

OPEN LETTER TO THE SOUTHERN AFRICAN DEVELOPMENT COMMUNITY (SADC)

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SADC: RESTRICTIVE COVID-19 REGULATIONS PRESENTING CONCERNING RAMIFICATIONS FOR ENJOYMENT OF HUMAN RIGHTS, INCLUDING LIVELIHOODS

We, the undersigned organizations, are writing this letter to bring to your attention the worrying restrictive COVID-19 regulations presenting concerning ramifications for enjoyment of human rights, including livelihoods.

As the international community strives to combat the spread of COVID-19, a number of states in the Southern African Development Community (SADC) have adopted varied measures that have concerning ramifications for the enjoyment of human rights, including livelihoods for people in the informal economy. States have, in some instances adopted declarations of states of emergency and [others declared] states of disaster or other measures that limit the exercise of certain human rights. While some states have begun gradually relaxing these regulations, the business environment remains restrictive and this means that millions of people within SADC, especially those who are in the informal economy, cannot work, with the poor mostly affected. While the challenges presented by COVID-19 are enormous and compel States to employ unprecedented measures to protect populations from this global pandemic, it is important all measures comply with applicable international human rights standards. Human rights must be at the centre of all prevention, preparedness, containment and treatment efforts, in order to best protect public health and support the groups and people who are most at risk.

Legal measures in response to COVID-19

In southern Africa, several countries have declared states of emergency or taken exceptional measures to curb the spread of COVID-19. Those that have declared states of emergency include, Angola, Botswana, Eswatini, Lesotho, Mozambique and Namibia. These are of varying periods and it is concerning that unduly prolonged periods or extensions of state of emergency have been declared in some countries where parliamentary oversight is not guaranteed without providing reasons to justify the length. Only Botswana and Namibia have subjected the declarations to parliamentary oversight. States of emergency must be limited to the extent strictly required by the exigencies of the situation, “relating to the duration, geographical coverage and material scope, and any measures of derogation resorted to because of the emergency.

All relevant safeguards under international law must be adhered to, including the official proclamation of the state of emergency and its international notification with full information about the measures taken and a clear explanation of the reasons for them; that it must be temporary and subject to periodic and genuine review before any extension; and to narrow down any derogations

of human rights to those for which this is actually allowed under international law, and strictly necessary in the situation. The undersigned organization are concerned that this may lead to human rights violations, including related to freedom of movement and livelihoods. While States can derogate from certain freedoms and rights during a state of emergency, they cannot derogate from certain rights including the right to life; the prohibition from torture, cruel, inhuman or degrading treatment or punishment medical or scientific experimentation without free consent; freedom from slavery or involuntary servitude; imprisonment for failing to fulfil a contractual obligation; equal recognition before the law; and freedom of thought, conscience and religion.

The states of emergency and the measures taken under then must not become a “new normal”. States must lift all emergency measures as soon as it is no longer warranted by the pandemic-related emergency and ensure that related restrictions or derogations of human rights do not become permanent.

Excessive use of force to enforce COVID-19 response measures

Across the SADC region, governments have deployed security forces to enforce compliance with COVID-19 response measures. Coercive enforcement approaches contradict evidence-based public health best practice, and often target disadvantaged communities which are marginalized, impoverished or at risk of discrimination resulting in stigma, fear and thwarting trust in authorities.

The imposition of penalties as enforcement measures must be the last resort after other alternatives have proven unsuccessful or if it becomes clear that the objective cannot be achieved by those other means. Sufficient steps need to have been taken to make sure the public is aware of the reasons for the restrictions and the need to comply with them. States must also put in place measures for people to be able to comply with the restrictions, including by enabling them to satisfy their essential needs, and take into account the situation of marginalised groups who may require support in order to be in a position to comply with the restrictions. In some cases, security personnel have used excessive force against people allegedly breaching such measures, including beating and humiliating them in public. Police have been accused of [entering people’s homes and assaulting them](#). In some cases, government officials are reported to have encouraged use of force.

