

HUMAN RIGHTS DIAGNOSIS

Community Advice Offices and Covid-19

Foundation for Human Rights
July 2020



FOUNDATION FOR
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Old Trafford 3 Building
Isle of Houghton
36 Boundary Road
Parktown, Johannesburg
+ 27 (0) 11-484-0390
www.fhr.org.za

Researched and written by: Katarzyna Zduńczyk; Katherine Brown;
Bongane Gasela; Zimbali Mncube; Robert John Tyrrell; and Zaid Kimmie



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Acronyms and abbreviations

CAO	community-based advice office
CPI	consumer price index
CSO	civil society organisation
DBE	Department of Basic Education
ECD	early childhood development
EELC	Equal Education Law Centre
FHR	Foundation for Human Rights
GBV	gender-based violence
GDP	gross domestic product
HSRC	Human Sciences Research Council
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IDP	internally displaced persons
IPID	Independent Police Investigative Directorate
MEC	member of the executive council
NFCF	National Food Crisis Forum
NGO	non-governmental organisation
NHI	National Health Insurance
NSNP	National School Nutrition Programme
PMBEJD	Pietermaritzburg Economic Justice and Dignity Group
PPE	personal protective equipment
SAFSC	South African Solidarity Food Campaign
SAPS	South African Police Service
SANDF	South African National Defence Force
TRC	Truth and Reconciliation Commission
UIF	Unemployment Insurance Fund
UN	United Nations
VEC	victim empowerment centre
WHO	World health Organization

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Executive Summary

Covid-19 has exacerbated the pre-existing socio-economic fault lines in South Africa. Increasingly, poor access to services and utilities has been reported by a significant proportion of community-based advice offices (CAOs) across the country, with by far the largest number of CAOs citing 'food' the most difficult to access. CAOs have also consistently raised the issue of unemployment, which has contributed to hampered access to the right to food, housing and education (especially for those families unable to pay for data). Access to water, electricity and healthcare has also worsened for their communities according to a significant fraction of CAOs.

Despite the reduced access to food, water and healthcare, large proportions of CAOs have also reported no or limited access to emergency assistance from the government in terms of food support, basic services and direct financial support in their communities. These findings are particularly worrying as they indicate that the economic and social packages designed by government to ease the impact of the lockdown may have remained largely inaccessible to those communities who need them most.

CAOs have also consistently emphasised several challenges that have affected communities' ability to access services and emergency assistance. Respondents identified a number of obstacles to the delivery of food parcels, including 'favouritism' (political parties distributing parcels to their supporters and affiliates exclusively), operational problems within the South African Social Security Agency (SASSA), confusion about how to apply for and collect the parcels, and community members being asked to pay for food parcels.

A large fraction of CAOs have pinpointed the practical and logistical consequences of the lockdown that have severely impeded their access to socio-economic rights. These include lack of transport due to the lockdown; closed government offices and consequent administrative issues (e.g. inability to obtain birth certificates for child grants); and the lack of permits to move around.

While the threat posed by Covid-19 to South Africa's relatively immuno-compromised and poverty-stricken population is severe, the lockdown has had its own severe consequences on these groups. The actions taken to avoid mass Covid-19 transmission have led to human rights violations and the exacerbation of existing inequalities.

The lockdown has had a significant impact on the constitutional right to freedom and security of the person, with growing incidents of gender-based violence (GBV) reported by CAOs, and an increased presence of security forces in large fractions of communities where CAOs operate. The lockdown has confined many GBV survivors with their abusers, increasing the risk of violence (e.g. intimate partner violence). This added stress and inability to physically distance from abuse during the lockdown may also have led to an increase in GBV. Taken together with other key findings such as mass unemployment and hunger, abusers may take out their increased frustrations and stresses on their partners. In tandem with extremely limited availability of shelters, GBV survivors' ability to seek assistance has been limited despite concessions for leaving the house to report GBV under level 4. Many CAOs also cited complaints of harassment by the police and the army – a tendency that was also pointed out by recent media reports and court orders.

The pandemic and lockdown have had a catastrophic impact on children, who have suffered physically and emotionally, and whose right to education has been severely restricted. Our survey indicates that, given the growing food insecurity and lack of access to school feeding schemes, children's emotional and physical well-being might have been significantly affected. The consequences of the pandemic may further

result not only in malnutrition but also in an increasing number of learners, especially in matric, dropping out of school, with young girls particularly at risk of not completing school.

Our survey indicates a serious crisis of governance at local levels. There has been a low level of engagement between local and community leaders, with a large majority of CAOs reporting that these leaders did not play a meaningful role in alleviating the crisis. In this regard, a number of CAOs also reported community leaders' alleged corruption, theft and allocating food parcels along political lines.

Non-governmental organisations (NGOs), civil society organisations (CSOs) and CAOs have been shouldering part of the burden in their communities in the distribution of food parcels, as more than one third of respondents' communities received food parcels from these organisations. CSOs/NGOs, including many of the CAOs, were the most likely to assist the unemployed in their communities and ranked second (after the Department of Health) among all stakeholders who conducted Covid-19 awareness campaigns in the communities.

The low adherence to regulations as reported by the large majority of CAOs (82%) must be understood in the context of a relatively low number of awareness-raising campaigns. While the levels of awareness about Covid-19 and prevention measures remain relatively high, one quarter of respondents cited no awareness campaigns in their communities. Even though most communities have taken some steps to reduce the spread of Covid-19, the use of personal protection equipment (PPE) has been low, potentially due to high costs or inability to access masks and other types of PPE. Two fifths of CAOs indicated that few or no community members are using PPE (42%) and that employees in spazas/supermarkets do not follow PPE regulations (34%).

While the lack of awareness might have been one of the contributing factors to the low levels of adherence, communities have also faced difficulties in accessing PPE, clean water and soap. A number of other intersecting challenges, such as lack of income or going out in search of food and employment, might also prevent the communities from protecting themselves against Covid-19.

Had the CAO sector been regulated, the CAOs could have played a more meaningful role in the response to the crisis. Despite most CAOs being forced to close as the CAO sector was not designated an 'essential service', a significant number have continued operating, albeit at a reduced rate. This is either because they have been recognised individually as an essential service and obtained the required permit, or they have been working remotely. In light of these findings, the number of people seeking advice both increased and decreased as some offices have closed down or downsized their operations, and others continued their operations as usual. For offices that remained operational, the demand for their services was likely higher due to the lockdown.

Most CAOs have remained accessible, but telephonically rather than via the internet. This is likely due to expensive data connectivity issues. The fact that CAOs have been mainly accessible telephonically or via the internet also means that some vulnerable community members may not have been able to access their services due to the lack of data, device or airtime. The popular platform WhatsApp has been widely used by CAOs during the lockdown. Most CAO staff have been using their personal data to work remotely and only 14% of CAOs nationally could afford to provide their employees with mobile data to work from home. This is evidence of CAOs' limited resources, and the serious financial crisis within the sector.

1

Introduction

In December 2019, a SARS-CoV-2 outbreak (Covid-19)¹ was reported in Wuhan, China. By 11 March 2020, when the World Health Organization (WHO) declared Covid-19 a global pandemic,² almost 120,000 cases and 4,292 deaths had been confirmed.³ As of 22 June 2020, the number of cases reported globally has grown to more than 9 million, with 471,022 deaths.⁴ As a result of the global movement of people, goods and services, the virus spread rapidly across the world and became a global threat. While Covid-19 was declared a pandemic by the WHO, the response to the virus has remained the responsibility of each state. Although countries have responded to the crisis differently,⁵ most have adopted stringent measures to mitigate the pandemic and prevent its further spread. This has resulted in restrictions on fundamental rights and freedoms, extensive powers granted to executives, and at times, growing securitisation and militarisation to enforce regulations. Notwithstanding the measures that are justified to address the global health crisis effectively, there has been a rising concern around their scope, legality, necessity and proportionality, as well as their impact on human rights and livelihoods. The United Nations (UN) has noted that:

*'We are facing a global health crisis unlike any in the 75-year history of the United Nations — one that is killing people, spreading human suffering, and upending people's lives. But this is much more than a health crisis. It is a human crisis. The coronavirus disease (COVID-19) is attacking societies at their core.'*⁶

South Africa has been no exception to this trend. The Covid-19 pandemic and subsequent lockdown imposed by government on 23 March 2020 have fundamentally changed the way we interact, work and live. Even during these trying times, human rights in our Constitution and international law must be respected and upheld. In light of this, the media and civil society reports on the violations of human rights – including abuses by security forces, forced evictions and increasing gender-based violence (GBV) – have been of particular concern. Community-based advice offices (CAOs) have been at the forefront of the crisis, assisting communities with social grants, distributing food parcels and monitoring the human rights situation on the ground.

The Foundation for Human Rights (FHR) has funded hundreds of CAOs under its flagship programme since 1996. Recognising this historical relationship with CAOs as critical partners, the FHR asked CAOs, as key human rights institutions within their communities, to assess the impact of Covid-19 on human rights in South Africa. The intervention aimed to gather information at a grassroots level from CAOs reporting on conditions in their communities. In addition, we were interested in documenting the effect of Covid-19 responses on CAOs' activities on the ground, including their ability to deliver basic access to justice services.

- 1 'Co' stands for corona, 'vi' for virus, and 'd' for disease. Formerly, this disease was referred to as '2019 novel coronavirus' or '2019-nCoV'. The Covid-19 virus is a new virus linked to the same family of viruses as Severe Acute Respiratory Syndrome (SARS) and some types of common cold. Available at https://www.who.int/docs/default-source/coronaviruse/key-messages-and-actions-for-Covid-19-prevention-and-control-in-schools-march-2020.pdf?sfvrsn=baf81d52_4#:~:text=%E2%80%9999CO%E2%80%9999%20stands%20for,type%20of%20common%20cold (last visited 16 June 2020).
- 2 World Health Organization (WHO), *WHO Director-General's opening remarks at the media briefing on COVID-19 – 11 March 2020* (11 March 2020) available at <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-Covid-19---11-march-2020> (last visited 18 May 2020).
- 3 WHO, *Coronavirus disease 2019 (COVID-19) Situation Report – 51* (March 2020) available at https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200311-sitrep-51-Covid-19.pdf?sfvrsn=1ba62e57_10 (last visited 17 June 2020).
- 4 CoronaTracker, available at <https://www.coronatracker.com> (last visited 17 June 2020).
- 5 Many declared a state of emergency under their constitutions, others relied on their disaster management legislation or adopted special legislation to deal with Covid-19. See T Ginsburg and M Versteeg, *Covid-19: States of Emergencies: Part I*, Harvard Law Review Blog (17 April 2020) available at <https://blog.harvardlawreview.org/states-of-emergencies-part-i/> (last visited 16 June 2020).
- 6 United Nations Secretary-General, *Shared Responsibility, Global Solidarity: Responding to the socio-economic impacts of Covid-19* (March 2020) available at <https://unsdg.un.org/sites/default/files/2020-03/SG-Report-Socio-Economic-Impact-of-Covid19.pdf> (last visited 15 June 2020) (hereinafter UN SG Report – Shared Responsibility).

