

#1

Volume 23
2022



ESR REVIEW

Economic & Social Rights
Review in Africa

ENSURING RIGHTS MAKE REAL CHANGE

SPECIAL EDITION ON COVID-19



DULLAH OMAR INSTITUTE
FOR CONSTITUTIONAL LAW, GOVERNANCE AND HUMAN RIGHTS

A publication of the Dullah Omar Institute for
Constitutional Law, Governance and Human
Rights (formerly Community Law Centre)
at the University of the Western Cape

ISSN: 1684-260X

A publication of the Dullah Omar Institute for Constitutional Law, Governance and Human Rights (formerly Community Law Centre), University of the Western Cape.

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PRODUCTION

The *ESR Review* is produced by the SocioEconomic Rights Project of the Dullah Omar Institute for Constitutional Law, Governance and Human Rights, with the financial assistance of AmplifyChange and CS Mott Foundation.

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Editorial

Welcome to the first issue for 2022 of ESR Review and the second in a special series on the impact of Covid-19 on socio-economic rights. There have been numerous reports that Covid-19 responses adopted by African countries have been fraught with corruption at a time when vulnerable and marginalised people lack the means to access essential commodities, such as food and water, as well as personal protective equipment to protect them from infection by the coronavirus.

Unfortunately, despite the loss of funds that were set aside to cushion vulnerable people from the socio-economic effects of the pandemic, most countries are still using the excuse of 'limited resources' to justify their failure to realise socio-economic rights. This creates an urgent need to plug administrative loopholes that have delayed the realisation of these rights – rights which should be a priority at this time.

The concept of 'maximum available resources' is applied when discussing the duty of states to promote socio-economic rights. It is provided for under article 2(1) of the International Covenant on Economic, Social and Cultural Rights, as well as the socio-economic rights related clauses of most national constitutions. The concept is often employed by states to justify their slow pace of realising socio-economic rights under the pretext of 'limited resources'. Such a justification, however, cannot suffice in the context of Covid-19.

The Committee on Economic, Social and Cultural Rights, the body that monitors the implementation of the covenant, has developed a number of normative frameworks on the interpretation of the concept. Pursuant to its General Comment 3, it is clear that the Committee does not view the concept as a shield that states can use to defend their lack of progress in promoting or fulfilling socio-economic rights. Instead, it interprets the concept as imposing a positive duty on state parties to mobilise sufficient resources for the fulfilment of their obligations.

Moreover, the Committee attaches great importance to good governance in the management of available resources, and has been emphatic about the duty of state parties to avoid the loss of resources through crimes such as corruption. The elaboration provided by the Committee on the nature of the duties generated by the concept of 'available resources' can be helpful in countering the excuses that African countries are using to avoid their obligations during this period. Simply put, the justification of limited resources cannot hold water when it is the consequence of misappropriation of already available funds. Accordingly, relevant stakeholders should ensure the availability of effective accountability measures to guarantee proper implementation of Covid-19-related policies, strategies, programmes and activities.

This issue of ESR Review features a variety of articles on the impact of Covid-19 on socio-economic rights. The first article by Jean Redpath discusses the implications of pre-trial detention on socio-economic rights during the Covid-19 period. The second by Sharon Hofisi examines why burial societies are considered preferable to ineffective burial insurance policies. The third by Ayeranga Godfrey and Tuhairwe Herman assesses the impact of Covid-19 on the right to health of prisoners in Uganda, while the fourth by Brian Chihera and Tanaka Manungo describes how limited access to water in Zimbabwe has increased the risk of contracting Covid-19.

We hope you find this issue a useful reflection on debates on the impact of the Covid-19 on the enjoyment of socio-economic rights by marginalised groups in Africa and beyond. We wish to thank our guest authors and anonymous peer reviewers for their insightful contributions.

On the updates section, we share the COVID-19 guiding notes of the African Committee of Experts on the Rights and Welfare of the Child.

We thank the anonymous peer reviewers and our guest authors for their insightful contributions.

Wilson Macharia
Guest Editor

FEATURE

Socio-economic Rights and Pre-Trial Detention during Covid-19

Jean Redpath

Introduction

Detaining people interferes with their socio-economic rights. Therefore, states must take into account the impact on socio-economic rights when devising criminal laws and procedures. During the Covid-19 pandemic, lockdown restrictions in many African contexts, including South Africa, were enforced using criminal law. The evidence in the Western Cape suggests that during the height of the pandemic, remand and imprisonment centres recorded their highest number of prisoners in recent years, well over the approved capacity. This is inimical not only to rights but also to the professed goal of the restrictions, namely preventing Covid-19 transmissions. Enforcement of lockdown restrictions via remand detention is arguably an unjustifiable limitation of rights.

In a 2017 paper (Muntingh & Redpath 2017), Lukas Muntingh and I argue that the interests of both the ‘rule of law’ and ‘development’ require that the ‘rule of law’ be delinked from simple conceptions of ‘law and order’ and imbued with a human rights approach. This builds on the views of Amartya Sen (Sen 1999), who argues that human rights enhance the capability of individuals to become agents of their own development, and that freedom is both an end in itself and a means to development. While ‘law and order’ may seem virtuous, and is frequently supported by ‘zero tolerance’ rhetoric from politicians, our 2017 paper presented evidence that the situation is complex, particularly in developing countries. States have a duty to take into account socio-economic rights rather than simply adhering to fair-trial rights when decisions around the circumstances in which people can be arrested and detained are taken.

The 2017 paper provides evidence from three African developing countries – Mozambique, Kenya and Zambia – to support the contention that the decision to detain an accused person before trial almost invariably interferes with the resources of individuals, including individuals other than those being detained. The re-

search found that detained persons are very likely to be breadwinners, and it is often their income-earning activity which brings them into conflict with the law. In the African context, a significant proportion of alleged offences are not criminal activities as usually understood, but activities which are deemed to be illegal, including unlicensed hawking, touting, selling liquor outside of the law, or selling charcoal.



While ‘law and order’ may seem virtuous, and is frequently supported by ‘zero tolerance’ rhetoric from politicians...

The impact of a detention is felt by families and households associated with the detainee. In these countries, there is often more than one household affected: one in the city and one in the village. The impact is generally immediate, but may have enduring negative consequences from which households struggle to recover, particularly when the detention continues indefinitely.

The severity of the impact of detention is determined by pre-existing socio-economic circumstances and the extent of compliance by the state with fair-trial rights, such as rules regarding appearing in court within 48 hours. The impact depends on the pre-existing precariousness of the position of the detainee and affected households, in particular on their level of poverty. Any failure of the state to adhere to fair-trial rights further exacerbates the socio-economic impact.



Any failure of the state to adhere to fair-trial rights further exacerbates the socio-economic impact.

A similar study in the Western Cape found much the same effects for households living under similar conditions as those in the countries above. In all of these countries, the affected households not only suffered from the loss of the income and support of the detained person, sometimes leading to the absence of sufficient food, but also in effect subsidised the prison system through the provision of food and other essentials to the detained person. These essentials had to be provided either because the state does not provide them in prison, or because of the social dynamic within prisons. In addition, households lost income through time invested in visiting. The studies found that job and asset losses to households caused by detention were sometimes permanent, and that detention had health consequences. The care of children was also frequently affected, with some children missing school or having to move home.

Consequently, it can be argued that the duty to respect socio-economic rights – which, as per the International Covenant on Economic, Social and Cultural Rights (ICESCR) include the right to work, to have an adequate standard of living, and to protect one’s family – intersects with fair-trial rights when states make and enforce criminal procedures and laws. The decision to detain a person to enforce a law almost invariably in-

terferes with the resources of individuals, including individuals other than those being detained. The impact of arrest and detention is not limited to an individual, but has adverse socio-economic consequences affecting a network of people.