In Zambia, Lusaka Province Minister Bowman Lusambo was reported to have threatened people with whipping if they did not respect the Presidential Directive to stay home, while police have been beating people with baton sticks on the streets. National police spokesperson [Esther Katongo said in a television interview that police in Zambia had adopted a strategy to “hit and detain”](#) anyone found on the streets. Police have been documented beating people with baton sticks on the streets. In Zimbabwe, police officers raided a vegetable market forcing more than 300 vendors to flee and leave behind their produce. Police carried out the raid despite the agriculture sector being flagged as an “essential service” during the 21-day lockdown. They later disposed of the food, and vendors are yet to be compensated.

In Mauritius, police officers are under investigation for torture following reports of police brutality while enforcing the lockdown. In Mozambique, a local television station has accused police of taking advantage of the lockdown to raid vendors’ shops and steal their goods. [In South Africa, there are reports of abuse, heavy-handed policing and the use of excessive force by the police and military.](#)

Legality of new legislation on surveillance

While legislative initiatives are critical to the fight against COVID-19, in some cases there are concerns about their legality and susceptibility to abuse during and after the pandemic is contained. Some states are using increasing and different forms of surveillance, including those aimed at movement tracking, contact tracing, and the creation of “health apps”. To date, only South Africa has put in place surveillance specific legislation. On 2 March 2020, South Africa issued revised regulations, which mandate various entities to provide the Director General of the Department of Health with personal information of persons for inclusion in the COVID 19 contact-tracing database. This includes persons who have tested positive for COVID-19 or persons that have come into contact with those confirmed or suspected to be infected.

In addition, the Director General of the Department of Health may direct an electronic communications service provider to furnish the location or movements of any person known or reasonably suspected to have contracted COVID-19, and the location or movements of any person known or reasonably suspected to have come into contact with such a person.

While efforts to combat the spread of COVID-19 may necessitate innovative approaches, surveillance laws or regulations can and have been used to violate citizens’ rights to privacy. Increased surveillance measures will only be lawful if they can meet strict criteria. Governments must be able to show that measures implemented are provided for by law and are necessary, proportionate, time-bound, and that they are implemented with transparency and adequate oversight. In promulgating the regulations, the South African government has rightly included safeguards to minimise threats of breaches to the right to privacy and other fundamental rights and freedoms. Such measures include the appointment of a designated COVID-19 Judge to provide oversight over the implementation of the regulations and provide recommendations to the government to address any real or possible breaches of citizens’ rights.

In addition, the gathering of the surveillance information is led by health authorities and not state security authorities who might use it for other purposes including policing. Similarly, the lead role by health authorities provides a level of protection to individuals such as human rights defenders who are often the subject of surveillance by state security authorities. Importantly, the regulations state that the data collected will only be used for the purposes of controlling COVID-19, and will be destroyed or anonymised after the state of disaster terminates. Moreover, the concerned individuals will be informed if they were subjects of surveillance during the state of disaster.

Persons deprived of liberty

The conditions of prisons and prisoners in many African countries are afflicted by severe inadequacies including high congestion, poor physical, health, and sanitary conditions, as a result special attention needs to be drawn to the severe risk these conditions pose to the spread of COVID-19. Urgent and holistic preventive measures are required that focus on the most marginalized groups in our society, particularly prisoners. If COVID-19 penetrates prison systems in the sub-region, this will not only rapidly contribute to infections, but it risks high prison mortality rates. Authorities must ensure prompt and regular access to medical attention and adequate health care for people who are deprived of their liberty at a standard that meets each person's individual needs

and is similar to what is available in the community. Prison health is public health and, therefore, effective COVID-19 responses should address the risk that congestion poses to both the prison population and the broader community. In order to de-congest prisons, governments in the sub-region should adopt an urgent strategy for the protection of the rights of people deprived of their liberty, including through addressing overcrowding in prisons, through the immediate and unconditional release of prisoners of conscience; reviewing decisions to retain people in pre-trial detention as well as to detain children; considering the early, temporary or conditional release of those convicted of minor offences and people at higher risk, such as older people, pregnant women and those with underlying medical conditions; and adopting alternatives to detention. Efforts should be made to release older detainees if they no longer pose a threat to public safety and they have already served a portion of their prison sentence.