The analysis of the survey responses has been divided into six chapters. Chapter 4 deals with the impact of Covid-19 on civil and political rights, including the potential abuses by security forces, and issues and concerns around the legislative responses to Covid-19 that may have created conditions leading to increased incidences of GBV and child abuse. Chapter 5 focuses on the impact of Covid-19 on socio-economic rights, particularly the right to access health services, water, electricity, food, education and housing. Chapter 6 describes the response to Covid-19 in the communities surveyed, particularly their adherence to government restrictions, preventive measures implemented in communities and whether personal protective equipment (PPE) has been freely available to community members. Chapter 7 focuses on how CAOs have interacted with local stakeholders in the nationwide response to Covid-19; while Chapter 8 deals with the impact of the lockdown on CAOs. Chapter 9 summarises compiled additional responses which pinpoint issues not covered in detail elsewhere in the report.

Community-based advice offices

Since its inception in 1996, the FHR has been providing support to CAOs. CAOs have historically been understood as community-based, community-empowered institutions which provide a wide range of free services and activities aimed at solving legal, human rights and social issues. The role of CAOs has evolved over time, and today CAOs constitute first-tier support to under-resourced and marginalised communities that, despite a progressive Constitution and conducive legal framework, are not able to access their rights fully. This has earned CAOs the label of ‘local centres of democracy’.

CAOs act both as first-tier respondents when human rights are violated and as intermediaries between individuals and their communities, the state and the private sector on a range of social and human rights issues. The services provided by CAOs may include: paralegal advice; information; assistance or support; victim support; interpretation of legislation and government policy; assistance with accessing state services such as registration of birth certificates; ID applications; problems with social grants; unfair dismissals; service delivery issues (by both public and private service providers); and consumer protection. CAOs are also able to refer matters requiring specialised legal expertise to third parties such as Legal Aid South Africa, university law clinics, NGOs or public interest lawyers. It is worth noting that almost all CAOs are local entities, created to address specific human rights-based or socio-economic problems affecting their community, and are usually managed and operated by members of the community.

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2

Response to Covid-19 in South Africa

This chapter briefly discusses the measures introduced by government to curb the spread of Covid-19 and notes the rights that have, as a consequence, been restricted. The chapter then examines South Africa's Constitutional and international obligations during a public health crisis, and some of the responses by stakeholders which have challenged the Covid-19 measures in court. We will also identify some fault lines that make the application of mitigating Covid-19 interventions in South Africa particularly challenging, and briefly analyse the measures announced by the government to moderate the impact of the lockdown and other restrictions. Finally, we will provide a short account of some of the human rights violations that have occurred under lockdown.

State of Disaster and the lockdown

When the first case of Covid-19 in South Africa was reported on 5 March 2020,⁷ other countries around the world had already been dealing with the virus. An important lesson learnt from these countries was that social distancing⁸ helps to 'flatten the curve'⁹ of infections. This required that the rate of infections be controlled so that it would not exceed the capacity of healthcare facilities to treat people who contract Covid-19, as has happened in Italy, the United States and Brazil.¹⁰ The measures adopted acknowledged that the world was facing an unprecedented crisis. This has necessitated a global response, with far-reaching consequences for our economic, social and political lives. In this context, like many countries, South Africa had no choice but to adopt extraordinary measures.

South Africa's initial response to Covid-19 on 15 March 2020 by President Ramaphosa was the declaration of a national State of Disaster in terms of the Disaster Management Act,¹¹ which mandated the Minister of Cooperative Governance and Traditional Affairs to pass regulations to combat the spread of Covid-19. The initial measures announced by the President included travel bans from eight high-risk countries, the closure of some points of entry into South Africa, bans on gatherings of 100 or more people, screening facilities at all taxi ranks and the closure of schools.¹² Provincial health members of the executive councils (MECs) were also directed to identify potential isolation and quarantine sites to which people who may struggle to self-isolate can be referred.

On 23 March 2020, the President announced a 21-day nationwide lockdown, beginning from 26 March with stringent limitations on a number of human rights and freedoms. When declaring the lockdown, the President stated that the '*analysis of the progress of the epidemic informs us that we need to urgently and dramatically*

7 Z Zama, *BREAKING: First case of coronavirus confirmed in South Africa*, 702 News (5 March 2020) available at <http://www.702.co.za/articles/376932/breaking-first-case-of-coronavirus-confirmed-in-south-africa> (last visited 24 June 2020).

8 A set of basic hygiene measures and a prohibition on large gatherings.

9 Reduce.

10 E.g. BBC, *Coronavirus: Hospitals in Brazil's São Paulo 'near collapse'* (18 May 2020) available at <https://www.bbc.com/news/world-latin-america-52701524> (last visited 17 June 2020); Healthcare Dive, *COVID-19 puts unprecedented strain on US health system* (17 March 2020) available at <https://www.healthcaredive.com/news/Covid-19-puts-unprecedented-strain-on-us-health-system/574275/> (last visited 17 June 2020).

11 Disaster Management Act (57/2002), *Schedule of Regulations related to COVID-19* (18 March 2020).

12 G Nicolson, *National Disaster explained: 'We need to act to avoid the risk of overwhelming the health services' – Zweli Mkhize*, Daily Maverick (16 March 2020) available at <https://www.dailymaverick.co.za/article/2020-03-16-national-disaster-explained-we-need-to-act-to-avoid-the-risk-of-overwhelming-the-health-services-zweli-mkhize/> (last visited 17 June 2020).

escalate our response'.¹³ Restrictions began with an extreme form of social distancing as a means of quarantine.¹⁴ This dictated that people remain at home as much as possible, leaving only to buy or receive essential goods and services such as food and medical supplies or services.

By the end of the first month of lockdown, government instituted a 5-level lockdown alert system. This was conceptualised as a risk-adjusted strategy for economic activity, where restrictions on economic activity are adapted to epidemiological trends of the virus and are consequently relaxed and tightened accordingly (in terms of geographic area and infection rates). Social gatherings and outside exercise are banned under levels 4 and 5 of the lockdown, following this reasoning. These restrictions also apply to inter-provincial travel, which has been allowed only under level 3 for people with a valid permit who need to travel to attend school or work.

To prevent large gatherings of people, commercial activity is limited according to the 5-level alert system. Under levels 4 and 5, only food and medical supplies are available for purchase. This led to the temporary closure of many shops. At the time of writing, the long-term effects of these measures are not clear. These restrictions severely impacted informal traders, who rely on their trade as a primary source of income. Under level 4, following legal and social pressure to resume e-commerce activities, government allowed the online ordering and delivery of essential items and eventually non-essential items. Under level 3, almost all economic activity has resumed, with many organisations operating at an estimated 71% capacity.¹⁵ Employees who can work from home are encouraged to continue doing so, to mitigate the increased risk of spreading and contracting the virus as restrictions are relaxed. The sale of alcohol and cigarettes was controversially banned under levels 4 and 5, with alcohol becoming available for purchase only under level 3.¹⁶ Cigarettes remain banned until level 2 of the lockdown.

Restrictions on both social and financial movement will be eased gradually until level 1 of the alert system is reached, under which there is a low risk of virus transmission and high health system readiness to combat the virus. However, the trajectory towards level 1 of lockdown may not be linear, as the alert levels are responsive to the epidemiological trends of Covid-19 across the country. This means that while the whole country has been on the same level so far, certain hotspots for the spread of the virus may be relegated to higher lockdown levels with more restrictions. For example, parts of the Western Cape, Eastern Cape, Gauteng and KwaZulu-Natal¹⁷ may ascend to level 4 again following the two-week monitoring period of level 3, which began on 1 June.

While the lockdown was a necessary and relatively successful measure – slowing down the progression of the virus and giving the state more time to prepare to deal with an upsurge in cases – it nevertheless had many unintended consequences. These have tended to exacerbate the existing socio-economic cleavages in South Africa. The most serious implication of the lockdown, which is borne out by our survey results, is the catastrophic impact on the right to food security: millions of people, particularly in the informal sector, have been deprived of their primary source of income, there have been increases in prices of food products and allegations that emergency food parcels have been stolen or sold illegally.

The South African Police Service (SAPS) and the South African National Defence Force (SANDF) have been tasked with maintaining law and order as well as enforcing

13 Statement by President Cyril Ramaphosa on Escalation of Measures to Combat Covid-19 Epidemic, Union Buildings, Tshwane (23 March 2020) available at <http://www.dirco.gov.za/docs/speeches/2020/cram0323.pdf> (last visited 24 June 2020).

14 Department of Health, *Presentation on COVID-19 to the Joint Committees* (26 April 2020) available at <http://www.health.gov.za/index.php/component/phocadownload/category/639-presentation-on-covid-19-to-the-joint-committees-progress-on-covid-19-south-africa> (last visited 24 June 2020).

15 Statistics South Africa, *Quarterly Labour Force Survey 2019 Q4* (2019) as cited by D Francis, K Ramburuth-Hurt and I Valodia, *Estimates of employment in South Africa under the five-level lockdown framework*, Southern Centre for Inequality Studies Working Paper 4 (2020).

16 The Citizen, *Here is the full list of everything to be permitted under the different levels of lockdown* (25 April 2020) available: <https://citizen.co.za/business/business-news/2275044/here-is-the-full-list-of-everything-to-be-permitted-under-the-different-levels-of-lockdown/> (last visited 16 June 2020).