The 2017 paper therefore argues that the state, inasmuch as it has an obligation to socio-economic development, must enact laws and take other measures to prevent, or at least limit, the adverse socio-economic consequences of the enforcement of laws. Civil and political rights, in particular fair-trial rights, are thus interdependent with socio-economic rights. Ultimately, respect and protection of socio-economic rights by states mean that laws and practices must be designed and implemented in such a way as to ensure that the impact of interference with socio-economic rights on all persons is minimised. This requires ensuring that deprivation of liberty through detention occurs only when absolutely necessary and for the shortest possible duration. This implies, inter alia, using criminal rather than administrative sanctions only when absolutely necessary or, where criminal processes are indicated, to ensure that these are applied sparingly and with a range of alternatives to detention, such as dealing with the matter immediately, or granting bail or otherwise releasing the person ahead of trial.

In relation to Covid-19, in Africa lockdown and other restrictions were implemented using ‘law and order’ approaches rather than the ‘public education’ approach. In their harshest form, over the first five weeks from 26 March, the lockdown restrictions in South Africa permitted only those providing essential services to work, thus ruling out any other form of work that could not be conducted at home. In addition, criminal sanctions applied to the failure to comply. In no time in recent memory has the link between freedom and the ability of individuals to be agents of their own development been more apparent than in countries in which such restrictions on freedom, designed to prevent the spread of Covid-19, were implemented. This had devastating impacts on the ability of poorer persons to feed themselves and their families. In South Africa, the NIDS-CRAM survey found that 47 per cent of adults interviewed reported that their homes had run out of

money to buy food in April (Van der Berg et al. 2020). In Malawi, the courts took the drastic step of ruling against such restrictions on the basis that the state had no capacity or plan to feed or support its people; consequently, the restrictions would inevitably condemn people to hunger and starvation (the Kathumba cases). In South Africa, the situation was less straightforward because the state attempted to ameliorate the economic impact of the limitations of rights through various forms of economic support. However, not only were there problems and delays with the practicalities of distributing the support, but many of the poorest of the poor were not qualified for support or unable to navigate the necessary bureaucracy in order to obtain it; research has found that only 12 per cent of South Africa adults were able to access support (Van der Berg 2020).

Compounding the situation, however, was the fact that many were detained and their rights further restricted, as will be seen below. Here it is necessary to pause to consider the nature of socio-economic rights and their justifiable limitation in more detail. Socio-economic rights are set out in the ICESCR. This convention requires signatory states to take legislative and other measures ‘with a view to achieving progressively the full realisation of the rights recognised in the present Covenant’. The nature of the obligations on states set out by the ICESCR is not that states must ensure that every person has employment, social security, and the like, but rather that states should ‘respect’, ‘protect’ and ‘fulfil’ these socio-economic rights. The duty to ‘respect’ entails an obligation not to interfere with the resources of individuals, their freedom to find a job, or their freedom to take necessary action and to use their resources to satisfy needs.

Clearly, the Covid-19 lockdown restrictions infringed on these rights, in addition to infringing on classic civil

rights such as freedom of movement. States across the world nevertheless sought to justify these limitations on the basis, inter alia, of their ICESCR article 12(2)(c) obligation to prevent, treat and control epidemics and diseases, combined with the application of the relevant limitation principles (most notably the Siracusa Principles), as the right to health alone is not a straightforward justification. In the general comment dating from 2000, the Committee on ESC Rights noted that the right to health contained in article 12 is closely related to and dependent upon the realisation of other human rights, including the rights to food, housing, work, education, human dignity, life, non-discrimination, equality, the prohibition against torture, privacy, access to information, and the freedoms of association, assembly and movement. Thus states imposing restrictions would have been obliged to take this dependency into account.

Furthermore, in a general comment on article 12(2)(c) in particular, law-and-order approaches to dealing with epidemics and disease are notably absent from what is envisaged. The committee is at pains to note that ‘issues of public health are sometimes used by states as grounds for limiting the exercise of other fundamental rights. The committee wishes to emphasise that the Covenant’s limitation clause, article 4, is primarily intended to protect the rights of individuals rather than to permit the imposition of limitations by States’. Indeed, the Siracusa Principles, adopted by the UN Economic and Social Council in 1984, specifically state that restrictions on rights should, at a minimum, be

- provided for and carried out in accordance with the law;
- directed toward a legitimate objective of general interest;
- strictly necessary in a democratic society to achieve the objective;

“ The duty to ‘respect’ entails an obligation not to interfere with the resources of individuals, their freedom to find a job, or their freedom to take necessary action and to use their resources to satisfy needs. ”

- the least intrusive and restrictive available to reach the objective;
- based on scientific evidence and neither arbitrary nor discriminatory in application; and
- of limited duration, respectful of human dignity, and subject to review.

In a statement in April 2020, the ESCR Committee affirmed this as the general approach that should be adopted to Covid-19 restrictions on rights. Consequently, whether Covid-19 lockdown restrictions themselves are justifiable or not depends on a range of factors and on the nature of the restrictions.

Here, however, it is argued that the manner of implementation or enforcement of the restrictions must also be considered. The justifiability of restrictions is inter-linked with the nature of enforcement. Arrests on the grounds of restrictions which are not directed toward legitimate objectives, or are not strictly necessary, may be viewed as not justifiable. Furthermore, there is an argument that restrictions which can be implemented only via law-and-order approaches of arrest and detention, with their attendant impact on rights both civil-political and socio-economic, must require far greater justification.

For example, it is one thing for a state to impose restrictions on a business's operations and fine it administratively if it fails to comply. It is another thing to arrest and detain the proprietor for failing to comply with the said restrictions. In South Africa, for example, police arrested a shopkeeper and shut down his small grocery shop in Lakeside, Cape Town, for trading without a permit during the lockdown, despite the fact that grocery shops were considered essential services and he did in fact have a permit, which was not printed but electronic.

In South Africa, the state took an explicitly law-enforcement rather than a public-education approach to the measures adopted. In other words, physical force and the use of the state's coercive power to effect an arrest were employed in enforcing the restrictions. Not only were 11 people killed and many others roughly handled by police in adopting this approach and enforcing the provisions, but some 300,000 people were deprived of

their liberty through lockdown arrests, according to the Minister of Police (ENCA 2020). Again according to the Minister, most of those arrested during lockdown were arrested for breaking the curfew, gathering in groups, or selling or transporting alcohol and cigarettes while these were banned. These, on the face of it, are all activities linked to socio-economic activity.



