018).

are utilising coping strategies and mechanisms to cope with the difficult situation. They have shifted their stalls from the city to high-density suburbs, however, they face constant harassment and raids from security forces. This infringes on the right to work and earn a living of people in the informal sector. Also, an increase in children's rights abuses has been noted since families are involving children in the selling of products. To them, it is a way of diversifying flows of income where household members can move in different directions selling commodities. This paper argues for the necessity to introduce efficient policies that integrate the informal sector into the mainstream economy to allow the informal sector to withstand times of emergencies and crisis such as the COVID-19 pandemic. The measures we propose also include the use of virtual platforms to trade and offer social safety nets to compensate for the lost income and livelihood portfolios. These measures are not only important to enable the informal sector to thrive, but they also intersect with the protection of the rights of traders in line with the 'leave no one behind' principle that has been promoted considering the response to the COVID-19 pandemic.

6 The Right to Access to COVID-19 Information Amongst the Indigenous-Minority Shangaan Community in Zimbabwe

Linnet Sithole,* Cowen Dziva** and Davy Ndlovu***

Abstract

In the face of the widespread COVID-19 pandemic, all citizens, including the indigenous-minority populations, require access to credible knowledge and information about the nature of the crisis and, more so, about precautionary measures to avoid infection and to minimise the risk of transmission. In this study, we sought to understand how the Shangaan community in the Southern part of Zimbabwe tried to access accurate and credible COVID-19 information. This qualitative study gathered data using document reviews and interviews with conveniently and purposively sampled key informants from the Shangaan community members to understand how they are accessing pandemic information. Despite efforts by state and non-state actors in Zimbabwe to disseminate pandemic information, results suggest that the Shangaan community struggles to access accurate and credible pandemic information from broadcasting and print media platforms. The challenges of limited tools, power supply, transmission, and the absence of translations into the local Shangaan language deprive this group of their right to information. The hurdles faced by the Shangaan community in accessing pandemic-related information resemble the general exclusionary and discriminatory communication plight of many minority groups across the global South. With limited enjoyment of the right to information, the Shangaan community's capacity to combat COVID-19 remains limited. The article recommends pandemic communication translations to all languages as provided for in the Constitution, increased communication investment and service delivery in remote areas.

1 Introduction and Background

As of 2020, there is no cure nor vaccine for Covid-19 and, consequently, no foreseeable end of the pandemic which is why it remains a threat to everyone in Zimbabwe and the world at large.¹ This, therefore, speaks to the need for every person to access timely and relevant pandemic information in a language they understand. The right to information is critical in times of crisis including pandemics. Thus, the need for all citizens to have the right to pandemic information is in itself a necessary government response that contributes to combating the COVID-19 pandemic. With adequate information, communities come to understand the diseases' causes, signs, symptoms and preventative measures. With this understanding, citizens are able to take informed precautionary measures that protect them from the pandemic.

Cognisant of the requirement to ensure citizens have access to adequate and reliable pandemic information, the government of Zimbabwe has resorted to mass media platforms to educate society and distribute the World Health Organisation's (WHO) and national guidelines for combating the Coronavirus. Varied media platforms have been awash with COVID-19 messages that encourage citizens to stay at home, wear protective clothing, practice social distancing and good hygiene, avoid touching the eyes and the nose to protect oneself from the

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¹ World Health Organization (WHO), *Coronavirus Disease (COVID-19) Outbreak Situation*. 2020, www.who.int/emergencies/diseases/novel-coronavirus-2019, visited 20 January 2022.

deadly virus.² While these efforts for ensuring access to COVID-19 information are well-intentioned, their wider outreach to disadvantaged communities, including indigenous-minorities who are at a heightened risk of discrimination and exclusion, remains insufficient.³ Amid this limited access to pandemic communication in Zimbabwe, Media Institute of Southern Africa (MISA) filed an urgent chamber application to the High Court of Zimbabwe to compel the Ministry of Health and Child Care and the Ministry of Information, Publicity and Broadcasting Services to ensure citizens' right to COVID-19 information.⁴ One such group that MISA intended to protect includes the indigenous minority of the Shangaan community who live in secluded rural communities where their right to information as protected under section 62 of the Constitution⁵, let alone health communication, are likely to be compromised amid the COVID-19 pandemic.⁶

Despite this acknowledgement, existing studies on indigenous minorities' access to health information remain scarce in the global South. Any attempt to research the subject has mainly focused on the impact and determinants of health communication inequalities and strategies.⁷ In Zimbabwe, existing communication inequality studies focused on general development issues, with no focus on health communication (in)equality in emergency and pandemic preparedness.⁸ This is the research gap that this study sought to fill. Such an analysis contributes to the body of knowledge that is critically needed in Zimbabwe at this point in time when the country, and indeed the rest of the world, is battling the deadly Coronavirus that has killed millions of people and has the potential to exacerbate the existing inequality gap between communities. It is, therefore, hoped that the research will result in inclusive practices and policy action that largely work to ensure access to information for all citizens in times of emergencies. This timely study answers the call by the UN Secretary General, António Guterres, for the urgent need to reach disadvantaged groups, make their plight be heard during the pandemic, and make governments *#LeaveNoOneBehind* in their COVID-19 response plans.

The article is divided into five sections. The first section is this introduction and background. The second section outlines the legal basis for indigenous minority communities in accessing COVID-19 information, while the third section explains the adopted methodology. This is followed by a discussion of the experiences of the Shangaan people in accessing COVID-19 information in the Chiredzi district. The article ends with a conclusion that summarises the discussion findings and offers suggestions on ensuring the enjoyment of the right to information by all in emergency situations.

² *Ibid.*

³ E. Savoia, M. A. Testa and K. Viswanath, 'Predictors of knowledge of H1N1 infection and transmission in the U.S. population', 12:328 *BMC Public Health* (2012), pg 7.

⁴ High Court judge Justice Mafusire, on 24 April 2020, ordered the Ministry of Health and Child Care and the Ministry of Information, Publicity and Broadcasting Services to promote citizens' access to information pertaining to the Coronavirus.

⁵ Section 62 provides for the right of access information..

⁶ J. Thondhlana, 'Using Indigenous Languages for Teaching and Learning in Zimbabwe', 1992, <jan.ucc.nau.edu/~jar/ILAC/ILAC_4.pdf> (accessed 28 February 2023); Zimbabwe Human Rights Commission (ZHRC), *Report on the Situational Analysis of The San/Tshwa Community of Tsholotsho: Special Interest Groups Thematic Working Group*, (ZHRC, Harare, 2017).

⁷ Savoia, Testa and Viswanath, *supra* note 3; A. R. Zairina, M. S. Noorah and A. M. Yunus, 'Knowledge and practices towards influenza A (H1N1) among adults in three residential areas in TampinNegeri Sembilan: a cross sectional survey', 66 (3) *Med J Malaysia* (2011) pp. 207-213.

⁸ C. Dziva and B. Dube, 'Promoting and protection of minority rights using the UN Declaration for minorities in Zimbabwe', 21 (3) *International Journal for Minority and Group Rights* (2014) pp. 395-413; F. Ndhlovu, 'Language and African Development: Theoretical Reflections on the Place of Languages in African Studies', 17 *Nordic Journal of African Studies* (2008) pp. 137-151.

2 Legislative Framework on the Right to Access Information

The right to information has long been recognised within the framework of the right to freedom of expression in the International Covenant on Civil and Political Rights (ICCPR).⁹ For instance, the 1998 report by the UN Special Rapporteur on Freedom of Opinion and Freedom of Expression referred to the right to seek, receive and impart information in Article 19 of the ICCPR as imposing “a positive obligation on states to ensure access to information, particularly with regard to information held by governments.”¹⁰ The UN Human Rights Committee published the General Comment No 34 Article 19: Freedoms of opinion and expression, which defines the requirements necessary to give effect to the right of access to information protected under Article 19 of the ICCPR.¹¹ Parties to the Covenant should both proactively publish government information of public interest and enact the necessary procedures, such as enacting freedom of information legislation that allows citizens to gain access to information.

In Zimbabwe, access to information is a constitutional right for Zimbabwean citizens as provided for in section 61 and 62 of the 2013 Constitution. The main law regulating access to information in Zimbabwe is the Freedom of Information Act (FIA).¹² The FIA repealed the Access to Information and Protection of Privacy Act (AIPPA). It provides citizens and media practitioners with the right to access information and creates legal frameworks and mechanisms for accessing information from public and private bodies. The FIA is commendable as it endeavours to give effect to sections 61¹³ and 62¹⁴ of the Constitution which provide for freedom of expression, media freedom and access to information. In line with the Constitution which provides in section 6¹⁵ that Zimbabwe has 16 official languages, the FIA in section 16 provides for access to information in a language requested by the applicant. This is a welcome development as it is inclusive to all citizens and ensures access to information in a language they understand.

