

# Whither democracy and human rights in SADC:

# COVID-19

LOCKDOWNS AND BASIC RIGHTS

(A CRISIS IN ZIMBABWE COALITION PUBLICATION)



**C**risis in Zimbabwe  
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a time to act

# Editorial Note

## Covid-19: SADC veiling tyranny with lockdown regulations



BY BLESSING VAVA

Executive Director  
Crisis in Zimbabwe Coalition

The month of December 2019 saw the outbreak of the deadly coronavirus in Wuhan, Hubei, China. By February 2020, the disease had spread globally and as a result, the World Health Organisation (WHO) declared it a pandemic. As countries across the globe were desperately trying to control the spread of the COVID-19 pandemic, a rapidly increasing number of governments started to impose severe restrictions on core civic freedoms. While many countries across Africa and the SADC region imposed lockdowns as a measure to control the spread of the virus, it is worrying to notice an escalation of human rights abuses and the shrinking of civic space in the process of enforcing the lockdown regulations.

Some governments appear to be using the pandemic as an opportunity and a justification to impose restrictions that quite obviously serve political purposes.

More generally, we currently witness restrictions of the freedom of speech and extension of surveillance measures in various countries, following the playbook of China's measures of suppressing information and repressing journalists and whistleblowers.

The lockdowns severely restricted freedom of movement, closed all but essential companies and schools, banned the sale of alcohol and tobacco, and introduced a night-time curfew. In South Africa, 230 000 people had been arrested for violating lock-down regulations. Several cases reported of police and army brutality, including at least 11 deaths. In Zimbabwe, opposition activists and journalists were either arrested, abducted to date. A successful legal challenge was brought concerning the murder of Collins Khosa by members of the South Africa National Defence Forces in the township of Alexandra in Johannesburg. On May 15, 2020, in a detailed and far-reaching judgment, the court made it clear that members of the security forces must respect and protect rights to dignity and life, not commit torture, and only resort to minimum force to enforce the law.

Other parts of the SADC region and beyond also saw an escalation of human rights abuses and shrinking of space as governments continue to suppress citizens under the pretext

of enforcing lockdown regulations. Authoritarian regimes tried to tighten their grip on power using the pandemic. For example in Malawi, where former President Peter Mutharika tried to use the Covid-19 lockdown to continue his stay in power, but the people remained vigilant until a fresh election was held. The shrinking of democratic space in the region has been escalating and has been worsened by the Covid-19 pandemic. Newspapers have been shut down, NGOs work is being restricted, arrests of opposition members and activities have been on the increase.

Leading human rights organisations have been barred from observing elections and conducting voter education in the country. As a result, the outcome of elections is already compromised. Tanzania is being urged to observe the rule of law, to allow for democracy and to defend human rights. In Zambia, the shutting down of *Prime Television*, the main independent television station in the country, could be a strategy by President Edgar Lungu to tighten his grip onto power by restricting access to information.

The brotherhood approach in the SADC region has worsened the democracy and human rights situation as the leaders do not hold each other accountable for their actions and nobody calls the other to order. The citizens and judiciary

should work together, as the case in Malawi, to ensure that the democratic space is opened and human rights are defended. The introduction of cyber laws meant to limit freedom of speech and expression is unacceptable, the militarisation of lockdown regulations should be stopped.

Thus, on September 29, 2020, the Crisis in Zimbabwe Coalition regional office hosted its Third Annual Regional Conference. Due to the COVID-19-induced travel restrictions, the conference was held virtually and constituted of panellists from different countries in the southern Africa region, who are champions in issues around human rights, democracy and advocacy in their respective countries.

The panellists brainstormed, reflected, reviewed and shared experiences in their different countries on how the COVID-19 had impacted on the civic and democratic space and advocacy work by civil society organisations (CSOs). They also deliberated on how the restriction measures imposed by governments to curb the spread of the pandemic had caused the upholding or abuse of human rights. The conference also allowed the panellists to present their requests asks which would enable the mapping of a way forward after the dialogue.

### **Why a dialogue on shrinking democratic space**

The third annual conference was built on solidarity work being done among the people of southern Africa. Many issues arose from the last

conference in the region which prompted the convening of the third annual regional conference on shrinking democratic space in southern Africa. The sole purpose of the conference was to share, learn and review country-level positions on the state of democracy and human rights in the region and to consolidate regional positions and put together a strategy for a coordinated regional level democracy campaign targeting hotspots like Zimbabwe, Eswatini and Mozambique.

There is a need to create space for continuous dialogue with policymakers on issues identified during the conference deliberations. There is also a need for advocacy groups to review, kick-start and strengthen action-oriented processes that connect people to people solidarity and ongoing struggles against environmental, social and economic injustices to the interventions against political injustices.

The conference was a continuation of an in-depth process that has been going on at the SADC Summit and SADC Non-Governmental Organisation platform. The conference spoke on what needs to be done to address the situation prevailing in the different countries. The Covid-19 pandemic saw an upsurge in human rights abuses, the use of military and excessive forces to enforce lockdowns that were meant to curb the spread of the virus. There is a need to assess the state of democracy now and determine what can be done by the solidarity partners to address the situation.

When the Covid-19 pandemic struck the world, it presented member States in SADC with an opportunity to suppress democracy and rule of law. Therefore, there is need to take stock on how and what member States have done to protect or violate human rights. However, when social, health, economic and political assessments were done, the behaviours that manifested during government responses were a continuation of conduct and behaviour embedded in the political elites of the region. This should be taken into consideration when analysis and new advocacy initiatives to promote human rights and the defence of liberties in the region are being deliberated on.

### **Challenges, obstacles and possible solutions from different countries**

The conference was a strategic and important space provided to the region to correctly deal with the question of the shrinking democratic and civic space, and violation of human rights for a just and holistic approach to be adopted. Democracies in southern Africa have been in existence for about 40 to 60 years since breaking the shackles of colonial rule. Despite the waging of successful struggles in southern African countries, the challenge today has been the inability to transform the State from a colonial set up with a bias to the needs of the first world countries existing to service needs and wants of the first world countries economically.

# Whither democracy and human rights in SADC: Covid-19, lockdowns and basic rights

## Covid-19 regulations, a harbinger for shrinking human rights, democracy

### Introduction

It has been a long six months since the world was forced to adopt a new normal after the novel coronavirus forced the world to impose into lockdowns, shutting national and international borders and literally grinding the economic wheels to a halt.

The global death toll continues to rise though there are hopeful signs that southern Africa is well past the peak. This paper will highlight some of the challenges that the region has faced as a result of this global scourge. The presentation focuses on how the Covid-19 pandemic has impacted on democracy and human rights, by critically analysing the measures adopted by governments to ostensibly manage the health emergency. As countries emerge from the shadows of this very difficult chapter, it is imperative to analyse how governments in southern Africa behaved when the world was not watching.

### A socio-economic crisis of global proportions

On 11 March 2020, the World Health Organisation (WHO) declared Covid-19 a global pandemic. In response, authorities in the region declared states of emergency and disaster or issued other public measures to curb the spread of the disease. While these measures may have been necessary, concerns were raised over the incompatibility of the lockdown requirements with the ability of the generality of the population to sustain themselves and their families. The lockdown measures threatened hunger and starvation for millions of people.

Regrettably, except for South Africa, the limited measures implemented across the region to alleviate the economic damage targeted the formal economy, neglecting the informal and communal economies where the majority of people, particularly women, are located. Authorities in the region, to a larger extent, failed to respond sufficiently to the region's high level of poverty, unemployment, inequality and the need for social safety nets.

Such was the scale of concern about the impact of the Covid-19 measures on the poor that on 23 April 2020,



**BYTATENDA MAZARURA**

**Woman Human Rights Defender (WHRD)**

the African Commission on Human and People's Rights expressed concern "about the precarious conditions ... constituting a real risk for the spread of Covid-19".

Over the years, the informal economy in southern Africa has grown to unprecedented levels. For some of those who were in employment, thousands of jobs were lost every day as small-to-medium enterprises and some big companies started reeling as a result of stagnant economic activity. As people continued to lose jobs and income, without a way of knowing when normalcy would return, hunger and starvation settling in people's homes and rowdy scenes of people

scrambling for food became the new norm. In May 2020, the International Labour Organisation revealed that businesses across a range of economic sectors were facing catastrophic losses, which threatened their operations and solvency, especially among smaller enterprises, while millions of workers became vulnerable to income loss and layoffs. The impact on income-generating activities was especially harsh for unprotected workers and the most vulnerable groups in the informal economy.

The World Food Programme (WFP) had already warned that the world was on the brink of a hunger pandemic. David Beasley, head of the WFP, reported that 135 million people were facing acute food shortages globally and that the coronavirus pandemic could increase this by another 130 million by year-end. The world faces “multiple famines of biblical proportions” that could result in 300,000 deaths per day - a “hunger pandemic”, he said.

Estimates by the International Food Policy Research Institute (IFPRI) indicated that a possible global gross domestic product (GDP) loss of 5% in 2020 could increase worldwide poverty levels by 20%, pushing another 147 million people into extreme poverty, and more than half of those at risk - 79 million people - would be in sub-Saharan Africa.

## Hunger pains grow across southern Africa

The immediate reality for many in Africa was that despite the health crisis posed by the pandemic, hunger and poverty remained, as probably,

the most devastating threat due to pre-existing economic conditions. Several countries approached multilateral lenders, including the World Bank, the International Monetary Fund (IMF) as well as the African Development Bank for emergency financial assistance. These include Lesotho, South Africa, Namibia, Zambia and Zimbabwe.

In an unusual turn of events, on 2 April 2020, Zimbabwe’s finance minister Mthuli Ncube wrote to the IMF and other leading multilateral lenders, not only pleading for financial assistance but admitting to policy errors and pledging to address the issue of electoral reforms, among other issues previously raised by the international community, for the organisations to agree to reschedule the payment of arrears and allow Zimbabwe to access fresh finance that is needed for the creation of a social safety net.

**Zimbabwe**, with an unemployment rate of over 90%, has the second-largest informal economy in the world

after Bolivia. Before the pandemic, the country was already battling a severe socio-economic crisis spanning two decades. Many observers raised concern that measures to curb the Covid-19 would hit the most vulnerable people hard. The Zimbabwe National Chamber of Commerce (ZNCC) estimated that 25% of the country’s formal jobs and 75% of informal jobs were at risk from Covid-19 containment measures.

This came in the wake of a report that was issued by the WFP in December 2019 advising that the country was facing its worst hunger crisis in 10 years, with 7,7 million people food insecure. In a country where half the population was already struggling to eat daily, and maize prices rose by a third in February 2020, the situation was dire.

A significant population lives from hand to mouth, with limited access to basic needs such as food, water, clothing and shelter. Social services, particularly healthcare and education,



PICTURE SOURCE: GOOGLE

are beyond the reach of many. Many rely on support from relatives, families and friends in the diaspora who have fled the same miserable economic conditions. However, accessing Zimbabwe diaspora remittances has been a nightmare and is worsened by the non-availability of cash from outlets.

Parallel market money traders who operate the streets of Bulawayo, Harare and Mutare reportedly resorted to working from home, as they could not afford to abide by lockdown restrictions, so desperate customers would time and again call them on their mobile phones.

Since the government introduced lockdown measures, many lost their sources of income and depended on food aid.

*NewsDay* reported that close to 400 sex workers in Marondera were struggling to survive owing to lockdown restrictions, particularly physical distancing. Life Health Education Development director Primrose Fundai, whose organisation works with commercial sex workers, reported that sex workers had been greatly affected by the requirement to observe physical distancing. Some needed to collect their medication for chronic conditions during the lockdown but did not have written letters to permit them to travel.

The ruling Zanu-PF was also accused of using food to shore up support, especially in rural areas. The Zimbabwe NGO Forum reported that cases of partisan distribution of food aid were on the rise countrywide. In Sakubva, Mutare, community members reported that government

food aid distribution in the area was being conducted on a partisan basis. On 12 April, about 200 people were allegedly summoned by the Zanu-PF Manicaland youth assembly at Sakubva Beit Hall to draw up a list of food beneficiaries, deliberately excluding those who are not aligned to the party. Similar reports were recorded in Beitbridge, Matabeleland province. The Zimbabwe Peace Project stated in their monthly report in April 2020, that the government “announced it would disburse \$600 million to a million vulnerable households and the money (about \$200 per family (equivalent to US\$5 per month) was to be disbursed through the Department of Social Welfare, which was to assess vulnerability and compile a list of deserving families”.

In **Angola**, reports of partisan distribution of food aid also emerged after the government announced relief measures to cover businesses, informal sector workers and families affected by the lockdown regulations. Distribution of food rations such as maize, rice, pasta, sugar and cooking oil were rolled out after the government announced a nationwide relief of over US\$550 000 through the Ministry of Social Action, Family and Women’s Promotion.

Civil society organisations raised concern about the lack of transparency in food distribution following government relief assistance. Families in the Luanda and Benguela provinces reportedly complained that they were not properly informed about who qualified to receive food aid or how the government made decisions on who would receive the relief in

communities. In **Mozambique**, on 6 May, the Forum De Monitoria Do Orcamento (FMO) met with the IMF in light of the US\$309 million emergency fund that was allocated to that country to guarantee social protection and strengthen the capacity of the health sector to address the Covid-19 pandemic. FMO called on the IMF to incorporate principles of transparency and good governance in the management of the funds and ensure the involvement of civil society as an independent monitoring mechanism, given the history of corruption and diversion of government funds by the ruling elite with impunity.

In **Malawi**, efforts to lockdown by the then embattled President Peter Mutharika were suspended after High Court Judge Justice Kenyatta Nyirenda ruled against it. Malawi’s High Court temporarily halted the government’s 21-day lockdown pending a judicial review. The government was ordered to put in place necessary socio-economic protection measures to prevent harm to the poorest and most vulnerable of society.

In response, the government reportedly introduced a US\$51 million emergency crash programme to mitigate the impact of the Covid-19 pandemic on vulnerable groups for six months from May to October. More than 172 000 households in the cities of Lilongwe, Blantyre, Mzuzu and Zomba were expected to benefit from the programme. Other measures included a reduction of fuel prices, waiver on fees on electronic payments and a moratorium on bank loan repayments. Data shows that more than 70% of the country’s population lives below the poverty datum line.

**South Africa**, ranked one of the most unequal countries in the world by the World Bank, had a 29% unemployment rate before the lockdown. Even among the employed, 18% of three million people work in the informal sector.

According to Africa economist Boingotlo Gasealahwe:

*"South Africa implemented some of the most draconian containment measures in the world. This has come at a huge cost to the economy. Even though the most stringent containment measures were being eased by the beginning of May, large parts of the economy remained closed. This together with the limited direct fiscal policy support means that the economy will continue to haemorrhage. The cumulative damage will depend crucially on the length of the lockdown."*

Food became scarce, resulting in rampant looting of grocery shops and supermarkets in **South Africa's** townships. On 16 April, *IOL* reported that 11 people had been arrested for burglary and looting of grocery stores at Cape Flats in Cape Town amid lockdown. *News24* reported similar incidents, where a Shoprite outlet in Gatesville, Athlone, Cape Town was looted by 16 suspects who fled with tills, cash and groceries. In Manenberg, about 5km away, large crowds also took to the streets and broke into two wholesalers, "helping themselves to grocery items".

On 29 April 2020, people were shocked when *The Daily Telegraph*

PICTURE SOURCE: GOOGLE



**Food distribution must not politicized**

broadcast a video of poor people queuing for food parcels in Centurion in winding queues of over 4km just to receive food that would last less than two days. Various private businesses donated 8 000 food hampers, which were distributed in the informal settlement of Mooiplaas in Centurion.

On 19 April, *City Press* reported that incidents of corruption and food aid looting had been reported in eight provinces, where there were claims that those in charge of the distributions mostly African National Congress (ANC) councillors were not giving the food to the families that were most in need. The councillors were accused of nepotism and unfair discrimination when distributing food parcels and other Covid-19 related essentials in North West, Mpumalanga, Limpopo, Gauteng, KwaZulu-Natal, Eastern Cape and Northern Cape provinces.

Allegations of partisan distribution of food were reported across the

whole southern African region, prompting Deprose Muchena, Amnesty International director for East and Southern Africa, to warn that:

*"The distribution of food aid along party political lines is completely unacceptable and it is undermining the protection measures that governments have committed to implement to uphold the right to food for everyone."*

Therefore, across Southern Africa, the requirement of physical distancing proved to be a tall order if not impossible in extremely poor communities, with no adequate housing in all high-population density locations in cities.

Almost business-as-usual movement of people as they scrambled for basics such as food for survival remained common in Angola, Zambia, Malawi, Mozambique, South Africa, Zimbabwe, Namibia and Botswana.

In Mozambique, for example, the townships of Chamanculo, Mafalala, Polana Canico, Maxquane and Hulene in Maputo; Manga, Munhava, Goto and Nhamudima in Beira proved near impossible to impose physical distancing due to overcrowding and limited accommodation.

The other incompatibility with physical distancing was that communities in all these southern African cities have to scramble for food daily, making it difficult for them to remain indoors.

In Mutare, Zimbabwe, armed police reportedly burnt huge quantities of food confiscated from vendors at Sakubva vegetable market under the guise of imposing lockdown measures.

Across Southern Africa, lockdown measures exposed grave inequalities in societies with a disproportionate impact on the poor and economically vulnerable. The precarious conditions in which millions of ordinary people – the unemployed, women vendors and informal traders – live without adequate food, clean drinking water, decent housing and toilets and jobs did not only increase the risk for the spread of Covid-19 but also increased the dangers of facing State security agents brutality, given that many governments deployed the army to help the police enforce the lockdown measures.