17 The four provinces with the highest Covid-19 cases currently. See *Covid-19 Online Resource and News Portal* (2 June 2020) available at <https://sacoronavirus.co.za/2020/06/02/update-on-Covid-19-02nd-june-2020/> (last visited 17 June 2020).

adherence to lockdown restrictions in terms of the Disaster Management Act. Nationwide, 2,820 military personnel have been deployed with an additional 73,180 SANDF members put on standby.¹⁸ The legal basis for the deployment of the military is contained in Section 201(2)(a) of the Constitution and Section (18)(1) of the Defence Act of 2002.¹⁹ However, this deployment was implemented with only limited guidelines, particularly with respect to the manner in which the security forces should execute their duties and interact with citizens. This has opened up a space for abuse and human rights violations, especially given the security forces' disproportionately large presence in low-income areas.²⁰

Obligations in the Constitution and international law

The UN Secretary General has stressed that it is critical to observe the crisis and its impact through a human rights lens, with a focus on how it is affecting people on the ground, particularly the most vulnerable. Guaranteeing human rights in the midst of a public health crisis poses a challenge for every country, even more so when the measures taken to address that crisis lead to economic and social crises.²¹ A human rights lens guides states on how to exercise their power in order to cause the least harm. In the current crisis, human rights can help states to recalibrate their response measures to maximise their effectiveness in combating the disease and minimise the negative consequences. The centrality of protection, which underpins the response in humanitarian settings, ensures that we collectively preserve our common humanity and dignity. This is a central tenet of the South African Constitution.

In light of the above, the Constitution of South Africa, particularly the Bill of Rights, and international law, including treaties ratified by South Africa,²² oblige the government to protect, promote, fulfil and ensure fundamental human rights. These rights include the right to liberty, freedom of expression, freedom of assembly, freedom of association, freedom of movement and of religion, and the right to education, housing, healthcare, food, water and social security.²³ While the extraordinary responses to Covid-19, for the most part, justifiably include some restrictions of human rights and fundamental freedoms, these must be imposed within our constitutional framework and accord with international standards and norms.

Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) establishes the duty to respect, protect and fulfil *'the right of everyone to the enjoyment of the highest attainable standard of physical and mental health'* and the obligation to take effective steps for the *'prevention, treatment and control of epidemic, endemic, occupational and other diseases'*.²⁴ Article 4 of the International Covenant on Civil and Political Rights (ICCPR) recognises that countries can declare states of public emergency and derogate from some human rights recognised by the Convention when circumstances *'threaten the life of the nation'*. However, such measures must be temporary and time-bound and in accordance with the principles

18 A Watson, *Ramaphosa authorises 73,000 more troops, but it doesn't mean all will be deployed*, The Citizen (22 April 2020) available at <https://citizen.co.za/news/south-africa/government/2272942/ramaphosa-authorises-73000-more-troops-but-it-doesnt-mean-all-will-be-deployed/> (last visited 24 June 2020).

19 Parliament of the Republic of South Africa, *Presiding Officers Receive Letter from President on Employment of Additional SA National Defence Force Members for Covid-19 support services*, Press Release (22 April 2020) available at <https://www.parliament.gov.za/press-releases/presiding-officers-receive-letter-president-employment-additional-sa-national-defence-force-members-covid-19-support-services> (last visited 17 June 2020).

20 K Harrisberg, *Coronavirus exposes 'brutal inequality' of South Africa townships*, Reuters (12 June 2020) available at <https://www.reuters.com/article/us-health-coronavirus-safrica-housing-tr/coronavirus-exposes-brutal-inequality-of-south-africa-townships-idUSKBN23J2BS> (last visited 24 June 2020).

21 UN SG Report – Shared Responsibility (March 2020).

22 In particular, the International Covenant on Civil and Political rights (ICCPR) and the International Covenant on Social, Economic and Cultural rights (ICESCR), but also: the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women; the International Covenant on Civil and Political Rights; the International Convention on the Protection and Promotion of All Migrant Workers and Members of Their Families; the International Convention on the Rights of Persons with Disabilities; and The Convention on the Rights of the Child.

23 The Constitution of the Republic of South Africa, 1996.

24 International Covenant on Economic, Social and Cultural Rights (16 December 1966) available at <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx> (last visited 24 June 2020).

of legality, necessity, proportionality and non-discrimination.²⁵ In particular, the availability of effective and generalised testing and tracing, and targeted quarantine measures, can mitigate the need for more indiscriminate restrictions.

The government has been criticised for imposing severe restrictions without sufficient oversight and transparency, and thus inadequate attention to the potential impact of these measures. The Democratic Alliance was the first to challenge what they called the ‘draconian’ limitations imposed by the government in court.²⁶ On 20 May 2020, the Helen Suzman Foundation approached the Constitutional Court seeking an order that the President, Cabinet and Parliament had failed to fulfil their obligations under the Constitution. In particular, the application states that Parliament had failed to exercise its oversight function, and together with the President and Cabinet ‘*failed to fulfil their obligations, under section 7(2) of the Constitution, to respect, protect, promote and fulfil the rights in the Bill of Rights insofar as their legislative and executive responses to Covid-19 is concerned*’.²⁷ In a similar tone, Advocates Vuyani Ngalwana SC, Nazeer Cassim SC and Erin Richards – as well as British American Tobacco (BAT) and Black First Land First (BLF) – wrote a letter to President Cyril Ramaphosa accusing him of illegally establishing the National Command Council and therefore impeding on the constitutional system of checks and balances.²⁸

Most importantly, however, on 2 June, the Pretoria High Court found, in a controversial and criticised judgment, that some restrictions under levels 4 and 3 of the lockdown were unconstitutional and invalid.²⁹ While the declaration of a national State of Disaster (which has been extended to the lower levels of the lockdown) in terms of Section 27 of the Disaster Management Act in response to the Covid-19 pandemic was found rational by Judge Norman Davis, the subsequent regulations were not. In particular, the court found that those ‘lockdown regulations’ which do not pass a ‘rationality test’ cannot be justified in an open democratic society based on human dignity, equality and freedom as stated in Section 36 of the Constitution.³⁰ However, this judgment has been suspended for two weeks to give the Minister of Cooperative Governance and Traditional Affairs time to review, amend and republish the regulations in consultation with Cabinet, in accordance with the Constitution. The Minister of Cooperative Governance Nkosazana Dlamini-Zuma has appealed the judgment.³¹

Factors affecting the Covid-19 response

There are a number of pre-existing factors that make South Africa’s response to Covid-19 even more challenging. The legacy of the systemic structural inequalities arising from the apartheid era, exacerbated by widespread corruption, have laid bare existing socio-economic fault lines in South Africa. The high levels of poverty and high population density of informal settlements in poor communities make social

25 OHCHR, *Emergency Measures and Covid-19: Guidance* (27 April 2020) available at https://www.ohchr.org/Documents/Events/EmergencyMeasures_COVID19.pdf (last visited 1 July 2020); International Covenant on Economic, Social and Cultural Rights (1966); American Association for the International Commission of Jurists, *Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights* (1985) available at <https://www.icj.org/wp-content/uploads/1984/07/Siracusa-principles-ICCPR-legal-submission-1985-eng.pdf> (last visited 24 June 2020).

26 The Citizen, *Level 4 lockdown regulations resemble state of emergency, DA argues in urgent court application* (15 May 2020) available at <https://citizen.co.za/news/south-africa/politics/2285508/level-4-lockdown-regulations-resemble-state-of-emergency-da-argues-in-urgent-court-application/> (last visited 16 June 2020).

27 M Thamm, *Helen Suzman Foundation approaches ConCourt to order Parliament oversight of Covid-19 response*, Daily Maverick (22 May 2020) available at <https://www.dailymaverick.co.za/article/2020-05-22-helen-suzman-foundation-approaches-concourt-to-order-parliament-oversight-of-covid-19-response/> (last visited 22 June 2020).

28 M Manyane, *Lawyers threaten Ramaphosa’s National Command Council*, IOL (3 May 2020) available at <https://www.iol.co.za/sundayindependent/news/lawyers-threaten-ramaphosas-national-command-council-47489065> (last visited 22 June 2020).

29 *De Beer and Others v Minister of Cooperative Governance and Traditional Affairs* (21542/2020) [2020] ZAGPPHC 184 (2 June 2020) available at <http://www.saflii.org/za/cases/ZAGPPHC/2020/184.html> (last visited 22 June 2020). See also T Mahlakoana, *Lockdown regulations for levels 3 & 4 declared invalid and unconstitutional*, Eyewitness News (2 June 2020) available at <https://ewn.co.za/2020/06/02/lockdown-regulations-for-levels-3-and-4-declared-invalid-and-unconstitutional> (last visited 22 June 2020).

30 *De Beer and Others v Minister of Cooperative Governance and Traditional Affairs* (21542/2020) [2020] ZAGPPHC 184 (2 June 2020) available at <http://www.saflii.org/za/cases/ZAGPPHC/2020/184.html> (last visited 22 June 2020).

31 F Rabkin, *Dlamini-Zuma seeks to appeal the judgment that set aside lockdown regulations*, Mail & Guardian (9 June 2020) available at <https://mg.co.za/politics/2020-06-09-dlamini-zuma-seeks-to-appeal-the-judgment-that-set-aside-lockdown-regulations/> (last visited 22 June 2020).

distancing almost impossible. In addition, communities living in informal settlements are less likely to have access to clean water and electricity. These factors make it more likely that poorer communities will be at higher risk of contracting and spreading Covid-19. As is so often the case, the poor and marginalised will likely bear the brunt of both the epidemic and the measures taken to combat it.³² In the remainder of this section, we briefly discuss some of the factors that will interact with any response to Covid-19 in South Africa. These include inequality, the high levels of GBV, the existing disease burden and inequalities in health provision, and the particular vulnerability of migrants, asylum-seekers and refugees.