The significance of advancing the right to access information cannot be overemphasised. Lawrence Martin, defines information as the “lifeblood of a democracy”.¹⁶ He further argues that “without adequate access to key information about government policies and programs, citizens and parliamentarians cannot make informed decisions and incompetent or corrupt governments can be hidden under a cloak of secrecy”.¹⁷ Besides its importance to policymakers, access to media also remains a panacea to the enjoyment of citizens’ rights. In that respect, Hodzi and Chikakano, argue that “access to information is by no means an end in itself, rather it is a means through which communities and individuals alike obtain knowledge of the rights that accrue to them and demand their fulfilment”.¹⁸

⁹ Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 23 March 1976, in accordance with Article 49.

¹⁰ Article 19 of the ICCPR.

¹¹ M. McDonagh, ‘The Right to Information in International Human Rights Law’, 13 (1) *Human Rights Law Review* (2013) pp. 25-55.

¹² Other laws dealing with this right include the Official Secrets Act, Interception of Communications Act, Censorship and Entertainment Controls Act.

¹³ Section 61 of the Constitution provides for freedom of expression and freedom of the media.

¹⁴ Section 62 of the Constitution provides for access to information.

¹⁵ Section 6 of the Constitution provides for 16 official languages.

¹⁶ M. Lawrence, *Harperland: The Politics of Control*. (Toronto: Penguin, 2010:34).

¹⁷ *Ibid*.

¹⁸ O. Hodzi and J. Chikakano, ‘National Study on access to information in Zimbabwe’. African Network of Constitutional Lawyers, 2012, <ancl-radc.org.za/sites/default/files/images/ANCL-ATI_national%20study%20in%20Zimbabwe.pdf> (accessed 28 February 2023).

With increased knowledge about the pandemic, the indigenous minorities are able to effectively take precautionary measures for themselves and the wider society. Conversely, the failure of indigenous minorities to access COVID-19 information has implications on their responses to the pandemic, and makes this group particularly vulnerable to the deadly virus. Indeed, the realisation of peoples' right to health depends not only on readily accessible health care services but also on the citizens' right to accurate information about the nature of the impending threats and the means to protect oneself, one's family, and one's community.¹⁹

3 Methodology

This qualitative study was informed by an exploratory research design to investigate the health communication (in)equality gap for the Shangaan community in emergency and pandemic preparedness in Zimbabwe. The study purposively and conveniently sampled ten key informant interviews, and 20 Shangaan community members for semi-structured interviews. Many of the key informant interviews included state and non-state actors involved in the dissemination of COVID-related information in Zimbabwe, and the specific district to understand the inclusive nature of their communication strategies and practices. In line with COVID-19's social distancing requirements, many of the Key Informant Interviews were conducted through virtual platforms and tools (skype, phone, etc.). For semi-structured interviews with community members, the study reached out to 20 gender-balanced respondents who comprised local and traditional leaders, community men, women and youth. These community members provide daily experiences with regard to their access to pandemic information. The team followed WHO and Ministry of Health guidelines of one metre social distancing while conducting interviews. The study also reviewed documents including government, media and stakeholder statements and communications regarding combating the pandemic. Many of the reviewed documents included those from the Ministry of Health and Child Care and the Ministry of Information, Publicity and Broadcasting Services, and civil society organisations amongst others.

4 Experiences and Challenges in Accessing COVID-19 Information

This section discusses the experiences of the Shangaan indigenous minority in accessing COVID-19 information in Chiredzi. Specifically, the section highlights the sources utilised by the Shangaan people to access pandemic information and explores how they were used and what challenges were associated with it.

4.1 Broadcasting Media

With the infectious nature of the COVID-19 virus, broadcasting media has been preferred as a mode through which pandemic education and precautionary measures have been communicated to the wider society. The use of broadcasting media was also preferred due to the subsequent lockdown measures that followed the outbreak of the pandemic. Following the announcement of the lockdown, many organisations temporarily closed, including those advancing the right to information and health.²⁰ During this national lockdown, the mainstream media, mainly broadcasting and print media, were the main sources of credible COVID-19 communications and education in Zimbabwe. Tapping from international organisations including the WHO and

¹⁹ Government of Zimbabwe. *Constitution of Zimbabwe (No.20)*, 2013, section 62, www.constituteproject.org/constitution/Zimbabwe_2013.pdf, visited on 23 January 2023.

²⁰ H. Musarandega and L. Chitongo, 'A Contextual COVID-19 Social Distancing Monitoring Strategy for Remote Communal Settings: Insights from Biriiri Communal Lands, Zimbabwe'. 9 (1.1) *African Journal of Governance & Development* (2020) pp. 309-328

the Ministry of Health and Child Care (MoHCC) in partnership with Plan International, created COVID-19 information messages including jingles, which were repeatedly aired on national television, the Zimbabwe Broadcasting Corporation (ZBC TV) and radio stations.²¹

As lockdown measures continued, community radios including those in Masvingo province joined those efforts to increasingly raise awareness and educate communities about the pandemic. For the Masvingo province, the Hevoi FM and the Great Zimbabwe University Campus Radio (GZU) have been influential with tailor-made messages for pandemic education. With their provincial coverage, the Hevoi FM and GZU Campus Radio broadcasts reached some Shangaan communities with information about the pandemic. In the same way, organisations that promote health and community development also created COVID-19 messages which they disseminated through community radios. With these efforts, some Shangaan communities with access to TV and radios got the chance to access relevant information while isolated in their houses as explained by one Shangaan resident:

While the TV and radio programmes reached us with pandemic communications, the message was accessed by a few elites amongst the Shangaan groups who own functional TVs and radio sets which they could switch on and follow the COVID-19 programmes as they were rolled out on radio stations such as the Radio Zimbabwe, Studio 7 and GZU Campus Radio.²²

However, the limited access to broadcasting media by indigenous minority groups has been criticised by various scholars.²³ Ndlovu stated that the broadcasting and print media is not accessible by 60 per cent of rural dwellers in Zimbabwe.²⁴ With regards to the broadcasting media, the main obstacles include limited access to devices, poor transmission and unpredictable power shortages.²⁵ Indeed, the majority of the Shangaan people do not own TV sets, radios and cell phones which they could use as radios to access COVID-19 news and updates. A few Shangaan people with access to these gadgets also face power challenges. Out of all the households with electricity in Zimbabwe, 86 per cent are located in urban areas while 14 per cent are in rural areas.²⁶ The study noted a few areas with electricity including the Growth Point of Chikombedzi, and townships such as Phahlela, while the majority of small townships are not equipped with electricity. Limited access to electricity is more pronounced in local villages in the Shangaan area.

The few families with TV sets, radios, and smartphones use solar power and batteries, which have become increasingly unaffordable and unavailable. The challenge with solar power remains that it is only available on sunny days and not during the night considering that many users do not own power-backup batteries. With this power unreliability, it becomes a significant challenge for Shangaan communities to access COVID-19 news and updates, especially in the evenings. As one respondent explained:

You miss out a lot on the news if you do not have backup power because during the day, you will be going through your chores: working in the fields or doing piece jobs. So the evening will be your only time to relax

²¹ MoHCC, Situation Report, COVID-19, Issue No. 10, Date of Issue 31 March 2020.

<https://www.mohcc.gov.zw/index.php?option=com_phocadownload&view=category&id=13:situation-reports&Itemid=744>, visited 22 January 2023.

²² Face to face Interview with a Shangaan Resident, Chilonga area, 2020.

²³ M. Mutale, 'Challenges and opportunities of information Communication Technologies (ICTs) in Binga District, Zimbabwe', 8: 2 *African Journal of Social Work* (2018) pp. 55-62.

²⁴ Ndhlovu, *supra* note 8.

²⁵ N. Mangirazi, 'Marginalised communities left out in COVID-19 campaign', *The NewsDay*, 14 April 2020. <<https://cite.org.zw/marginalised-communities-left-out-in-covid-19-response/>>, visited 23 January 2023.