In addition, those convicted of minor offences should also be considered for release. Individuals arrested on immigration-related charges should not be detained in prisons. Judicial institutions should be provided with the necessary support and mandate to enable them to consider release of prisoners, especially those who have spent excessively long periods in detention pending judgment or sentencing. Judiciaries should also pay specific attention to the release on bail of older persons, persons who are chronically ill and whose state of health is exacerbated by prison conditions. Equally, special attention should be paid to children in prison and reformatory centers and women who are pregnant or remanded with their children. Importantly, on 25 March, the UN Committee on the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment also [called](#) on governments to reduce prison populations wherever possible by implementing schemes of early, provisional or temporary release.

Gender-based violence

The COVID-19 pandemic has heightened the risk and exposure of women and girls to sexual and gender-based violence (SGBV). Confinement due to stay-at-home orders or lockdowns has increased the risk of women and girls to domestic, sexual, economic, psychological and other forms of gender-based violence by abusive partners and family members. Poor housing and poverty in most countries of the sub-region exacerbate this phenomenon. Increasingly, hotlines in the sub-region have been inundated with calls from women reporting abuse and seeking assistance.

In South Africa, the Department of Social Development's Gender-Based Violence Command Centre received about 2,300 complaints in the first four days after the lockdown came into effect. Accessing help can also be difficult due to confinement with the abuser. It is, therefore, imperative that States adopt innovative ways in exercising their due diligence obligation to prevent and protect women and girls from SGBV during the pandemic. States must ensure that prevention of and protection from gender-based violence and domestic violence is an integral part of their national response to the pandemic.

The unique challenges that COVID-19 presents to addressing SGBV due to confinement require bold responses from States including re-prioritizing access to support and protection services, helplines and shelters for survivors. States should also ensure that women, girls and people who can get pregnant can access sexual and reproductive health services, especially ones that are time-sensitive such as emergency contraception, pre-natal testing and counselling, abortion, post-

abortion care and miscarriage treatment as well as the prevention and treatment of HIV and other sexually transmitted infections.

Victimization of human rights defenders

COVID-19 has increased threats to civic space and human rights defenders. Some of the emergency measures to combat the novel coronavirus have severely restricted the civic space and led to violations of human rights, including targeted attacks on human rights defenders. The rampant arrests and detention of grassroots human rights defenders across Africa including Southern Africa as well as journalists and those involved in trying to disseminate information resulted in the Special Rapporteur on Human Rights Defenders and Focal Point on Reprisals in Africa, Honourable Commissioner Rémy Ngoy Lumbu, expressing concern in a statement on 12 May 2020. For example, in Malawi human rights defenders were forced to institute what we refer to as *firewall public interest litigation* to stop the imposition of lockdown measures that would pose a threat of generalised harm to women vendors and informal traders and grassroots defenders including police brutality and detentions.

In Eswatini police [reportedly harassed](#) Swaziland news editor, Zweli Martin Dlamini's wife and children for spreading "fake news," that suggested that King Mswati III had contracted the coronavirus, insisting that the King "is well and in good health." In Zimbabwe, President Mnangagwa has indefinitely extended the lockdown. And three young women political leaders from the Movement for Democratic Change – Alliance, Cecilia Revai Chimhiri, Netsai Marova and Joana Ruvimbo Mamombe, a Member of Parliament were abducted, tortured and sexually abused after having participated in a flash protest against rising levels of hunger and abuse of government sourced food aid during the lockdown. In addition, a freelance journalist, James Jemwa was temporarily detained by soldiers and police officers and forced to delete the footage he had recorded at Gwentyambira shops, Harare. The Zimbabwe police Commissioner went on to [say](#) that journalists should stay at home and be bound by national lockdown regulations, arguing that they are not providers of an essential service and claiming that only journalists from "broadcasting services" (usually government controlled) are exempted. Opposition officials were also arrested and fined for providing food relief to the poor and hungry in Mutare notably Regai Tsunga a member of Parliament for Mutasa South.