South Africa is the most unequal society in the world, with a labour market split into two extremes.³³ Most South Africans living in poverty are black South African women, who experience higher levels of poverty than average, regardless of the particular measure of poverty used.³⁴ One in ten South Africans live in informal dwellings either in backyards or in informal settlements,³⁵ and about one third of the population have limited access to running water.³⁶ Fifteen percent of adults could be termed 'extremely poor' as per the index developed by the FHR, the *SEJA Baseline Survey on Constitutional Awareness*, with 22% of the population going without cash income always or often in the last year. Similarly, according to Statistics South Africa (2019), almost 20% of South African households have no access to adequate food.³⁷

Intersectional violence³⁸ exacerbates conditions for the most vulnerable. The rate of GBV in South Africa was already high before Covid-19, with recent gruesome femicides as a morbid reminder of this ongoing 'war on women'.³⁹ The latest estimates are that just over 12 deaths per 100,000 people are due to interpersonal violence – almost five (4.8) times the global average.⁴⁰ The number of reported sexual offences increased to 52,420 in 2018/19 from 50,108 in 2017/18. Given the low reporting rates of GBV generally, the actual figure is likely to be significantly higher. Most of these were cases of rape.⁴¹ According to the FHR *SEJA Baseline Survey*, two fifths (41%) of all respondents felt that women should not be allowed to refuse sex with their husbands.⁴² Approximately one in six (16%) South African adults also thought that a man is justified in hitting or beating his partner if their partner annoyed them.⁴³

There is an additional danger that the high rate of chronic immune-compromising diseases such as Tuberculosis (TB) and HIV/AIDS in the South African population, coupled with disparities between private and public healthcare, will further disproportionately affect the vulnerable population in the country. According to Global Tuberculosis Control, an estimated 301,000 people in South Africa had TB and the disease claimed the lives of an estimated 63,000 persons (of whom 42,000 were HIV-positive) in 2018.⁴⁴ Approximately 7.7 million South Africans were HIV-positive in 2018,

32 The Guardian, *Black people four times more likely to die from Covid-19, ONS finds* (7 May 2020) available <https://www.theguardian.com/world/2020/may/07/black-people-four-times-more-likely-to-die-from-covid-19-ONS-finds> (last visited 22 June 2020); The Guardian, *Black Americans dying of Covid-19 at three times the rate of white people* (20 May 2020) available at <https://www.theguardian.com/world/2020/may/20/black-americans-death-rate-covid-19-coronavirus> (last visited 22 June 2020).

33 World Bank, *Overcoming Poverty and Inequality in South Africa: An assessment of drivers, constraints and opportunities* (2018) available at <http://documents.worldbank.org/curated/en/530481521735906534/pdf/124521-REV-OUO-South-Africa-Poverty-and-Inequality-Assessment-Report-2018-FINAL-WEB.pdf> (last visited 24 June 2020).

34 Statistics South Africa, *Five facts about poverty in South Africa* (2019) available at <http://www.statssa.gov.za/?p=12075> (last visited 7 January 2020).

35 Foundation for Human Rights & DoJ&CD, *SEJA Baseline Survey Report* (2018), at 6, available at https://www.fhr.org.za/files/2515/2292/1138/Foundation_for_Human_Rights_Baseline_Survey_2018.pdf (hereinafter *SEJA Baseline Survey Report* (2018)).

36 A further quarter (23%) had a tap in their yard, while one in ten (12%) used a neighbour's or communal tap to get water. *Ibid.*, at 8.

37 Statistics South Africa, *Towards measuring food security in South Africa: An examination of hunger and food inadequacy*. Report No. 03-00-14 (2019).

38 Intersectionality is defined as 'the interconnection of race, class, and gender among an individual or group. This is often related to an experience of discrimination or a disadvantage by particular groups based on the intersection of these identity characteristics. For example, black lower-class women will be more subjugated in society than white upper-class men.' See K Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, (Chicago IL: University of Chicago Legal Forum, 1989, at 149).

39 N Ngatane, *Ramaphosa laments week of femicides, calling it 'dark and shameful' period*, Eyewitness News (13 June 2020) available at <https://ewn.co.za/2020/06/13/ramaphosa-laments-week-of-femicides-calling-it-dark-and-shameful> (last visited 22 June 2020).

40 Africa Check, *Five facts: Femicide in South Africa* (2019) available at <https://africacheck.org/reports/five-facts-femicide-in-south-africa/> (last visited 22 June 2020).

41 The Citizen, *FACTSHEET: South Africa's crime statistics for 2018/19* (2019) available at <https://citizen.co.za/news/south-africa/crime/2178462/factsheet-south-africas-crime-statistics-for-2018-19/> (last visited 22 June 2020).

42 *SEJA Baseline Survey Report* (2018), at 20.

43 *Ibid.*

44 WHO, *Global Tuberculosis Control 2019* (2019) available at www.who.int/tb/publications/global_report/en/ (last visited 22 June 2020).

and 71,000 died from AIDS-related illnesses that year.⁴⁵ Inequalities in healthcare have also been reflected in access to medical aid. In this regard, black Africans are the least likely to have medical aid, particularly in provinces such as Limpopo, while the highest access rates to medical aid are in Gauteng at 25% and the Western Cape at 24.8% in 2017.⁴⁶

Migrants, asylum seekers, refugees⁴⁷ and internally displaced persons (IDPs) are particularly vulnerable to stigma, xenophobia, hate speech and related intolerance, which has been worsened by Covid-19. Migrants across the world face loss of jobs, discrimination and difficulty returning to home countries due to border closures. Some 167 countries have closed their borders. Refugees, asylum seekers, IDPs and migrants tend to live in overcrowded conditions with limited access to sanitation and healthcare, and are particularly vulnerable to infection. In many instances, undocumented migrants do not seek healthcare because they fear being detained or deported. While South Africa has a progressive refugee policy,⁴⁸ different rules apply to the undocumented migrant population.⁴⁹ Migrants remain protected under the Constitution; however, they may not be entitled to a number of social security benefits in the same way as citizens or refugees may be. Although the government has introduced a number of mitigating measures aimed at all people living in South Africa, including foreign-nationals and undocumented people,⁵⁰ they have not been adequately implemented and foreign nationals continue to struggle to access the relevant services.

Measures taken to ease the impact of the lockdown

The lockdown has had negative effects on all sectors of society, but particularly for the precariously employed, informal traders, migrants, small businesses and the unemployed. Prior to the pandemic, the South African economy was already experiencing slow growth and high unemployment.⁵¹ The extensive lockdowns, adopted to slow the transmission of the virus, restrict by necessity many human rights and unintentionally affect people's livelihoods and security, access to healthcare, food, water and sanitation, work, and education. In this context, measures need to be taken to mitigate any such unintended consequences. The President has made two major announcements to support interventions aimed at curbing the spread of Covid-19 and easing the impact of the lockdown, including the establishment of a Covid-19 Solidarity Fund and a R500 billion fiscal stimulus package to support the healthcare system, municipalities, businesses, workers and vulnerable groups.

The Solidarity Fund is a conduit for public, societal and private donations,⁵² which has so far received R2.21 billion and pledges of R2.80 billion. It aims to raise R4 billion towards supporting preventative campaign measures, supplying testing kits and research, purchasing PPE for frontline workers and supporting food and shelter programmes. The fiscal stimulus package, on the other hand, amounts to approximately 10% of GDP and involves a reprioritisation of the current budget, as well as using local and international mechanisms as a source of funding. This includes

45 Joint United Nations Programme on HIV and AIDS (UNAIDS), *South Africa* (2020) available at <https://www.unaids.org/en/regionscountries/countries/southafrica> (last visited 22 June 2020).

46 Statistics South Africa, *Inequality Trends in South Africa – Multidimensional diagnostic of inequality* (2019), at 14, available at <http://www.statssa.gov.za/publications/Report-03-10-19/Report-03-10-192017.pdf> (last visited 24 June 2020).

47 Please note that the term 'migrant' refers to a person who has voluntarily left their country in search of work. This is often erroneously conflated with the term 'refugee', which denotes a person who has been forced to flee their country for fear of political or other persecution and/or physical harm. See the Migration Data Portal available at https://migrationdataportal.org/data?i=stock_abs_&t=2019&cm49=710 (last visited 22 June 2020).

48 The Refugee Act of 1998.

49 The Immigration Act of 2002.

50 It is important to note that many South Africans are undocumented in addition to foreign nationals. Thus 'undocumented' does not refer exclusively to any nationality. E.g. South African Government, *Social relief of distress* (undated) available at <https://www.gov.za/services/social-benefits/social-relief-distress> (last visited 22 June 2020).

51 Business Day, *The price SA will pay for being downgraded to junk* (31 March 2020) available at <https://www.businesslive.co.za/bd/economy/2020-03-31-the-price-sa-will-pay-for-being-downgraded-to-junk/> (last visited 22 June 2020).

52 Solidarity Fund (undated) available at <https://solidarityfund.co.za> (last visited 24 June 2020).

the Unemployment Insurance Fund (UIF) and international financial institutions such as the International Monetary Fund (IMF), World Bank, the BRICS New Development Bank (NDB) and the African Development Bank.⁵³ The stimulus package is dedicated to increasing the health budget, relieving hunger and social distress, and supporting workers and businesses. It includes R20 billion to support municipalities' continued service delivery and R50 billion for additional spending on social grants. The new grant measures include the Covid-19 Social Relief of Distress grant⁵⁴ as well as the increase in Child Support Grant and other grants.⁵⁵

The President also announced that R100 billion has been set aside for job support.⁵⁶ This includes the Temporary Employer/Employee Relief Scheme, to which R40 billion is dedicated to supporting wage payments for businesses that are unable to do so.⁵⁷ Additionally, a R200 billion loan guarantee scheme has been set up in partnership with major banks, the South African Reserve Bank (SARB) and the National Treasury. Collectively, the economic measures are expected to ease the impact of the lockdown on business, workers and unemployed individuals.⁵⁸

It appears that foreign nationals and undocumented people⁵⁹ in South Africa may be able to access food packages using some other form of identification, such as an affidavit, baptismal certificate or a letter vouching for their identity.⁶⁰ Additionally, the eligibility criteria for receiving the R350 South African Social Security Agency (SASSA) Social Relief of Distress grant do not preclude non-citizens, which means if these individuals meet the stipulated criteria, they can receive this grant too, provided they use one of the other proposed forms of identification.⁶¹ However the reality for foreign nationals is that they are unable to collect food parcels or access any of the relief measures available.

Notwithstanding government's tremendous efforts to mitigate the impact of the pandemic and the lockdown, some CSOs such as the Covid-19 People's Coalition,⁶² the South African Solidarity Food Campaign (SAFSC)⁶³ and the Institute for Economic Justice⁶⁴ have raised concerns that these measures are insufficient and poorly designed. These stakeholders have observed that the Covid-19 Social Relief grant will not cover the cost of basic groceries for the average family in South Africa, especially given the increasing prices of food.⁶⁵ This issue has been exacerbated by the failure to deliver food parcels to poor communities reliably. Where food parcels are delivered, their nutritional value has also been questioned.⁶⁶ Some reports also pointed to corrupt officials intercepting the food parcels from the Department of Social Development (DSD) and NGOs and redistributing them according to political party affiliation.⁶⁷

53 Daily Maverick, *Ramaphosa announces R500bn relief package* (21 April 2020) available at <https://www.dailymaverick.co.za/article/2020-04-21-ramaphosa-announces-r500bn-relief-package/> (last visited 22 June 2020).