²⁶ The Herald, 'The Most Dangerous Place in Europe for Journalists', *The Herald*, 10 June 2023, p. 1. <<https://www.herald.co.zw/zimbabwes-electricity-access-rate-moves-to-53pc/>> visited 23 October 2023.

and listen to national programmes and news on the radio but normally it's 15-20 minutes and the back-up power is gone.²⁷

Besides power challenges, many of the areas inhabited by the indigenous Shangaan people have limited television and radio transmission. These areas include Masukwe and Dhavata, where community members have to pitch high aerials in trying to get signals. As explained by one local leader:

Many parts of our area do not access radio and TV transmissions such that even those with TV sets and radios find it difficult to access national news and programmes. We normally get transmission from South African radios such as the Mahungulamanene Radio which broadcasts in Shangaan language, and the Pala FM which broadcasts in Venda. It is from these radio stations that we have been getting some insights about the COVID-19 pandemic.²⁸

The results of this study confirm previous findings which revealed similar challenges associated with radio and TV transmission in rural areas, specifically in indigenous minority communities.²⁹ In some areas, without either local or South African transmissions, the Shangaan households who own TV sets and radios use said tools to play music and watch videos from external memory devices. In rare instances, high-income households were found to own satellite dishes such as the DStv and Open View Decoders. In these rare cases, the households had a more profound knowledge and understanding of the pandemic. This was due to more access to pandemic news, updates, and messages on precautionary measures from the neighbouring South Africa news channels, and the rest of the world.

The few indigenous Shangani people with access to broadcasting media questioned the quality and cultural sensitivity of the COVID-19 broadcast information. English, Shona and Ndebele are the broadcasting languages in Zimbabwe and are favoured on national and community radio stations in the province.³⁰ Contrary to that, the other constitutionally recognised minority languages are broadcast on National FM with news slots of only five minutes. Both Shona and Ndebele are also used on the National FM radio station.³¹ In most instances, the programmes are broadcast in English which is not understood by many of the Shangaan people. The same applies to COVID-19 pandemic discussions on ZBC TV and radio stations, which are exclusively conducted in English, Ndebele and Shona. Minority languages such as Shangaan are usually not represented within these media.³²

4.2 Access to Print Media

Concerning print media, the study found only a few highly educated and professional Shangani people who travel to Chiredzi town regularly to have periodic access to newspapers and COVID-19 pamphlets. Many of these include civil servants, pensioners, and war veterans, who often travel to the town on a monthly basis to receive their salaries. A teacher at a local school, explained that:

I am used to buying a weekly Sunday Mail newspaper when I go to town during my pay days, but this was no longer possible during the lockdown since no one was allowed to travel to town, and they were in short supply

²⁷ Face to face interview with a Shangaan Resident, Chikombedzi area, 2020.

²⁸ Virtual Interview with a Shangaan Resident, Corner 18, 2020.

²⁹ Mutale, *supra* note 23.

³⁰ Hevoi FM and GZU Campus Radio are the only community radio stations in Masvingo province.

³¹ P. Mabaso, 'Lexicographical Practice and Lexicological Research: The Case of Shangani in Zimbabwe', 17 *African Journals Online* (2007) pp. 316-328.

³² *Ibid.*

as well because you would send a transporter to buy for you and he would struggle to get a copy. So it was still impossible during lockdown to get to understand more about the pandemic in the newspaper.³³

While travelling to town was impossible during the first days of the lockdown in April and May 2020, the situation has improved since October 2020 and lockdown regulations and restrictions on peoples' movements have been eased. Nonetheless, increasing poverty amongst communities continues to have serious effects on their right to access information as the newspapers are now unaffordable for many people. The teacher further elaborated that:

after the relaxation of strict lockdown rules, it's now easy to travel to town but newspapers are now beyond the reach of many people in this community due to increased economic hardships. We therefore rely much on information on the pamphlets being given to us for free in shops and civil society organisations and state actors through the village health workers ...³⁴

The issues raised above were confirmed by many respondents who do not access newspapers regularly and have relied on reading about COVID-19 regulations and precautionary measures in pamphlets distributed by state and non-state actors. In the explanations of many Shangaan members, these documents are found mainly when one visits a health centre, shops in Chiredzi town, and when they are distributed in their area by non-state actors, mainly through the village health workers.

4.3 New Technologies and Social Media

The internet and mobile phones have significantly improved access to pandemic information for the Shangaan community. With access to smartphones and the internet, many technologically knowledgeable community members are increasingly using social media platforms, mainly Facebook and WhatsApp, to access relevant information including COVID-19 news. Some community members, mainly the youth and civil servants, explained how they followed posts and updates about the pandemic from influential persons, the MoHCC and Ministry of Information, Publicity and Broadcasting Services on their Facebook and Twitter accounts. The MoHCC also created WhatsApp groups to encourage productive dialogues and share pandemic information at a national, provincial and local level. In the same way, the Gonarezhou Conservation Trust, through their COVID-19 virtual meetings on WhatsApp, reached local people with translated pandemic messages in English and Shangaan. It was also explained how the Shangaan relatives based in South Africa and urban Zimbabwe used WhatsApp to disseminate COVID-19-related information to villagers back home. Thus, the few Shangaan people with smartphones and access to mobile network benefited from this real time information sharing, and redistributed it to their fellow community members who had no access. As one headman re-called:

Smartphones and social media have been important in letting us access pandemic communications in this area since our relatives in South Africa and urban Zimbabwe have been consistent in telling us about the pandemic and the preventative ways. In some instances, the messages were sent by the Ministry of Health and Child Care, and we took these to be serious, and shared it with fellow indigenous minorities without access to such information.³⁵

However, similar to the challenges associated with the transmission of broadcasting media, the Shangaan people continue to have limited access to the internet and mobile network. As the

³³ Virtual Interview with a Shangaan Teacher, Boli, 2020.

³⁴ *Ibid.*

³⁵ Virtual Interview with a Shangaan leader, Boli Area, 2020.

Mutale study noted, with regard to the Tonga indigenous minority in Zimbabwe, limited network access for the Shangaan people originates from insufficient investments in communication infrastructure including cell phone signal boosters which are also known as cellular repeaters.³⁶ Indeed, neoliberalism has seen more remote rural areas excluded from faster broadband connections since market forces lead private companies to focus their attention on urban areas instead.³⁷ The communication impasse has resulted in the side-lining of rural people from accessing crucial information that are vital for community development.³⁸ Without access to communication services that are decisive for the quality of life, many indigenous minority communities cannot overcome social exclusion and isolation, and cannot, above all, escape pandemic vulnerability.³⁹

Despite these challenges, the Shangaani people managed to utilise other means of communication to access the much-needed pandemic information. In areas with limited mobile networks such as Gezani, Makhanani, Masukwe and Dhavata, inhabitants would travel to mountains and other higher places in search of local or South African mobile networks to contact relatives and read messages and updates about the pandemic.⁴⁰ In some Shangaan villages with ageing populations, the young and educated household members were sent to search for mobile network and get updates about the pandemic and thereafter disseminate it to fellow villagers. For communities that rely on foreign networks including Corner 18, Dhavata, Puzani and Gezana, this is an expensive but last resort given the absence of local network.⁴¹ With these efforts, many Shangaani people obtained some understanding of the pandemic and about what precautionary measures to take. Thus, the internet and social media platforms, particularly WhatsApp, have to some extent liberalised the real-time flow of pandemic information to the remote minority indigenous communities. Despite it being considered key to pandemic information dissemination, social media has been affected by pandemic infodemic, which may put the indigenous-minorities at risk of contracting the virus. The challenge was explained by a respondent as following:

[t]he challenge of social media posts and forwards has been that we ended up not knowing which of the information was correct as anyone was sending unverified and contradictory messages about COVID-19, how it spreads and how it can be prevented.⁴²

While it provides cheap and easy access to information, social media simultaneously creates an un-regulated flow of information which may have both positive and negative effects in communities.⁴³ Indeed, anyone who is technologically literate can take to the cyberspace and distribute fake COVID-19 related information masked as a journalist or health expert. By connecting such information with popular conspiracy theories, some unsuspecting citizens and

³⁶ Mutale. *supra* note 23.

³⁷ K. Salemink, D. Strijker and G. Bosworth, 'The Community Reclaims Control? Learning Experiences from Rural Broadband Initiatives in the Netherlands: The community reclaims control?', 57 (S1) *Sociologia Ruralis* (2017) pp. 555-575

³⁸ Mutale, *supra* note 23.

³⁹ J. Noguera and A. F. Martínez, 'Accesibilidad y provisión de Servicios de Interés General en las áreas rurales de la Unión Europea: Un análisis a partir del Eurobarómetro', *Boletín de la Asociación de Geógrafos Españoles* (2014).

⁴⁰ Virtual Interview with a Shangaan Resident, Dhavata area, 2020.