In Malawi threats have been made against the chairperson of Malawi Human Rights Defenders Coalition Mr Gift Trapence before he was later involved in a serious accident. In Zambia on 9 April 2020 the government controlled Independent Broadcasting Agency cancelled the broadcasting/television license of the popular Prime Television Station citing "public interest ... safety, security, peace, welfare and good order" as the reason for such action. Civil society see this conduct as part of the wider government policy of systematically closing civic space ahead of the 2021 elections.

Rather than resort to intimidation, states should provide human rights defenders on the frontline of the pandemic with the necessary information, tools and protective equipment they need to carry out their human rights activities in safety.

Recommendations

While noting the enormous social, economic and other challenges presented by COVID-19, the respect for human rights is key in ensuring that responses are humane and do not negatively impact on people's lives and livelihoods. We therefore call on States in southern Africa to:

- (a) Ensure that declarations of states of emergency respect international human rights law, particularly to the provisions of article 4 of the International Covenant on Civil and Political Rights, including (i) notifying the Secretary General of the United Nations of the rights derogated; (ii) ensuring institutional oversight to curb abuse of emergency powers; (iii) undertake regular reviews to assess if emergency powers are no longer required in the circumstances;
- (b) Ensure that only permissible limitations under international human rights law are imposed if they decide to restrict the rights and freedoms of individuals during the COVID-19 pandemic;
- (c) Take appropriate measures to prevent the excessive use of force by security and other personnel in the enforcement of COVID-19 measures including by ensuring that regulations establish clearly circumscribed responsibilities and tasks for law enforcement officials, avoiding overly broad discretion that may lead to arbitrary or otherwise excessive use of police powers. and that those responsible should be held accountable and sanctioned with commensurate penalties;
- (d) Avoid responding to the COVID-19 pandemic with increased digital surveillance, unless these measures meet strict criteria. States must ensure that any surveillance regulations adopted to curb the spread of COVID-19 contain appropriate legal safeguards to protect citizens' rights to privacy and other rights; and that such measures should not be used to gather any information unrelated to the containment of COVID-19 and to crush dissent or surveil the activities of human rights defenders; Measures implemented are provided for by law and are necessary, proportionate, non-discriminatory, time-bound, and that they are implemented with transparency and adequate oversight; And that such data are not used for any other purpose, that collection is limited to the minimum possible and is securely stored and subject to mandatory, time-bound deletion;
- (e) Take urgent steps to de-congest places of deprivation of liberty to protect prison populations and communities from COVID-19 by taking urgent action to protect people in detention from COVID-19, including guaranteeing access to healthcare and sanitation products in all facilities and releasing prisoners of conscience and others in arbitrary detention, reviewing cases of pre-trial detention, and considering release for children, women and girls who are in detention with their dependent children or who are pregnant, and other prisoners specifically at risk, such as older prisoners or those with underlying medical conditions.
- (f) Urge the Government of Zimbabwe to conduct a swift, thorough and credible investigation into the abduction, torture and sexual assault of opposition Member of Parliament Joana Ruvimbo Mamombe, along with Cecilia Revai Chimhiri and Netsai Marova. We expect justice and accountability on this egregious and heinous violation of human rights.

States must ensure that women survivors continue to have access to police protection and justice as well as to shelters, helplines, community-support services, including by designating these as essential services and ensuring they receive the necessary support and resources to continue operating during the pandemic. Sufficient resources must be available to scale up services when necessary and provide information about their availability while also responding to the specific challenges and needs of certain groups of women and girls such as migrant and refugee women, minority and Indigenous women, LGBTI women, women experiencing discrimination based on work and descent, and women living in poverty.

SIGNED BY

Advancing Rights in Southern Africa (ARISA)

Southern Africa Human Rights Defenders Network (SAHRDN)

Southern Africa Litigation Centre (SALC)

Amnesty International