Unfortunately, the lockdown regulations also threw millions of more people, who usually survive on hand-to-mouth jobs, into extreme poverty as they could not fend for themselves. The fragile nature of the majority of livelihoods and the absence of government measures such as

social safety nets to cushion poor people also produced this unintended consequence. The stay-at-home orders were imposed on a population that could ill afford and were ill-prepared to stay at home.

### **Fighting Covid-19 without water**

At the centre of expert advice to combat, the spread of Covid-19 was basic hygiene, but the requirement to regularly wash hands was also near impossible to achieve because of the absence of clean and potable water in many urban centres in southern Africa. In **Zimbabwe's** sprawling capital Harare alone, one million people have no access to water, a basic human right. Crowds of more than 50 people would be seen gathered at community boreholes and water points to fetch water at the peak of the pandemic. The absence of water resulted in Zimbabwe Lawyers for Human Rights (ZLHR) mounting a series of public interest litigation cases in different provinces to compel the authorities to supply water to the people during the lockdown.

The 2013 Constitution of Zimbabwe guarantees the right to safe and potable water for everyone, and this is the first time that the lawyers have made a concerted effort to assert such rights in Zimbabwe.

As a result, on 7 April 2020 in the Mutare High Court, judge Justice Hlekani Mwayera ordered the City of Mutare and the government of Zimbabwe to provide safe and potable water for residents of Dangamvura on schedules published and accessible to the public. The case

was brought by Ephraim Matanda and United Mutare Residents and Ratepayers Trust against the City of Mutare and the Ministry of Local Government and argued by human rights lawyers Passmore Nyakureba and Kelvin Kabaya.

In Luanda, **Angola**, crowds continued to make their way to markets, shops and water points despite the lockdown regulations, arguing that “it is better to die of this disease or a gunshot than to starve to death”, evidence that physical distancing as a measure was near impossible in relation to people’s daily struggles. While expected to stay at home, people were forced to defy lockdown regulations owing to the erratic supply of water.

South Africa should be applauded for availing R20 billion to municipalities tasked with the provision of emergency water supply, increased sanitation of public transport and facilities, and providing food and shelter for the homeless.

### **Politicised lockdowns: Shrinking democratic space, the crackdown on peaceful dissent**

Over the past decade, civic and democratic space has been invariably shrinking in Southern Africa. Reports confirm a recent acceleration of the trend of “closing” or “shrinking” civic space, triggered by both State and non-State actors through legal means like repressive laws as well as through para-legal tactics such as intimidation, harassment, abductions, forced disappearances and killings. This has particularly targeted progressive civil society organisations

(CSOs), opposition political parties, journalists, and human rights defenders (HRDs) involved in human rights promotion.

It is an indictment on Southern African governments that the advent of Covid-19 has worsened the situation.

When the lockdowns were imposed, it became clear that they had not been thought out properly, were disproportionately affecting the poor and economically vulnerable, and had magnified existing inequalities and economic injustices and, above all, had resulted in police brutality. Critics argued that several fundamental human rights were being violated in Southern Africa, including the freedom and security of persons, of expression, of movement and residence, rights to privacy and access to information, among others.

The disproportionate impact of the Covid-19 measures on the poor demonstrated that civil and political rights are as important as economic and social rights and are mutually reinforcing. The poor, who were forced to go out of their homes to look for food and eke a living, were the ones who came face-to-face with the might of the police and army. Human rights watchdogs such as Amnesty International documented an escalation of violations and abuses of human rights across the region, including intensified crackdowns on peaceful dissent.

The chorus of complaints about how Covid-19 measures were deliberately being made repressive by some governments in Southern Africa - to produce political outcomes as opposed to public health outcomes

- only increased in volume.

According to Deprose Muchena, *"A number of countries in the SADC region are experiencing alarming human rights violations and abuses threatening peace and stability and hindering the response to Covid-19. In Zimbabwe, authorities have stepped up a crackdown on dissenting voices, with State security forces unleashed on activists, human rights defenders, journalists and opposition supporters."*

However, in the words of UN High Commissioner for Human Rights Michelle Bachelet, on 27 April, emergency powers invoked to fight Covid-19 "should not be a weapon governments can wield to quash dissent, control the population, and even perpetuate their time in power."

Police and soldiers in **South Africa**, the region's leading democracy, were accused of assaulting people they

alleged were breaching lockdown regulations. In one incident, riot police went as far as firing rubber bullets at nurses protesting shortages in personal protective equipment. By 1 May, reports indicated that law enforcement officers had killed eight people and at least 200 cases of police brutality had been recorded.

In **eSwatini**, the police commissioner warned journalists against writing "negative news" about the kingdom. The warning followed the detention of former *Times of Eswatini* journalist Eugene Dube for seven hours on 23 April. The detention followed the publication of an article in which Dube criticised King Mswati III for not putting in place social distancing measures, describing the strategy as "reckless". The Economic Freedom Fighters of Swaziland issued a statement strongly condemning "the psychological warfare, abuse of power and demonising and torture of innocent journalists and its members by the police."



PICTURE SOURCE: GOOGLE

In **Madagascar**, former Minister of Communication Harry Laurent Rahajason was detained on 16 July on charges of undermining state security after he was arrested for organising and funding a protest against the abuse of pre-trial detention in the country. The protest, which was banned due to the state of emergency, called for the release of a student leader, Berija Ravelomanantsoa, who had been in pre-trial detention since 8 June.

In **Zimbabwe**, there was a renewed assault on human rights, including the right to freedom of expression in the Covid-19 months, especially targeting journalists, activists, government critics and human rights defenders who spoke out against alleged corruption and called for peaceful protests. On 12 May, the Zimbabwe Republic Police reportedly pounced on a flash demonstration organised by the Movement for Democratic Change (MDC) Alliance youth leaders in Warren Park, Harare, and arrested three young female leaders, Joana Mamombe, Netsai Marova and Cecilia Chimhiri. Joana Mamombe is the youngest female Member of Parliament in the current Zimbabwe Parliament. The protest was against the government's failure to put in place necessary social safety nets for the poor and vulnerable citizens.

Journalist Hopewell Chin'ono and opposition leader Jacob Ngarivhume spent 45 days at Chikurubi Maximum Security Prison after they were arrested on 20 July and charged with "inciting public violence" by exposing allegations of corruption and calling for peaceful anti-corruption protests. This was ahead of a nationwide

peaceful anti-corruption protest that was planned for 31 July. Authorities in Zimbabwe launched a manhunt for political and human rights activists they suspected of planning the protest. Several activists and opposition supporters were also arrested, including renowned writer Tsitsi Dangarembga and opposition MDC Alliance spokesperson Fadzayi Mahere. Others were abducted by State agents for allegedly supporting the national protests.

In **Tanzania**, President John Magufuli came under fire for cracking down on political dissent and freedom of speech in a desperate bid to tighten his grip on political power, a situation that worsened as the elections drew closer. Tanzania went to the polls on 28 October 2020 to elect a president, members of parliament and councillors. Reports indicated shrinking civic and democratic space, information manipulation and restriction of freedom of expression, association and assembly. Newspapers were shut down, journalists were being harassed and arrested, the opposition members and leaders were being persecuted and arrested and the work of non-governmental organisations (NGOs) was severely restricted. Protests, anonymous blogging and criticism of parliament were all outlawed. This heightened fears that the vote's credibility would be compromised.

The legal framework for elections is also problematic. Freedom House's annual report documents how, in January 2019, parliament passed draconian amendments to the Political Parties Act that, among other provisions, allow for bans on political parties that engage in common forms

of activism. A campaign of repression against opposition parties ensued, with harassment, arrests, and detentions of prominent political figures.

According to a report released by Human Rights Watch (HRW) on 2 September 2020, at least 17 opposition party members and critics of the government had been arrested since mid-June. The human rights watchdog argued it was no coincidence that the Tanzanian government had increased its repression so close to October's elections. In a joint statement submitted by CIVICUS and DefendDefenders at the 43rd session of the United Nations (UN) Human Rights Council in June, the organisations noted the rapidly deteriorating situation in Tanzania, urging the UN to act swiftly and prevent further escalation.

Part of the statement read: *"We continue to document the use of draconian legislation and of legal and extra-judicial methods to restrict freedom of expression and opinion, peaceful assembly and association, and the overall closure of the civic and democratic space."*

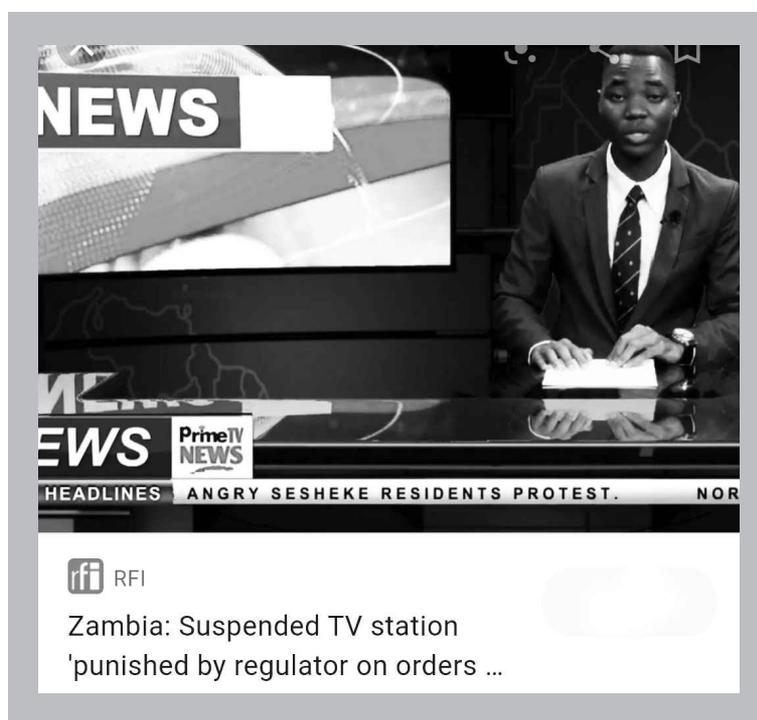
In the absence of a conducive operating environment for political parties, candidates, civil society and the media, the people of Tanzania risk having their right to freely participate in the elections compromised.

**Malawi** was faced with a similar situation before the 23 June 2020 fresh presidential election. Former

President Peter Mutharika tried various tricks to not only manipulate the process but delay the elections as well. This included refusing to assent to the Electoral Reforms Bill that had already been passed by parliament, trying to get Members of Parliament to change the date of the elections and refusing to fire the then Malawi Electoral Commission (MEC) chairperson, Jane Ansah and her team of commissioners who were found incompetent by the courts. Timothy Mtambo, the Commander in Chief of the CFT People Power Movement and the Minister of Civic Education and National Unity in Malawi, in a paper titled *An activist's tale - How Malawi's people successfully fought for democracy and accountable governance*, wrote:

*"Once it became clear that the Human Rights Defenders Coalition (HRDC) leadership had mobilised ordinary Malawians to take agency for accountable governance into their own hands, Mutharika became paranoid and started constricting civic space and persecuting human rights defenders. The law became weaponised. Arbitrary arrests and detentions of HRDC leaders became commonplace."*

**Zambia** has also been accused of deteriorating human rights. On 9 April 2020, the government-controlled Independent Broadcasting Agency cancelled the broadcasting/television licence of the popular *Prime Television Station* citing "public interest ... safety, security, peace, welfare and good order" as the reason for such action. This was just another high-level media closure after



PICTURE SOURCE: GOOGLE

similar action was taken against *The Post* newspaper. The Law Association of Zambia stated on 11 April 2020, strongly condemning the closure and asking the government to reverse the decision on account of numerous irregularities that they cited.

To date, the Zambian authorities have still not reversed the decision, despite widespread criticism from various stakeholders including the International Press Institute.

Civil society believes this is a wider government policy of systematically closing civic space ahead of the 2021 elections to consolidate power by President Edgar Lungu. The attacks on civic space also include arbitrary arrests and detentions of human rights defenders the case of Pilato, Laura Miti and Barnabas Mwewa being a prime example. The three defenders were arrested for promoting human rights in Livingstone.

## Conclusion

When the Covid-19 pandemic emerged as a serious threat to human health and economic systems at the start of 2020, many countries across the globe summoned their abilities to focus on the twin threats. In Southern Africa, however, it seems to have been an opportunity for illiberal governments to consolidate political hegemony, curtail citizen rights and in some cases financially profiteer from the crisis. Not only did this weaken the fight against the pandemic, but also pegged back by very significant margins, the hard-won progress that had hitherto been made in the painstaking democratisation process. It is unimaginably tragic that for most leaders in the region, the pandemic was "too good a crisis to waste!"

# Angola's democratic space shrinks as the political situation, human rights and freedom of movement curtailed after Covid-19



BY NELSON JOAO

Done at Luanda on the 28th of September 2020

The democratic space in Angola is currently characterised by important elements with regards to the expectations of citizens, civil society organisations and their interaction with political power and government.

It is important to note that the change in government after a three-decade rule by one party MPLA following the 2017 elections was regarded by many as the desired and long-awaited change for greater political openness, promotion of human rights, greater access to information and consequently greater protection of individual and collective freedom.

Such steps were needed to change the paradigm, both in terms of participative governance and the end of fears and oppression which would result in greater access to information,

access to justice, reduced repression by the State security agents and greater freedoms such as freedom of expression/speech, information, more co-operation and solidarity.

These expectations were built upon promises made by the president João Lourenço as a running candidate for the ruling party. His candidature until then was seen as the bridge to take the country away from the state of monarchy which had been created by the Dos Santos family, to a state of law, since one of his campaign mantras was that all are equal before the law because no one is too poor to be protected and no one is too rich to be judged.

Despite all the hope and expectations people had, the year 2020 has been marked by a myriad of challenges that include the rising cost of living, high unemployment rate, arrests of senior officials some of whom were part of the previous government and of which many are now again serving in the new government, as well as being members of families linked to the former Angolan president. The arrests are as a result of corruption (embezzlement), defrauding the State, which in part has been seen by some critics as persecutions and selective arrests.

With the declaration of a state of emergency following the outbreak of the Covid-19 pandemic, the challenge of the shrinking democratic space intensified. The declaration of the state of emergency involved the putting in place of restrictive measures across the country, bringing with it serious concerns about the survival of families, restrictions on the movement of people, access to medical care and the cancellation of municipality elections. The paper will discuss some of the highlighted issues.

## Realisation of municipalities

The municipality elections were seen as part of the solutions to the numerous problems experienced by the communities such as lack of access to water, electricity, deficient basic sanitation, inadequate education facilities and effective participation in democracy.

The halting of municipal elections was announced towards the end of the year, and at that time the legislative package was being discussed and prepared. However, the general expectation among citizens was that the elections would take place.

The announcement on the postponement of the elections was

made by the president and with no scheduled date for the elections in the future, this was a blow to the democratic space and active participation of civil society.

It is also believed that the current government is afraid of losing ground in the polls due to unfulfilled promises and worsening social and economic conditions and, as such, postponing elections would ensure that they stay in power for longer.

### Freedom of the press

With regards to press freedom in the country and taking into consideration the phase the country is going through, there should be great concern over the operations of private media, particularly its coverage on issues to do with the recovery of assets fraudulently acquired by businessmen and/or government officials. The private media serves as an alternative voice to the state media. Now that the private media is being controlled by the state, it clearly means that the state has control over the content private media players produce, thus undermining the freedom of the press that the country has been registering. The private media was the platform where civil society organisations had the ability to freely address certain issues and engage in meaningful debates without fear of intimidation.

Regarding freedom of speech, today people can speak more freely and openly. People are making use of various social media platforms to express themselves. The number of people addressing issues that have a bearing on their lives is also growing on television and radio programmes.

However, the use of state funds on the nationalisation strategy of private companies owned by those with political connections, many of whom have today fallen from grace, does not guarantee greater freedom of expression. The companies that are being nationalised include *TV Zimbo*, *Palanca TV* and other radio stations which had wider national coverage and a larger audience.

### Violation of human rights

The police started to increase the use of force against citizens, making arbitrary arrests for not wearing face masks. The police also extorted money from the Citizens were brutalised in public regardless of age or physical condition. Women and children were also not spared, with the beatings taking place either in public spaces or police stations.

The police denied some citizens the right to life by killing 25 people for allegedly non-compliance with security measures. In an incident which clearly demonstrated disregard for human rights, the police shot dead a 14-year-old child during a demonstration against the poor performance of the police at a police station. To disperse the demonstrators the police opened fire and shot dead the child.

Another example of police brutality was to do with the death of a doctor who upon knocking off work left the hospital for his house. While he was in his vehicle, he was not putting on his face mask and was arrested and taken to jail, where he was brutally beaten and bled to death. In another incident, a young man aged 18 was shot dead by the police while with his friends. His crime was the failure to wear a face mask and confronting the

PICTURE SOURCE: GOOGLE



Angola's prisons ill-equipped to curb Covid-19 spread

police over unprofessional conduct when they approached. Police officers also publicly raped defenceless women.

Following these narratives, there have been attempts to hide the truth by the police. For example, in the case of the deceased doctor whose death was a result of police assault, police claim that the doctor fell and bled to death. These announcements were made using state media. It is also believed that the autopsy results were manipulated to suit the narrative given by the police command. They were not allowed to see their families even from a distance and were not even aware of the medication they were being given or policies government had adopted in the fight against Covid-19. Families were in a fix because the containment zones did not take into consideration that Covid-19 patients needed critical resources such as food, drinking water and often communication.

### **Economic measures during the state of emergency**

Most Angolan families earn a living through trading in the informal markets. However, part of the Covid-19 restrictive measures was closing the markets and only opening them on specific days for sales and purchases of groceries. Many families were left in great difficulty as their sources of income were disrupted. For the deprived communities, they were affected by the unavailability of water supplies and basic foodstuffs, as there was a lot of speculation about prices. This forced many families to leave their homes and move around knocking at other people's doors begging for food. This led to many young children walking the streets and getting

exposed to contracting Covid-19.