⁴¹ Virtual Interview with a Shangaan Resident, Masukwe Area, 2020.

⁴² Face to face interview with a Shangaan Resident, Chikombedzi Area, 2020.

⁴³ C. Dziva and M. Shoko, 'Transnationals, social media and democratisation of Africa in the 21st century'. In M. Addaney and G. M. Nyarko (eds.), *Ghana@ 60: Governance and Human Rights in Twenty-First Century Africa*, (Pretoria: Pretoria University Law Press, 2018).

orthodox indigenous minority groupings may choose to deny, mistrust and reject interventions and precautionary measures meant to combat COVID-19.

4.4 Community Leadership and COVID-19 Dissemination

The indigenous Shangaan communities also obtained COVID-19 information from local political and traditional leaders of their respective areas. Concerning political leaders, the study noted the important role of ward councillors, ruling political party leadership, and the Members of Parliament, all of who are said to have assisted in spreading pandemic information on grassroots levels in the local Shangaan language. Taking advantage of their decentralised nature, traditional leadership (chiefs, headmen and village heads)⁴⁴ played a key role in raising awareness on the pandemic in their communities. Many of the traditional leaders receive information from health experts, and they in turn relay them to the wider society for improved adoption and implementation of preventative measures. In their explanations, traditional leaders capitalise on their periodic governance and community development forums such as village meetings and the presence of local law enforcement personnel to disseminate credible pandemic information to their constituency.⁴⁵ As explained by one traditional leader:

It was difficult to conduct awareness raising in the first days of COVID because of limited knowledge and the subsequent lockdown that followed after the first cases were reported. But as the lockdown measures were loosened, we started to work with experts from the Ministry of Health and Child Care, and NGOs to deliver messages in local languages to community members at meetings, traditional court sessions, funerals and food distribution points.⁴⁶

Similar sentiments were shared by many of the respondents, who explained how COVID-19 education and awareness-raising sessions were conducted at different meeting points with leaders including MPs, Local Authority Councillors and traditional leadership. In most instances, the sessions saw communities being educated on the need to practise good hygiene and social distancing for effective pandemic prevention. As Dziva noted, traditional leaders are custodians and enforcers of endogenous norms and values and do play a pivotal role in educating, encouraging and convincing local people to adhere to COVID-19 precautionary measures.⁴⁷ With the fear of breaching local customs, and the subsequent punishment from endogenous leaders by way of being ostracised or cursed, rural dwellers often listen to and abide by traditional leaders' pleas and repeated calls to practice social distancing, and observe good personal hygiene.⁴⁸

While performing this role of disseminating COVID-19 messages, traditional leaders often have limited knowledge available about the pandemic themselves and they face challenges in translating COVID-19 messages from English, Shona and Ndebele to the local Shangaan language understood by local communities. As one village head explained:

The problem is that the pandemic messaging is in most cases written in English, Shona and Ndebele and none is in our local Shangaan language which is understood by community members [...] I'm not educated and as

⁴⁴ Chigwata, T. (2016). The role of traditional leaders in Zimbabwe: Are they still relevant? *Law, Democracy & Development*, 20 (1), 69–90; N. Musekiwa, 'The role of local authorities in democratic transition'. In E. Masunungure and J. Shumba (eds.), *Democratic Transition*, (Harare: Weaver Press & IDAZIM, 2012).

⁴⁵ J. Marashe, 'The African traditional religious landscape: An examination of the role of traditional leaders in the fight against HIV and AIDS in Chipinge, Zimbabwe', 35 (1) *Verbum et Ecclesia*, (2014) pp. 1-8.

⁴⁶ Face to face interview with a Shangaan Leader, Chikombedzi area, 2020.

⁴⁷ C. Dziva, 'The potential and challenges for traditional leadership in combating the COVID-19 pandemic in rural communities of Zimbabwe', 9 *African Journal on Governance and Development* (2020) pp. 510-515.

⁴⁸ *Ibid.*

a leader, I struggle to interpret some of these to my community. For my community meetings, I often invite the village head or one of our learned children in High School to explain the meaning of these to members.⁴⁹

It is crucial to have people who interpret the messaging to locals, yet in many instances the message might be distorted during such translations. In a way, the absence of pandemic communications in local Shangaan language becomes a major obstacle for communities to access accurate information.

5 Conclusion and Recommendations

The exclusion of minorities in COVID-19 awareness raising has serious consequences on their ability to take precautionary measures against the novel virus. It is against this background that the study investigated the health communication (in)equality gap for indigenous minority communities in emergency and pandemic preparedness amongst the Shangaan people in the Chiredzi district of Zimbabwe. The Shangaan dominated areas, similar to many indigenous minority-dominated areas around the world, are falling short in terms of technological investment, with limited enjoyment of their fundamental right to accurate information and communication affecting them mainly due to limited access to communication resources and insufficient availability of modern technologies. Thus, because minorities struggle to access information they mainly depend on local leadership, search for alternative national and foreign TV and radio transmission, and internet and mobile connections. Their search for credible and accurate pandemic information is further obstructed by the significant language barrier. With these challenges, many Shangaan inhabitants remained deprived effective means that proactively and appropriately inform them about the course of action to combat and address COVID-19 in their community.

It is from such an informed position that the study makes the following recommendations:

- Pandemic information ought to be translated into all 16 official languages provided for in the Constitution;
- Broadcasting media must allow minority languages sufficient air time;
- Rural infrastructure and telecommunication systems should be improved in indigenous minority communities;
- The capacity-building of traditional leaders (considering that they interact more with minority communities) must be encouraged to ensure that they disseminate correct information to their communities; and
- Prioritise COVID-19 awareness amongst indigenous-minority communities.

⁴⁹ Face to face interview with a Shangaan Leader, Chilonga area, 2020.

7 Supporting Democracy in Zimbabwe During the COVID-19 Pandemic: Challenges and Opportunities for Execution of the Zimbabwe Human Rights Commission Mandate

Delis Mazambani*

Abstract

This research interrogated the challenges and opportunities faced by the Zimbabwe Human Rights Commission (ZHRC) in the execution of its constitutional mandate, during the COVID-19 pandemic. ZHRC is Zimbabwe's National Commission for Human Rights and Public Protector Institution as well as one of the five Chapter 12 Independent Commissions Supporting Democracy. The multifarious functions of the ZHRC, as enshrined in sections 233 and 243 of the Constitution and the Zimbabwe Human Rights Commission Act [Chapter 10:30], make the Commission a critical player in supporting and entrenching human rights and democracy in Zimbabwe. Even under normal circumstances, executing such an extensive mandate is a formidable task for the ZHRC. The advent of the COVID-19 pandemic which created a public health emergency compounded the challenges faced by the Commission in the execution of its highlighted triple mandate as a national human rights institution (NHRI), Public Protector and Chapter 12 Commission. This qualitative research paper, which was based on both review of literature and empirical research, highlighted that the major challenges faced by the ZHRC during the COVID-19 pandemic included legal restrictions imposed in response to the pandemic, resource limitations, dwindling democratic space, State impunity and citizens' unrest. The opportunities which the ZHRC explored and are still open to the Commission included: a constitutional mandate which rendered the Commission an 'essential service' capable of operating during the national lockdown, support from local, regional and international external stakeholders as well as commitment to independently execute its constitutional mandate.

Keywords: ZHRC, constitutional mandate, COVID-19, challenges, and opportunities

1 Introduction

Article 21(3) of the Universal Declaration of Human Rights (UDHR) states that the will of the people should be the basis of the authority of government.¹ Even though the term democracy was not specifically mentioned in the UDHR, the concept was implicitly referred to. In order to expressly reinforce the concept of democracy, in 1997 the international community adopted the Universal Declaration on Democracy (UDD)², which places emphasis on democratisation and representative democracy. The preamble to the Universal Declaration on Democracy highlights that sovereignty is a critical element of democracy. It provides that each State has the sovereign right to freely choose and develop its own political, social, economic, and cultural systems without interference from other States, in strict conformity with the United Nations Charter. In line with the principle of sovereignty, Zimbabwe opted to be a unitary, democratic and sovereign republic as highlighted in section 1 of the Constitution of Zimbabwe Amendment

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¹ United Nations General Assembly, *The Universal Declaration of Human Rights (UDHR)*, (New York: United Nations General Assembly, 1948).

² Inter-Parliamentary Union, *Universal Declaration on Democracy*, (Cairo: Inter-Parliamentary Union, 1997).