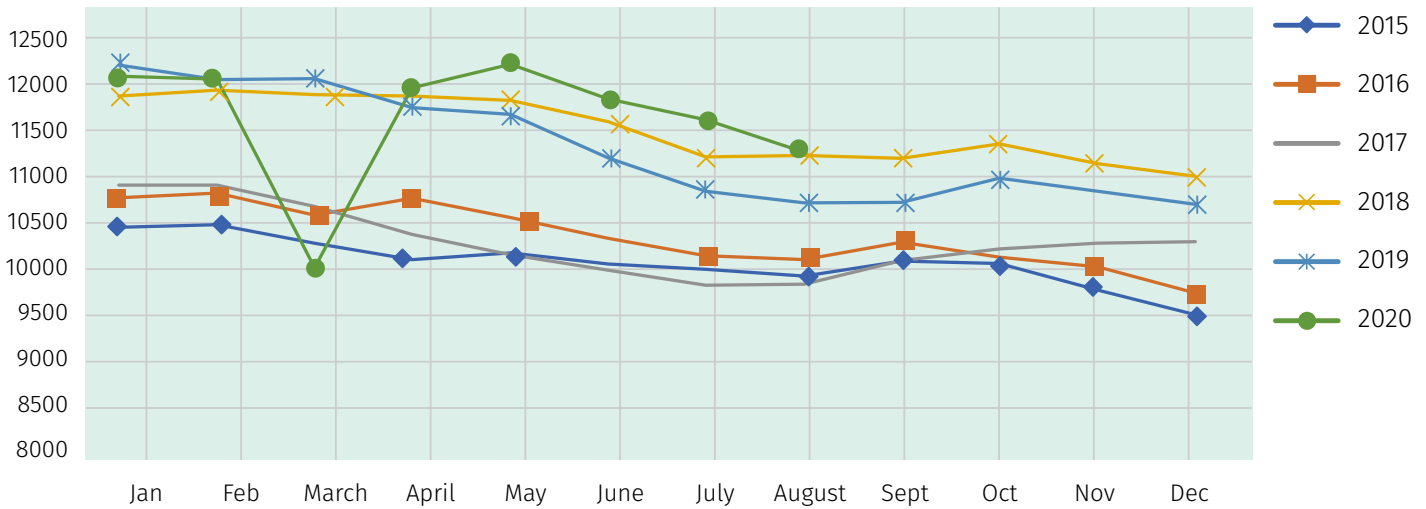
The emphasis was on releasing sentenced persons via special parole. Ironically, South Africa's most crowded facilities are remand centres, holding those awaiting trial.

Arrest – necessarily involving deprivation of liberty in the company of other persons, frequently in close confinement – is arguably not (1) directed toward the objective of reducing the spread of the virus; (2) strictly necessary to achieve the objective; or (3) the least restrictive and intrusive measure. Consider the example of two persons detained for months for lockdown infringements. Justice Shabangu and George Mphotse could not obtain government food parcels, so they ventured out to make some money to support themselves through waste-picking in early April 2020. They were arrested and detained, and in June they were still in prison. Consider too the lockdown arrest of Sikhumbuso Mabaso, who was arrested while out grocery shopping; police demanded bail of R1,500, which he was unable to pay, and his son was left alone in their home overnight.

The extent to which this kind of detention (of persons seeking to survive being detained on remand for allegedly infringing lockdown restrictions) may have occurred more generally is not clear but is suggested by the data. At the start of South Africa's lockdown, prisoners were released, as per international recommendations, in a bid to reduce the transmission of the Covid-19 virus within prisons. The emphasis was on re-

leasing sentenced persons via special parole. Ironically, South Africa’s most crowded facilities are remand centres, holding those awaiting trial. The law-and-order approach to curbing the epidemic inevitably had the

potential to result in remand centres becoming more crowded than before, if arrest and detention were to be used. Up-to-date data is available only for the Western Cape.



Source: Correctional Services Western Cape Statistics 21 September 2020

This data shows that remand numbers dropped markedly in March just before the commencement of the restrictions. Subsequently, from the beginning of April, remand figures rose, with the total exceeding the numbers recorded in the past five years in the same months. Given the widely publicised reduction in serious violent crime in April and May during hard lockdown, frequently commented on by the Minister, a decrease in remand admissions would have been anticipated for April and May, as the increase cannot be ascribed to an unusually large number of arrests for serious crime over this time. (There was an unusually low incidence of crime over this time.)

The rise in remand appears to coincide with the period of hard lockdown during April and May, when, inter alia, alcohol and cigarette sales – a legitimate form of economic activity outside of Covid-19 restrictions – were prohibited. Although this is data for one region, justice and corrections are a national government function, and the restrictions applied nationwide, so the same drivers are likely to be evident nationally; the Western Cape holds about 15 per cent of all inmates in South Africa.

New admissions must then have related to arrests for less serious crime, including infringement of lockdown regulations. It was widely assumed that most people would pay fines, or be released pending their court date. But the incident of the waste-pickers referred to above shows this was not always the case. Could these remand numbers include people denied bail, or whose bail applications were postponed? It is also clearly the case that those arrested and remanded for all crimes are being held longer than usual, as the courts operate in a slower fashion. A court official, when asked for comment, said the difficulty lies with hearing bail applications, with the absence of legal practitioners and prosecutors who have tested positive and the closure of courts and prisons due to positive results being part of the problem. The socio-economic impact on persons detained and their families will be exacerbated by these delays.

In addition, there are health consequences of such detention for both the individual and the community. Some 25 prisons in this region hold both remand and sentenced persons, and as at 20 July 2020, after the most limiting restrictions were no longer in place, these facilities were at 154 per cent of approved ac-

commodation. In other words, there was on average of about one extra person for every two beds already occupied. The most crowded facility was at 270 per cent, that is, with more than three extra people for every two beds already occupied. This is contrary to the goal of preventing Covid-19 transmissions, as this famously requires avoidance of crowds and maintenance of social distance.

Furthermore, remand is characterised by persons being held and then released to court and from there into the community. More than 10 per cent of correctional officials have tested positive; the fact that almost double the number of officials in correctional centres have tested positive compared to inmates, despite inmates' outnumbering officials by four to one, would suggest that testing of officials has been more thorough and that many infected remand prisoners are likely to have been released back into their communities.

Even in instances where a detained person is held only in a police van and then in police cells, but avoids prison remand, in the current situation the socio-economic and health risks are high. During hard lockdown, while conducting human rights monitoring, I observed police vans in a township area. I was informed by residents that people not complying with restrictions were loaded into the van and taken to the police station, processed there, and later released, with those released having to walk home. Again, the goal of reducing the spread of transmission does not appear to be served by this approach.

Deprivation of liberty by the state in the attempt to maintain 'law and order' has a clear and measurable socio-economic impact on individuals and their dependents, one which is frequently disproportionate to the alleged offence. During this pandemic, deprivation of liberty and detention on remand in the name of enforcing

lockdown restrictions is not only contrary to the ultimate goal of reducing transmission of the virus, but also constitutes an infringement of political and socio-economic rights. This is difficult to justify.

During a pandemic, one might have expected that the state would adopt measures which would seek to reduce the extent to which remand detention is used. International human rights law clearly places an obligation on states to decriminalise trivial offences. Petty matters should be resolved immediately where possible; alternative methods of securing attendance at trial should be available and used where appropriate and trial is necessary, to ensure that individuals are tried within a reasonable time. Beyond simple compliance with fair-trial rights, it is necessary to reconsider the appropriateness of pre-trial detention in a range of contexts because of its inevitable and severe impact, which causes disproportionate harm to detainees and affected households. Finally, it has public health consequences during an epidemic.

In conclusion, deprivation of liberty by the state has a clear and measurable socio-economic impact on individuals and their dependents which is frequently disproportionate to the offence. In the time of Covid-19, it also has implications for the containment of transmission of the virus. Use of prolonged detention for lockdown infringements and minor offences is counter-developmental and counter to public health goals; its use to enforce lockdown restrictions unjustifiably limits rights even if the restrictions themselves are justifiable.

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Petty matters should be resolved immediately where possible; alternative methods of securing attendance at trial should be available and used where appropriate and trial is necessary...

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FEATURE

Social Protection and Burial Societies in Zimbabwe during Covid-19

Sharon Hofisi

Introduction

Burial societies are family-run or community-based assurance groups established with the intention of assisting members financially, physically and morally in times of bereavement. This article examines the extent to which formal funeral policies have been replaced by burial societies due to Covid-19. It provides a logical analysis of consumer behaviour and concerns about abandoning formalised funeral policies. Specifically, the article notes how burial societies are gaining in popularity owing to the prohibitive costs of funeral policies.