During the Covid-19 pandemic lockdown regulations, the government has been hiding behind the veil of biosafety conditions and destroying people's homes without taking them alternative land for relocation. This is a clear violation of the law itself (see the case of Salinas in Benguela)

Questioning government decisions is taboo. The right to information, therefore, exists in name only. Government has been announcing its decisions regarding the Covid-19 pandemic but does not allow the questioning of its decisions.

### **Health services**

Another fundamental issue that arose during the Covid-19 pandemic was the capacity of the National Health Service to deal with high magnitude situations. According to the National Health Development Plan 2012-2025 (PDNS, 2014), Angola has a total of 2 356 healthcare facilities. In most cases, the document goes on, it's either they are basic health posts that are unable to provide a complete set of services, or non-operational altogether. In addition, there is only one health technician (nurse or doctor) per 1 000 inhabitants. With the state of emergency, many basic health professionals such as prenatal consultations for pregnant women were not available and health services in the periphery were almost non-existent, thus putting pressure on bigger health institutions.

### **Freedom of movement**

Under the Covid-19 pandemic state of emergency, freedom of movement

was limited. The decision was made without taking into account people in transit and inter-provincial labour relations (for example people who stayed in Luanda from Cabinda who remained there for a long time, without proper accommodation and food supplies).

The right to education was also limited, especially given the poor conditions in most schools aggravated by the need for biosafety and hygiene, during the pandemic which required financial resourcing.

### **Conclusion**

During the period of the pandemic, most people were forced to stay at home to avoid getting infected or spreading the pandemic, and in the case of Angola, the government was quick to prescribe Covid-19 containment measures and must be congratulated for this measure. However, the conditions taken to keep people at home had little effect, as promises made to help keep people at home, especially low-income families, were not met. The rights to food, clean water, medical care, protection were constantly violated by state agents.

Another important aspect related to health was to do with the neglect of diseases such as malaria and others that greatly affected people. Due to the lack of regular medical care, the number of deaths in communities greatly increased.

### **Asks and recommendations**

The government must create conditions that enable people to have access to drinking water as this

represents a way to combat the pandemic, sanitation and prevents diarrhoeal diseases that contribute a lot to the death of children and old aged people.

The government should put necessary measures to ensure that the health system and hospitals do not neglect other illnesses that have been affecting people well before the outbreak of the Covid-19 pandemic, particularly malaria. Medical centres and hospitals in the periphery should be equipped so that they can respond to the health needs of the citizenry.

Police officers who have been using excessive force on people should face criminal charges and have their day in court. This will bring to an end the high number of deaths and human rights violations that have been registered in the country.

During the confinement period, the government should have made use of civil society organisations (NGOs, FBOs and grassroots community organisations) to help in the creation of educational programmes for communities as well as helping families in need with basic goods need. Finally, a regional call should be made to come up with a plan to avoid food insecurity for most citizens in the region and renewed outbreak of Covid-19

# eSwatini, a nation letting out a shrill cry for democracy



BY WANDILE DLUDLU

PUDEMO (eSwatini)

## Introduction

When activists, human rights defenders and leaders engage in such a pertinent question, the approach and depth ought to be not only holistic but analytical and solution-based. This is so because Africa, and largely SADC is at crossroads today as self-rule in most countries in the region is averaging plus or minus 50 years old.

This by far is sufficient time for any ideas, formulas and ideologies, if properly applied, to have turned around any country and/or region to be a success story. There are a plethora of examples wherein far less time has been spent trying to turn around far more complex, poverty-stricken and environmentally-challenged countries and regions of the world into democratic and economically independent nations.

The reality, without sounding pessimistic, is that democracy is still far more fragile, while development is pro-business and governments and administrations policies alienate locals while favouring foreigners, which makes their programmes completely divorced from the realities of their people.

This brief paper will look at issues and challenges faced by SADC and the impact of the Covid-19 global pandemic. This deadly virus not only brought to the fore these intrinsic development conundrums but nakedly exposed the fallacy of democracy, which is devoid of a human face, an absent service delivery machine and palace paralysis in the case of eSwatini.

## A brief history of the Kingdom of eSwatini

Swaziland is the second smallest country on the African continent, with a landmass of about 17 000 square km. It is situated between two huge neighbours, the Republic of South Africa and the Republic of Mozambique. It has a population of approximately a million people. Swazis are predominantly Nguni in language and culture. The country was colonised by the British, purportedly with a protectorate status from 1902 until 1968. Its main role was and still is, to supply raw materials, cheap labour

and cheap market access to major global economies, the Republic of South Africa included, its most developed neighbour.

The country is governed by a dual system comprising the Westminster and traditional forms of governance, mutually co-existing. In real terms, they are an artificial division because the king presides over all forms and structures of governance and conflates them as and when he wishes to serve his interests and those of the royal family. The tinkhundla system was created in 1978 to entrench and institutionalise a culture and pattern of narrow elitist (royal) accumulation of wealth for the few and exclusion of the majority from the economy. At the centre of its very essence is the systematic marginalisation of the poor and working majority from decision-making, economic participation and plans about the future of the country and its people.

There are three main forms of land ownership, which are Title-deed land, Swazi nation land and Crown land. The majority of the land is under the Swazi nation land, which is owned and directly controlled by the king, despite traditional assumptions that such land belongs to the nation and not individuals. Individuals can use it, but cannot own it. The Swazi National land is sometimes referred to as communal land.

In rural areas, there are two forms of land ownership which co-exist. These are Individual Tenure Farms (ITF) and Swazi Nation Land (SNL).

eSwatini has a dual form of land ownership in rural areas. This form of duality started at the dawn of the last century when traditional leaders

granted land concessions to foreigners, where about two-thirds of the country was given away, after which the foreigners ultimately became private owners in the form of title-deed landholders.

The royal family created institutions to leverage its agenda to become a fully-fledged capital-owning class through controlling capital, derived from using ordinary people's contributions and national resources. They are Tibiyo taka Ngwane, Tisuka taka Ngwane and a multitude of others, such as Lidlelantfongeni.

eSwatini has also entrenched her commercial and economic interests in various sectors of the economy, including sugar milling, manufacturing, retail and hospitality industries, citrus and agriculture in general, as well as other interests beyond these sectors.

The country is characterised as a semi-feudal and neo-colonial economy, as a result of the dominance of these two features in the extraction of capital and surplus labour for capital accumulation. This also underlines the status of the country as underdeveloped in political economy terms. The ruling tinkhundla regime is responsible for the supervision of Swazi labour on behalf of capitalists, hence the intersection between major sections of capital and the royal family, facilitated largely by Tibiyo taka Ngwane, the royal investment arm.

The ruling dynasty, which is the royal family, has a tight stranglehold and monopolistic control over land, which is the material foundation of their power and control over the whole society, hence the basis for wealth accumulation. The land is the principal tool of controlling the whole society

in terms of ideas and their lives in general, hence the important role of royal structures and their associates, particularly traditional structures in rural areas, in enforcing the rule of the monarchy and its interests. This is the most critical means to also enforce patriarchy and the subjugation of women in relation to land, power and rights.

Royal hegemony is the organised system of rule and power enforced by the wide array of institutions and values imbued through the abuse of education, religion, culture and tradition and the whole ideological apparatus to serve the narrow interests of the ruling regime. The tinkhundla state represents a bureaucratic class, which feudalistically uses the poorest to advance its own narrow interests. It uses violence, manipulation of traditional values and narrow tribal ideology to whip up social prejudice, vales of royal supremacy and the perpetuation of its own interests. This is primarily about seeking economic and financial security through political office.

### Latest data on Covid-19



This is the picture over the six-month period since the country recorded its first Covid-19 case at the beginning of March 2020. These look like just figures, but the reality behind it is an attack on the poor, who besides getting infected, were affected by losing their loved ones. The figures are by Swazi standards significant when deaths per thousand ratios are put into consideration

The lockdown regulations, without mitigation programmes, exposed his majesty's government the most. The gazetted regulations, which will be attached as an addendum in this presentation, literally shut down economic activities and made it worse for the informal economy, which provides livelihoods to more than 60% of Emaswati.

While it is understood that the country was adhering to the World Health Organisation health preventative measures, the people were left without food, which somehow violated their fundamental basic human right. In first world countries, most governments put in place strategies and plan to cushion their citizens, yet nothing of a similar nature was put in place in eSwatini. In eSwatini, if not many other Sadc countries save for Rwanda, governments failed dismally to roll out food hampers distribution so that people could have sufficient supplies of food and stay indoors.

This led to a violation of regulations as the poor found themselves out on the streets trying to eke a living or get a meal for the night despite strict lockdown regulations. Hunger and starvation forced many onto the streets, while soldiers, police and warders were deployed in their thousands to maintain order on the

PICTURE SOURCE: GOOGLE



*A responds to Covid-19 in Eswatini*

streets and get people back into their houses. This led to human rights abuses, where all security agents hunted down poor youths in slumps, townships and villages like wild animals.

The healthcare system was caught flat-footed in terms of its capacity to rise to the occasion. In eSwatini, the advent of HIV and Aids drastically weakened the healthcare system. Health infrastructure is acutely insufficient and dilapidated, with the nurse/patient ratio very high, while the poorly capitalised human resource capital across the health sector has faced numerous challenges for decades now.

Budgetary constraints have been a major bottleneck if we look at what the eSwatini government, and many other Sadc countries, set aside for healthcare delivery against the Abuja Declaration, which stipulates that governments must set aside 15% of their national budget which must go towards healthcare delivery. In

eSwatini, the healthcare system collapsed during the first week of the outbreak of Covid-19.

Testing capacity was close to zero. The country relied on a testing facility in Pretoria, South Africa (Sadc), and the results of these tests required a two-week waiting period before they could be availed. It was until after two months since the outbreak of the pandemic that a French company offered to upgrade the local government referral national hospital's laboratory that the country's testing capacity slightly improved.

Fifty-two years after attaining independence, the eSwatini national leadership led by King Mswati III has failed to prioritise the health system, making the country a charity case and leaving it at the mercy of so-called development partners who literally keep the healthcare system afloat. The United States government, in this case, is responsible for funding and running primary healthcare, whereas His

Majesty King Mswati III invests in his own plush private hospital nearby the palace or flying to Taiwan and various other first world countries to receive medical attention.

This is the trend with most SADC leaders, whether presidents or kings and/or top army generals. Robert Mugabe, the former President of Zimbabwe deposed in a November 2017 military coup, died overseas while receiving medical treatment and his body had to be repatriated back home for burial. Two Zambian Presidents also died overseas receiving medical treatment. The list is endless. There is a need to confront this as Africans.

Our current crop of leaders is different from most post-colonial African leaders, who were selfless, servants of the people and principled, the current crop of leaders is selfish and thinks only about itself first before anyone else. It is made up of businessman and women, who are darlings of neoliberal institutions first before they are leaders. The national lockdown adversely affected most small and medium enterprises in eSwatini. To date, alcohol is banned, while churches have been allowed to reopen, albeit with most sermons characterised largely by huge gatherings.

There is a selective application of the law, reflecting a biased approach which proves that the government does not consult, and neither is it sensitive to the plight of the ordinary people. Official reports for the business sector reveal that over R100 million in tax was lost due to the ban on alcohol trade. This has a huge bearing on the economy, which the country cannot afford because unemployment was already as high as 52% before the outbreak of the Covid-19 pandemic.

## Negative impact on education

Shortly after the first case was reported, as advised by WHO, the eSwatini government ordered that all public and private schools close countrywide. Legislators introduced half-baked mitigatory measures, for example, education and learning were to be done through television and radio classes as well as newspapers. This measure was not complemented by the reduction in the cost of data or provision of affordable radio and TV sets to all disadvantaged children, hence it was doomed. The divisions between the poor and the rich played out openly. Largely, children who had poor backgrounds were disadvantaged and deprived of the right to education.

Private schools quickly adjusted and came up with online education programmes. This saw some pupils and students smoothly continuing with their learning through conducting online lessons, while the majority from public schools were forced to downscale or opt for shortcuts to fulfil the academic year. Some of the strategies they employed include giving assignments and continuously making assessments of their progress to take pupils and students to the next level in an academic year where literally 80% of their work was not covered.

Post-Covid-19 economic recovery plans, as already alluded to, were formulated with a bias towards colonial development patterns, favouring those with either an Anglophone or Lusophone background. The fact that local traditional bureaucrats together with agents of international capital have already applied to the International Monetary Fund for a Covid-19 rescue

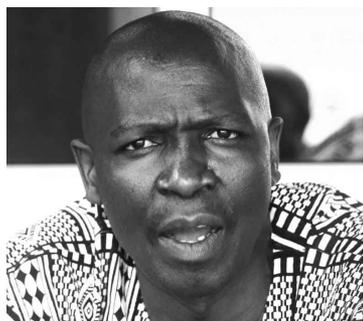
package to the tune of E1,9 billion, as well as E39 billion, means the country will in the future carry a huge debt that will be a burden to the taxpayers.

The Eswatini post-Covid-19 economic recovery programme has been designed in such a way that favours the private-led economic enterprise, wherein few local and international players will be dominant. The plan spells doom for 63% of the Swazis who are currently living on handouts.

In conclusion, the people of eSwatini and SADC citizens are now economically, socially and politically in a worse off situation than before. The Covid-19 pandemic piled more misery for the commoners, in the process exposing that governance systems in the region have remained elitist and divorced from realities. The governance systems are pro-rich and anti-poor. The insurgency ravaging the northern parts of Mozambique and the inaction by the SADC body and Mozambique's neighbours presents a huge threat to peace in the SADC region.

In Zimbabwe, the barbaric treatment of citizens by the military without any chastising by SADC is a constant reminder that after years of attaining independence, the masses are still on their own. The rate at which His Majesty King Mswati III plunders resources and loots everything in his path is worrying. His people have nowhere to turn to, indicating that there is a need for intensified advocacy and mobilising for change and total transformation.

# Governments hiding behind the veil of Covid-19 regulations to shrink democratic space



BY SEABATA MOTSAMAI

The Executive Director for Lesotho Council of NGOs (LCN)

## Introduction

The notion of civic space talks about conditions on which freedoms and liberties are fully enjoyed by the citizens. It has been noted that governments continue to attempt to limit civic societies' operations by coming up with legislations and policies that impact negatively on the growth and activeness of the civil society. Limited civic space restricts effective participation of citizens in the legislative and policy processes and this usually affects their socio-economic and political life.

This paper reflects on Lesotho's concept of civic society space and current trends under Covid-19. The paper also highlights key issues in Lesotho relating to the protection

and promotion of democratic space in the country. The other issues of reflection include civil society response, civil society key concerns and key requests from regional peers and regional policymakers and the conclusion would be made thereof.

## Context

Lesotho got her independence in 1966 and her first multi-party elections faced several challenges that ranged from rejection of the outcome of the elections by the opposition parties to legitimacy and high influence by South African politics. The second elections, which were held in 1970 were marred by many challenges that gave birth to a one-party state which lasted until 1986 when the military junta took over power for almost six years. During these periods, the shrinking of the civic space was a common practice as evidenced by the limitation of certain freedoms. The opposition leaders fled the country and human rights abuses were rife.

It is common knowledge that in Lesotho, elections are key to bringing about a legitimate government and the electoral process leads to the creation of employment opportunities for politicians and, as such, the unprincipled competition

for occupancy of the highest public office is perceived as the source for the creation of tensions, corrupt practices and conflicts that impact negatively on civic space. One of the main reasons why Lesotho is not politically stable is that its economy is small and cannot accommodate all, so politics is the best paying sector without consideration of knowledge, skills or educational achievement.

Lesotho has made good strides towards normalising the regularity of holding elections since 1993, but the bigger challenge is how to build resilient, inclusive and participatory societies. These challenges are exacerbated by the fact that the level of response to national challenges such as climate change, poverty, human rights violations is still inadequate and weak. Consolidation of democracy is in the fragile stage and requires efforts of civil society organisations to contribute to building resilient, inclusive and participatory societies. It should be noted that resilient democratic societies exist where there is democratic space for civic engagement, freedom of expressions, association, movement, including where governance institutions such as Legislature, Executive and Judiciary are accountable to the electorate.

The citizens are empowered to engage with their institutions and provide alternative policy positions.

The rate at which the democratic space is shrinking weakens the demand side from civic organisations and citizens to hold government institutions to account in the protection and promotion of democracy and human rights. As a result, this has undermined the rule of law in the Kingdom of Lesotho. It is, therefore, essential for civic society organisations to pursue a clear agenda that contributes towards the removal of barriers that prevent the promotion of democratic space for citizens.

The strengthening of the rule of law requires that the supply and demand principles for fighting against impunity and building a culture of democratic governance based on the values of transparency, accountability and responsiveness by the State institutions be elevated by the creation of civic space, where every citizen can enjoy freedoms as enshrined in the Constitution of Lesotho.

When democracy fails to serve the needs of citizens, poverty is always rife. There exists a wide gap between the rich and the poor. The beneficiaries of the system are the political elite, cronies and their friends as they engage in corrupt practices as evidenced by grabbing of government tenders by politicians and their friends and the looting of public resources in travel and per diems. For them to protect their actions, they opt to silence human

rights activists and anti-corruption campaigners by shrinking civic space.

### Civic space concept

The concept of civic space refers to conditions that afford every citizen human rights freedoms such as freedoms of expression, association, participation in governance and access to information. The net effect of enjoyment of these freedoms is that citizens partake in the decision-making processes and influence national policies. The Transparency International defines the civic space as the conditions that determine the extent to which all members of society, both as individual and informal or organised groups, can freely, effectively and without discrimination exercise their basic civil rights.