(No.20) Act of 2013.³ As a democratic republic, Zimbabwe is obligated to uphold democratic principles including holding regular, genuine, free, and fair elections; observing constitutionalism; good governance; respect for the rule of law as well as the establishment and adequate capacitation of mechanisms and institutions to support democracy.⁴

The Zimbabwe Human Rights Commission (ZHRC) is one such institution which was established to support democracy. Section 232 of the Constitution provides for the establishment of five Independent Commissions Supporting Democracy. These are the Zimbabwe Electoral Commission (ZEC), Zimbabwe Human Rights Commission (ZHRC), Zimbabwe Gender Commission (ZGC), Zimbabwe Media Commission (ZMC) and the National Peace and Reconciliation Commission (NPRC). These Commissions which are collectively referred to as Chapter 12 Commissions share common objectives which are outlined in section 233 of the Constitution as follows:

- a) to support and entrench human rights and democracy;
- b) to protect the sovereignty and interests of the people;
- c) to promote constitutionalism;
- d) to promote transparency and accountability in public institutions;
- e) to secure the observance of democratic values and principles by the State and all institutions and agencies of government, and government-controlled entities; and
- f) to ensure that injustices are remedied.⁵

As an institution supporting democracy, the ZHRC has a critical role to play in ensuring the State's compliance with principles of democracy. Articles 4, 11 and 19 of the Universal Declaration on Democracy and Article 25 of the International Covenant on Civil and Political Rights (ICCPR)⁶ state that democracy is founded on the right of every citizen to take part in the management of public affairs and in activities which affect one's life either directly or through freely chosen representatives. Principle 3 of the said Declaration further explains that the aim of democracy is to preserve and promote the dignity and fundamental rights of individuals, attain social justice, foster the economic development of the community, reinforce the cohesion of society, and maintain peace.⁷ Some of the entrenched principles of democracy include respect for human rights, the rule of law, political participation, transparency and accountability, separation of powers and democratic pluralism. Human rights institutions should therefore facilitate mainstreaming of human rights in structures of government at all levels and ensure equality and non-discrimination in the exercise of the right to participate in public affairs, both at local and national levels.⁸ Democracy also entrenches respect for fundamental freedoms of citizens such as freedom of assembly, association, movement and residence, expression and freedom of the media, petition and demonstrate and choice of profession or trade.⁹

³ Constitution of Zimbabwe Amendment (No. 20), Act 2013.

⁴ Inter-Parliamentary Union, *supra* note 2.

⁵ Constitution of Zimbabwe, *supra* note 3, Section 233.

⁶ UN General Assembly, *International Covenant on Civil and Political Rights*, Treaty Series, vol. 999, p. 171, 1996.

⁷ Inter-Parliamentary Union, *supra* note 2.

⁸ European Network of National Human Rights Institutions, 'Democracy and Rule of Law: COVID-19 Impact on Democratic Rights and Role of NHRIs', *ENNHRI*, 2020. <<https://ennhri.org/news-and-blog/covid-19-impact-on-democratic-rights-and-role-of-nhris-discussed-on-bbc-world-news/>> (accessed 3 April 2023).

⁹ See Government of Zimbabwe. *Constitution of Zimbabwe*, 2013, Chapter 4, <constituteproject.org/constitution/Zimbabwe_2013.pdf> (accessed 3 April 2023).

The significance of this research lies in its contextualization of COVID-19 as a disruptive agent for the enjoyment of human rights and fundamental freedoms, including the right to administrative justice, which is monitored and protected by the ZHRC in its role as Public Protector. The research also highlights the ZHRC's role in protecting the inalienability, indivisibility, and interdependence of all generations of rights, which are threatened by the effects of the pandemic. It is unfortunate and disheartening to note that the legal mechanisms put in place by the Government for the prevention and containment of the pandemic caused undue hardships on the citizenry.

Even though the laws were well-intended to save lives, the litany of statutory instruments or COVID-19 regulations, created severe limitations on several rights, such as rights of arrested and detained persons, the right to protest, freedoms of expression, association, movement, and residence as well as socio-economic rights such as the right to work and to undertake freely chosen trades or professions. Limitation of socio-economic rights resulted in limited access to food and other necessities, thus promoting destitution amongst citizens. In terms of enforcement of the COVID-19 Regulations by the security agencies, there was a serious outcry over gross human rights violations which were being perpetrated by law enforcers who did not comply with the human rights-based approach to law enforcement. The ZHRC therefore hoped to get an opportunity to highlight its role in promoting, protecting and enforcement of human rights and share its experiences in handling these human rights situations during the COVID-19 pandemic through the interrogation of the following research issues:

- international obligations of NHRIs in supporting democracy as well as promotion and protection of human rights during volatile situations such as those caused by pandemics and other public emergencies
- the multifaceted challenges faced by the ZHRC in discharging its constitutional mandate individually and in collaboration with other Independent Commissions
- available opportunities for the Commission to enhance its visibility and ‘sharpen its teeth’ through enforcement of civil and political, socio-economic and group rights during the COVID-19 pandemic

2 Background

In its 2019 Annual Report, ZHRC reported that Zimbabwe was inundated with multifarious political and economic challenges such as political polarisation, protests, intra-state violence and uncontrollable inflation.¹⁰ The advent of the COVID-19 pandemic in late 2019 and its persistence into 2020 and 2021, compounded the socio-economic and political crises in Zimbabwe, resulting in unbridled violations of the different generations of rights. As one of the Chapter 12 Institutions established by the Constitution to support democracy, the ZHRC faced a daunting task of fulfilling its international and domestic obligations of supporting democracy in Zimbabwe and ensuring enjoyment of human rights and fundamental freedoms during the COVID-19 pandemic, in such a rugged human rights terrain. It is the right of the citizens of Zimbabwe as well as other domestic and international stakeholders to know the capabilities and challenges faced by ZHRC in fulfilling both the international and domestic obligations of supporting democracy as well as ensuring the promotion and protection of human rights during the COVID-19 pandemic, hence this research.

¹⁰ See ZHRC, ‘Annual Report’, 2019, <zhrc.org.zw/wp-content/uploads/2020/11/ZHRC-2019-Annual-Report.pdf> (accessed 3 April 2023).

3 Research Methodology

This research was qualitative in nature and in this regard, Creswell, posits that qualitative research focuses on unstructured and non-numerical data which is collected through interpretive and naturalistic approaches.¹¹ Qualitative research was deemed appropriate since it provides an understanding of underlying reasons, opinions and motivations relating to a subject matter. Through qualitative research, the researcher was able to elicit the opinions of citizens as well as state and non-state stakeholders on the challenges faced by the ZHRC in executing its constitutional mandate during the COVID-19 pandemic.

The Commission relied on both primary and secondary data. Secondary data was collected through reviewed literature. Extensive document analysis was conducted in order to acquire background information on COVID-19 as well as information on international and domestic human rights obligations of the ZHRC. The Commission also reviewed its monitoring and investigation reports for the period ranging from April to October 2020. Primary data was collected through interviews with fifty targeted citizens, including officials from public institutions such as the police, military, prisons and line ministries responsible for provision of social services such as food aid and other forms of public assistance, education, health, and national documents. Other non-state stakeholders who were interviewed included development partners and representatives of civil society organisations. The data was analysed using thematic analysis with reference to human rights thematic areas and generations of rights.¹²

4 Conceptual Frameworks

This research was based on the concepts of democracy, national human rights institutions (NHRIS) and COVID-19. The meaning and scope of the concept of democracy are highly contested and it has been the subject of various opposing interpretations. Yet, this research follows Cunningham's definition that posits that democracy is essentially the idea that political sovereignty resides in the people who are the source of the power and authority exercised by those who govern.¹³ The Universal Declaration on Democracy is the key reference instrument. As a concept closely linked to the human rights agenda, a historical analysis of the international human rights systems shows that when the United Nations Charter was adopted in 1945, it did not explicitly refer to democracy. However, the preamble to the Charter referred to 'We the Peoples...' which reflects the principle of democracy by taking cognisance of the will of the people as the source of legitimacy of sovereign States. The 2030 Agenda for Sustainable Development also sets peace, justice and strong institutions as goals for the international community to work toward to ensure attainment of democracy (Goal 16.7). Goal 16.7 seeks to ensure responsive, inclusive, participatory and representative decision-making at all levels. At domestic level, section 1 of the Constitution, which provides that Zimbabwe is a democratic State resonates with section 232 of the Constitution which places an obligation to support democracy on the Independent Commissions Supporting Democracy such as the ZHRC.