In Zimbabwe, most workers in the public and private sectors are spending more than they earn, since companies providing health and funeral policies have hiked their policies due to the economic downturn and de-dollarisation policies in Zimbabwe. As a result, funeral policy-holders have been forced to abandon health and funeral policies to cater for other needs such as food and shelter. Those who have lost their jobs because of the Covid-19 lockdown have been unable to contribute to their funeral policies. Even after an indefinite lockdown and curfew between 8 pm and 6 am, workers are still at risk of having their employment contracts terminated through the invocation of the vis major clauses.

Funeral policy providers are refusing to provide buses due to social distancing requirements. Those who die in their houses are also forcibly taken to funeral parlours once their deaths have been reported to the Zimbabwe Republic Police (ZRP). Their relatives must endure many bureaucratic procedures to get burial orders and clearance to travel to rural areas. As a result, burial societies have become the preferred choice to ensure that social rights are enjoyed by assisting the families of those deceased with coffins and food.

The concept of social protection enjoins the Government of Zimbabwe (GoZ) to provide social security for

all citizens. The right to social security is enshrined in section 30 of the Constitution of Zimbabwe 2013 (the Constitution) under the national objectives. Although not justiciable, the national objectives can be considered part of the list of priority issues to be realised if resources permit. The state is also obligated to promulgate pieces of legislation and adopt practical measures to make social security realisable.

With this in mind, this article focuses on the erosion of salaries and the inability of ordinary citizens to pay for impossibly expensive funeral assurance policies. The revival of burial societies is a call to the state to enable communities to design and implement funeral assurance policies that are community-driven and supported by those who are directly affected by the economic downturn.



The state is also obligated to promulgate pieces of legislation and adopt practical measures to make social security realisable.

Conceptualisation

Social protection refers to a set of benefits available from the state, market, civil society, and households, or a combination of the above, to an individual or household to reduce multi-dimensional deprivation (NSSA 2020). Burial societies in Zimbabwe do not get support from the state but depend on the goodwill of rural communities, who usually use them as social credit control systems. Traditionally, children are seen as a sign of social virility and wealth and as the 'insurance policy' for parents in their old age. It is considered un-African for parents to expect to die before their children. The burden of 'black tax' means that those who are fortunate enough to secure employment in urban areas contribute to burial societies' funds.

However, the 'austerity for prosperity' policy, the de-dollarisation policy, and de facto dollarisation by informal traders mean that urbanites can no longer support their rural counterparts. Urban landlords demand rent in foreign currency. Utilities have prohibitive costs. There is erratic water, electricity and fuel supply. Panic-buying, impulsive price hikes, and lack of depositor security mean that those employed cannot contribute dutifully to ease the burden of black tax.

Social service delivery depends on sound financial resources. Zimbabwe's failure to provide adequate services to its citizens is linked to many issues, including the country's ballooning public debt, austerity measures that are not pro-poor, and the erosion of the buying power of the Zimbabwean dollar (Hofisi 2020). The National Social Security Agency (NSSA) currently services pensions and compensations for injuries sustained at the workplace. Pensioners do not enjoy access to their monies due to runaway inflation and the poor value of the Real-time Gross Settlement (RTGS) dollars. Most pensioners are old but do not enjoy the right to elderly care as contemplated by the Constitution. Social assistance programmes under the auspices of the Social Welfare Department have also been affected by the unprecedented Covid-19 pandemic. Social welfare is underfunded due to the rapidly growing public debt and Zimbabwe's failure to get Covid-19-related financial assistance from international financial institutions. At a national level, Zimbabwe's external and domestic

debt stood at US 9.2 billion in April 2020 (World Bank 2020). Domestic debt stood at ZWL\$ 12.89 billion in May 2020, and the country continues to score poorly under such indices as the Human Development Index (150 in 2019 according to the United Nations), reflecting a decrease in the quality of life. The Corruption Perception Index places Zimbabwe at number 158 out of 180 countries, according to Transparency International. The effects of rising sovereign debt are painful during the Covid-19 pandemic, where the cost of sanitiser is prohibitive, and practical social and physical distancing is difficult to observe during funerals, especially in rural areas.

In the context of social spending, Zimbabwe suffers from financial leakages that include the USD 15 billion lost in mining revenue during Mugabe's time, annual inflation soaring at around 840 per cent in July 2020, and evaporating savings. Zimbabwe is in financial crisis due to serious economic and humanitarian crises and poor micro-economic and macro-economic stability, factors which are amplified by climate shocks and low international reserves (IMF 2020).



The effects of rising sovereign debt are painful during the Covid-19 pandemic...

Methodology

This article uses qualitative research methods. Documentary sources were reviewed and burial society secretaries were interviewed through WhatsApp-based questionnaires. The writer also interviewed attendees at the funeral of two family members. Data was analysed thematically. The major themes in this study are as follows: social protection is inadequately funded; the burden of black tax forces ordinary citizens to support burial societies; there is a need for social intelligence to improve social life and capital; villagers should be capacitated to engage in occupations such as carpentry; and a new method of community social responsibility is emerging where villagers use their horizontal

and vertical relations to encourage their counterparts to find new ways of eliminating rural poverty and inequalities. The study was limited to Chikava Village in Gutu.

Key findings

1 Inadequate funding of social protection by various players

First, social protection is inadequately funded in Zimbabwe, and this affects burial societies in rural areas greatly. Documentary sources reveal that the government is failing to provide social safety nets to its citizens due to lack of financial resources (Hofisi 2020). Social protection was allocated USD 9.9 million, which is 0.2 per cent of the total government budget and 0.1 per cent of gross domestic product (UNICEF 2017). The combined allocation to social protection was 1.8 points lower than what is sustainably required to ensure that children and families in need can survive (ibid). While NSSA (2020) includes the state, civil society and households as part of funders of the social security in Zimbabwe, the state currently only funds pensions and those who are injured at work.

Civil society organisations (CSOs) are also suffering from donor fatigue. Some donors define specific communities that they want to target for funding. This leaves rural communities affected because CSOs do not have contacts or point persons in those areas. Further, there are no community-based organisations (CBOs) in Chikara village or its neighbouring villages to assist villagers in the event of a death.

As a result, the families of the two deceased relatives had to rely on the goodwill of their extended family members to purchase a coffin from a funeral services company. The funeral parlour did not have a mortuary, and relatives were advised to omit body-viewing as part of the steps to mitigate the Covid-19 pandemic. The relatives did not have money to hire the funeral company's vehicle from Harare to Gutu because the company demanded USD480. They had to use a relative's pick-up truck and contribute to fuel. The deceased was a member of a burial society that had ceased operations because of uncertainty in the Zimbabwean economy.



The funds of the burial society used to be held in trust in the custody of a treasurer who was appointed by the villagers.

2 Black tax and burial societies

Residents in Chikava village have been unable to open bank accounts because of the de-dollarisation of the economy. When the Covid-19 pandemic struck, most companies down-sized. While most companies did not invoke the vis major (act of God) provisions to terminate employment contracts, they continued to pay their workers in Zimbabwean dollars whose value has been deeply eroded. The funds of the burial society used to be held in trust in the custody of a treasurer who was appointed by the villagers. In good times, the villagers would be given the account details and deposit their funds. Most of their bank or cash savings were eroded in 2008 because of runaway inflation and economic collapse in Zimbabwe.