54 A Mitchley, *All systems go for special Covid-19 Social Relief of Distress grant*, News 24 (11 May 2020) available at <https://www.news24.com/SouthAfrica/News/all-systems-go-for-special-Covid-19-social-relief-of-distress-grant-20200511> (last visited 22 June 2020).

55 South African Government, *Social grants – Coronavirus Covid-19* (undated) available at <https://www.gov.za/coronavirus/socialgrants> (last visited 22 June 2020).

56 BusinessTech, *Ramaphosa announces R500 billion support package as South Africa gets ready to slowly re-open its economy* (21 April 2020) available at <https://businesstech.co.za/news/government/391481/ramaphosa-announces-r500-billion-support-package-as-south-africa-gets-ready-to-slowly-re-open-its-economy/> (last visited 22 June 2020).

57 South African Government, *Labour on Temporary Employer-Employee Relief Scheme during Coronavirus Covid-19 lockdown* (27 March 2020) available at <https://www.gov.za/speeches/labour-temporary-employer-employee-relief-scheme-during-coronavirus-Covid-19-27-mar-2020> (last visited 22 June 2020).

58 National Treasury, *Answering your questions about the Covid-19 Loan Guarantee Scheme* (2020) available http://www.treasury.gov.za/comm_media/press/2020/COVID-19%20Loan%20Guarantee%20Scheme%20Q&A.pdf (last visited 24 June 2020).

59 It is important to note that many South Africans are undocumented in addition to foreign nationals. Thus 'undocumented' does not refer exclusively to any nationality.

60 South African Government, *Social relief of distress* (undated) available at <https://www.gov.za/services/social-benefits/social-relief-distress> (last visited 24 June 2020).

61 Ibid.

62 Covid-19 People's Coalition, *Submission to the Ministers of Finance, Social Development, and Women on the Social Grant Component of the Disaster Relief Package* (27 April 2020) available at <https://c19peoplescoalition.org.za/submission-disaster-relief-package/> (last visited 22 June 2020).

63 The FHR is a proud endorsee of SAFSC, and is involved in its working groups aimed at combating issues exacerbated during the pandemic, especially the hunger crisis. See the SAFSC's official website, available at <https://www.safsc.org.za/> (last visited 24 June 2020).

64 G Isaacs, *Covid-19: Unpacking President Ramaphosa's rescue package*, GroundUp (22 April 2020) available at <https://www.groundup.org.za/article/unpacking-president-ramaphosas-rescue-package/> (last visited 22 June 2020).

65 PMBEJD (Pietermaritzburg Economic Justice and Dignity Group), *Research Report: Food, hunger, and Covid-19* (26 May 2020) available at <https://pmbejd.org.za/wp-content/uploads/2020/05/PMBEJD-Research-Report-26052020.pdf> (last visited 26 June 2020).

66 N McCain, *Lockdown: 'Inadequate' nutrition in food parcels may worsen child malnutrition – NGO*, News 24 (30 May 2020) available at <https://www.news24.com/news24/southafrica/news/nutrition-in-food-parcels-inadequate-to-prevent-rise-in-child-malnutrition-health-ngo-20200530> (last visited 22 June 2020).

67 Covid-19 People's Coalition, *Rights violations threaten individuals and communities via lockdown regulations in South Africa* (11 May 2020) available at <https://c19peoplescoalition.org.za/rights-violations-threaten-individuals-and-communities-via-lockdown-regulations-in-south-africa/> (last visited 22 June 2020).

Human rights violations under the lockdown

Disasters and emergencies, particularly those that pose a serious public health threat, may have wide-ranging implications for peace and security. In these circumstances, governments may use law enforcement, in some cases including the military, to support the fight against the disease and to protect people. However, as observed by the UN Secretary General, a heavy-handed security response may undermine the health response, can exacerbate existing threats to peace and security, or indeed create new ones.⁶⁸ The best response is one that aims to respond proportionately to immediate threats whilst ensuring that human rights are respected. Karl Van Hold and Tasmeen Essop from the Society, Work and Politics Institute at the University of the Witwatersrand have argued that the government's interaction with communities and grassroots community movements can be described as *'too distant and disorganised to directly access communities and ameliorate desperation and social distress'* and that its most visible presence has been through the police and the army, especially in poorer communities.⁶⁹ Although South Africa has been lauded for its swift and strict response to Covid-19,⁷⁰ law enforcement officials and the SANDF have been accused of using unnecessary force to enforce lockdown regulations, especially in impoverished, high-density communities where their presence has been disproportionately higher than in the suburbs.⁷¹ At least 13 people have been killed by the police, private security personnel or the SANDF during their enforcement of lockdown regulations.⁷² Another 230,000 have been arrested for violating the lockdown.⁷³ In Vosloorus, a private security guard and a member of the Ekurhuleni Metro Police Department shot Sibusiso Amos for allegedly contravening lockdown regulations and drinking alcohol.⁷⁴ In Khayelitsha, the Covid-19 People's Coalition has received footage of the SAPS shooting rubber bullets at the community, and a preliminary medical report concerning the death of Collins Khosa established that he died from blunt force trauma to the head. Khosa died after being brutally assaulted by members of the SANDF at his home in Alexandra for contravening lockdown regulations.⁷⁵ The disproportionate use of force by the security forces constitutes a serious abuse of power and a violation of human rights.

In the Collins Khosa matter, the High Court found that the conduct of the SANDF members implicated in his death was in violation of his human rights, including the right to life, dignity and security of a person, and, in particular, the right to freedom from torture and other inhumane or degrading treatment.⁷⁶ The High Court therefore requested the suspension of the SANDF members and ruled that the ministers of Defence and Police develop and publish a code of conduct and operational procedures regulating the conduct of their members.⁷⁷ The judgment also emphasised that *'the populace must be able to trust the government to abide by the rule of law and to make*

68 UN SG Report – Shared Responsibility (March 2020).

69 K von Holdt and T Essop, *Communities, not government, can and are fighting Covid-19*, University of the Witwatersrand (28 April 2020) available at <http://www.wits.ac.za/news/latest-news/general-news/2020/2020-04/communities-not-government-can-and-are-fighting-Covid-19.html> (last visited 22 June 2020).

70 A Harding, *South Africa's ruthlessly efficient fight against coronavirus*, BBC (3 April 2020) available at <https://www.bbc.com/news/world-africa-52125713> (last visited 19 May 2020).

71 K Harrisberg, *Coronavirus exposes 'brutal inequality' of South Africa townships*, Reuters (12 June 2020) available at <https://www.reuters.com/article/us-health-coronavirus-safrica-housing-tr/coronavirus-exposes-brutal-inequality-of-south-africa-townships-idUSKBN23J2BS> (last visited 24 June 2020).

72 Confirmed deaths include: Petrus Miggels (Western Cape); Sibusiso Amos (Gauteng); two unnamed males (Northern Cape); Adane Emmanuel (an Ethiopian in KwaZulu-Natal); Collins Khosa (Gauteng); Ntando Sigasa (Gauteng); an unnamed 7-year-old child (North West); an unnamed male (Western Cape); an unnamed person (Gauteng); an unnamed person (KwaZulu-Natal); Elma Robyn Montsumi (Western Cape). No arrests have been made in connection with these deaths.

73 F Haffajee, *Ramaphosa calls 11 lockdown deaths and 230,000 arrests an act of 'over-enthusiasm' – really!* Daily Maverick (1 June 2020) available at <https://www.dailymaverick.co.za/article/2020-06-01-ramaphosa-calls-11-lockdown-deaths-and-230000-arrests-an-act-of-over-enthusiasm-really/> (last visited 22 June 2020); J Bornman, *Law enforcers kill and brutalise during SA lockdown*, New Frame (7 April 2020) available at <https://www.newframe.com/law-enforcers-kill-and-brutalise-during-sa-lockdown/> (last visited 22 June 2020).

74 K Koko, *Metro cop, security guard arrested after Vosloorus man killed in lockdown shooting*, IOL (30 March 2020) available at <https://www.iol.co.za/the-star/news/metro-cop-security-guard-arrested-after-vosloorus-man-killed-in-lockdown-shooting-45763069> (last visited 22 June 2020).

75 P Rampedi, K Ngoepe and M Manyane, *SA lockdown: Soldiers accused of beating Alexandra man to death with sjambok*, IOL (12 April 2020) available at <https://www.iol.co.za/sundayindependent/news/sa-lockdown-soldiers-accused-of-beating-alexandra-man-to-death-with-sjambok-46619454> (last visited 22 June 2020).

76 *Mphephu and Another v Minister of Defence and Veterans and Others* (2512/2020) [2020] ZAGPPHC 147 (15 May 2020), par 84, available at <http://www.saflii.org/za/cases/ZAGPPHC/2020/147.pdf> (last visited 24 June 2020).

77 Z Venter, *Court lockdown victory for family against SANDF, SAPS after death of Collins Khoza*, IOL (2020) available at <https://www.iol.co.za/news/south-africa/gauteng/court-lockdown-victory-for-family-against-sandf-saps-after-death-of-collins-khosa-47987611> (last visited 22 June 2020); See also *Mphephu and Another v Minister of Defence and Veterans and Others* (2512/2020) [2020] ZAGPPHC 147 (15 May 2020).

rational regulations to promote their state purpose.⁷⁸ However, the court-mandated internal investigation conducted by the SANDF has exonerated the soldiers involved in the death of Collins Khosa. The internal investigation found that the altercation was not the cause of death *‘when taking into account the post mortem report’*.⁷⁹ The Khosa matter has fuelled a series of statements condemning the government’s handling of the situation, which has been worsened by contradictory signals and communication coming from the Defence Ministry.⁸⁰ In particular, the UN condemned the use of force by the security forces in South Africa and is investigating 39 charges, including murder, rape, use of firearms and corruption.⁸¹ The UN Secretary General has noted that the instability created by Covid-19 is a public health emergency that requires peace and stability to be maintained, and particularly that principles such as fairness, justice and respect for the rule of law are adhered to. Courts and the administration of justice must continue to function despite the constraints imposed by the crisis in order to ensure the relevant oversight, and that abuses of power are not tolerated.⁸²

There has been a notable increase in the number of GBV cases⁸³ which echoes international trends. Some victim empowerment centres (VECs) and shelters have recorded an increase in GBV cases as most women are stuck with their abusers during lockdown. In his address to the nation on 13 May, the President acknowledged this increase and that the regulations have been amended to allow a woman to leave her home to report GBV.⁸⁴ However, at the start of the lockdown, many organisations offering services to GBV survivors were hamstrung because they did not have ‘essential service’ status. This had an impact on the number of women accessing these services and their ability to report GBV incidents.