The Zimbabwe Human Rights Commission as a NHRI therefore plays a critical role in supporting peace, justice as well as democratic and good governance through the exercise of its

¹¹ J.W. Creswell, *Research Design: Qualitative, Quantitative and Mixed Methods Approaches (3rd ed.)*, (SAGE, California, 2013).

¹² K.A. Neuendorf, 'Content Analysis and Thematic Analysis', In P. Brough (ed.) *Research Methods for Applied Psychologists: Design, Analysis and Reporting* (Routledge, New York, 2013), pp.211-223.

¹³ F. Cunningham, *The Real World of Democracy Revisited* (Globe Pequot Press, 1994).

constitutional mandate to mitigate exclusionary politics by monitoring electoral processes and protecting fundamental freedoms such as assembly, association, opinion and expression. In its role of Public Protector, ZHRC has the responsibility to ensure protection of citizens from abuse of power and office by public officials and institutions, as stated in section 243 (d), (e) and (f) of the Constitution.

The conceptual framework of this research paper is also influenced by the concept of national human rights institutions (NHRIs). The Handbook on National Human Rights Institutions explains that national human rights institutions are bodies with a constitutional or legislative mandate to protect and promote human rights and fundamental freedoms.¹⁴ NHRIs can have unitary or hybrid mandates, meaning that an institution can focus on a particular human rights function or perform several functions. The Zimbabwe Human Rights Commission has a dual mandate of being a National Commission for Human Rights as well as a Public Protector, with special focus on protection of the constitutional right to administrative justice espoused in section 68 of the Constitution. In addition to being a NHRI, the ZHRC also has a specialised function of supporting democracy in collaboration with the other Chapter 12 Commissions outlined in section 232 of the Constitution.

According to the World Health Organisation (WHO), COVID-19 is an infectious respiratory disease caused by a newly discovered coronavirus which is believed to have originated from a wet market in Wuhan Province in China.¹⁵ With the advent of the COVID-19 pandemic, that ushered in a plethora of restrictive measures which limited certain human rights and freedoms, the role of the ZHRC as an institution mandated to promote and protect human rights, became prominent. Citizens and stakeholders had varied expectations on the execution of the Commission's mandate. Some expected the ZHRC to promote democratic self-governance, respect for the rule of law, protect lives and property, promote respect for the fundamental freedoms, dignity and equality of every person. Others expected the Commission to support democracy through protection of the rights of human rights defenders, promoting transitional justice and support broad-based inclusive dialogue, in light of escalating political polarisation and deterioration in standards of living of the general populace.¹⁶ In spite of diverse operational challenges which were a result of the COVID-19 pandemic and are discussed in this research paper, ZHRC continued to execute, capitalising on its constitutional mandate which exempted it from severe restrictive measures for purposes of monitoring the human rights situation in the country.

5 Theoretical Frameworks

This research was guided by democracy and human rights theories. According to the Stanford Encyclopaedia of Philosophy, democracy theories are democratic models that capture societal ideals of 'rule by the people'.¹⁷ Human rights theory brings to the fore the diverse human rights treaties and instruments such as the International Covenant on Civil and Political Rights, Universal Declaration on Democracy, Sustainable Development Goals and the Constitution of

¹⁴ United Nations, *National Human Rights Institutions: History, Principles, Roles and Responsibilities*, Professional Training Series No. 4 (1), (United Nations, New York and Geneva, 2010), pp.13.

¹⁵ World Health Organisation, *Coronavirus* (2020). Available: <<https://www.who.int/europe/emergencies/situations/covid-19>> (Accessed 3 April 2023).

¹⁶ Zimbabwe Human Rights Association Monitoring Report, 'Rights Crisis', *ZimRights*, 2020, pp.49, <zimrights.org.zw/rights-in-crisis/> (accessed 3 April 2023).

¹⁷ Stanford Encyclopedia of Philosophy. (2006). <<https://plato.stanford.edu/entries/democracy/>> (accessed 4 April 2023).

Zimbabwe, among others. International human rights principles that are particularly instructive for the study include equality and non-discrimination as well as civil and political rights.

5.1 Participatory Democracy Theory

Of the various theories on democracy, ZHRC opted for the participatory democracy theory which focuses on encouraging citizen participation in matters shaping their daily lives.¹⁸ This theory is a transformative model, which seeks to build on the democracy tenet of participation of the governed. It encourages citizen participation either personally or through freely chosen representatives as dictated by Article 25 (a) of the (ICCPR). Participatory democracy also raises the crucial issue of inclusivity. Participation should, therefore, consider interests of diverse groups such as civil society, women, youth, labour, industry, religious groups as well as community and traditional leaders as provided for in Articles 4, 11 and 19 of the Universal Declaration on Democracy which states that all people have the right to participate in the public affairs of their communities and enjoy their rights and freedoms.

5.2 Human Rights Theory

Human rights theory posits that the principal function of human rights is to protect and promote certain essential human interests.¹⁹ Human rights normative frameworks such as the UDHR, Universal Declaration on Democracy, International Covenant on Civil and Political Rights, Sustainable Development Goals, African Charter on Human and Peoples Rights (ACHPR), the Constitution of Zimbabwe and Zimbabwe's Vision 2030, serve to protect and promote civil and political rights such as the right to participate in public affairs of one's community or country as well as protection of fundamental freedoms such as the freedoms of association, assembly, movement and residence, expression and freedom of the media and to protest and demonstrate, among others. The mere existence of the mentioned human rights instruments is not enough to ensure the promotion and protection of human rights. There is also a need for independent bodies, which should perform the role of providing oversight over the governance and public administration mechanisms and institutions established by the State.²⁰

6 Findings

The main research question interrogated the role of ZHRC in supporting democracy in Zimbabwe with a specific focus on the challenges and opportunities in discharging its international obligations and constitutional mandate during the COVID-19 pandemic. The findings are presented in line with the secondary research questions as follows:

6.1 International and Domestic Obligations of the ZHRC in Relation to Supporting Democracy in Zimbabwe

Section 232 of the Constitution established the ZHRC as an Independent Commission Supporting Democracy. As such the Commission is expected to provide oversight over governance systems, structures, and mechanisms so as to ensure compliance with the basic tenets of democracy such as respect for human rights, rule of law, political participation,

¹⁸ J.L. Cohen, 'Is there a right to democracy?', In C. Sypnowich (ed.) *The Egalitarian Conscience Essays in Honour of G.A Cohen*, (Oxford University Press, Oxford, 2006) pp. 226-248.

¹⁹ M. Freeman, *Human Rights: An Interdisciplinary approach (2nd ed)*, (Polity Press, Cambridge, 2011).

²⁰ Inter-Parliamentary Union, *supra* note 2.

transparency and accountability, separation of powers and democratic pluralism. There are several human rights normative frameworks on civil and political rights which Zimbabwe adopted and/or ratified. These instruments include: the Universal Declaration on Human Rights, Universal Declaration on Democracy, ICCPR, Sustainable Development Goals, ACHPR, the Constitution of Zimbabwe and Zimbabwe's Vision 2030. The frameworks are discussed below:

6.1.1 The Universal Declaration of Human Rights

Zimbabwe adopted the Universal Declaration of Human Rights of 1948 as a sign of its commitment to the promotion and protection of human rights. Although declarations are statements of intent that are not legally binding, the UDHR and other subsequent declarations play a significant role in the international human rights discourse. The UDHR provides a guiding framework for States to ensure that there are adequate measures and mechanisms for monitoring observance of human rights, raising awareness on human rights issues and securing redress for victims or survivors of violations of human rights.

Despite the threat of infection of its Commissioners and staff members by COVID-19 during the onset of the pandemic, ZHRC continued with its physical monitoring missions of the general human rights situation in selected districts of the country, so as to ensure that citizens continued to enjoy their rights, even during the public health emergency brought about by the pandemic. Sampling of areas for physical monitoring was influenced by reports of human rights violations gathered from media monitoring or highlighted by stakeholders and citizens through complaints. Complaints received during the peak of the COVID-19 pandemic mainly related to arbitrary limitation of rights. Sections 86 and 87 of the Constitution allow the limitation of the enjoyment of human rights and freedoms in compliance with the law and the Constitution. However, citizens lamented the lack of consultation in setting up mechanisms for limiting rights and the extent of limitation of rights which they viewed as arbitrary and unfair.²¹

To mitigate the spread of the COVID-19 pandemic, the Government invoked provisions of the Public Health Act [Chapter 15:09] and thereafter rolled out statutory instruments (SI) in response to various public health concerns. From March 2020 up to October 2020, several statutory instruments were promulgated ranging from SI 76 of 2020 to the latest SI 225A of 2020. The statutory instruments commenced with regulation of the closure of schools and other institutions of learning, limitation of the number of participants at public gatherings, banning of all public gatherings and imposition of the lockdown order which prohibited all forms movement and operation of businesses, stay at home order, imposition of social distancing and wearing of masks, amongst other restrictions. The latest statutory instrument, SI 225A of 2020 has indefinitely suspended by-elections as a measure for preventing the resurgence of COVID-19 which has however, been reported to be on a downward trend in terms of new infections.²²

The Government of Zimbabwe's gradual and serial issuance of statutory instruments had an effect on the enjoyment of human rights protected under the Declaration of Rights in the Constitution of Zimbabwe.²³ As a result, residents filed complaints against law enforcement officers who were accused of violating human rights. Between April to October 2020, the ZHRC received a significant number of complaints. Some of these complaints were related to

²¹ S. C. Mutambasere, 'Constitutionalism in the time of Covid-19: The Zimbabwe Experience', *African Network of Constitutional Lawyers*, 2020, <ancl-radc.org.za/node/641>, (accessed 3 April 2023).