The advent of the Government of National Unity and multi-currency prompted households to join formal funeral policies. Some funeral companies would provide a bus to ferry relatives and a private vehicle to transport the deceased. However, the outbreak of Covid-19 saw funeral companies refusing to provide buses even when the policy-holder had paid for them. In most cases, relatives contributed towards hiring private buses. Ferrying the deceased to rural areas proved difficult since Covid-19 restrictions required the deceased to undergo Covid-19 tests.

Only 50 people were supposed to attend a funeral. This is difficult in villages because death is seen as a whole village's calamity. The Covid-19 pandemic meant, furthermore, that burial society funds could not be deposited into the bank account because of Covid-19 travel restrictions. The GoZ also imposed limits on other flexible funding alternatives such as Ecocash. Ecocash holders are now obligated to have one Econet line that is linked to Ecocash.

As a result, saving substantial funds is now impossible. The burial society thus depends on the goodwill of the villagers and well-wishers under the slogan, ‘goodness is the only investment that pays’ and ‘wafa wanaka’, which in Shona means ‘the dead are good’. Contributions are also made under societal norms which require that those attending the funeral should bring foodstuffs or money to assist the bereaved. This is linked to the biblical belief that one should ‘cry with those who are crying and rejoice with those who are rejoicing’ (Romans 12: 15).

Furthermore, the villagers in Chikava and other villages across Zimbabwe believe that ‘afirwa haatariswi kumeso’ (that is, ‘you do not just look into the eyes of the bereaved relatives, but have to contribute something in material form’). This is buttressed by beliefs that society should enable the bereaved to heal through communitarian contributions. Throughout this, the burden of black tax is felt by the ordinary citizens. The state is subsided by its citizens and is seen as failing to uphold its duty to respect, protect, promote and fulfill social security.

3 Social intelligence and burial of relatives

With Zimbabwe’s total consumption poverty line for an average of five persons per household standing at USD 873 in March 2019 (Zimstat 2019), rural communities have resorted to using social intelligence and social capital to give their dead relatives a decent burial. In instances where formal funeral policies or burial societies are not faring well, villagers use various methods to ensure the deceased is properly buried. A local carpenter, usually stationed at the local township, makes the coffin for free or on credit. Additionally, family members donate bricks and sleeping mats (rupasa) to be used for the burial.

Those with scotch carts supply flat stones to be used to cover the deceased’s coffin. Each family brings its cornmeal and vegetables. Those who do not contrib-

ute to their bhodho reraini, or village pot, receive a stern warning that they will not be given food in future. Social distancing is observed during body-viewing. Villagers use their quilts to cover their mouths and faces because most of them do not have masks. For the deceased relative who was a hwindi, or bus loader in Harare, the female in-laws, varoora, made plans by raising funds through nzveura (a ritual performed by varoora). They erected a tollgate along the road to the grave. The pall-bearers passed only after paying USD 20. This money was used to buy food for the family’s in-laws (vakwasha).

Churches, villages, and fund-raising clubs also contributed. In all of this, villagers used various forms of collaboration to ensure that the funeral rites went well without worrying that the deceased had not been transported by a formal funeral company, or that burial funds had been eroded by de-dollarisation.

4 Capacitation of villagers

Since the GoZ has imposed restrictions on Ecocash payments, there is need for CSOs and CBOs to capacitate villagers in self-help projects. Some villagers indicated that they are aware of villages that have champions of community or agents of positive social change. These champions or agents of positive social change are trained as human rights watchdogs who can raise funds in times of crises. The villagers in Chikava have indicated that they are willing to engage in carpentry work if they can find a donor to give them tools which they can own as a community.

The village head implored urbanites from the village to plough back to the community to ensure that their relatives get decent lives. He indicated that there is need for the village to have a funeral parlour, and that only the villagers can uplift each other to ensure they realise their rights to a decent life. Ultimately, the village head’s concerns underline the need for



Some villagers indicated that they are aware of villages that have champions of community or agents of positive social change

state institutions, agencies, and natural and juristic persons to respect, protect, promote and fulfill the cultural rights that are made justiciable in the Constitution.

5 Community social responsibility

Funeral contributions, especially given the many challenges posed by Covid-19, demonstrate the emergence of community social responsibility. Every village, with its surrounding villages, has made the decision to plough its resources into the same pool. Their rallying cry is kwedu kuchafwawo, or 'death will not spare us either!' The body of the deceased female relative who committed suicide without leaving a suicide note was buried after the families of the deceased and relatives of the deceased's husband agreed to pay the two cows that were being demanded.

The family took no advantage of laws allowing them to avoid paying the two cows demanded by the in-laws. Instead they used the rallying cry maonera pamwe chuma chomuzukuru ('unity is power') to ensure that the deceased got a proper burial. There were no burial society funds but villages came together. At a horizontal level, villages around Chikava provided food. The counsellor, who is regarded as the secretary of the ward, did not attend the funeral, but his role was acknowledged.

At the vertical level, the village head allowed the deceased to be buried in the village although she had not left a suicide note. He said that, although death had robbed the family of a cheerful lady, she was still part of the family. The chief did not attend the funeral but his role was also acknowledged. The village head implored the villagers to plan ahead for unexpected calamities such as the passing on of the female relative.

Conclusion

Despite economic woes and inadequate social protection services in Zimbabwe, villagers are innovating to ensure that relatives get decent burials. It has been said that an indecent burial is worse than being born dead (Ecclesiastes 6: 3). Burial societies and black tax are refuges that dissipate the anger associated with

poor satisfaction with life, low quality of life, and eroded savings. The deceased are honoured with eulogies and properly laid in the ground. The villagers ensure that burial rites are conducted out of respect for the departed. Even though they do not have access to state-assisted funerals, they are committed to maintaining the legacy of respecting the dead.

The author recommends that

- NSSA broaden and formalise contributions to burial societies;
- CSOs and CBOs, including faith-based organisations, should embrace the need for communities to take burial societies seriously;
- the GoZ should allow burial societies to have multi-currency savings in the wake of economic collapse and the erosion of the value of the Zimbabwean dollar;
- villagers should continue to embed social intelligence and financial literacy into their survival strategies; and
- social security should be made part of the bill of rights so that it becomes a justiciable right. To this end, the Constitution should be amended to protect social rights as a fundamental human right beyond national directives or objectives.

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FEATURE

Covid-19 and the Right to Health of Prisoners in Uganda

Ayeranga Godfrey and Tuhairwe Herman

Introduction

The World Health Organization (WHO) declared Covid-19 a world-wide pandemic on 11 March 2020 and called upon states to take measures to contain it. In response, the Government of Uganda imposed a nationwide 'stay-at-home' lockdown from 22 March to 6 June 2020. Furthermore, it adopted measures such as the suspension of prison visits and a temporary shutdown of prison facilities, with the aim of containing the spread of the virus in areas such as Rubanda Government Prison (The Independent 2020) and Amuru Prison (Daily Monitor 2020). This was followed by mass testing at prison facilities such as Amuru Prison, which found that 152 inmates and one staff member had contracted Covid-19 (Daily Monitor 2020). On 8 October 2020, results from 33 samples taken from inmates and prison staff in Rubanda Government Prison showed that six inmates and one staff member had tested positive for Covid-19 (The Independent 2020).

The mass testing conducted at Amuru District Prison recorded what was then the highest number of new infections in a single day. The infected persons were transferred to an auxiliary isolation facility, but the high number of infections brought to the fore concerns about the right to health for an estimated 64,000 people who were in detention across the country.

Uganda is a signatory to international and regional instruments that guarantee the right to health of all persons, including prisoners. While the Constitution of Uganda does not expressly guarantee the right to health, there is consensus that the right may be derived from various provisions in the Constitution with a bearing on health (Twinomugisha 2007). This article, therefore, considers whether the state is fulfilling its obligations with regard to realising the right to health for prisoners during the Covid-19 pandemic.