Civic space is an essential element of a well-defined democratic process in any given country. It is, therefore, important to reflect on its conceptualisation and importance. The importance of civic space in democratic governance is that it adds value to a functioning democracy by affording citizens and their formations freedoms and rights. The active participation of the electorate enhances accountability from the side of duty bearers.

The democratic space is protected by the International Covenant on Civil and Political Rights (ICCPR) especially Article 19, 22 and 25. In Lesotho, the Constitution provides sections that protect and promote civic space. Section 14 states that every person shall be entitled to, and shall not be hindered in his enjoyment of freedom of association,



PICTURE SOURCE: GOOGLE

*A lockdown enforcement in Lesotho*

while sections 15 and 16 talk about freedom of peaceful assembly and freedom of association, respectively. Therefore, it is important to note that Lesotho embraces all efforts geared towards the promotion of democratic space.

## **Current trends under Covid-19**

The outbreak of the coronavirus pandemic, commonly referred to as Covid-19, has imposed a global threat to socio-economic and political development. It has not only threatened the mobility and existence of humanity but has also overwhelmed some of the world's strongest economies and some state-of-the-art health systems. The pandemic has been declared a world crisis by the World Health Organisation (WHO). The government of the Kingdom of Lesotho declared a state of national emergency after the Covid-19 pandemic for an initial period of six months and established the National Emergency Command Centre (NECC), comprising cabinet ministers and a technical team of experts as the central co-ordination mechanism for a national response. This declaration and subsequent public health regulations imposed strict restrictions on gatherings, transport, education, business and health service operations.

The initial NECC has been replaced with a new structure called National Covid-19 Secretariat (NACOSEC), whose mandate is to swiftly respond to the Covid-19 challenges. NACOSEC is yet to extend an invitation to the civil society so that

they are included in the fight against the pandemic and that they support with necessary resources. Civil society participation is bound by current restrictions even where there is a need for community mobilisation and awareness-raising on Covid-19. This approach could have helped communities to adhere to protocols without using State security agencies because communities would have adjusted to protocols and monitored themselves. It should be noted that since the borders separating Lesotho and South Africa are porous, citizens of the two countries keep skipping into the other country without being subjected to Covid-19 tests. This is rife in the southern districts of Quthing and Qacha's Nek, which borders with Eastern Cape, South Africa.

Due to Covid-19, the government imposed restrictions that contributed to the shrinking of democratic space. The shutdown banned the movement in all public spaces, including imposing restrictions on movements and associations. The government was overwhelmed by the rising numbers of Covid-19 cases in the region and the country.

Government's response was mainly characterised by securitising the epidemic. The military and the police took control of most places in towns. Human rights abuses increased due to military patrols, with the country recording a spike in the beating of innocent people. This comes against the backdrop of a poor human rights track record in Lesotho. There are long detentions of members of the military and this has resulted in the violation of human rights on the

need for speedy trials. Though there are different stories regarding litigation of members of the military in custody, the fact of the matter is that this situation is tantamount to the denial of justice.

In affirming the human rights abuses in Lesotho, the United States of America Country Reports on Human Rights Practices for 2018 states that there were several reports of members of the Lesotho Mounted Police Service (LMPS) committing arbitrary or unlawful killings. Further, the report states that human rights issues included arbitrary deprivation of life, torture, restrictions on media freedom, corruption, lack of timely accountability in cases involving violence against women, including rape, and child labour. The Covid-19 related abuses have exacerbated the matter. For example, the military officers found one person sitting outside his house, they beat him until his legs were broken.

The restrictions prevented civil society from executing their usual work in communities. All civil society outreach programmes were stopped by the government. These restrictions also affected the relationship between donors and civil society because donors are not eager to continue to support human resource costs without programmes. Civil society organisations had to retrench some employees.

## **Civil society response**

When the lockdown was declared, the government securitised the Covid-19 pandemic response and the presence of the military and

police on the streets saw a surge in human rights abuses. Civil society documented the abuses and engaged the heads of military and police on these issues. An agreement was reached that the victims of abuse should continue to pursue legal process while at the same time military would support them with medical costs and any other necessary support during those hard times. The military withdrew the deployment of its officers from the streets while police deployed the minimum numbers required.

Civil society further responded by establishing People’s Response Platform on Covid-19 (PRP), a broad-based civil society of Lesotho that comprised women, youth, labour, textile, teaching and other professional fraternities, business, informal business-medium and large, transport industry, civil society organisations and governance/advocacy to consolidate civil society position and also negotiating restrictions relaxations within the confinements of WHO protocols. This platform included those from transport organisations, street vendors, labour and formal civil society formations. The PRP was able to engage government ministers on the need to speed up the establishment of a local testing centre. Since the private sector contributed to the purchase of testing machines, there was disagreement between the donating company and the Ministry of Health officials. PRP intervened and the testing centre was finally opened.

## Civil society key concerns

The civil society concerns are the following:

1. The civic space is shrinking due to COVID-19 and the work of the sector is hampered,
2. Declining funding for CSOs work due to Covid-19 and limited activities that can be delivered only through virtual platforms
3. Community outreach programmes were stopped, and as a result, funders may suspend funding until Covid-19 outbreak stabilises,
4. Human rights continue to be violated,
5. Government is challenged by the Covid-19, in terms of following

proper procurement processes, the process is prone to corruption.

## Conclusion

The shrinking space for citizens limits the democratisation process and effective governance. Civil society needs to continue the fight against any efforts geared towards putting restrictions on freedom of expression, movement and association. Governments will continue to impose certain restrictions masked as Covid-19 regulations, but respect for human rights should always be observed.

## Key requests from the regional peers and regional policymakers

Regional peers	Regional policymakers
<ol style="list-style-type: none"> <li>1. Regional actors should consider engaging each other with a view of sharing lessons,</li> <li>2. Actors should come up with a regional strategy on supporting each other on COVID-19,</li> <li>3. Pressure should be mounted at national and regional bodies to stop COVID-19 related corrupt practices,</li> <li>4. Work more in regional solidarity towards opening up democratic space for citizens and civil society formations.</li> </ol>	<ol style="list-style-type: none"> <li>1. SADC should play a leading role in the creation of a regional policy framework on mitigating the impact of COVID-19, Regional fund for COVID-19 related response should be established</li> </ol>

# Covid-19, dictators' heaven-sent gift to choke democracy, human rights

## 1. Country context.

This paper gives a synopsis of the human rights and democratic landscape in the wake of Covid-19 in Malawi. Covid-19 hit Malawi at a very delicate time when a very important presidential election was coming up and there was a dire need to make sure that the spread of the virus was contained. Just like what most of her neighbours had done, Malawi was supposed to effect a total lockdown. There was also a need to strike a balance between according citizens a chance to exercise their democratic right through electing a new President and making sure that the raging coronavirus was contained. This became a very delicate act.

The situation became even more complicated given how the then ruling party was very uncomfortable with the impending presidential election and the writing was on the wall that they would use all the tricks in the book to postpone the same.

The lockdown was successfully challenged in court. Covid-19 cases peaked in and around June and July, with mortalities reaching 157. Several human rights violations and abuse were recorded or worsened due to Covid-19 lockdown regulations. This paper attempts to highlight the same and how Malawi and HRDC have helped in minimising the impact of Covid-19.

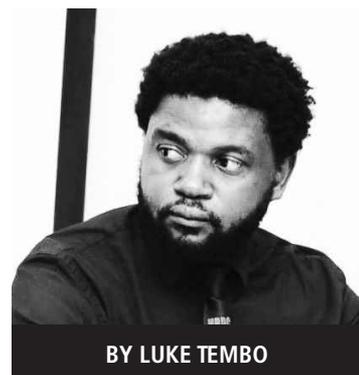
## 2. Main democracy and human rights issues

**a. Presidential elections vs Covid-19.** - In preparation for the June 23, 2020, presidential elections, Malawians were very conflicted as to how to proceed with presidential election campaigns, which could not be held virtually, but in face-to-face meetings. Earlier in April 2020, the government had imposed restricted gatherings to 100 people per gathering, but the nomination and subsequent campaign period disregarded these restrictions<sup>1</sup>.

The High Court had nullified a verdict upheld by the Supreme Court of Appeal. Due to massive irregularities in the 2019 presidential elections, the High Court ordered a fresh presidential election.

The court ordered that the fresh presidential elections should happen within 150 days from the day of the judgment<sup>2</sup>. The first Covid-19 case in Malawi was announced as the country was already preparing for the elections.

It was clear from the previous ruling that the Democratic Progressive Party wanted to take advantage of the Covid-19 preventive measures to derail any prospects of the rerun of the



BY LUKE TEMBO

The Executive Director of Human Rights Defenders Coalition

Presidential election. The party proposed a total lockdown, which the Human Rights Defenders Coalition (HRDC) successfully challenged in court<sup>3</sup>.

Besides, the Human Rights Defenders Coalition and others sought the injunction not because they were against the lockdown, but precisely because the government failed to put in place measures to cushion the poor during the lockdown.

The economic catastrophe that was to happen was also evident in the people themselves as following the announcement of the lockdown, thousands of informal traders in across the country took to the streets to protest against the coronavirus lockdown regulations wielding placards that read *'Lockdown more poisonous than Corona'* and *'We'd rather die of corona than die of hunger.'*

<sup>1</sup> [http://www.xinhuanet.com/english/2020-05/12/c\\_139051422.htm](http://www.xinhuanet.com/english/2020-05/12/c_139051422.htm)

<sup>2</sup> The judgement was delivered on 3 February 2020

<sup>3</sup> <https://www.loc.gov/law/foreign-news/article/malawi-high-court-temporarily-blocks-covid-19-lockdown/>

among others.

**b. Covid 19 and right to education** -On March 20, 2020, former President Arthur Peter Mutharika declared a state of national disaster under the Disaster Preparedness and Relief Act, which authorises such declarations and this included indefinite closure of schools. The Human Rights Defenders Coalitions has been working with various students' unions to see the best options to safeguard the right to education which is clearly being violated. Students argued that politicians were exhibiting double standards as they allowed people to gather for political campaigns and yet closed schools. To date, the gradual opening of schools has been announced and will be monitored to determine if this opening will affect the number of cases.

**c. Business and human rights** - The most affected sector is the tourism industry. HRDC handled a lot of complaints from retrenched people who were employed by hotels and travel agents. There are also reports that some businesses were hiding/concealing cases of Covid-19 and forcing their workers to report for work.

**d. People in detention** - Malawi grappled with how to deal with the congested prisons in the wake of Covid-19.<sup>4</sup>One-hundred and fifty-five inmates and 21 members of staff tested positive for Covid-19. There were 71 cases in one prison in Blantyre alone. HRDC, including other human rights organisations, called on authorities to decongest the prisons. Malawi has since pardoned about 499

prisoners. These figures are too small, and there is a need for more prisoners to be released since Malawi prisons hold 14 000 inmates, which is almost triple the recommended capacity of 5 000 prisoners. There is a need to do court camps and screening of those on remand.

**e. Corruption and accountability** - Follow the money! The Covid-19 pandemic became a very fertile ground for abuse of public funds. In Malawi, the dethroned regime was accused of abusing huge sums of money in allowances while healthcare providers lacked basic needs including personal protective equipment. HRDC took the government to task, especially the ministers of Health and Information, to explain allegations and claims that they were pocketing huge allowances during the pandemic.

**f. Gender-based violence** - The Covid-19 pandemic saw a rise in cases of gender-based violence. The HRDC gender desk became a very busy place as the number of women and girls reporting cases of gender-based violence increased. Organisations working in this sector need to seriously work hand-in-hand to manage and avert this crisis.

### 3. Lessons and asks.

Several lessons can be drawn from experiences over the months. These include:

- a. Malawi failed to take lessons from other countries and inform their own country's strategy. Malawi's first case was confirmed on April 2, 2020, and by this time, the

country had had all the time to put in place measures to reduce the impact of Covid-19 on democracy and rights.

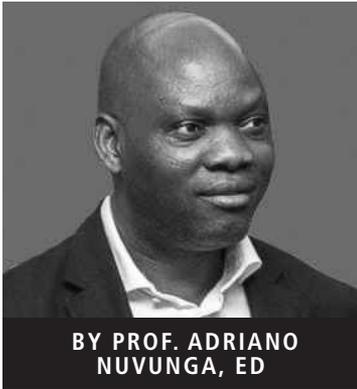
- b. Civil society groups need to push and fight back. The continuous push by HRDC made sure that the lockdown was not imposed on the people of Malawi. Presidential elections went ahead as scheduled and the economic impact of lockdown was minimised.
- c. In Malawi, litigation has been used and has proved to be the best strategy in safeguarding democracy and human rights. Whether other SADC member countries can use the litigation strategy is subject to debate since there are different political, social and judicial landscapes.
- d. Malawi has managed to mobilise communities to stand and speak for themselves.

### 4. Conclusion

- a. There is a need to convene regular meetings among human rights organisations across the region to share lessons and best practices on how to safeguard democracy and human rights in the wake of Covid-19.
- b. There is also a need for strong solidarity among CSOs across the region.
- c. SADC member countries should stop skirting around issues and come out in the open to condemn human rights abuses.
- d. Local courts have failed people in the region and if there is a way, international human rights courts or African courts should be made use of to challenge abuses on human and people's rights.

<sup>4</sup> <https://www.theguardian.com/global-development/2020/aug/06/malawi-human-rights-groups-warn-of-covid-deaths-in-packed-prisons>

# Terrorism, Covid-19 and the shrinking democratic space in Mozambique



BY PROF. ADRIANO  
NUVUNGA, ED

Center for Democracy and  
Development (CDD) Mozambique

## 1. Introduction

Since the October 2019 general elections, reported to be irrefutably fraudulent by several electoral observation missions, Mozambique has been and is still facing the closure of the democratic space. The October 2019 general elections set a clear path of democratic closure, which has now been exacerbated by the Covid-19 pandemic.

The killing in broad daylight of the human rights defender, Anastácio Matavele by the state defence forces in Gaza Province was a clear point of departure toward a democratic closure in the country. The illegal detention and incarceration of 18 pro-democracy activists who were acting as a party list for the newly-formed Nova Democracia party in Gaza is also a clear indicator of the democratic closure and growing authoritarianism by the government of Filipe Nyusi.

Also, the US\$2 billion illegal debt scandal that was unveiled in 2016 resulted in severe socio-economic problems as development partners immediately withdrew aid. As a result, the state has been unable to pay for key social and economic services such as medicine, school teachers and equipment, among others.

This left the government in a near state of bankruptcy. So, even well before the Covid-19 pandemic, Mozambique was facing a serious democratic reversal and a fundamental socioeconomic crisis affecting the daily lives of the people.

The situation became worse with the rise of the insurgency in Northern Mozambique, which resulted in the militarisation of the already shrinking civic space. This militarisation resulted in gross human rights violations and abuse as well as a launch of frivolous attacks against human rights defenders.

In the central part of the country, democracy and human rights were also affected by the Junta Militar, led by Mariano Nhongo, who is a dissident from the ongoing peace process that is already between RENAMO party and the Government. His attacks have resulted in the loss of lives, destruction of property and a situation of instability for more than 30 years in Mozambique.

At the moment, Mozambique has two war zones; one in the central part of the country affecting the Beira corridor, Manica and Sofala provinces and the second one in the northern parts of Mozambique where the insurgency has created a humanitarian crisis, resulting in the internal displacement of more than 300 000 people; 1500 deaths and tremendous economic impact. Having given this background, the paper will focus on democracy and human rights violations in the context of Covid-19 pandemic.

## 2. Right to information during the State of Emergency

Following the declaration of the State of Emergency through Presidential Decree no. 11/2020 of 30 March, ratified by the Parliament, through Law no. 1/2020 of March 31, the Council of Ministers approved Decree no.12/2020 of 02 April on administrative implementation measures for the prevention and containment of the Covid-19 pandemic to be in force during the State of Emergency.

The rule set out in article 27(5) of Decree No. 12/2020 of April 2, stipulated that: "*During the duration of the State of Emergency, the media that broadcast information on COVID-19 contrary to the official ones are sanctioned*".

This rule was repealed by the Council of Ministers through Decree 14/2020 of April 9, following contestation by civil society and the media which denounced the illegal limitation to the right to information and freedom of the press. The rule contained in Article 27(5) of Decree No 12/2020 of 02 April 2020 was not reflected in either Law No 1/2020 of March 31, which ratified Presidential Decree No 11/2020 of March 30, or in the Law on the Right to Information and, above all, in the Constitution of the Republic.

Although the above-mentioned rule was repealed/eliminated by Decree 14/2020 of April 9, the same decree established a dubious limitation of the right to information with an intimidating content, through its article 37, which determined that: "*Without prejudice to civil and disciplinary sanctions, the dissemination of false information on COVID-19 and failure to comply with the restrictive measures in the cases provided for in this Decree is punishable under the terms of the applicable legislation*". The decrees by the Council of Ministers made clear the notorious institutional effort to regulate and limit the exercise of the right to information during the State of Emergency declared in the framework of the prevention of the COVID-19 pandemic.

### **Poor provision of information on the payment of tuition fees in private educational establishments during the State of Emergency**

Following the declaration of the State of Emergency and the consequent closure of public and private educational institutions, a dispute arose over the payment of tuition fees

in private schools during the period where classes were on suspension. Parents and guardians contested the collection of tuition fees during the period when there were no classes. The Government of Mozambique, through the Ministry of Education and Human Development (MINEDH), had not provided concrete and enlightening information on this matter of high public interest. As a result of the arbitrariness in the collection of fees by private educational institutions, the matter was taken to the courts. The MINEDH had "washed its hands" over the matter allegedly because this was an eminently private matter which was supposed to be settled between the parties involved (i.e. parents/guardians and private educational establishments) without interference from the State or the Government.