²² IndexMundi, 'Coronavirus cases in Zimbabwe', 2020, <indexmundi.com/coronavirus/country/zw>, (accessed 12 October 2020).

²³ Constitution of Zimbabwe, *supra* note 3, Chapter 4.

law enforcement officials who allegedly used excessive force while enforcing COVID-19 regulations. Other complaints were about the government implementing overly restrictive measures that limited fundamental freedoms, including freedom of expression, press freedom, assembly, association, movement, residence, the right to petition and demonstrate, and labour rights. There were also allegations of inconsistent and differential interpretations of the statutory instruments. In order to prevent recurrence of the violations of human rights and ensure compliance with the Constitution and other human rights normative frameworks, ZHRC continued with its monitoring missions. The presence of the Commission in different areas where monitoring took place acted as a deterrent measure to potential human rights violators.

In relation to awareness raising during the COVID-19 pandemic, the last paragraph of the preamble of the UDHR states that every individual and organ of society has the responsibility to promote human rights by raising awareness of citizens and duty bearers on rights and responsibilities as well as on progressive measures that should be adopted and implemented to secure universal and effective recognition and observance of human rights and fundamental freedoms. The ZHRC has a constitutional mandate to raise awareness on human rights as provided by section 243(1) (a) of the Constitution, even during public health emergencies such as COVID-19. During the peak of the pandemic when the Government imposed national lockdown measures, the Commission embraced electronic, print and social media as tools for disseminating information on prevention of COVID-19 and human rights implications of the pandemic.

Since statutory instruments on COVID-19 were rolled out on almost a weekly basis, the ZHRC embarked on production of education, information, and communication (IEC) materials in English, Shona and Ndebele²⁴ so as to raise the awareness of citizens on compliance requirements which were constantly changing. Radio programmes on limitation of rights during COVID-19 were also held through national and community radio stations such as Radio Zimbabwe, Star FM, Khulumani FM, Hevoi FM, Diamond FM, Nyaminyami FM, to name but a few. Almost a hundred radio programmes were held from April to October 2020, for purposes of raising awareness on human rights during the pandemic and also providing details on how to lodge complaints in the event of experiencing violations of human rights and administrative justice.

Ten press statements were issued on various human rights thematic areas such as rights of persons with disabilities, rights of farm workers, rights of human rights defenders, right to education, right to freedom of expression and freedom of the media, the right to life in light of escalating ritual killings as well as on the indefinite postponement of by-elections by ST 225A of 2020, which was issued by the Ministry of Health and Child Care.

6.1.2 Human Rights Normative Frameworks on Democracy

According to the American political scientist, Larry Diamond, democracy consists of four key elements, namely a political system for choosing and replacing the government through free and fair elections, the active participation of citizens in politics and civic life, protection of the rights of all citizens as well as constitutionalism and respect for the rule of law.²⁵ In line with Diamond's argument, the preamble to the Universal Declaration on Democracy calls upon relevant institutions such as the ZHRC to ensure strengthening of democratisation processes

²⁴ Some of Zimbabwean local languages.

²⁵ L. Diamond, *The Spirit of Democracy: The Struggle to Build Free Societies Throughout the World*, (St. Martin's Griffin, New York, 2004).

and representative democracy. Democratisation entails the establishment of a democratic political regime which enables its citizens to choose its leaders through free, fair and credible elections, facilitate enjoyment of their fundamental rights and freedoms and guarantee personal security through adherence to constitutional principles and the rule of law.²⁶

Articles 4, 11 and 19 of the UDD, Article 25 of the ICCPR and Article 13 of the ACHPR state that democracy is founded on the right of every citizen to take part in the management of public affairs and in activities which affect one's life either directly or through freely chosen representatives. Principle 3 of the UDD further explains that the aim of democracy is to preserve and promote the dignity and fundamental rights of individuals, attain social justice, foster the economic development of the community, reinforce the cohesion of society, and maintain peace. Similarly, one of the goals under the 2030 Agenda for Sustainable Development sets to promote peace, justice, and strong institutions toward ensuring democracy.^{27 28} Specifically, target 16.7 of the same goal is to ensure responsive, inclusive, participatory, and representative decision-making at all levels. Locally, the Zimbabwean Constitution is committed to safeguarding democratic principles as well as establishment and adequate capacitation of mechanisms and institutions supporting democracy, such as the Zimbabwe Human Rights Commission.

Zimbabwe developed a new national vision which was called Vision 2030²⁹ and highlights the country's road map towards attainment of a middle-income economic status by 2030. It places emphasis on democratisation and governance including the adoption of servant leadership; respect for human rights; national unity, peace, and reconciliation; tolerance, freedom of speech and association as well as free, fair, and credible elections. In the area of national unity, peace and reconciliation, the Government reiterated that national cohesion and peaceful co-existence of various segments of the society, including people of diverse political views are necessary conditions for sustainable peace in Zimbabwe. These are the democratic principles which the Government committed to adhere to and promote until 2030. ZHRC has an obligation to ensure that the Government keeps its word and acts in accordance with the national vision.

6.2 Promotion and Protection of Human Rights During the COVID-19 Pandemic

Human rights promotion entails the adoption of a human rights-based approach which focuses on a conscious and systematic integration of human rights and human rights principles to all activities, programmes, and projects.³⁰ The objective of such an approach is to promote equality and non-discrimination, ensure the participation and inclusion of disadvantaged groups, strengthening of State accountability concerning its human rights obligations. From April to October 2020, the ZHRC published several thematic human rights advisory statements to duty bearers on their human rights obligations towards specific vulnerable groups such as older persons, farm workers, prison inmates, persons with disabilities, children, and youths in institutions of learning, human rights defenders, and media practitioners. Field and media

²⁶ C. Hauss, 'Democratisation', In G. Burgess and H. Burgess (eds.), *Conflict Information Consortium*, 2003.

²⁷ United Nations. Transforming our world: the 2030 Agenda for Sustainable Development. <<https://sdgs.un.org/2030agenda>> (accessed 5 April 2023).

²⁸ Constitution of Zimbabwe, *supra* note 3, Section 1, Section 233.

²⁹ Government of Zimbabwe, 2018. Vision 2030: Towards a Prosperous & Empowered Upper Middle-Income Society by 2030. <<https://www.zim.gov.zw/index.php/en/government-documents/category/1-vision-2030>> (Accessed 5 April 2023).

³⁰ UN Office on Drugs and Crime, 'UNODC and the Promotion and Protection of Human Rights: Position Paper', *UNODC*, 2012, p.5, <unodc.org/documents/justice-and-prison-reform/UNODC_Human_rights_position_paper_2012.pdf> (accessed 3 April 2023).

monitoring by the Commission as well investigations of complaints highlighted the vulnerability of the mentioned groups, who deserve protection by the Commission.

Human rights protection entails ensuring that the State as duty bearer and other third parties respect human rights and thereby refrain from violating rights of citizens. It also covers the State's duty to 'do no harm' and to ensure that third parties do not harm its citizens.³¹ Human rights protection is achieved through monitoring the observance of human rights as well through investigations of violations and potential violations of human rights, freedoms, and administrative justice. ZHRC carried out both media and field monitoring of the human rights situation during the COVID-19 pandemic to assess the human rights implications of the public emergency and advise duty bearers to mitigate the hardships which were being experienced by citizens because of the prevailing limitation of rights. Complaints of violations of human rights and freedoms were investigated to secure appropriate redress for complainants and to deter potential human rights violators. Some of the cases dealt with included a complaint of violation of the right to food as enshrined in section 77 of the Constitution, which was lodged with the Commission by the San Community of Tsholotsho in April 2020. ZHRC intervened by engaging the Ministry of Public Service, Labour and Social Development, which immediately supplied rice to the affected community. Complaints of abuse of power and office by law enforcement officials were also investigated and criminal action took place as well as disciplinary action against the public officials involved in acts of maladministration took place after the Commission's intervention since the conduct by the law enforcement officials was contrary to section 68 of the Constitution which seeks to promote administrative justice. These legal measures for addressing human rights violations also deterred prospective human rights violators from engaging in similar conduct.