Implications of the outbreak for prisoners

The outbreak of the pandemic has highlighted the vulnerability of prisoners in Uganda, where prisons are characterised by poor hygiene, overcrowding, and a lack of adequate health care (African Commission 2015) that expose inmates to the risk of contracting the coronavirus (Cadman 2020).

These conditions make it difficult to implement the WHO's guidelines of maintaining social distance (World Health Organisation 2019) and regular hand-washing to reduce the spread of the Covid-19. Prisoners do not have unconstrained access to ablution facilities and cleaning agents and are instead entirely dependent on



The mass testing conducted at Amuru District Prison recorded what was then the highest number of new infections in a single day.

the state for their well-being (International PEN and Others (on behalf of Saro-Wiwa) v Nigeria (2000) AHRLR 112). Wetsman (2020) has argued that vulnerable communities, such as those held in prisons and jails, are often most at risk during public health emergencies since they have less protection than others from an outbreak of disease.

Legal framework for prisoners' right to health

1 International legal framework: The soft law

The right to health of prisoners is enshrined in a number of soft law provisions related to the prisoners' right to medical care, such as the 1990 UN Basic Principles for the Treatment of Prisoners, which recognise prisoners' right to access health services despite their legal situation. The UN Standard Minimum Rules for Treatment of Prisoners (2015: rule 18) stipulate that prisoners have a right to access water and other toilet articles necessary for their health and cleanliness. It further recognises prisoners' right to access necessary health-care services free of charge without discrimination based on their legal status, and requires that the prisoners enjoy the same standards of health care as those available in the community.

The 1988 UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Principle 24) requires that all detained or imprisoned persons have access to medical care and treatment whenever necessary. The Kampala Declaration on Prison Conditions in Africa 1996 (para 2) stipulates that prisoners should retain all rights which are not expressly taken away by the fact of their detention; this includes the right to health. Furthermore, the 1990 UN Rules for the Protection of Juveniles Deprived of their Liberty (rule 49) recognises the right of every juvenile to adequate medical care, which should be provided through the appropriate health facilities and services of the community in which the detention facility is located.

However, the above rules are only soft law, and so not binding upon states. This grants states such as

Uganda the discretion to determine whether or not to uphold those norms (Lines 2008). Nigel (1999) has argued that the Standard Minimum Rules create a merely moral or political influence, while Betteridge (2004) has noted that states have an ethical duty to comply with the above instruments.



...the 1990 UN Rules for the Protection of Juveniles Deprived of their Liberty (rule 49) recognises the right of every juvenile to adequate medical care...

2 International legal framework: The hard law

Uganda is a signatory to international human rights instruments that recognise the right to health. Every person in Uganda enjoys this right, including prisoners. These instruments include article 25(1) of the Universal Declaration of Human Rights (UDHR); article 11(f) of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); the International Covenant on Economic, Social and Cultural Rights (ICESCR); article 16 of the African Charter on Human and Peoples' Rights (ACHPR); and article 5 of the Convention on the Rights of the Child.

Although the International Covenant on Civil and Political rights (ICCPR) does not contain explicit provisions related to the right to health, the United Nations Human Rights Committee (UNHRC) has noted that matters regarding the right to health of persons in detention may arise under article 10, the right to humane treatment, or article 6, the right to life (Cabal and Pasini v Australia (2003)). Lines (2008) has argued that both the right to humane treatment and right to life do oblige all states that have ratified the ICCPR to protect the well-being and lives of persons in custody, thereby requiring states to undertake measures aimed at protecting the health of prisoners.

As a signatory to these treaties, Uganda has committed itself to protecting the right to health enshrined in them. This imposes duties on the state regarding

the realisation of the right to health for prisoners during the coronavirus pandemic, as will be discussed below.

Government obligations to prisoners' health rights

All human rights, including economic, social and cultural rights, impose both positive and negative duties on states, in this case Uganda. These duties include the duty 'to respect, protect, promote and fulfill the above rights'; furthermore, no hierarchy is accorded to any of these duties and all should be discharged through administrative and judicial remedies (African Commission on Human and Peoples' Rights 2010). The government's obligations with respect to the right to health are three-fold and entail the duty to respect, protect and fulfill it (CESCR Committee, General Comment No. 14: para 33), as will be elucidated below.

1 Obligation to respect

This obligation obliges states to desist from interfering directly or indirectly with the enjoyment of the right to health (CESCR Committee, General Comment No. 14: para 33). The African Commission on Human and Peoples' Rights has noted that states are obliged to refrain from directly threatening the health and environment of their citizens (Social & Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESCR) vs Nigeria 1996). The above position was taken in the case of *The Center for Health, Human Rights & Development & 2 Ors vs The Executive Director, Mulago Referral Hospital & Anor* (2017), where Lady Justice Lydia Mugambe noted that the duty to respect obliges states parties to refrain from interfering directly or indirectly with the enjoyment of economic, social and cultural rights, including the right to health of prisoners.

The duty to respect also requires states to refrain from denying or limiting equal access to health care to all persons, including prisoners (CESCR Committee, General Comment No. 14: para 34). Furthermore, the obligation to respect mandates states to take positive measures to ensure that all branches of government (legislative, executive and judicial) at all levels (national, regional and local), as well as all organs of state, do not violate economic, social and cultural rights (African Commission on Human and Peoples' Rights 2010).

The adoption of measures such as curfew and the nationwide lockdown, which included a ban on public transport that limited the movement of some prison medical officers who did not have their own means of transport, denied prisoners equal access to health care, thereby violating this obligation. Prisoners mostly rely on the external community, including their family members, for essential medicines and supplies, such as sanitary items, which the prison facilities cannot provide. By suspending prison visits without considering the vulnerable state of prisoners, the government interfered with prisoners' rights to health. Even during a pandemic, the government should ensure that the external community has access to prisoners to assist them with their needs.

2 Obligation to protect

This obligation obliges the state to undertake measures aimed at ensuring equal access to health-related services provided by third parties, as well as ensuring that third parties do not limit people's access to health-related information and services (CESCR Committee, General Comment No. 14: para 34). The duty to protect encompasses the monitoring and regulation of commercial and other activities of non-state actors that affect people's access to and equal enjoyment of economic, social and cultural rights. It



Prisoners mostly rely on the external community, including their family members, for essential medicines and supplies, such as sanitary items, which the prison facilities cannot provide.

also ensures the effective implementation of relevant legislation and programmes, and provides remedies for such violations (African Commission on Human and Peoples' Rights 2010).

This obligation was violated by the introduction of the nationwide lockdown, which included the ban on public transport and the suspension of prison visits since, as mentioned, prisoners with special needs could not be assisted by friends and family members. Furthermore, the government did not issue standard operating procedures (SOPs) to enable the prisoners to have access to health-related services provided by third parties.

“...the prisons to assist with social distancing, more needed to be done.”

3 *Obligation to fulfil*

This duty mandates the state to ensure that all persons, including prisoners, have equal access to the underlying determinants of health, such as basic sanitation, potable drinking water, nutritiously safe food, and adequate housing and living conditions (CESCR Committee, General Comment No. 14: para 35). It also obliges states to take positive measures aimed at assisting and enabling individuals and communities to enjoy the right to health (CESCR Committee, General Comment No. 14: para 35). Furthermore, states are obliged to undertake appropriate legislative, budgetary, judicial administrative, promotional and other measures towards the full realisation of the right to health (CESCR Committee, General Comment No. 14: para 33). Although the government pardoned a total of 833 prisoners in April 2020 to curb the spread of Covid-19 and decongest the prisons to assist with social distancing, more needed to be done. Ugandan prisons are highly overcrowded and operate at an average capacity of 319 per cent (World Prison Brief 2020).