In a state where education is primarily a state responsibility regulated, guided and supervised by Government through the National Education System, the failure to provide clear and concrete information on the collection of fees in private educational establishments constituted an unfounded denial of information and, thus, a violation of the fundamental right to information in the context of the right to education.

### **Lack of information on the funds allocated for the prevention of COVID-19 and on social protection during the State of Emergency**

The Government received funds to finance specific activities and actions within the scope of the Covid-19 Pandemic Response Strategy. However, citizens, especially the most vulnerable groups and small businesses complained that they did not and are

still not benefiting from these funds. Information on the criteria for accessing the funds was not available to them. According to Article 6 of the Law on the Right to Information: "*The public and private entities covered by this law have the duty to make available the information of public interest in their possession, publishing it through the various legally permitted means, which may make it increasingly accessible to the citizen, without prejudice to the exceptions expressly provided for in this law and other applicable legislation.*" Therefore, the failure to provide information of public interest concerning the funds channelled to contain Covid-19 and ensure the social protection of citizens constitutes a violation of the fundamental right to information.

### **3. Right to information and the attacks in Cabo Delgado**

In addition to the Covid-19 pandemic, the first half of 2020 was marked by intensified terrorist attacks in the districts of central and northern Cabo Delgado, with the district headquarters of Quissanga, Macomia, Muidumbe (Namacande) and Mocimboa da Praia being invaded. The military insurgency that began in October 2017 has seen the death of more than 1500 people, the displacement of 350000 people, disruption of cultural process, destruction of houses and cultural properties, hospitals, schools and other public and private infrastructure.

In the face of escalating armed violence, civil society organisations (CSOs), the media, academics and society have pressed the government to provide relevant and public interest information on what is happening in Cabo Delgado, including the strategies

for ensuring public security, protection of human rights and assistance for the internally displaced persons. The government has had challenges in providing this vital information, a situation which has left the population in a state of distress<sup>1</sup>. Moreover, it was the government itself that created obstacles that prevented the dissemination of information in the context of the attacks in Cabo Delgado. Silence, intimidation and a ban on Press coverage of the war were the main obstacles put in place by the government to prevent the right to information from being exercised.

In April 2020, the government hired South African mercenary company Dyck Advisory Group (DAG) to support the Defence and Security Forces (FDS) in the air combat against the terrorists carrying out attacks in Cabo Delgado. Before DAG's arrival, Russian mercenaries were involved in a military operation in Cabo Delgado but were unable to contain the terrorists' advances. Several voices, including civil society organisations, requested detailed clarification on why the government was hiring private military companies. The CSOs criticised the option of using mercenaries, a practice discouraged by the African Union (through the OAU Convention on the Elimination of Mercenarism in Africa)<sup>2</sup> and the United Nations (through the International Convention against the Recruitment, Use, Financing and Training of Mercenaries)<sup>3</sup>. The government has remained mum and choosing not to speak out on the hiring of private military companies

PICTURE SOURCE: GOOGLE



***Mercenaries, a serious threat to national security***

and the involvement of mercenaries in the operational area of Cabo Delgado. The hire of mercenaries, in the long run, poses a serious threat to the independence, sovereignty, territorial integrity and harmonious development of the state<sup>4</sup>. The Mozambican government has never commented on complaints and allegations of human rights violations by the FDS.

In addition to numerous Press reports, last April, 17 national and international civil society organisations wrote a letter to the President of the Republic, Filipe Nyusi, in which they expressed their concern about the increase in police violence and brutality against defenceless civilians in Cabo Delgado.

The brutality is being exerted on the people by members of the Rapid Intervention Unit (UIR) and the Special Operations Group (GOE). In the same statement, the organisations also denounced the harassment and intimidation of civil society groups and journalists working in the terror ravaged province<sup>5</sup>.

#### **4. Exercise of Freedom of the Press and Expression**

The Constitution of the Republic enshrines the right to freedom of the Press and freedom of expression in Article 48, partly as interconnected fundamental freedoms and corollary to the right to information. Freedom of the press and freedom of expression

<sup>1</sup> <https://cddmoz.org/ataques-armados-em-cabo-delgado-a-guerra-silenciosa-e-silenciada-que-deixa-milhares-de-pessoas-desesperadas/>

<sup>2</sup> <https://cddmoz.org/?s=UNI%C3%83O+AFRICANA+%C3%89+CONTRA+O+USO+DE+MERCEN%C3%81RIOS+>

<sup>3</sup> <https://cddmoz.org/?s=USO+DE+MERCEN%C3%81RIOS+IN+CONFLICT+ARMADO>

<sup>4</sup> <https://cddmoz.org/perante-o-silencio-do-governo-as-novidades-sobre-a-guerra-contra-o-terrorismo-que-chegam-aos-mocambicanos-atraves-dos-mercenarios/>

<sup>5</sup> <https://cddmoz.org/17-organizacoes-nacionais-e-internacionais-escrevem-ao-presidente-da-republica-sobre-a-violencia-policial-em-cabo-delgado/>

are also legally enshrined in international human rights instruments,

The exercise of freedom of the Press and expression is based on the principle of the democratic rule of law enshrined in Article 3 of the Constitution of the Republic, which states: "The Republic of Mozambique is a Rule of Law, based on pluralism of expression, democratic political organisation, respect for and the guarantee of fundamental human rights and freedoms".

However, contrary to the standards and principles set out above, in the first half of 2020, the exercise of freedom of the Press and freedom of expression was violated strongly and constantly.<sup>6</sup> The institutions responsible for the promotion, respect, protection and realisation of freedom of the Press and expression, namely the PGR, the Supreme Council of the Media (CSCS), the Information Office (GABINFO), the National Journalist Union (SNJ) and the Parliament did little or nothing to prevent or resolve the cases of violation of the freedoms of the press and expression some of which are listed below. The PGR for instance has been accused of directly perpetuating the violations, even though it has a specific legal responsibility to safeguard the fundamental freedoms in question.

- On April 7, 2020, Ibraimo Abu Mbaruco, a journalist and announcer for Palma Community Radio, disappeared in strange circumstances on his return from work, his whereabouts are still unknown. The Press gave

indications that this journalist was supposedly abducted by members of the Defence and Security Forces (FDS) in Palma. MISA

Mozambique, in its statement on this matter published on April 9, 2020, said that "moments before, Ibraimo Mbaruco had sent a short message (SMS) to one of his colleagues, informing them that 'he was surrounded by the military'. He said he had not answered the calls since then, although his phone was still communicable". MISA

Mozambique, in its report on the disappearance of journalist Ibraimo Mbaruco in Palma (Cabo Delgado)<sup>7</sup>, noted that "a police officer assigned to the District Command of Palma, confided to MISA Mozambique, in anonymity, that "it was, in fact, the Armed Forces of Defence of Mozambique (FADM) that took the journalist", and added that he was aware that Ibraimo Mbaruco was taken from Palma to Mueda, where the Armed Forces have an interrogation room.

- In the first half of 2020, the PGR formalised the initiation of criminal proceedings against the journalists Fernando Veloso and Matias Guente, respectively Director and Executive Editor of Canal de Moçambique<sup>8</sup>. This is the case no. 85/11/P/2020, which is taking place in Section 7 of the Maputo City Prosecutor's Office, in which the two journalists were charged with the crime of violating State secrets, which is provided for and punishable under the Criminal

Code in force in Mozambique. The newspaper Canal de Moçambique is believed to be the one being prosecuted through the arrest of the journalists. The criminal case is related to the publication, in the March 11 edition of this year, of a report on the existence of a confidential agreement/contract signed on February 28, 2019, between the Ministries of National Defence and Interior and the oil companies Anadarko (now Total) and Eni (now Mozambique Rovuma Venture - MRV), which exploit natural gas in the Rovuma basin, in Cabo Delgado. According to the confidential contract in question, the two ministries agreed to deploy agents of the Rapid Intervention Unit (UIR) and military personnel of the FADM to protect the operations of oil companies, including their staff and facilities. In return, the multinational companies would make monthly payments to the Ministry of National Defence which, in turn, sends the sums, in the form of additional remuneration, to the FDS personnel deployed on the ground to repel attacks by terrorist groups against oil companies' interests. The Mozambique Channel had access to a copy of parts of this confidential contract, which revealed acts of corruption and abuse of power in the actions of the public administration bodies. Instead of investigating the legality of the confidential contract, as well as the pressing issues of that contract, within the framework of the rules of action of the Public

<sup>6</sup> <https://cddmoz.org/dia-mundial-da-liberdade-de-imprensa-violacao-dos-direitos-dos-jornalistas-e-tentativas-de-silenciamento-marcam-as-celebracoes-em-mocambique/>

<sup>7</sup> <https://www.misa.org.mz/index.php/destaques/noticias/77-relatorio-sobre-o-desaparecimento-do-jornalista-ibraimo-abu-mbaruco-em-palma-cabo-delgado>

<sup>8</sup> <https://cddmoz.org/nao-a-perseguiçao-de-jornalistas-e-seja-urgentemente-arquivado-o-processo-crime-contr-o-canal-de-mocambique/>

Administration and the oil companies in Mozambique, the PGR decided to criminally prosecute freedom of the Press and of expression outside the constitutional norms and principles that guarantee respect for fundamental rights and freedoms.

- On April 14, 2020, Hizdine Achá, a journalist from STV (the largest private television channel in Mozambique) based in Pemba, was arbitrarily arrested and taken to the police station by members of the UIR and the Special Operations Group (GOE), where he was threatened and forced to erase on his mobile phone the images he had recorded, as part of his journalistic and democratic citizenship work, of police violence

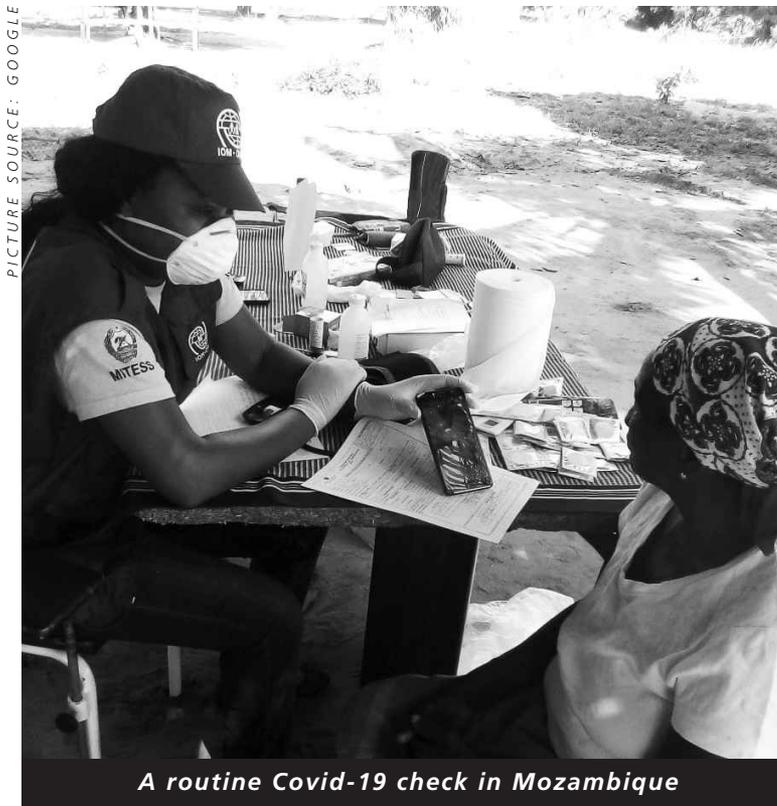
against civilians in the Paquitequete neighbourhood, in the capital city of Cabo Delgado.

- The journalist, Omardine Omar, of the digital newspaper Carta de Moçambique, was on June 25 arrested in strange circumstances by PRM agents and spent three days in detention allegedly for disobeying the measures imposed by the State of Emergency, having first been held at the 7th Police Station of PRM in Maputo and then later at the Provincial Penitentiary of Maputo (former Central Prison of Maputo)<sup>9</sup>. During this period, the journalist was isolated from everything, without being heard and without the right to a lawyer. After his release, due to pressure exerted by Carta de

Moçambique on the Justice authorities, Omardine Omar was summarily tried in a criminal court, he was sentenced with an option to pay a fine.

- Also in the first half of 2020, in a clear act of contempt and discrimination against the private Press, the PRM General Command, without sufficient legal basis, decided to exclude private and/or independent media from the coverage of some weekly briefings. The General Command of PRM decided to convene only Televisão de Moçambique (TVM) and Rádio Moçambique (RM), two public media bodies for the weekly briefings.
- MISA Mozambique, in its Half-Year Activity Report for 2020, refers to 14 cases of violation of freedom of the Press and expression during the period under review. Most of these violations were perpetrated by PRM, through threats, physical assault and arbitrary arrests.
- It should be noted that during the first half of the year, journalists were virtually banned by the FDS from covering and investigating the terrorist attacks in Cabo Delgado<sup>10</sup>.

The public discourse of the Government of Mozambique led by President Filipe Nyusi, with regard to freedom of opinion, through the exercise of freedom of the press and expression, represents a purely theoretical political will without practical enactment. When he assumed



*A routine Covid-19 check in Mozambique*

PICTURE SOURCE: GOOGLE

<sup>9</sup> <https://cddmoz.org/cdd-condena-detencao-violenta-do-jornalista-omardine-omar-e-exige-que-seja-imediatamente-restituído-a-liberdade-2/>  
<sup>10</sup> <https://cddmoz.org/bispo-de-pemba-em-discurso-directo-cabo-delgado-vive-uma-situacao-de-isolamento-e-nem-parece-que-fazemos-parte-de-mocambique/>

office for the second term on January 15, 2020, he made a public commitment to do everything possible to ensure respect for human rights and differences of opinion as to values that should be encouraged as they generate alternative solutions to the country's problems.

Freedoms of expression and the Press are indispensable conditions for the full development of democratic society and the human person. These freedoms are the cornerstone of any free and democratic society, as they are the condition and the vehicle for the exchange and development of opinions. Freedom of expression is a necessary condition for the realisation of the principles of transparency and the promotion and protection of human rights. A free, uncensored and unimpeded Press is essential in any society to guarantee freedom of opinion and expression and the enjoyment of other citizens' rights and freedoms and such a society is being advocated for in Mozambique.

## 5. Protection of Human Rights Defenders

The deterioration of the human rights situation and the democratic rule of law that characterised the first half of 2020 intensified with increased threats, harassment and violations of the rights of human rights defenders in Mozambique. The spell did not spare journalists, activists, civil society organisations and independent media.

Even though human rights defenders have their own status and specific protection under the UN instruments and mechanisms for the protection of

the rights of human rights defenders, as well as at the level of the African Commission on Human and Peoples' Rights, they are subjected to threats, defamation campaigns, arbitrary arrest and ill-treatment. Many are at risk of violent attacks and murders by criminal gangs, state organs and entities.

The hate speech against critics of poor governance and human rights defenders reached its peak in the first half of 2020, and it had as protagonists, public figures, some of whom were close to the President of the Republic and had prominent roles in the Public Administration advocating for it. The Chairman of the Board of Directors (CEO) of the National Science and Technology Parks Company, Julião Cumbane, even advised the government to use "extra-legal" means to silence journalists reporting on terrorism in Cabo Delgado<sup>11</sup>. Social networks, especially Facebook, have been the mechanism most used by these figures, better known as "Digital Militiamen".

Journalist Gustavo Mavie's election to the Central Public Ethics Commission generated protests and a wave of public outrage after he uttered strong and intimidating attacks on human rights defenders and civil society organisations. The Centre for Public Integrity (CIP) has been one of its victims.

Reference can also be made to the historian Egídio Vaz and the lawyer Elísio de Sousa, as figures which stood out in a campaign to incite hatred, violation and abuse of the rights of human rights defenders, when they advised the government to despise

and disregard the work of civil society organisations and the independent Press. These figures, which have raised funds from the public purse to promote hate campaigns, have even brought to the attention of the public prosecutor's office the prosecution of some human rights defenders, as well as investigating certain critical civil society organisations in the system of governance.

The first half of 2020 was characterised by the instilling of a climate of fear with regards to social activism and the exercise of freedom of expression. The government was extremely intolerant of human rights activists, academics and the independent press. As a result, citizens now either speak anonymously or are afraid to exercise freedom of opinion to avoid government aggression on them, especially by the notorious "Death Squads". In Maputo City, one of the major fears among activists and citizens fears is to be taken to the "Bairro Chiango", a well-known stage for the torture of human rights and social activists, critics of poor governance or the deficient performance of state institutions. In mid-January 2020, a then Deputy Minister said at the centre of a restaurant that the matter of Adriano Nuvunga (Executive Director of the CDD) could be solved with a bullet because he was already too much in his interventions! Nuvunga publicly denounced this threat at a public event and unashamedly how a government official could openly advocate for violence.

Most recently, Prof. Adriano Nuvunga received threats of the bombing of his

<sup>11</sup> [https://cddmoz.org/wp-content/uploads/2020/02/CDD\\_condena\\_ameacas\\_de\\_silenciamento\\_de\\_jornalistas\\_que\\_reportam\\_sobre\\_os\\_atques\\_armados\\_em\\_cabo\\_delgado.pdf](https://cddmoz.org/wp-content/uploads/2020/02/CDD_condena_ameacas_de_silenciamento_de_jornalistas_que_reportam_sobre_os_atques_armados_em_cabo_delgado.pdf)

house and family<sup>12</sup>. Therefore, the situation of protecting the rights of human rights defenders in Mozambique is precarious in a context where the government of the day and the institutions of Justice give room for the spread of hate speech, intimidation, arrest and murder of social activists, critics of the system and civil society organisations.