The President, however, missed an opportunity to address the issue of evictions, which have continued despite regulations issued by the Minister of Justice, Mr Ronald Lamola, stipulating that evictions are not essential, and are suspended for the duration of the lockdown at levels 5 and 4.⁸⁵ The cities of Cape Town, Johannesburg and eThekweni have allegedly continued to unlawfully evict people. The Covid-19 People’s Coalition has written a letter to the President condemning this.⁸⁶

The best response is one that aims to respond proportionately to immediate threats whilst ensuring that human rights are respected



78 *Mphephu and Another v Minister of Defence and Veterans and Others* (2512/2020) [2020] ZAGPPHC 147 (15 May 2020), par 7.

79 F Rabkin, *SANDF inquiry clears soldiers of the death of Collins Khosa*, Mail & Guardian (27 May 2020) available at <https://mg.co.za/news/2020-05-27-sandf-inquiry-clears-soldiers-of-the-death-of-collins-khosa/> (last visited 22 June 2020).

80 S Morais and A Karrim, *Defence Minister Mapisa-Nqakula got it wrong on Collins Khosa inquiry, report is final – SANDF*, News 24 (5 June 2020) available at <https://www.news24.com/news24/southafrica/news/defence-minister-mapisa-nqakula-got-it-wrong-on-collins-khosa-inquiry-report-is-final-sandf-20200605> (last visited 24 June 2020).

81 Aljazeera, *UN raises alarm about police brutality in Covid-19 lockdowns* (28 April 2020) available at <https://www.aljazeera.com/news/2020/04/raises-alarm-police-brutality-Covid-19-lockdowns-200428070216771.html> (last visited 22 June 2020).

82 UN Secretary General, *Covid-19 and Human Rights: We are all in this together* (April 2020) available at https://www.un.org/victimsofterrorism/sites/www.un.org.victimsofterrorism/files/un_-_human_rights_and_covid_april_2020.pdf (last visited 24 June 2020).

83 N Lefafa, *Covid-19 lockdown provides ‘perfect storm’ for SA’s GBV crisis*, Health-E News (29 April 2020) available at <https://health-e.org.za/2020/04/29/Covid-19-lockdown-provides-perfect-storm-for-sas-gbv-crisis/> (last visited 22 June 2020).

84 Daily Maverick, *Covid-19: President Ramaphosa announces a slight Lockdown lifting, but when?* (13 May 2020) available at <https://www.dailymaverick.co.za/article/2020-05-13-Covid-19-president-ramaphosa-announces-a-slight-lockdown-lifting-but-when/> (last visited 22 June 2020).

85 E.g. Regulation 489, Disaster Management Act (57/2002), *Directions issued in terms of Regulation 4(2) of the Regulations under the Act* (4 May 2020) available at <https://www.justice.gov.za/legislation/notices/2020/20200504-gg43268-GoN489-COVID19.pdf> (last visited 28 June 2020); Regulation 440 issued on 31 March 2020.

86 C19 People’s Coalition, *Call to Action from C-19 Coalition concerning evictions and state violence committed in the name of Covid-19 response* (14 April 2020) available at <https://c19peoplescoalition.org.za/wp-content/uploads/2020/04/c19-coalition-call-to-action-presidency-anti-repression-letter.pdf> (last visited 28 June 2020).

3

Methodology

Survey's purpose

The aim of this study was to collect information across the country about the experiences of communities served by CAOs during the lockdown. In particular, the survey was intended to gather information about access to basic services, the ability of communities to exercise their rights under lockdown, and their interactions with law enforcement officers. The survey also inquired about Covid-19 responses in communities and how the lockdown has affected CAO operations. The decision to target CAO staff as respondents was based on their role in communities, their access to first-hand information, and the long-standing partnership between CAOs and the FHR.

All CAOs taking part in the survey were specifically requested to complete the questionnaire based on the information available to them without putting themselves or other people in danger. They were urged to respect all lockdown regulations.

Survey's limitations

Respondents were requested to answer all questions based on their experiences as CAOs and were asked not to canvas their responses from local communities. Consequently, the responses in this survey reflect the perceptions of the CAOs' staff members in the communities where they operate. This should be kept in mind while interpreting the results or analysing the responses, particularly when a question deals with issues that normally fall outside the competencies of CAOs.

Questionnaire design

The survey questionnaire was designed by FHR staff, including those who have worked closely with CAOs and were familiar with the context and constraints of these organisations. The questions were mostly focused on the extent to which fundamental rights and freedoms have been affected as a result of the lockdown, with several questions pertaining to the Covid-19 response in the communities and whether Covid-19 has had an impact on CAOs' operations.

Data collection and processing

The data was collected through an online survey that targeted a total of 224 CAOs across all provinces in South Africa. The list of CAOs was compiled by FHR staff based on the information obtained from national and provincial workshops held by the FHR in the course of last year. One hundred and twenty-seven CAOs have responded to the survey. CAOs that were unable to complete the online version of the survey were provided with a Microsoft Word version of the survey to complete. The use of the online survey allowed us to address some of the accessibility issues often faced by the CAOs such as the lack of laptops or computers, particularly during the lockdown. The online version of the survey was easily accessible on all mobile devices.

The survey was administered through Microsoft Forms and the data was processed through a statistical package, R. Microsoft Forms was chosen for its user friendliness and low consumption of data and R was used for its efficiency and strength as a data analysis tool. All collected data was monitored and stored in one password-protected Microsoft account.

During the data processing, any answers which fell under the 'Other (specify):' category and fitted into the existing choices were recoded as such. Since relatively small numbers of respondents selected this option throughout the survey, we have not included the 'Other' responses in the tables shown in this report.

Data analysis

Table 3.1 shows the number of respondents to the survey by province. Note that for multiple-choice questions, as respondents could select more than one answer, the responses may not add up to 100%. For open-ended questions, themes were derived from an initial reading of the data and responses were then categorised according to key words into these themes.

This survey was completed by 127 CAOs, using them as local points of contact to gauge the situation on the ground in communities across the country. The highest proportion of respondents (25%) are from the Eastern Cape, followed by KwaZulu-Natal (22%) and Gauteng (13%). This makes sense as these provinces have the highest concentration of CAOs in the country. Unfortunately, only three respondents from the Northern Cape are captured in this survey, and they constitute the smallest proportion of respondents at 2%. It is important to keep these proportions in mind when assessing the findings of this survey. Due to the low response rate in the Northern Cape, North West and Mpumalanga, no provincial-level deductions will be made in these cases.

It is also important to note that this survey was completed between 26 April and 31 May 2020, thus 24 responses (19%) were submitted during level 5 of South Africa's lockdown, and the balance (81%) were submitted during level 4.

Table 3.1: Survey distribution per province

	No. of CAOs contacted	No. of responses	Response rate
Eastern Cape	50	32	64%
KwaZulu-Natal	51	28	55%
Gauteng	40	16	40%
Limpopo	19	14	74%
Free State	19	11	58%
Western Cape	20	9	45%
North West	9	8	89%
Mpumalanga	12	6	50%
Northern Cape	4	3	75%
TOTAL	224	127	57%

Logistics related to the survey

The data costs associated with completing the survey were covered by the FHR. The FHR set up a dedicated email account for CAOs to contact concerning any issues encountered in completing the questionnaire. Before distributing the survey, FHR staff contacted the CAOs telephonically and via email to explain the purpose of the survey. Following the lockdown restrictions, no in-person exchanges were made in the process of this survey.



4

Impact of Covid-19 on Civil and Political Rights

This chapter discusses the impact of Covid-19 on the political and civil rights in disadvantaged and marginalised communities during levels 4 and 5 of the lockdown. The chapter has been divided into three sections, each of which deals with aspects of civil and political rights. These consist of the response by security forces to Covid-19, GBV and lastly, children's rights. The right to education is discussed separately under the socio-economic rights chapter.

Response by security forces

In the aftermath of the lockdown declaration, on 25 March 2020, the President authorised the deployment of the SANDF to support the SAPS in the enforcement of the lockdown regulations.⁸⁷ On the first day of the lockdown, on 27 March 2020, Petrus 'Pietman' Miggels died soon after he had been assaulted by police for allegedly violating lockdown regulations.⁸⁸ As described earlier in this report, the allegations of police and military brutality and harassment continued during the first two months of lockdown. Abuse of power and the extensive use of force is not new in South Africa. As reported by ViewFinder, between April 2012 and March 2019, South Africans lodged 42,365 criminal complaints against the police with the Independent Police Investigative Directorate (IPID).⁸⁹ The establishment of the IPID stems from one of the recommendations by the Truth and Reconciliation Commission (TRC). The TRC, faced with allegations of police brutality during apartheid, requested that an independent watchdog be created to deal with complaints against the police. While the relevant independent bodies were established following the transition to democracy, the High Court found (in *Khosa, Mphephu et al. v Minister of Defence and Military Veterans et al.*) that both the IPID and Military Ombudsman have been inadequate in ensuring efficient and prompt investigations of human rights violations by security forces. The High Court therefore ordered that they establish a 'freely accessible mechanism for civilians' to report allegations of torture, or cruel, inhuman or degrading treatment or punishment for the duration of the State of Disaster.⁹⁰

Both the constitutional design in South Africa⁹¹ and international law⁹² ensure and protect the right to life, right to dignity, security of a person and the right to be free from cruel, inhuman or degrading treatment or punishment. These rights are non-derogable, meaning that no limitations may be imposed on their enjoyment, even in special circumstances such as internal political instability or a public emergency.⁹³ Sections 12(d) and (e) of the Constitution stipulate that everyone has the right to freedom

⁸⁷ President's Minute 78 of 2020, 25 March 2020.

⁸⁸ D Knoetze, *Covid-19: Police watchdog investigation of first lockdown death reveals deep flaws*, ViewFinder (28 April 2020) available at <https://viewfinder.org.za/Covid-19-police-watchdog-investigation-of-first-lockdown-death-reveals-deep-flaws/> (last visited 22 June 2020).

⁸⁹ D Knoetze, *IPID's cover-up of police brutality in SA* (7 October 2019) available at <https://viewfinder.org.za/kill-the-files/> (last visited 22 June 2020).

⁹⁰ *Mphephu and Another v Minister of Defence and Veterans and Others* (2512/2020) [2020] ZAGPPHC 147 (15 May 2020), par 146, available at <http://www.saflii.org/za/cases/ZAGPPHC/2020/147.pdf> (last visited 24 June 2020).