6.3 Challenges Which Constrained Operations of the ZHRC During the COVID-19 Pandemic

ZHRC faced a myriad of challenges in executing its mandate during the peak of the COVID-19 pandemic. Some of the challenges included the following:

- Restrictions on human rights and freedoms, especially freedoms of movement and assembly which made it difficult for complainants to physically lodge their complaints with the Commission. The high cost of airtime and data bundles also affected citizens who normally communicated telephonically. The Commission tried to mitigate this inaccessibility challenge by activating its hotlines where citizens could send messages requesting for assistance and the Commission would call back and provide the required remedy. Field investigations and public outreaches were also difficult to conduct since citizens were confined to their homes and there were fears of contracting the virus from people coming from urban areas, which were believed to be hotspots of COVID-19.
- The Commission also encountered challenges in reaching out to citizens through the media due to high service costs for use of traditional media such as newspapers, radio and television and expensive data bundles which limited the Commission's reach to social media users.
- COVID-19 Regulations regulated entry into places of detention and care institutions such as prisons and homes for mental patients, older persons, and children, yet these groups had extra vulnerability due to confinement in overcrowded environments with limited access to food and other basic necessities.

³¹ *Ibid.*, p.6.

- Limited financial resources for the procurement of personal protective equipment (PPEs) and for testing for COVID-19 for officials who were engaging in field work such as investigations, monitoring missions and public outreaches.
- From 7 May to October 2020, ZHRC was not fully constituted, as there were five vacant positions for Commissioners. Terms of office of four Commissioners ended on 7 May 2020 and one Commissioner had resigned in October 2018. As of 15 October 2020, new Commissioners had not been sworn-in, despite an announcement in the media of the names of appointed Commissioners. The Commission lacked a quorum for meetings and consequently could not make binding decisions, which were critical during the tumultuous time brought about by the COVID-19 pandemic.

6.4 Strategies to Enhance the Discharge of the Constitutional Mandate of the ZHRC During and After COVID-19

To enhance the discharge of its constitutional mandate during and after the COVID-19 pandemic, ZHRC should:

- a) Come up with a strategy and policies for managing disaster situations and public emergencies. The strategy and policy should be adequately resourced to enable the Commission to effectively respond to such unforeseen circumstances and disastrous eventualities.
- b) Strengthen its information communication technology (ICT) system so that virtual communication and e-programming become part and parcel of the operations of the Commission. This allows remote operations to take place during times when physical interactions are limited by prevailing circumstances.
- c) Mobilise adequate resources for transitioning to e-programming and e-communication.
- d) Provide capacity building of members of secretariat on virtual communication and e-programming so that distance ceases to be a barrier to execution of the Commission's mandate.

6.5 Opportunities for the ZHRC's Execution of Its Mandate During the COVID-19 Pandemic

In carrying out its mandate, the ZHRC continues to leverage on available opportunities. The following are some of the opportunities available.

6.5.1 Benefits of Having a Constitutional Mandate

While other non-constitutional bodies were severely crippled in fulfilling their functions during the initial phase of the national lockdown due to restrictive measures, ZHRC was cleared by the Zimbabwe Republic Police to continue executing its constitutional mandate. The police and other state institutions showed an appreciation of the importance of the role of the Commission which helped Commission staff and Commissioners to carry out planned activities, despite the disruptions that other institutions and organisations were facing. Field monitoring, investigations and public outreaches continued to take place, with observance of COVID-19 precautionary measures such as use of social distancing, masks, face shields and hand sanitisers.

6.5.2 Financial and Technical Support from Partners and Stakeholders

ZHRC is primarily funded by the national Treasury which was under strain due to overwhelming demand for financial resources for responses to the pandemic. This meant that

the Commission, just like other public institutions had limited access to funds from Treasury. This financial resource gap was however addressed by financial and technical assistance from partners and stakeholders who stepped in at a critical time and supported programming activities of the Commission, which would have been difficult to implement in the absence of financial resources.

6.5.3 Commitment to the Duties of ZHRC Commissioners and Members of Secretariat

The Marrakech Declaration on Human Rights Defenders states that members and employees of national human rights institutions are human rights defenders.³² The ZHRC Commissioners and staff members lived up to the title of human rights defenders. At a time when most people were prioritising their health and safety, ZHRC Commissioners and staff sacrificed their lives and those of their families by prioritising their commitment to promote and protect human rights in Zimbabwe. Even when two members of staff tested positive for COVID-19, this did not deter the institution from continuing to execute its mandate.

7 Conclusion

From the research outcomes, it can be concluded that the COVID-19 pandemic caused unforeseen and unprecedented operational challenges for the ZHRC. The human rights violations escalated due to limitation of rights in response to the public health emergency which required the Commission to be on the ground, playing its role of being the national human rights watchdog. However, through support from partners and stakeholders, the ZHRC managed to continue implementing its programmes. The Commission's monitoring and investigation missions revealed that the serialised COVID-19 public health emergency measures lacked clarity in that there was no consistency in terms of interpretation, thus resulting in human rights violations due to discretionary and arbitrary enforcement by the police and the military who were tasked to ensure compliance with the lockdown regulations.

Citizens lamented the fact that although Zimbabwe is a democratic State as stated in section 2 of the Constitution, there was no consultation and participation of citizens in the development of intervention measures for the pandemic, resulting in the violation of a broad range of rights. Other forms of limitation of rights which were observed were the limited transparency and access to information on donations and response mechanisms; limited access to remedies and courts due to limited freedom of movement because of the national lockdown measures, affecting enforcement of rights; limited media pluralism and press freedom; suspension of electoral processes; restrictions on the right to petition, demonstrate and express their views or objections.

Members of the public were also concerned that with the pandemic still ongoing, emergency measures and restrictions on human rights would continue without an end in sight. The ST 225A of 2020 which indefinitely suspended elections confirmed the fear of citizens that the pandemic could be used as a scapegoat for infringing on principles of representative democracy. ZHRC should, therefore, engage duty bearers so that there is a national review of the changing COVID-19 situation to assess if the remaining restrictive measures are still necessary and proportionate to the public health threat currently underway. The Commission should continue informing

³² Global Alliance of National Human Rights Institutions, 'The Marrakech Declaration', *GANHRI*, 2018, <ganhri.org/wp-content/uploads/2019/11/Marrakech-Declaration_ENG_-12102018-FINAL.pdf> (accessed 3 April 2023).

citizens of their rights, monitoring the human rights situation in the country, and assisting individuals whose rights have been violated or are facing threats of violation of human rights.

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The seven research papers contained herein are the final, peer reviewed papers from the 2021 National Symposium on Human Rights Implications of Social, Political, Economic and Legal Responses to the COVID-19 Pandemic, held at Cresta Lodge, Harare, Zimbabwe, on 7 and 8 October 2021, under the Zimbabwe Human Rights Capacity Development Programme (hereinafter ‘Zimbabwe Programme’).

The national symposium is an annual event under the Zimbabwe Programme. It is co-organised by RWI together with its Zimbabwean partner institutions, and is a forum where research funded and conducted during the year is packaged and presented before an audience representing diverse sectors of Zimbabwean society, thereby allowing the presenters and participants to in plenary engage in vibrant discussions around the topics at hand and together deliberate on the way forward with regard to critical human rights reform issues. The feedback and experiences shared during the national symposium also aid and feed into the preparation of final papers for publication and dissemination.

With that said, it is RWI’s sincere wish that the reader finds these papers thought-provoking and informative as well as an eventual source of inspiration towards furthering the provisions contained in the 2013 Constitution of Zimbabwe and its comprehensive Declaration of Rights.

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The Raoul Wallenberg Institute of Human Rights and Humanitarian Law is an independent academic institution founded in 1984 at the Faculty of Law, Lund University, Sweden. The Institute is named after the Swedish diplomat Raoul Wallenberg, in order to honour his work in the cause of humanity. Our mission is to promote universal respect for human rights and humanitarian law by means of research, academic education and institutional development programmes.