## 6. Conclusion

Mozambique has been, even before the Covid-19 pandemic, facing serious democracy and human rights challenges. The 2019 general elections, with the murder of the human rights defender, Anastácio Matavele, the illegal detention and incarceration of the 18 pro-democracy activists in Gaza province, the fraudulent election, which has not only jeopardised the quality of the election but has also set in motion a trend of democratic closure with clear violations of human rights.

Moreover, this has been exacerbated by the ongoing insurgency in northern Mozambique, which has led to the militarisation of the already shrinking civic space. This has heightened the

abuse and gross violations of human rights and deepened the humanitarian crisis in the area. The citizenry and journalists' ability to visit the area had been made impossible by the state defence forces. So, this is affecting the situation in the country.

Democracy and human rights are also being affected by the Junta Militar, in the central part of the country, which is led by Mariano Nhongo, who is a dissident from the peace process that is already ongoing between RENAMO party and the government. Consequently, this situation has resulted in losses of lives, destruction of properties and a situation of instability for more than 30 years in Mozambique.

This report concluded that the failure of the State to ensure the effective realisation of human rights and development through democratic institutions is notorious. Communities living in resource-rich areas still lead miserable lives and the people live in a climate of fear and terror. The government should aspire to protect the human dignity of all citizens, to improve the quality of life and standard

of living, and to enhance their well-being is at the heart of the concepts of human rights and development. The enforceability of human rights is increasingly urgent in the country, since violations are so common, even though the State is a signatory to numerous declarations, charters and international conventions, and has a Constitution that very well protects human rights.

Therefore, the Covid-19 context has not only given the government the excuses to limit freedoms and put vocal critics under surveillance, but also the State of Emergency and subsequent extensions, although a strategic necessity, have had a severe impact on the lives of people and operations of institutions, including human rights defenders, human rights organisations and civil society organisations, who rely on open and free civic space to carry out their legitimate work, which is to promote and protect human rights.

<sup>12</sup> **MOZZ24H:** <https://www.moz24h.co.mz/post/amnistia-internacional-condena-amea%C3%A7as-contra-o-investigador-mo%C3%A7ambicano-adriano-nuvunga>

**MMO – Moçambique Media Online:** <https://noticias.mmo.co.mz/2020/10/amnistia-internacional-condena-ameacas-contra-o-investigador-mocambicano-adriano-nuvunga.html>

**VOA Português:** <https://www.voaportugues.com/a/amnistia-internacional-condena-atentado-contra-investigador-mocambicano-adriano-nuvunga-/5611382.html>

**Angola News:** <https://angola.shafaqna.com/PT/AL/323262>

**AMNESTY INTERNATIONAL:** <https://www.amnesty.org/en/latest/news/2020/10/mozambique-investigate-bomb-threats-against-civil-society-leader/>

**PAN AFRICAN VISIONS:** <https://panafricanvisions.com/2020/10/mozambique-civil-society-leader-adriano-nuvunga-facing-bomb-threats/>

**TODAY NEWS AFRICA:** <https://todaynewsafrika.com/rights-group-urges-mozambique-to-investigate-bomb-threats-against-civil-society-leader-adriano-nuvunga/>

**MODERN GHANA (MG):** <https://www.modernghana.com/news/1033977/mozambique-investigate-bomb-threats-against-civil.html>

**Tolerance.ca:** <https://www.tolerance.ca/ArticleExt.aspx?ID=480017&L=en>

**ForeignAffairs:** <https://foreignaffairs.co.nz/2020/10/07/mil-osi-ngos-mozambique-investigate-bomb-threats-against-civil-society-leader/>

# South Africa: A model of democracy and human rights during the Covid-19 Pandemic?



BY CORLETT LETLOJANE

The Executive Director Human Rights Institute of South Africa (HURISA)

## Introduction

This paper attempts to analyse the state of human rights in South Africa in the context of COVID19. It will provide key steps the government followed in responding to the virus to save the lives of citizens. The analysis employed the following questions served as tools to discover what transpired, the consequences and impact on the country.

What are the main current human rights and democracy issues concerning South Africa? What are the non-state actors' positions on the issues or concerns? What actions are

being taken to address the challenges? What are the asks to (i) Regional peers and (ii) Regional policymakers?

In South Africa, the President announced a national disaster after the first case of the coronavirus was reported in early March 2020. The government responded swiftly by placing the country under lockdown between March 27 and April 30, 2020, with stringent preventative measures to mitigate effects/spread of the pandemic. Locally, many people and opposition parties praised the government for its quick and decisive response even when the country's economic conditions were austere<sup>1</sup>. The World Health Organisation (WHO) also commended South Africa for the way it had dealt with the pandemic.<sup>2</sup> Although the national disaster was announced with support of leading opposition parties, there were mixed feelings in the country concerning the President's bypassing of a parliamentary process and establishment of the National Command Council (NCC).

The President also announced that the National Disaster Management Act would be invoked to mitigate effects/spread COVID-19. The military was deployed to support the police in

maintaining law and order at a budget of R641 million. This budget was subsequently increased to R4,9 billion after 73000 military personnel were added to assist the police. Civilians' right to the movement was constrained, people were supposed to keep indoors, hygiene protocols that expected people to regularly "wash hands with safe water, soap and social distancing were enforced.". The business was closed except for commercial shops which were allowed to sell foodstuff. Schools, border posts, flights, buses and trains were closed, taxi companies were allowed to operate, although maintaining a maximum number of passengers. Civilians were only allowed to travel to receive medical care or go to shops to buy food.

These measures impacted severely on people's livelihoods and hit hard on people in the low-income brackets, including, women, youth, migrants, informal traders mainly, unemployed, domestic workers, trolley pushers, the poor living in overcrowded townships, informal settlements, shack dwellers with no infrastructure for safe water and sanitation. Hunger and food security threatened livelihoods. The President announced an R500billion stimulus package that would be

<sup>1</sup> Corruption Watch indicated the country was facing 29.1% unemployment rate, a budget deficit, and shrinking economic growth when the lockdown was announced.

<sup>2</sup> Speech by President Cyril Ramaphosa on 23 March 2020: South Africa's response to Coronavirus COVID-19 pandemic. Available at <https://www.gov.za/speeches/president-cyril-ramaphosa-south-africas-response-coronavirus-covid-19-pandemic-23-apr-2020>

provided to help the needy and keep the country's economy afloat while combating effects of the pandemic<sup>3</sup>.

The question was: Where was the money coming from? The President listed sources which included Unemployment Insurance Fund, global partners and international financial institutions; World Bank, International Monetary Fund, BRICS New Development Bank and the African Development Bank. The National Treasury was involved in various funding transactions with these institutions. This was a worrying trend because opposition parties were not being involved in decision-making but by the NCC. A solidarity fund was also established for soliciting more donations from the private sector, individuals, groups and donors with a seed capital of R150m provided by the government to save lives and support the economy<sup>4</sup>.

## 1. Current human rights and democracy concerns in South Africa under COVID19 context

It would seem unfortunate that from the earlier overwhelmingly goodwill extended to the government by the

citizenry, matters reached a low point that many people questioned the constitutionality and lawfulness of some of the government's decisions<sup>5</sup>. The police and military were harsh in enforcing the lockdown regulations. People living in overcrowded environments were expected to comply with hygiene protocols and confinement with no infrastructure for water and sanitation. People were evicted from illegal occupations of land and shacks were demolished despite a government moratorium passed to keep people, mainly women and children, safe from the virus. Reports of police and military brutality, murder, beatings, torture as well as arbitrary arrests of civilians for non-compliance were recorded<sup>6</sup>. One of the most disturbing killings was that of Collins Khosa. Security officers allegedly found him drinking alcohol in his yard and assaulted him following an altercation. Khosa later died of injuries he sustained as a result of the assault.<sup>7</sup>

The police oversight body, the Independent Police Investigative Directorate (IPID), received 828 complaints between March 26 and May 5, 2020. Of those complaints, 376 (45%) were lockdown-

related.<sup>8</sup> Sex workers found on the streets were arrested and assaulted. They were tortured, subjected to inhuman and degrading treatment, resulting in the death of a sex worker in police cells<sup>9</sup>.

Gender-based violence (GBV) and brutal murders of women, young girls and infants increased disproportionately across the country. The Minister of Police expressed concern at the escalating levels of GBV and indicated that in every three hours, a woman is murdered and raped in South Africa. The President described this scourge as a second pandemic. The perpetrators of this violence make South Africa an unsafe place for women and girls.

Regarding the distribution of humanitarian aid, allegations of blatant graft in state institutions have been reported happening from the level of the Presidency, national, provincial, local and the private sector. The reports exposed unlawful involvement by public officials in funds planned for the procurement of goods and services for the country's response to the coronavirus pandemic, such as the manufacture of face masks, ventilators and the distribution of food parcels<sup>10</sup>.

<sup>3</sup> This amount equals 10% of the country's gross domestic product and was to be split among several programmes aimed at helping businesses, poor people, and municipalities, among others.

<sup>4</sup> Two prominent business families in SA Rupert and Oppenheimer each contributed 1 billion to assist small business and their employees affected by COVID19, President Statement 23 March 2020. Others joined ELMA South Africa Foundation, Hasso Platter Foundation, Allan and Gill Gray Philanthropy, Lottery South Africa, Telesure Investment

<sup>5</sup> Vuyani Ngalwana, SC, Sunday Independent, 2 May 2020: Do Covid-19 regulations pass the constitutionality test in SA? <https://www.iol.co.za/sundayindependent/analysis/do-covid-19-regulations-pass-the-constitutionality-test-in-sa-47474336>. The much longer legal opinion by the writer is titled: Do the Covid-19 Regulations Pass the Rationality and Constitutionality Test in South Africa? He argued that the body lacked constitutional legitimacy, as it is not clear under which section of the Constitution it is established. He added that strangely, the NCC excludes certain members of cabinet including the Deputy President.

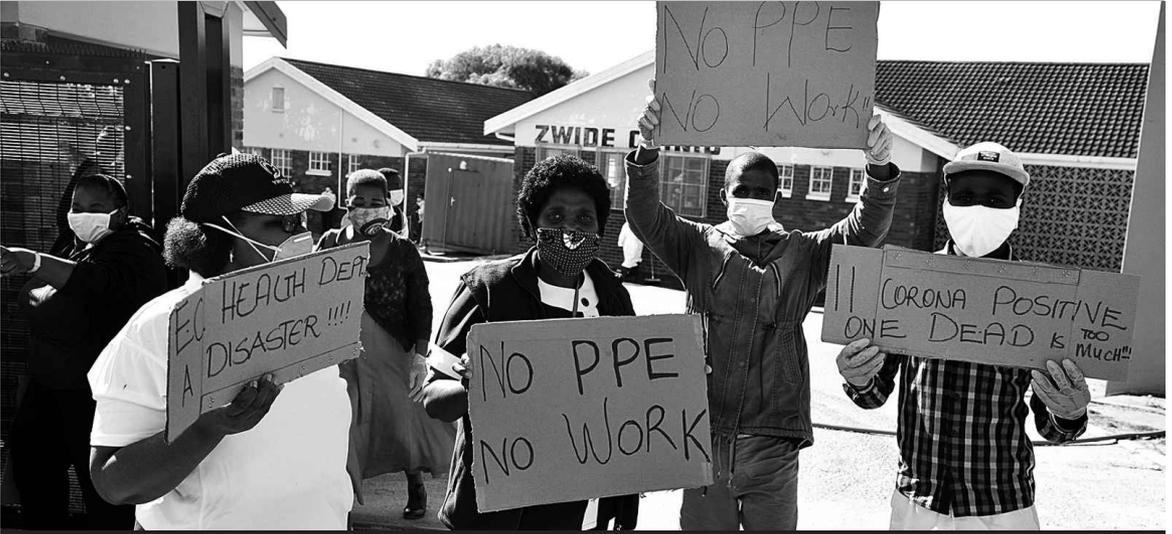
<sup>6</sup> HURISA, Ditshwanelo - The Botswana Centre for Human Rights, Transformation Resource Centre based in Lesotho, the impact of the lockdown on human rights, webinar held on 8 April 2020

<sup>7</sup> This case was widely reported in South Africa mainstream and social media. See e.g. SABC, Family of Alexandra man allegedly killed by soldiers don not trust SANDF probe. <https://www.sabcnews.com/sabcnews/family-of-alexandra-man-allegedly-killed-by-soldiers-doesnt-trust-sandf-probe/> See also the HURISA Report A Situational Analysis of Human Rights and Democracy in the SADC Region, (May 2020), at pp 22-27.

<sup>8</sup> Daily Maverick, 26 May 2020, Lockdown 'has made ordinary people criminals', <https://www.dailymaverick.co.za/article/2020-05-26-lockdown-has-made-ordinary-people-criminals/#gsc.tab=0>

<sup>9</sup> KII informant Sweat - HURISA assessment Women Peace Builders by Cathy Kodiemoka

<sup>10</sup> Auditor General uncovered massive corruption in the spending of 500 billion rands (\$26bn) Covid-19 relief funds and several suppliers have pleaded guilty to inflating prices of goods such as face masks by up to 748 per cent.



**Health workers at high risk as managers withhold PPE**

Tenders of worth millions were not advertised, but names and companies belonging to government officials and friends of senior politicians with companies with no track record of rendering goods or services required to combat a pandemic were awarded tenders.

At the provincial level, KwaZulu Natal, Eastern Cape, Free State and Gauteng, Limpopo Provinces had the highest reports of graft<sup>11</sup>. In the Eastern Cape province, R4,8 million was lost in corruption in an alleged awareness campaign that never happened. Gauteng Department of Health MEC Bandile Masuku was been placed on leave and the former chief financial officer Kabelo Lehloenyha pension was ordered to be frozen by the Special Tribunal and civil action be instituted for the recovery of financial damage caused to the Department as a result of allegations of the irregular signing of more than R2billion personal protective equipment (PPE) contracts. Sons of the ANC secretary-general Ace

Magashule in Free State province were cited among awardees of tenders with unknown track records for rendering services for combating a pandemic. The presidential spokesperson's husband and member of the African National Congress(ANC) provincial executive committee benefited immensely. It is alleged R2,2billion in PPE tenders was awarded few days after the announcement of the lockdown<sup>12</sup>. The investigation has been let down because of allegations of police abuse of emergency procedures through the fraudulent awarding of contracts worth R540 million for the supply of PPE to unknown companies with no track records in rendering services for the prevention of a pandemic.

South African private sectors, Dis-Chem Pharmaceutical Company, and LevTrade International Pharmaceutical Retailer were also investigated for inflating prices of COVID-19 goods, such as respiratory and blue surgical face masks at the detriment of

desperate customers for protection against the virus.

Food parcels were not reaching the intended communities, families and individuals due to discrimination, patronage, hoarding or selling of food parcels against some local officials. Migrants including refugees and asylum seekers were excluded from many of the interventions put in place by the government to ameliorate the plight of the most vulnerable.<sup>13</sup> Some commentators have termed this exclusion as 'deeply troubling' 'inhumane', and against the spirit of *Ubuntu*.<sup>14</sup> Some migrants were affected as they were unable to meet the required criteria of presenting identity documents for receiving food parcels. Other migrants had expired documents and renewal was impossible because the Department of Home Affairs was closed during the lockdown period. Repatriations were implemented as a pretext to curb COVID-19 by returning migrants to their countries. This was done without

11 special. Tribunal South Africa has granted Special Investigation Unit urgent order to freeze R37.8 million held the in bank accounts of 40 Gauteng based companies.  
 12. The Sunday independent indicated that Thandisizwe Diko also dramatically inflated cost of critical good at R7 after purchasing from supplier at 75c.  
 13 Human Rights Watch, South Africa: End Bias in Covid-19 Food Aid, <https://www.hrw.org/news/2020/05/20/south-africa-end-bias-covid-19-food-aid>  
 14 Njabulo S Ndebele and Judy Sikuzza, Daily Maverick, 19 May 2020, <https://www.dailymaverick.co.za/opinionista/2020-05-19-african-foreign-nationals-are-being-ignored-in-the-fight-against-covid-19-where-is-our-ubuntu/>

considering the potential risk they may face and although international law encourages states to invoke the principle of non-refoulement.

## 2. Positions of Non-State Actors on Concerning Issues

Women human rights defenders, civil society, community activists, trade unions and journalists, working remotely with limitations of the lockdown, have been following on these issues closely. Despite the lockdown-induced challenges they managed to maintain the vibrancy and consistency through online platforms which they utilised to conduct awareness campaigns, raising interventions, empowering communities to monitor implementation of COVID-19 regulations and providing technical support to grassroots activists who were engaging communities to adhere to COVID-19 preventative measures. Advocacy initiatives also have been embarked on against the GBVF scourge, and malfeasance in food parcels, PPE, through protests<sup>15</sup>. These protests are often quashed by heavy-handed police as they disperse protesters using rubber bullets, tear smoke and arbitrary arrests.

A group of CSOs, interfaith, Ahmed Kathrada Foundation, former public protector Thuli Mandonsela, former Minister Derek Hanekom and Rev Frank Chikane<sup>16</sup> called for civil society's

vigilance against corruption and demand for transparency, accountability and good governance. Calls were also made for interaction with the President and officials of the ANC to promote human rights and hold the perpetrators of corruption accountable.

Research studies on the state of GBVF have been commissioned by various non-state actors, including Corruption Watch, Foundation for Human Rights, African Monitor, HURISA, and Sonke Gender Justice. Some of the actions conducted include the promotion of three Bills for the adoption of strong legislation to curb the scourge on women's peace and security development of CSO Shadow Report on CEDAW, as well as monitoring civic space continues to be a top priority.