⁹¹ Sections 10, 11 and 12, Bill of Rights, South African Constitution.

⁹² Article 3, the Universal Declaration of Human Rights; Article 6, the International Covenant on Civil and Political Rights (ICCPR); Article 4, the African Charter on Human and Peoples' Rights (hereinafter, 'African Charter'); Article 4, Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.

⁹³ Article 4(2), ICCPR.

and security of the person, which includes the right *‘not to be tortured in any way; and not to be treated or punished in a cruel, inhuman or degrading way’*. Moreover, Section 199(5) of the Constitution provides that *‘The security services must act, and must teach and require their members to act, in accordance with the Constitution and the law, including customary international law and international agreements binding on the Republic.’* The statutes including the Defence Act,⁹⁴ the SAPS Act⁹⁵ and the Criminal Procedure Act⁹⁶ impose further limitations on the use of force by the South African security forces. The High Court in the *Khosa* matter summarised the rules on the use of force by the security forces as follows: 1) as a general rule members of the security forces (SAPS and SANDF) may not use force; 2) where force is necessary, it may only be minimal force; 3) force may be used to secure an arrest of the person if it is reasonably necessary and proportional; 4) deadly force may be used during the arrest only when there is a threat to life.⁹⁷

South Africa has also enacted the Prevention and Combating of Torture of Persons Act, 13 of 2013, which has domesticated the United Nations Convention against Torture, and has made torture a crime in South Africa. As the court found recently regarding torture *‘these constitutionally exceptional crimes need to be prevented and remedied in a radical different, more stringent and more urgent manner than “ordinary crimes”’*.⁹⁸

The results from our survey confirm the increased presence of police and the military in the communities across the country – three quarters of CAOs reported that there was an increased presence of security forces in their localities. Offices in Gauteng and the Western Cape were least likely to report the increased presence of security forces.

Among those CAOs who reported an increase in armed forces, the majority (61%) indicated that they were enforcing lockdown regulations. It is of course overwhelmingly likely that the increased security presence is indeed linked to the enforcement of lockdown regulations.

Table 4.1: Has the presence of the police/army during the lockdown increased?

	Yes	No	N
Eastern Cape	27	5	32
Free State	10	1	11
Gauteng	7	9	16
KwaZulu-Natal	18	10	28
Limpopo	11	3	14
Mpumalanga	6	0	6
North West	8	0	8
Northern Cape	3	0	3
Western Cape	5	4	9
TOTAL	95 (75%)	32 (25%)	127 (100%)

⁹⁴ Sections 19 and 20.

⁹⁵ Section 13.

⁹⁶ Section 49(2).

⁹⁷ *Mphephu and Another v Minister of Defence and Veterans and Others*, (2512/2020) [2020] ZAGPPHC 147 (15 May 2020), par 64.

⁹⁸ *Ibid.*, par 56.

75%

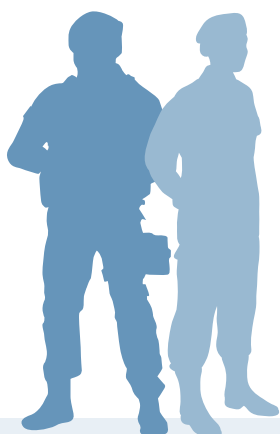
of CAOs reported that in most cases the security forces ensured that lockdown regulations were respected

32%

of CAOs reported complaints of harassment on the part of the police/army

6%

Only 6% of CAOs recorded incidents of harassment



One third of CAOs reported that there were complaints of harassment on the part of the police/army, but only a very small proportion (6%) indicated that they had recorded actual incidents of harassment. Complaints of harassment were more likely to occur in instances where CAOs had reported an increased presence of army/police forces – 40% of CAOs who reported an increase in the presence of the army/police indicated that they were aware of reports of harassment, while only 10% of CAOs who reported no such increase were aware of claims of harassment. Complaints of harassment were also more prevalent among CAOs who reported that the increased security forces were not enforcing lockdown regulations (almost 50% of CAOs who indicated that increased security forces were not enforcing lockdown regulations also reported that there were complaints of harassment).

All of the incidents where actual instances of abuse were recorded, occurred in communities where an increased presence of security forces was noted.

One of the CAOs reported that:

'During level 4 police and army [have] beaten up women whom were jogging along the road next to their house.'⁹⁹

While there might be some correlation between the increase in the presence of security forces and a growing number of complaints, it seems that there are still relatively few complaints in the communities despite what appears to be quite a heavy-handed response. The Free State has the highest proportion of CAOs reporting complaints against police and the army, and the lowest fraction of CAOs observing 'no security force presence'.

Table 4.2: How has the police/army presence during the lockdown affected community members?

	They ensure lockdown regulations are respected	We have noted complaints of harassment by the police/army from the community	We have recorded an increase in the number of incidents of harassment by the police/army	N
Eastern Cape	22	11	3	32
Free State	4	7	0	11
Gauteng	5	8	3	16
KwaZulu-Natal	17	5	0	28
Limpopo	10	3	1	14
Mpumalanga	5	1	0	6
North West	7	1	0	8
Northern Cape	2	1	0	3
Western Cape	5	4	0	9
TOTAL	77 (75%)	41 (32%)	7 (6%)	127 (100%)

99 One of the responses included under 'Other'.

Some communities, especially poor and densely-populated ones (such as townships and informal settlements) may experience an increase in the army or police presence more immediately than others, which in turn could contribute to different perceptions among the community members on what in fact constitutes an ‘increase’ during the lockdown (e.g. see results for Gauteng). Security forces appear to have targeted poorer, dense communities at least partly because of the inherent risks for the spread of Covid-19. However, it is important to note that this means that the poorest in South Africa are more likely to be subject to the most violent treatment by these forces in their enforcement of lockdown regulations.

At least 13 individuals have been targeted and died as a result of assault at the hands of the security forces and the police during the first two months of lockdown. While security forces have been deemed necessary to enforce lockdown regulations, the values and rights in the Constitution, including the protection of civilians, must remain paramount and violations must not go unchecked; those responsible for murder must be held accountable.

Gender-based violence

The Constitution guarantees the rights to equality, human dignity, life, freedom and the security of the person,¹⁰⁰ which are non-derogable even during an emergency.¹⁰¹ These rights and freedoms have been further expressed in a number of treaties ratified by South Africa,¹⁰² and constitute protection against any form of GBV. Despite the progressive constitutional and legal framework in South Africa¹⁰³ and the recent efforts by government to address GBV in the country,¹⁰⁴ cultural, religious, social and economic factors continue to drive GBV on a large scale. Before the outbreak of Covid-19 and the subsequent lockdown, GBV rates in South Africa were already one of the highest in the world.¹⁰⁵ Whilst these statistics are high, the country continues to be plagued by under-reporting, and the lack of accountability for perpetrators, including the low rates of conviction for rape, sexual violence and femicide.¹⁰⁶ In addition to this, there is little, if any, authoritative and disaggregated data available on violence and discrimination on the basis of sexual orientation, gender identity, expression and sex characteristics in South Africa.

During a crisis such as a public health emergency, the underlying causes of GBV, including a deeply rooted patriarchy, unequal power relations and unequal access to resources, are further exacerbated. In tandem with factors that typically accompany responses to a crisis – such as increased securitisation, scarcity of essential resources, disruption to community services, disrupted relationships and weakened

¹⁰⁰ Sections 9, 10 and 11.

¹⁰¹ Regarding freedom and the security of the person – with respect to subsections (1)(d) and (e) and (2)(c); and regarding the right to equality – with respect to unfair discrimination solely on the grounds of race, colour, ethnic or social origin, sex, religion or language. See Section 37 of the Constitution.

¹⁰² E.g. the International Covenant on Civil and Political Rights, 1966 (ICCPR), the International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR), the Convention on the Elimination of all Forms of Discrimination against Women, 1979 (CEDAW), and the African Charter on Human and People's Rights, 1981 (African Charter).

¹⁰³ E.g. The Domestic Violence Act, 116 of 1998 (DVA) and the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 32 of 2007 (Sexual Offences Act, SOA). See also the Commission for Gender Equality and the Department of Women in the Presidency.

¹⁰⁴ South African Government, *National Gender-Based Violence and Femicide Strategic Plan, 2020–2030* (12 August 2019) draft available at <https://www.gov.za/documents/national-gender-based-violence-and-femicide-strategic-plan-draft-12-aug-2019-0000> (last visited 25 June 2020).

¹⁰⁵ Some sources indicate that in South Africa, a woman is killed every three hours on average. According to Statistics South Africa, women constitute the majority of victims of sexual offences (68.5%). The South African Human Rights Commission (SAHRC) reported that an estimated 21% of women over the age of 18 years have experienced physical violence by a partner, while 6% of women overall have experienced sexual violence by a partner. See J Chukwueke, *The ‘shadow pandemic’ of gender-based violence*, Atlantic Council Blog (1 May 2020) available at <https://www.atlanticcouncil.org/blogs/africasource/the-shadow-pandemic-of-gender-based-violence/> (last visited 22 June 2020); Statistics South Africa, *Crime against Women in South Africa: An in-depth analysis of the Victims of Crime Survey data*, Report No. 03-40-05 (June 2018) available at <https://www.statssa.gov.za/publications/Report-03-40-05/Report-03-40-05June2018.pdf> (last visited 25 June 2020); SAHRC, *Unpacking the gaps and challenges in addressing gender-based violence in South Africa*, Research Brief (2018) available at <https://www.sahrc.org.za/home/21/files/SAHRC%20GBV%20Research%20Brief%20Publication.pdf> (last visited 25 June 2020).

¹⁰⁶ Rape Crisis Cape Town Trust, *From reporting to trial – how rape cases fall through the cracks* (undated) available at <https://rapecrisis.org.za/from-reporting-to-trial-how-rape-cases-fall-through-the-cracks/> (last visited 24 June 2020).

infrastructure¹⁰⁷ – the prevalence of GBV is likely to rise. The increase in incidents of GBV due to the lockdown has been widely reported in South Africa.¹⁰⁸ Our study has confirmed this trend.