The government is obliged to adopt measures aimed at enabling and assisting individuals and communities to gain access to the right to health on their own.

Where individuals and communities are unable to gain access to these rights for themselves, the obligation is 'to take measures necessary to ensure that each person within its jurisdiction may obtain basic economic, social and cultural rights satisfaction' (African Commission on Human and Peoples' Rights Charter 2010).

Therefore, the government's failure to conduct mass testing for all of its citizens, including those in all the prison facilities in Uganda, despite several calls from the prison authorities (The Independent 2020) and Members of Parliament (The Independent 2020), shows the reluctance of the government to fulfill its duty in regard to the right of prisoners to health.

Conclusion

The government should ensure that the prisoners have unhampered access to health-related services including medical care and treatment whenever the need arises, irrespective of Covid-19.

Furthermore, the government should ensure that all persons detained in prison, whether convicted or remanded, should undergo mandatory coronavirus testing prior to admission. This would enable prison authorities to allow early isolation and treatment of those infected before they come into contact with other inmates (World Health Organisation 2020).

The government should also develop guidelines and SOPs aimed at ensuring that the external community has the necessary access to prison facilities and prisoners of their choice, especially those with special needs, including the elderly, sick, pregnant mothers and women with dependent children. This is because prisoners tend to rely on the external community to access health-related supplies including medicine (Penal Reform International 2020).

The government should also adopt measures aimed at the provision of essential personal hygiene items, such as sanitisers and soap, to all prisoners. These are vital tools in the fight against the coronavirus.

The prison facilities should develop a comprehensive database of all the prisoners in their custody for planning purposes in case of any future public health emergencies like the coronavirus. Prisoners tend to be neglected when it comes to providing services because the government does not have details of the prison population.

The government should also speed up the development of a national emergency response strategy, in line with the National Disaster Management Policy 2010, which would aid in ensuring that the current health facilities respond to the health-related needs of prisoners

Finally, the government should conduct robust preparation through the Ministry of Disaster Preparedness to ensure that the country and its prison facilities are properly prepared to deal with any future pandemics.

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FEATURE

Zimbabwe: The Socio-economic Impact of Covid-19 on Access to Clean, Safe Water

Brian Chihera and Tanaka Manungo

Introduction

Access to clean water is of great importance, especially during the Covid-19 pandemic. It is no coincidence that, in Resolution 64/292, the United Nations General Assembly has explicitly recognised the human right to water and sanitation, acknowledged that clean drinking water and sanitation are essential to the realisation of all human rights, and affirmed that countries have a duty to provide their citizens with clean water. Zimbabwe has had water problems since early 2017, which in some instances has resulted in the spread of waterborne diseases.

Water is essential to life, but in Zimbabwe citizens have been struggling to have access to safe and clean water. For instance, Chitungwiza City Council consistently failed to provide water to the area's crowded townships for more than eight months (Muronzi 2020). Water shortages are a matter of concern in Zimbabwe, and this has been especially the case during the Covid-19 period, during which citizens have faced the risk of contracting the virus at overcrowded water-collection points.

The failure to provide water for citizens creates the risk of spreading Covid-19. Harare needs about 1.2 billion litres per day, but the city is only pumping an average of 170 million litres (Farai Matiashe). The old equipment at Morton Jaffrey Water Works is a cause of concern: the plant has been shut due to the lack of chemicals and the malfunctioning of the aging equipment. The water pumped to urban areas is not clean. One resident went to the extent of saying, 'We are drinking sewage water and we are all going to get sick. The city council should

respect us. What is surprising is that we have been paying bills every month without a drop of water. How is that fair when my children have to drink this dirty water?' (Chingono 2020).

Herbert Gomba, the Mayor of Harare, has said that a lot of treated water is being lost from the water system due to aged water pipelines. He also said only a third of Harare residents have access to piped water. As a result, many residents spend up to 10 hours a day, and sometimes queue at night, to get water from boreholes that are contaminated and unsafe (Mavhunga 2020)

Like countries around the world, Zimbabwe ordered a nationwide lockdown to curb the spread of Covid-19. However, even before the virus reached Zimbabwe, major parts of the country lacked one of the essential elements that protects people's health and prevents infectious disease outbreaks. According to Mavhunga (2020), thousands of residents across Harare have no access to clean water.



As a result, many residents spend up to 10 hours a day, and sometimes queue at night, to get water from boreholes that are contaminated and unsafe.


Women, as well as children of school-going age, spend eight to nine hours, and sometimes all night, at boreholes queuing for water (Mavhunga 2020). This has caused serious problems for schoolchildren who want to study but cannot because they have to stand in water queues all night. This is not a new problem, but Covid-19 has made a bad situation worse. Combating the spread of the virus requires people to wash their hands regularly and maintain good hygiene, and to do that they need access to an uninterrupted supply of sufficiently clean water.

Good hygiene practices prevent the spread of the Covid-19 virus. According to the World Health Organization (WHO), washing hands with soap and water is important. How does this possible for poor Zimbabwean households who have access to only 20 litres of water a day, while others have no access to clean water at all? (Nyoka 2016). The outbreak of Covid-19 has exposed the failures of the Zimbabwean government. The lockdown regulations are impractical on the ground. For example, to curb the spread of the coronavirus, citizens are expected to wash their hands with soap and running water on regular basis. This poses a great challenge to poor Zimbabweans who cannot afford to buy water, which is sold in USD.

 **The lockdown regulations are impractical on the ground.**

Zimbabwe's health-care system is likely to worsen, given the evolving pandemic coupled with difficult macro-economic environmental and climate shocks, Cyclone Idai, and drought. One of the key mitigation efforts to contain the spread of the virus is by staying hygienic, which can only be achieved with access to sufficient clean water. This is not the case in Zimbabwe. Unsafe water and sanitation crises have undermined the fight against the pandemic in Zimbabwe. According to Kingsly and Moyo (2019), more than 4.5 million residents in the Harare province alone have access to clean water, but only once a week. As a result, families have forbidden their children from using the toilet more than once a day.

Social distancing is not possible in Zimbabwe's urban poor areas, where water is a scarce commodity. In order to survive, people need to eat, and in order to cook, clean water is required. However, because of the shortage of clean water and the need for social distancing, people are being forced to make choices between going hungry and thirsty or getting infected (Chirisa et al. 2020: 1). Citizens are forced to crowd around the communal boreholes in their communities because the authorities struggle to provide safe and clean water for the citizenry. The lockdown regulations demand social distancing, but this is impossible because citizens spend hours waiting for their turn to pump water, which leads to crowding. Citizens are advised to maintain physical social distancing. This makes sense from a medical point of view. The 1.5 metre spacing is to ensure that infection does not spread; but regulations are impossible to comply with when people have to jostle for water in the early hours of the morning (with no guarantee of getting any).

 **Zimbabwe experiences water shortages; this has resulted in citizens resorting to paying for water from those who have boreholes.**

It is generally understood that the water supply for every person must be continuous and sufficient for personal and domestic uses. These uses include drinking, washing of clothes, food preparation, sanitation, and personal and household hygiene. According to the WHO, between 50 and 100 litres of water per person per day are needed to ensure that most basic needs are met. This is not the case in Zimbabwe because of water shortages. Taps have been dry for some time, and in places where there is running water, it is not clean.