## 3. Actions that are being taken to address the challenges

The Auditor-General report revealed corruption in the handling of COVID-19 funds, leading to a public outcry and the President's intervention. The President has authorised the Special Investigation Unit to investigate any allegations relating to misuse of COVID-19 funds across all spheres of government. These investigations have commenced, with the special tribunal ordering suspensions of suspected officials, freezing of pensions and banking accounts of responsible

officials, and companies awarded tenders irregularly by government officials. Although this might be late, the National Treasurer has taken steps to tighten procurement regulations.

In respect of GBVF, three bills advocating for the comprehensive address of the scourge are in the public domain for consultation. The bills seek to ensure that the outlined profound provisions are incorporated in legislation. The bills are namely Sexual Offences Amendment Bill, the Criminal and Related Amendment Bill as well as the Domestic Violence Amendment Bill.

The Competition Commission Tribunal found Dis-Chem guilty of excessive pricing and exploitation of customers in need of hygiene products to fight COVID-19 and fined the company R1,2 million. LevTrade was fined R50 million and ordered to make a R10 000 contribution to the Solidarity Fund and a donation of surgical masks and sanitisers worth R25000 to the children's home.

In respect of police brutality, the Pretoria High Court vindicated the Khoza family and citizens welcomed the ground-breaking judgment<sup>17</sup> ("the Khoza judgment") for granting a relief denied by the Constitutional Court affirming non-derogable of rights for all persons within the territory of the Republic of South Africa guaranteed in the constitution.<sup>18</sup> These include

15. The ANC Spokesperson Pule Mabe re-emphasised the ANC 54th National Conference resolution to fight any form of corruption and state capture irrespective of who is involved". He called for the law enforcement agencies to act against any malfeasance without, fear, favour or prejudice concerning allegations of the supply chain in the COVID19

16 Sandile Zungu, of the Black Business Council, also describing corruption in SA as being on "steroids

17 Carmel Rickard, Collins Khosa judgment: A win for all of South Africa against brutality by security forces, Daily Maverick, 18 May 2020; <https://www.dailymaverick.co.za/article/2020-05-18-collins-khosa-judgment-a-win-for-all-of-south-africa-against-brutality-by-security-forces/>. See also, Mia Swart, 17 Ma 2020: S Africa court issues orders to end police abuse during a lockdown: Praise for a court order compelling gov't ministers to stop security forces' brutality following death of Collins Khosa, available at <https://www.aljazeera.com/news/2020/05/africa-court-issues-orders-police-abuse-lockdown-200516105512595.html>

18 Khosa and 2 Others v Minister of Defence & Military Veterans and 4 Others (Case No: 21512/2020).

the rights to human dignity, life, not to be tortured in any way and not to be subjected to cruel, inhuman or degrading treatment.<sup>19</sup>

The Court ordered the police, including metro police, and the military to “act in accordance with the Constitution and the law including customary international law.”<sup>20</sup>The court also ordered the suspension of the military officers that were adjacent to the deceased’s house within five days of the judgment. The Minister of Police was ordered to publish a code of conduct within five days. The police and military, together with their entire chains of command, were directed to warn their members that “any failure to report, repress and prevent acts of torture or cruel, inhuman and degrading treatment or punishment shall expose them each individually to criminal, civil, and/or disciplinary sanctions.”<sup>21</sup>

## 5. Advocacy actions directed at regional CSOs and Human Rights Defenders

South Africa faces multiple pandemics. The President has described the GBVF as a second crisis followed by corruption, inequality and discrimination. South Africa is a state party to the African Charter on Human and People’s Rights Protocol on the Rights of Women in Africa whose provisions require state parties to consider all forms of violence, rape, sexual exploitation as war crimes, genocide, crimes against humanity and prosecution of the perpetrators. Advocacy actions are, therefore, being directed to regional partners to exert pressure on South Africa to end GBVF using regional human rights instruments and to hold South Africa accountable.

There is a need to advocate for the development of a regional policy to end crimes against humanity, hate crimes perpetrated against migrants, asylum seekers, refugees, LGBTI+ Q individuals. Co studies against perceptions that sexual orientation and gender identity is Eurocentric should be conducted.

There is need for institutions to work together to fight corruption in the region, exposing suspects of this crime

fearlessly and advocating for civil actions, seizure of assets of suspects and prosecutions of fraud and malfeasance in public and private institutions.

## 6. Advocacy Directed to Regional Policy Makers

There is a need for the promotion of implementation and compliance with the SADC Declaration Treaty, specifically Article 5, Article 23. Functioning national committees should be put in place in every country of the region. SADC is also being tasked with the creation of a human rights organ charged with promotion and protection of all guaranteed rights in the treaty, including all protocols. Advocacy actions directed at the African Commission on Human and People’s Rights should be undertaken. Co-ordination of training workshops on regional human rights mechanisms for officials, national human rights institutions, including Magistrates, judiciary and multi-stakeholders should be prioritised. Advocacy for ACHPR to use its locus standi to institute sexual violence affecting women in South Africa at the African Court on Human and People’s Rights.

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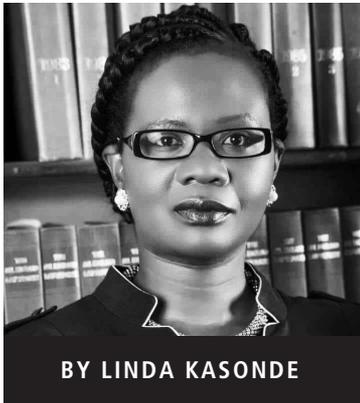
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<sup>19</sup> Ibid, at para 146.

<sup>20</sup> Ibid, at para 146: 2.2.

<sup>21</sup> Ibid, at para 146: 3.3.

# Covid-19 in Zambia: Consolidating the Erosion of Freedom



BY LINDA KASONDE

**The Executive Director of Chapter One Foundation and Former President of the Law Society of Zambia**

Zambia has become less free over the last 10 years and this narrative continues to be threatened by the rise of populism and increased authoritarianism. Since 1964, an extensive amount of power remains vested in the Republican President. Since independence, attempts at constitutional reforms have failed to adequately address this problem. Subsequently, negative repercussions on constitutionalism, the separation of powers and the rule of law in Zambia have emerged. Successive attempts at constitutional reforms have failed to liberate the people of Zambia from restrictions on participation in the political space and, if anything, have heightened political tensions in the country. Since the demise of President Levy Mwanawasa, who was widely perceived as observing the rule of law and championing the curbing of corruption, there has been a decline in adherence to the principles

of constitutionalism and the rule of law in the country.

Zambia recorded its first two cases of the Covid-19 virus on March 18 2020. At first, the virus appeared to have been contained, but as the number of local transmission cases increased, the infection rate rose exponentially. According to official statistics, as at September 27 2020, Zambia had recorded a total of 14,641 Covid-19 cases, with the official number of Covid-19 related deaths at 318 ([https://web.facebook.com/mohzambia/?\\_rdc=1&\\_rdr](https://web.facebook.com/mohzambia/?_rdc=1&_rdr)).

Zambia was hitting the peak of the pandemic, but to avoid curtailing the means of survival for ordinary Zambians at that time, the Zambian government announced that there would be no lockdown in that country since the majority of Zambians live on a hand-to-mouth basis.

So far, Zambia has been very lucky, as it has not seen apocalyptic numbers of deaths and its health facilities are just about coping with the numbers of the sick. Only a few months ago, the President effectively announced that the government was advising citizens to follow the health guidelines laid down, but effectively follow the "new normal" which meant each man for himself and God for us all (<https://www.zambiahc.org.uk/>

*wp-content/uploads/2020/05/President-Lungu.pdf*).

While the jury is out on whether the official figures tally with the actual numbers, it appears that the pandemic in Zambia is being managed reasonably well. Despite a shortage of protective clothing and testing kits (<https://usaka.sites.unicnetwork.org/tag/ppel/>), the health facilities are generally adequate.

However, as with many countries across the globe, the pandemic created an opportunity for political expediency which has had a detrimental effect on the human rights situation in the country. This is in the context of the fact that Zambia will be going to the polls to elect a new government in 2021. All roads lead to 2021 and as a result, political expediency has been the order of the day. The government has introduced two statutory instruments under the Public Health Act to manage the pandemic. Both instruments are thin on the details as to how the health regulations will be enforced. For example, in August 2020, police spokesperson Esther Mwata Katongo announced that the police would start arresting and fining people the equivalent of about US\$40 for failing to wear face masks in public (<https://diggers.news/local/2020/08/12/those-caught-without-masks-will-pay-k750-fine-police/>).

The police did start making arrests accordingly, but Home Affairs Minister Stephen Kampyongo rescinded the decision a couple of days later (<https://diggers.news/local/2020/08/18/kampyongo-directs-police-to-stop-arresting-charging-those-without-face-masks/>) as it became apparent that there was no legal backing for the move in the health regulations. In terms of human rights, probably Zambia's most well-known Covid-19 victim is *Prime Television*, a popular independent television station that had its broadcasting licence revoked following its refusal to broadcast government adverts and programmes on the Covid-19 pandemic for free amid the economic crisis facing the country (<https://cpj.org/2020/04/zambia-cancels-broadcaster-prime-tvs-license-police/>). The current Zambian government has a history of clamping down on media freedoms following the closure of the largest independent newspaper in Zambia, *The Post Newspaper* in 2016 (<https://www.civicus.org/index.php/media-resources/news/866-closure-of-zambia-s-post-newspaper-a-worry-for-freedom-of-expression>), and various other radio stations that have been critical of the government. The official reason given for closing the *Prime Television* station was that its broadcasting licence had expired.

Another casualty in respect to human rights has been the restrictions on freedom of assembly. Public gatherings in Zambia are governed by the Public Order Act, a notorious piece of legislation whose constitutionality has been challenged several times on the basis that its provisions are arbitrary and irrelevant in a democratic state.

Besides, adhering to the provisions of the Public Order Act, Zambians now have to get authority from the Ministry of Health or the local authority to hold public gatherings of more than five people (<http://znphi.co.zm/news/press-statement-on-covid-19-and-additional-preventive-and-control-measures-introduced-by-the-government-of-the-republic-of-zambia/>).

However, these restrictions are being selectively applied. Government officials and individuals considered close to the ruling party freely hold rallies and convene and address large public gatherings without adherence to any health and safety regulations. Zambians have been told that government officials cannot be blamed for people following them around (<https://diggers.news/local/2020/08/04/scores-defy-covid-19-rules-to-witness-lungus-launch-of-kafue-overpass/>). A group of youth protesters attempted to hold a public protest on the socio-economic challenges faced by Zambian youth on June 22, 2020. The police came out fully armed in riot gear and roamed around the streets in armoured vehicles in an attempt to intimidate the protestors.

However, the quick-thinking youths took their protest to the bush and beamed it live to an audience of around 300 000 people on their social media platforms (<https://diggers.news/local/2020/06/23/youths-dribble-police-as-they-take-protest-to-the-bush/>). In June, there were reports of police arresting opposition members for attempting to hold meetings (<https://www.lusakatimes.com/2020/06/07/284893/>). This has led to many Zambians

either resenting any restrictions selectively imposed on them or believing that the pandemic was a hoax. As always, the hardest hit by any crisis are the poor and vulnerable. As with most countries, Zambians are grappling with how to send their children back to school (<http://www.daily-mail.co.zm/letting-children-go-as-schools-reopen/>). The country's ailing economy has been further crippled by the loss of business, which has resulted in unemployment or underemployment. The government has partnered with donors to provide social protection to the most vulnerable ([http://www.xinhuanet.com/english/2020-07/28/c\\_139246830.htm](http://www.xinhuanet.com/english/2020-07/28/c_139246830.htm)), but with 58% of the total Zambian population (around 17 million people) living below the poverty datum line, according to 2015 World Bank figures, resources are stretched. Little has been done to ensure that the rights of the most affected by the pandemic are still protected, promoted and fulfilled and this is impacting on the overall effectiveness of the government's response to the pandemic.

However, the human rights challenges posed by the Covid-19 pandemic are part of a wider problem of democratic decline in Zambia. Most recently this has been demonstrated by the following:

### **a) The State's unwillingness to adhere to court orders**

This has undermined the legitimacy and credibility of the Judiciary, which is an integral part of ensuring that checks and balances are made on excesses of those in authority. For example in August

2018 following the general elections in Zimbabwe, opposition Movement for Democratic Change politician Tendai Biti sought asylum in Zambia. He was granted a court order that allowed him to remain in Zambia, but was nonetheless handed over to the Zimbabwean authorities and sent back to Zimbabwe in violation of the court order<sup>1</sup>.

### b) Public threats against members of the Judiciary

- In November 2017, President Edgar Lungu threatened judges not to follow the Kenyan court on the issue of whether or not he is eligible to stand in the 2021 presidential elections<sup>2</sup>.
- During the same month, the Presidential press aid Amos Chanda gave an interview on the public broadcaster suggesting that any judgment against a Member

of Parliament from the ruling party was not in the interests of justice. The statements<sup>3</sup> went further to suggest that there would be repercussions against any judge who rules against a Member of Parliament representing the ruling

- It is also worth noting that while the courts have been under attack from the Executive, the courts too have been heavy-handed in laying charges of criminal contempt against those that criticise them in the media<sup>4</sup>. This is a worrying trend as courts should ordinarily only speak through their judgments and their conduct of cases.
- The courts are also being used as a battleground to fight political battles, often resulting in judgments favourable to the sitting government.

### c) Abuse of the Public

### Order Laws

- The apparent partisanship of the law enforcement agencies in securing peace, security, law and order in relation to public meetings of the various political parties is of paramount concern. There has generally been an increase in politically-motivated violence by various political parties in the country. The law enforcement agencies must be seen to preserve and protect the safety and security of all involved.
- On September 29, 2017, police arrested six members of civil society for protesting against corruption on the day that the national budget was announced<sup>5</sup>. They were protesting against the purchase by the government of 42 fire engines at the cost of US\$42 million from a company affiliated to the ruling Patriotic



PICTURE SOURCE: GOOGLE

1 <https://www.telegraph.co.uk/news/2018/08/09/zimbabwean-opposition-figure-bit-deported-zambia-asylum-bid/>  
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Frontparty. The price is believed to be highly inflated. The group allegedly failed to follow the procedure for informing the police of its intended protest. After a night in jail, the human rights defenders and protesters were released, but are now facing trial charged with violating the Public Order Act and if convicted, they face up to six years imprisonment.

- In December 2019, popular artist Fumba Chama, better known as Pilato, was arrested on charges of unlawful assembly for conducting a workshop in Livingstone<sup>6</sup>. Activists Laura Miti and Bornwell Mwewa travelled to Livingstone to find out what they were being charged with and found themselves slapped with charges of disorderly conduct and assaulting a police officer. All three were discharged and acquitted in early September.

#### **d) The harassment of journalists and closure of alternative voices perceived to be anti-establishment in an environment where there appears to be a decreasing tolerance for divergent views**

- In June 2016, the government shut down the largest independent newspaper in Zambia, *The Post*, ostensibly for tax-related issues<sup>7</sup>. In August 2016, the Independent Broadcasting Authority (IBA), a

public agency run by officials appointed by the President, suspended the licences of three private media houses. The decision was made a few days after the country's leading opposition party filed a petition in the Constitutional Court contesting the outcome of the presidential election in which President Lungu was announced as the official winner.

#### **e) A blurring of the line between the ruling party and the government with party officials making statements on issues of government policy.**

The rhetoric and statements of high-ranking government officials and senior officials with the ruling Patriotic Front (PF) party have continued to pose a threat to civil society organisations, ordinary individuals and human rights defenders who are labelled as partisan to marginalise and intimidate them. The following has occurred since the 2016 general elections:

- In August 2016, the newly-created Constitutional Court handed down a judgment in favour of the Law Association of Zambia (LAZ) in which the LAZ had sued all cabinet ministers in their capacities for failing to leave office after the dissolution of Parliament. The court ruled that the ministers should pay back all the emoluments they received from the State coffers<sup>8</sup>.

- In March 2017, the Law Association of Zambia (LAZ) was targeted by ruling party MPs, who published a draft Bill in the national press which threatened to introduce measures to dissolve the organisation, which is the only professional legal organisation in Zambia<sup>9</sup>. This was in response to LAZ's vocal statements against infringements of constitutionalism and the rule of law. In response to the LAZ's advocacy, groups of young activists from the PF stormed the LAZ offices and threatened the association's president, Linda Kasonde. Members of the association that are affiliated to the ruling party later called for an extraordinary general meeting of the association to declare a vote of no-confidence in the Council of LAZ, a move which failed dismally.

### **Divide and Rule**

Article 3 of the constitution of the Patriotic Front manifesto seeks to "ensure that all the public institutions, State-owned enterprises and popular mass and similar organisations are led by persons who are members of the party and who are uncompromisingly committed to achievements of the party"<sup>10</sup>. This has played out well in Zambia's professional associations, the civil service and even non-governmental organisations. Any critic of the government on governance and related issues are labelled

<sup>6</sup> <https://www.themastonline.com/2019/12/21/stone-police-arrest-pilato-over-yellow-card-campaign/>

<sup>7</sup> <http://www.times.co.zm/?p=86367>

<sup>8</sup> <https://www.themastonline.com/2017/11/17/concourt-maintains-order-that-ministers-pay-back-money-earned-while-illegally-in-office/>

<sup>9</sup> <https://diggers.news/local/2017/03/20/dissolving-laz-will-dismember-zambia-mulongoti/>

<sup>10</sup> Constitution of the Patriotic Front, <http://www.lusakavoice.com/2014/11/16/constitution-patriotic-front-election-pf-party-president/>



PICTURE SOURCE: GOOGLE

*Hakainde Hichilema released from jail to jubilant reception*

“anti-government” and subsequently will often be abused through state-affiliated media or social media sites. This is one of the biggest threats to civil society and the media in Zambia.

## The rise of legal authoritarianism

On April 11, 2017, the government arrested Hakainde Hichilema (popularly known as ‘HH’), leader of the opposition United Party for National Development (UPND), for treason<sup>11</sup>. The charges were ultimately dropped, but only after he was held in prison for almost five months<sup>12</sup>. The release of HH was instigated by the Catholic Church and the Commonwealth. Following his release, the Commonwealth tried to spearhead peace-building initiatives to bridge the political divide<sup>13</sup>. The process proposed to incorporate electoral reform, enhancing judicial independence, enhancing media freedoms and freedom of expression, enhancing professionalism in the

police service and constitutional reform. This dialogue process will be important in ensuring free and fair elections in 2021. The government has since rebuffed the Commonwealth’s efforts, insisting that the dialogue process must be led by the Zambia Centre for Interparty Dialogue (ZCID), which is widely perceived to be favourable to the ruling party<sup>14</sup>. The three church mother bodies on their part are trying to position themselves to lead the dialogue process as neutral arbiters. The dialogue process was used as a cover to create a quasi-legislative structure called the National Dialogue Forum which was a feature of the statute. It was created ostensibly to facilitate national dialogue by proposing amendments to the Constitution, electoral laws and the Public Order Act. The process was widely seen as illegitimate and not consultative enough. The proceedings were closed to the public and statutory penalties were introduced to stop information leaking from the

Forum. The result has been catastrophic.

In July 2019, the government published the Constitution Amendment Bill of 2019, which has already gone through its first reading in parliament, which proposes the consolidation of power in the Executive by increasing its influence over the functioning of the other organs of the State. The Bill further weakens National Assembly oversight by removing key functions entrusted on Members of Parliament and transferring such power and authority to the Executive.

The Bill also proposes the weakening of the independence of the Judiciary by removing the constitutional provisions that provide for the numbers of judges in the country’s most superior courts. This is the greatest threat to Zambia’s democracy since the 1972 national referendum that turned Zambia from a multi-party democracy into a one-party

<sup>11</sup> <https://www.aljazeera.com/news/2017/04/upnd-leader-hakainde-hichilema-charged-treason-170412173802546.html>

<sup>12</sup> <https://www.aljazeera.com/news/2017/08/zambia-frees-opposition-leader-hakainde-hichilema-170816085124209.html>

<sup>13</sup> <http://thecommonwealth.org/media/news/commonwealth-set-national-mechanism-zambia-peace-dialogue>

<sup>14</sup> <http://www.daily-mail.co.zm/church-critical-to-dialogue-process/https://www.lusakatimes.com/2018/04/06/pf-will-not-be-part-of-the-dialogue-process-organised-by-the-commonwealth/>

state. Students of history will recall that the Third Reich in Nazi Germany was built through a series of legislative changes which made Nazism legal. This is the threat posed in Zambia and other countries in the world. Coupled with increased surveillance and proposed cybersecurity laws that threaten freedoms in the digital space, the future does not look bright for Zambia at the moment.

### **The response by civil society**

Citizens and civil society organisations have instituted a campaign against the runaway corruption in Zambia as set out in various constitutional reports that include the Financial Intelligence Centre reports as well as the Auditor-General's reports as well to reclaim citizens' right to effective participation in the country's democracy. The campaign also raises concern on bad governance in the country, with particular focus on the Constitutional Amendment Bill (Bill 10 of 2019) which was recently published and whose provisions the campaigners are of the view will take the country's democracy backwards.

The campaign, which has been christened the "Yellow Card Campaign", has been carried out largely via social media under the hashtags *#YellowCard* and *#HandsOffOurConstitution*. A peaceful Yellow Card protest against corruption and bad governance was also held on Saturday, July 20, 2019, outside the Parliament Building. The *#YellowCard* campaign has had a massive response from the general public, which is very worried about the state of the nation. The

*#YellowCard* campaign holds the record for a hashtag on Zambia's *Twitter* streets. The movement is gathering momentum despite receiving some backlash from the government. There is also a group of youths that is separately agitating for the welfare of young Zambians.

International organisations are also coming out to condemn the proposed changes to the Constitution. The public is also being sensitised on the dangers of the proposed constitutional amendments. The Law Association of Zambia has announced that it will take legal action to try and stop the enactment of the Bill.

### **Recommendations**

As can be seen, the current state of affairs has not arisen overnight. It has been a gradual erosion of freedoms and the rule of law. The following measures are being proposed to address the shrinking civic space:

1. Pay attention when the alarm is raised, particularly by civil society organisations. Civic society organisations are often branded as alarmist or unpatriotic by governments and even the public, but the tell-tale signs of attacks on the media, the Judiciary and human rights defenders must be heeded.
2. The Bar Association and other professional organisations should champion the cause of human rights and the rule

of law. The Bar Association should also try and work in collaboration with civil society organisations.

3. Reach out to civil society organisations and human rights defenders when these things are happening. Expressing solidarity can not only have a calming effect on those whose rights and freedoms are being assaulted but also many governments respond to local and international pressure to desist from such actions.
4. Encourage CSOs to work together rather than to compete with or against each other.
5. Local and international CSOs need to work with credible non- governmental organisations in their respective countries.
6. Provide technical and material support to CSOs and human rights defenders who are under attack. Most important is legal support to defend human rights defenders and to challenge retrogressive laws. Chapter One Foundation is helping to fill in this gap in Zambia.
7. Bring it to international attention.

# Zimbabwe's deepening human rights crisis under the cover of Covid-19 lockdown



BY SITABILE DEWA

Executive Director -  
Women Academy for Leadership and  
Political Excellence (WALPE)

## 1.0 Introduction

The outbreak of coronavirus in Africa has exerted social, economic, political, health and environmental challenges on a continent that was already on its knees. These challenges thus pose a threat to democracy, human rights and rule of law. Zimbabwe has not been spared by the ravages of the pandemic, with 8 610 cases recorded and 255 deaths as of November 13, 2020. Since the advent of the virus, severe restrictions on fundamental human rights and democracy have been recorded countrywide, with the State descending heavily on dissenting voices and using unorthodox means to silence critics. More than 5,8 million Zimbabweans both in urban

and rural areas are food insecure.<sup>1</sup> Many Zimbabweans are now relying on donor assistance for survival. This is further straining an already fragile relationship between the government and the citizens. The pandemic has also created a breeding ground for corruption and those who have spoken publicly against the vice have been subjected to harassment and intimidation by state security agents, a case in point being that of a renowned journalist Hopewell Chin'ono, who was jailed for six weeks<sup>2</sup> for exposing corrupt acts by State officials and those linked to the President.

## 1.2 Some of the gross human rights violations recorded so far are as follows:

- **The criminalisation of civil society work.**

The State has been obsessed with insulting, name-calling and labelling civil society leaders sell-outs, especially those who have come out strongly to speak against its excesses. Many CSO leaders were forced into hiding just before the July 31, 2020, planned demonstrations. Some of those

harassed include Namatai Kwekweza, Vongai Zimudzi, Tsitsi Dangarembga, Obert Masaraure, Peter Mutasa, Noxolo Maphosa, Tawanda Muchehiwa, Takudzwa Ngadziore and many more opposition political activists.

The nature of victimisation included arbitrary arrests, assault, abductions and torture. The safety of these human rights defenders and activists is still under threat. On September 29, 2020, State security minister Owen Ncube held a Press conference where he again threatened CSO leaders and accused them of attempting to overthrow the government. These false allegations by the State expose CSO leaders to danger and are a direct attack on their lives.

Another case of criminalisation of CSO work was uncalled for attacks on the Zimbabwe Environmental Lawyers Association after it filed a court order against plans by some Chinese officials to conduct mining activities in the middle of Hwange National Park. The organisation was subjected to intense attacks and labelling by government officials.

<sup>1</sup> <https://reliefweb.int/report/zimbabwe/more-14-million-people-facing-acute-hunger-one-largest-food-crises-southern-africa#:~:text=Zimbabwe%20is%20the%20hardest%20hit,across%20urban%20and%20rural%20areas.>

<sup>2</sup> <https://www.theguardian.com/world/2020/sep/02/zimbabwean-journalist-hopewell-chinono-is-freed-on-bail>

- **Shrinking of democratic space.**

It is essential to remind the Zimbabwean government that what is under lockdown is the Covid-19 virus, not citizens' fundamental constitutional rights and civil liberties. The unwarranted clampdown on human rights defenders and activists in the country is as if some sections of the Constitution, especially section 59, have been suspended. Section 59 gives Zimbabweans the right to demonstrate, petition, associate and assemble and all these rights have been criminalised under the guise of enforcing lockdown regulations. The Zimbabwe Peace Project recorded 1 498 human rights violations between March and August 2020<sup>3</sup>. Women's Academy for Leadership and Political Excellence (WALPE) has documented 570 violations against women human rights defenders and activists from March to September 2020<sup>4</sup>.

On March 31, 2020, the Supreme Court issued a controversial judgment on the internal affairs of the MDC<sup>5</sup> which many suspects were an attempt by the ruling ZANU PF party to destabilise and weaken the main opposition and push for a one-party State. Concerns of a compromised judicial system have been raised over the years and many unfair rulings, especially against CSO leaders and opposition members during this Covid-19 period, have further confirmed the allegations.

The judgment led to recalls of MPs and councillors aligned to Mr Nelson Chamisa and his MDC Alliance party, forcing by-elections in these areas. Zimbabwe Electoral Commission (ZEC) chairperson Justice Priscilla Chigumba indicated that the by-elections would cost the state \$18 million<sup>6</sup>. This is money that should be used for other essentials, for example, purchasing personal protective equipment for frontline health workers. The recalls mean these wards and constituencies currently have no representation, denying citizens the right to representation and participation, stifling freedom of choice and association. We should note the fact that the by-elections are also coming at a time electoral reforms have not been implemented. The 2018 election

observer mission reports and recommendations are gathering dust.

The Covid-19-induced lockdown saw the government pushing for the amendment of the Constitution for a record 27 times. At a time the nation is battling with the pandemic, the government misplaced priorities and rail-roaded the public into Bill hearings, which were ill-planned. The Act to amend the Constitution is being seen by many as a strategy to consolidate power by the President. CSOs raised awareness on the amendment and its implications on governance and democracy. The majority of those who attended the Bill hearings rejected in toto the proposed amendments.



*ZEC chairperson Justice Priscilla Chigumba*

PICTURE SOURCE: GOOGLE

<sup>3</sup> <https://www.cite.org.zw/human-rights-violations-escalate-as-police-enforce-lockdown/>

<sup>4</sup> [www.walpe.org.zw](http://www.walpe.org.zw)

<sup>5</sup> <https://www.jsc.org.zw/jscbackend/upload/Judgements/Supreme%20Court/Harare/2020/MDC%20et%20al%20vs%20Mashavira%20et%20al.pdf>

<sup>6</sup> <https://www.zimlive.com/2020/09/09/zec-submits-us18-million-budget-as-it-lifts-by-election-suspension/>

Members of the State security forces on September 6, 2020, killed two assailants who gunned down a soldier in Chivhu in a possible case of extra-judicial killings<sup>7</sup>. The circumstances leading to the incident are not clear, but there was a general sentiment that the State should have investigated first before taking the law into their own hands. This poses a threat to the safety of Zimbabweans and of HRDs and activists in particular.

- **Violence against women.**

The outbreak of Covid-19 saw a sharp increase in gender-based violence (GBV). According to Musasa Project, its national GBV hotline (Musasa) recorded a total of 4 615 calls receiving GBV report from the beginning of the lockdown on March 30 to date. About 94% of the calls are from women<sup>8</sup>. Unfortunately, cases of State-sponsored violence against women HRDs and activists were also noted in the period under review. A case in point is the abduction, sexual abuse, torture, assault and arbitrary arrest of Hon Joana Mamombe, Cecilia Chimhiri and Netsai Marova by State security agents. The trio were victimised and abused in May 2020 for demanding social safety nets and cushioning of the poor by the government who are wallowing in poverty because of Covid-19-induced regulations.

- **The militarisation of the State**

Reports of the militarisation of the State in the country have been

rife. The active involvement of the military has been seen in sectors such as health, agriculture, economy, Judiciary, mining and the Executive. This compromises democracy, human rights and rule of law stifle dissenting voices and increases human rights violations against HRDs and activists.

## 2.0 Non-State actors position on the challenges.

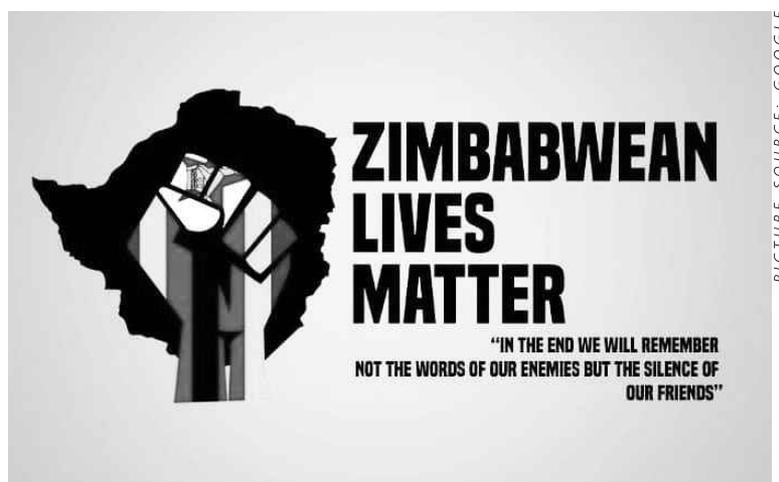
Some CSOs have been cowed into submission by the perpetual threats to their work. They have resorted to being fence-sitters and avoid upsetting the status quo. But others such as Crisis in Zimbabwe Coalition, The Zimbabwe Congress of Trade Unions, the Zimbabwe National Students Unions, Amalgamated Rural Teachers Union of Zimbabwe and WALPE etc, as a matter of principle, have chosen to push back and continue fighting for democracy and good governance.

### 2.1. What needs to be done?

There is need for CSOs to intensify advocacy and lobby strategies locally

through engaging independent commissions that support democracy such as the Zimbabwe Human Rights Commission, National Peace and Reconciliation Commission, ZEC and Zimbabwe Gender Commission. Political parties and Parliament should also be engaged. In the region, there is need to intensify engagements with South Africa's ruling African National Congress party, Southern African Development Community, African Union and push for a resolution to the Zimbabwean crisis through advocating for an inclusive national dialogue process and implementation of political and economic reforms. At the international level, human rights institutions such as the United Nations, Inter-Parliamentary Union and UN Women should be engaged.

In terms of engagements within the regional CSO space, there is a need for more acts of solidarity such as the #ZimbabweanLivesMatter and also joint sustainable campaigns. There is also a need to push for strong institutions, not individuals and continuous calls for the respect of constitutionalism.



<sup>7</sup> <https://www.newzimbabwe.com/latest-security-forces-kill-2-assailants-who-gunned-down-zim-soldier/>

<sup>8</sup> <https://reports.unocha.org/en/country/zimbabwe/card/2XxB9GOV93/>

# Resolving the Zimbabwe Crisis: A Systems Approach:

The road to legitimacy and norm compliance  
with democratic governance.



# The Zimbabwe People's Charter

**February 09, 2008**

The Zimbabwe People's Charter adopted at the peoples' convention, Harare, on the 9th of february 2008

We, the People of Zimbabwe, After deliberations amongst ourselves and with the full knowledge of the work done by civic society organizations and social movements; With an understanding that our struggle for emancipation has been drawn-out and is in need of a people-driven solution; Hereby declare for all to know that: -

1. Political Environment In the knowledge that our political environment since colonialism and after our national independence in 1980 has remained characterised by:
  - a) *A lack of respect for the rule of law;*
  - b) *Political violence, most notably that which occurred in the early to late 1980s in the provinces of Midlands and Matabeleland, and that which occurred in the years from 1997 to present day, where lives were lost as a result of government actions undertaken with impunity;*
  - c) *A lack of fundamental rights and freedoms, including freedom of expression and information, association and assembly, all characterised by the militarization of arms of the state and government.*
  - d) *The People shall have a political environment in which: All people in Zimbabwe, including children, are guaranteed without discrimination the rights to freedom of expression and information, association and assembly, and all other fundamental rights and freedoms as provided under international law to which the state has bound itself voluntarily.*
  - e) *All people in Zimbabwe live in a society characterised by tolerance of divergent views, cultures or religions, honesty, integrity and common concern for the welfare of all.*
  - f) *All people in Zimbabwe are guaranteed safety and security, and a lawful environment free from human rights violations and impunity.*
  - g) *All national institutions including the judiciary, law enforcement agencies, state security agencies, electoral, media and human rights commissions, are independent and impartial and serve all the people of Zimbabwe without fear or favour.*
  - h) *There exists a free and vibrant media, which places emphasis on freedom of expression and information and a government, which guarantees independent public media as well as a vibrant and independent private media.*
  - i) *All people in Zimbabwe live in a society, which is the embodiment of transparency, with an efficient public service and a belief in a legitimate, people-centred state.*

And hereby further declare that never again shall we let lives be lost, maimed, tortured or traumatised by the dehumanising experiences of political intolerance, violence and lack of democratic government.

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Unit 404 • khotso House • 62 Marshalltown Steet • Marshalltown • Johannesburg • 2107

 [coordinator@crisiszimbabwe.org](mailto:coordinator@crisiszimbabwe.org) •  [www.crisis.crisiszimbabwe.org](http://www.crisis.crisiszimbabwe.org)

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