Section 77 of Zimbabwe's Constitution states that 'every person has a right to safe, clean and potable water and that the state must take reasonable legislative and other measures, within the limits of the resources

available to it, to achieve the progressive realisation of this right'. Zimbabwe experiences water shortages; this has resulted in citizens resorting to paying for water from those who have boreholes. Those with water tanks on their properties rely on individuals or privately owned water companies to fill them at considerable cost, often charged in USD. This creates difficulties because USD are not easy to obtain.

As mentioned, not all Zimbabweans have access to running water (Kingsly & Moyo 2019). A majority of citizens struggle to get clean and uninterrupted water for drinking and cooking purposes. According to Mavhunga (2020), some wake up as early as 3 am and travel kilometres to queue for clean water, which they have to share with their animals. They have to use this water sparingly so that it lasts longer. Since they must wash hands regularly, cook, bath, and feed their animals daily, this means that they must walk to and from the water points more often than before the coronavirus outbreak. So the national lockdown, social distancing and the need for clean water have increased the misery of Zimbabwean communities.

In 2015, the United Nations introduced the Sustainable Development Goals (SDG), which are designed to achieve a better and sustainable future for all. Sustainable goal number 6 (Access to water and sanitation for all) is that water and sanitation should be available to every human being no matter what continent or country they live in. This is not the case in Zimbabwe, where clean water has become a scarce commodity.

Access to clean and safe water is a basic human right, so countries have a duty to provide their citizens with clean water. Zimbabwe, like the rest of the world, has confronted the Covid-19 pandemic with orders to stay

indoors, wash hands frequently and practise social distancing in an attempt to curb the spread of the virus which may overwhelm the national health care system (Mavhunga 2020). Zimbabwe entered the era of Covid-19 with pre-existing challenges. These challenges have hindered effective responses to the virus. Lack of clean water has been a frequent problem in Zimbabwean cities and rural communities (Dzirutwe 2020; Moyo 2019; Kingsley & Moyo 2019; Mbugua 2019), making both staying at home and washing hands frequently difficult.

Soap might seem like a basic item. Those who think so could be pardoned because that is what it is supposed to be under normal circumstances. Access to clean water, including handwashing facilities, is widely accepted as a cost-effective way to reduce the disease burden in lower income countries like Zimbabwe. However, the reality is that this is not actually the case in many Zimbabwean communities. Sanitiser is even more difficult to get since one needs money to buy it. It is not surprising that one of the most prominent measures to prevent infection by Covid-19 is the frequent washing of hands, preferably with running water (Haddout 2020: 285).

Zimbabweans face both financial and emotional challenges due to water scarcity during the Covid-19 pandemic. People hardly have money for food because of high levels of unemployment, let alone for buying water which the city council should be providing cheaply. Consequently, with boreholes drying up, water is accessible only to users who can afford a monthly fee of 15 Zimbabwean dollars (Masiwa 2020). Upon waking, people start wondering where to fetch water; when they have it, they need to use it sparingly because it is expensive and hard to get.

“ Access to clean water, including handwashing facilities, is widely accepted as a cost-effective way to reduce the disease burden in lower income countries like Zimbabwe. However, the reality is that this is not actually the case in many Zimbabwean communities.

Conclusion

The current water shortages have exposed how authorities have neglected the maintenance of existing water reticulation infrastructure to pump and distribute clean, safe and potable water to all citizens. Infrastructure must be maintained to combat water shortages, as this can reduce the spread of Covid-19. This maintenance should be done not only to combat Covid-19, but to provide citizens with clean water regardless of the pandemic. The pandemic itself should be a wake-up call to the government to take service delivery seriously. Immediate government intervention is required to address water issues in Zimbabwe to make sure that citizens are protected from Covid-19. Authorities should try to deliver clean water to urban areas, especially in high-density suburbs. Collection points are needed to reduce crowding at boreholes. As a way of reducing transmission in crowded places, authorities must have sanitising stations near water collection points. There is a need to work together with non-profit organisations as they can raise awareness on the Covid-19 pandemic and continue to supply impoverished areas with clean water.

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UPDATE

African Committee of Experts on the Rights and Welfare of the Child: Guiding Note on Children's Rights during Covid-19

Usang Maria Assim

Within the African human rights system, there are three major institutional organs responsible for the promotion and protection of the rights of persons on the continent. The first is the African Commission on Human and Peoples' Rights (African Commission), a quasi-judicial organ established under article 30 of the African Charter on Human and Peoples' Rights, to promote and protect human rights.

The second is the African Court on Human and Peoples' Rights, established under article 1 of the Protocol to the African Charter on Human and Peoples' Rights on the establishment of the African Court on Human and Peoples' Rights (African Court). In terms of article 2 of the Protocol, the role of the African Court is to complement the African Commission's protective mandate of human rights in Africa through binding decisions on cases of human rights violations in state parties.

The third organ is the African Committee of Experts on the Rights and Welfare of the Child (ACERWC), whose focus is on the protection of children's rights in Africa in terms of the African Charter on the Rights and Welfare of the Child (ACRWC).

The ACRWC was adopted in 1990 by the then Organization of African Unity, the predecessor of the African Union (AU); it entered into force in 1999. At present, 50 member states of the AU are parties to the

Charter, which sets out the rights of the child, covering the entire spectrum of civil, political, economic, social and cultural rights. The states which are yet to ratify the Charter are Morocco, Saharawi Arab Democratic Republic, Somalia, South Sudan and Tunisia.

The ACRWC was influenced by and is complementary to its predecessor global child rights instrument, the United Nations Convention on the Rights of the Child (CRC). The main reasons for the adoption of an African child rights instrument are political and legal. The political reasons relate to a perception of exclusion or marginalisation of African states in the drafting process of the CRC, while the legal and more substantive reasons include the need to address matters of particular concern to children in Africa. These include the socio-economic conditions of children in Africa, the situation of children living under apartheid (at the time), harmful traditional practices and discrimination against the girl-child, and the impact of armed conflict on children.



The main reasons for the adoption of an African child rights instrument are political and legal.

During the outbreak of the Covid-19 pandemic, the ACERWC issued to the African Union member states a 'Guiding Note on Children's Rights during Covid-19', on 8 April 2020. The Guiding Note is aimed at providing recommendations to member states on child protection measures to implement as part of their efforts to respond to the impacts of Covid-19. In the Guiding Note, the Committee stressed that, 'beyond its immediate impacts on children's health and that of their parents or caregivers, the social and economic disruptions caused by the outbreak also harm children's rights and welfare'.

The pandemic presents risks to the safety and wellbeing of millions of children, including separation from families, temporary school closures and permanent dropout of school for some children, as well as gender-based violence and exploitation. Children in vulnerable situations face greater risks to their security and wellbeing, and the violation of their rights generally.

Further, the 'pandemic is likely to result in a devastating effect on family functioning by limiting sources of income for households, resulting in limited access to adequate nutritious food, health care, appropriate shelter and other basic needs, which will then have an immediate and longer-term consequences on the life, survival and development of children'.

The child protection measures provided in the Guiding Note are as follows:

- establishment of child-friendly information and communication procedures;
- establishment of child-friendly quarantine procedures and environment;
- ensuring every child's right to education;
- ensuring continued provisions of essential services which are crucial to life, survival and the development of children;
- ensuring that children enjoy their right to parental care and protection; and
- tailoring responses to the special vulnerabilities of different groups of children, including children with disabilities, refugee and internally displaced children, and children in situations of conflict.

The Guiding Note concludes by urging member states to 'undertake a targeted national assessment on the outbreak of Covid-19 and its impact on the rights and welfare of children. The outcome of the assessment could also inform states' intervention strategies in the post Covid-19 era'.

To view the Guiding Notes, click here: <https://www.acerwc.africa/guiding-note-on-childrens-rights-during-covid-19/>

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