Most respondents (54%) in all nine provinces recorded an increase in the number of GBV cases in their communities since the lockdown. Although the responses between the provinces differed, at least one third of respondents in each province said that incidents of GBV increased during lockdown. Based on the information from CAOs, provinces with the highest relative rise of GBV are the North West, where all CAOs surveyed noted an increase, followed by the Free State (82%) and KwaZulu-Natal (65%). In two of the most populated provinces, Gauteng and the Western Cape, between 38% and 44% of CAOs reported an increase in GBV cases, respectively. In some instances, CAOs heard about the increase GBV cases from colleagues at a police station, while in others the knowledge was from first-hand experience of dealing with GBV cases. As one respondent observed:

*'I heard about the increase of GBV from colleagues (Police) as the Support Centre was closed.'*¹⁰⁹

Another respondent gave a first-hand account of their intervention:

*'[We had] cases of taxi drivers [who] assaulted the passenger of other transport and the police are attending the matter after our interventions.'*¹¹⁰

54%

of CAOs reported an increase in GBV cases during lockdown, across all provinces

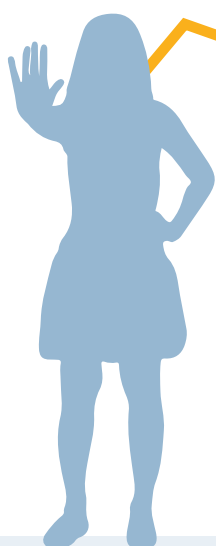


Table 4.3: Has there been an increase in the number of gender-based violence (GBV) cases in the community since the lockdown?

	No	Yes	N
Eastern Cape	19	13	32
Free State	2	9	11
Gauteng	10	6	16
KwaZulu-Natal	10	18	28
Limpopo	7	7	14
Mpumalanga	3	3	6
North West	0	8	8
Northern Cape	2	1	3
Western Cape	5	4	9
TOTAL	58 (46%)	69 (54%)	127 (100%)

107 IASC, *Guidelines for Integrating Gender-Based Violence Interventions in Humanitarian Action: Reducing risk, promoting resilience and aiding recovery* (2015) available at <https://reliefweb.int/report/world/guidelines-integrating-gender-based-violence-interventions-humanitarian-action-reducing> (last visited 22 June 2020).

108 See J Chukwueke, *The 'shadow pandemic' of gender-based violence*, Atlantic Council Blog (1 May 2020) available at <https://www.atlanticcouncil.org/blogs/africasource/the-shadow-pandemic-of-gender-based-violence/> (last visited 22 June 2020).

109 As reported by one CAO in the 'Other' responses to Question 18.

110 Ibid.

The survey results indicate that the lockdown has had a negative effect on women and girls, who constitute the majority of GBV victims. Intimate partner violence is the most common form of GBV,¹¹¹ which is the most likely to have increased given that victims have been legally restricted from leaving their homes, thus isolating them with their abusers. According to GBV experts, home is likely to become a space where sexual and other forms of GBV is further normalised and where women and girls also face an increased burden of caregiving due to the lockdown.

For GBV victims, home has been described as a space

‘where the family friend lurks to plan his sexual assault. It is where the father beats on the mother for not cooking food on time. It is where fiancés are murdered; partners are stabbed over allegations of affairs; and children have been abused and killed.’¹¹²

The restrictions on the freedom of movement only add to an already long list of challenges traditionally faced by GBV survivors, such as long distances between communities and police stations, poor logistics for police officers and high transportation costs that often prevent or hinder survivors from reporting cases of GBV. When the allegations emerged about a police officer who was alleged to have raped his wife¹¹³ during the lockdown, the Minister of Police dismissed the incident:

‘A story came out about a policeman who raped a lady. We discovered that he is policeman, but he is the husband of the lady — it is not the police ... He was not in uniform, it was not at the police station. It was in the middle of the night. Say: ‘The husband raped his wife’ — not the police!’

Table 4.4: Does your CAO have a system and capacity to assist with GBV cases?

	No	Yes	N
Eastern Cape	8	11	19
Free State	1	9	10
Gauteng	5	5	10
KwaZulu-Natal	6	14	20
Limpopo	4	7	11
Mpumalanga	3	3	6
North West	3	5	8
Northern Cape	0	2	2
Western Cape	6	0	6
TOTAL	36 (39%)	56 (61%)	92 (100%)

111 Safer Spaces, *Gender-based violence in South Africa* (undated) available at <https://www.saferspaces.org.za/understand/entry/gender-based-violence-in-south-africa> (last visited 22 June 2020).

112 Urgent Action Fund Africa, *The double jeopardy of inequality and Covid-19 lockdown* (undated) available at <https://www.uaf-africa.org/the-double-jeopardy-of-inequality-and-covid-19-lockdown/> (last visited 22 June 2020).

113 D Meyer, *‘Rape apologist’ Bheki Cele should be removed as police minister – DA* (8 April 2020) available at <https://www.thesouthafrican.com/news/bheki-cele-rape-apology-what-he-said-should-be-removed/> (last visited 25 June 2020).

Those CAOs that responded that GBV had increased were then asked whether they had the systems and the capacity to assist GBV survivors. The majority of these CAOs (61%) said that they had the necessary capacity and systems in place to assist GBV survivors. The exception is the Western Cape, where none of the CAOs in this group indicated that they had the required systems in place. All CAOs surveyed from the Northern Cape (3) said that they have the relevant systems in place. Similarly, almost all respondents from the Free State said that they have systems in place to provide assistance with GBV cases (90%), followed by KwaZulu-Natal (70%) and Limpopo (64%).

Three quarters of CAOs reported that there were some GBV services available in their community. CAOs in KwaZulu-Natal were least likely (17 of 28, or 60%) to report that these services were available to their constituency.

Counselling services were the most common type of GBV-service identified (75 of 127, or 59%), while victim empowerment centres (VECs) were also available in a majority of these areas. On the other hand, only 15 CAOs indicated that shelters were available.

However, even if VECs exist within communities, some were closed during the lockdown because of an inability to put preventative measures in place. As one respondent says:

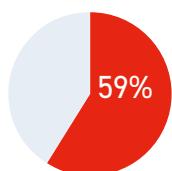
'[V]ictim empowerment centres were closed, staff members did not have safety measures to protect themselves and victims.'

Table 4.5: Are GBV-related services available in your community?

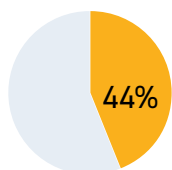
	Yes	No	N
Eastern Cape	25	7	32
Free State	9	2	11
Gauteng	11	5	16
KwaZulu-Natal	17	11	28
Limpopo	11	3	14
Mpumalanga	5	1	6
North West	5	3	8
Northern Cape	2	1	3
Western Cape	8	1	9
TOTAL	93 (73%)	34 (27%)	127 (100%)

Reported services available to GBV survivors in communities where CAOs operate:

Counselling services



VECs



Shelters

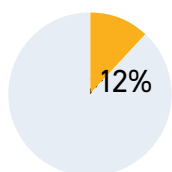


Table 4.6: Which services are available in your area to assist survivors of GBV?

	Counselling services	Shelters	VECs	N
Eastern Cape	16	2	15	32
Free State	8	2	7	11
Gauteng	10	1	7	16
KwaZulu-Natal	15	2	6	28
Limpopo	7	2	9	14
Mpumalanga	5	1	0	6
North West	5	3	2	8
Northern Cape	2	0	1	3
Western Cape	7	2	4	9
TOTAL	75 (59%)	15 (12%)	51 (40%)	127 (100%)

Shelters for GBV survivors were available in only 15 communities surveyed, with no shelters in the Northern Cape and with the most shelters in the North West.

'There is no shelter at the moment, the victim is forced to go back stay with the abuser until there is a second option arrangement, e.g. moving the victim to relatives for temporal. Shelters are very far and most of the times are full.'

In other instances, CAOs gave accounts about how they worked together with local councillors and others to address GBV cases in their community:

*'As our services are not essential to our government we are totally not operational but because of the demand of our hand held help in the community we work with our councillors, just last week on Friday we had a case of GBV and the victim did not have anywhere to go and we intervened and took the victim to stay with our local councillor.'*¹¹⁴

Some CAOs worked closely with the police: *'We have been referring our cases to the police working together hand in hand and making follow ups.'*¹¹⁵

Other services available for GBV survivors in the community include mediation of cases by CAOs, referrals to the SAPS or court for protection orders, and support groups and advocacy. One CAO complained that the government did not recognise the CAO sector as an *'essential service'* forcing them to close during lockdown.¹¹⁶ However, as will be discussed later in this report, some CAOs have managed to obtain the required permits to operate.

Many CAOs have continued providing services to GBV survivors or referring them to other entities (such as other NGOs or the SAPS) when they are unable to assist. CAOs, as suggested by respondents, are well-placed to play a more meaningful role in addressing GBV cases in instances of public emergencies and disasters. These roles could include acting as human rights monitors during door-to-door campaigns. Our findings show that there has been no comprehensive assistance for GBV survivors in

¹¹⁴ As reported by one CAO in the 'Other' responses to Question 18.

¹¹⁵ Ibid.

¹¹⁶ Ibid.

many disadvantaged and marginalised communities across the country. Although most CAOs may have the capacity to provide counselling, paralegal advice or assistance with referrals, they are not ‘shelters’ and most CAOs do not have the capacity to isolate GBV survivors from their abusers.

While some CAOs managed to work with their communities or leaders to separate the survivors from the perpetrators or to obtain restraining orders, in the long run, this is not a sustainable solution. One component of such a long-term approach would be providing more shelters.¹¹⁷ This is particularly pertinent given that only 15 CAOs reported having shelters in their communities.

Children’s rights

High levels of poverty coupled with the deepening food crisis and inequality increase the likelihood of malnutrition in children



Although experts and epidemiologists have indicated that children are at much lower risk of experiencing severe Covid-19 symptoms than adults,¹¹⁸ they are more likely to bear the considerable burden of trauma and economic fallout during, and in the aftermath of, the lockdown. High levels of poverty and inequality coupled with the deepening food crisis during and after the lockdown particularly increase the likelihood of malnutrition in children, which has negative long-term effects on their health and educational outcomes.¹¹⁹ The pre-pandemic neglect and growing frustration about the lack of income and growing unemployment among parents may also result in increased incidences of child abuse.¹²⁰ Social distancing and lack of access to extended family members may further exacerbate this already significant impact of the lockdown on children. Some experts report that:

‘For some children, these extended sources of support is often a crucial buffer in toxic or even more (physically) dangerous home environments.’¹²¹

All of this is in addition to the lack of access to education for millions of children in South Africa, which is discussed in detail elsewhere in this report.

The government-run National School Nutrition Programme (NSNP) provides nutritious meals to all learners in primary and secondary schools¹²² and reaches 9 million children in over 20,000 public schools across South Africa.¹²³ The NSNP has two major objectives, namely food security (to improve the health and nutritional status of school-going children) and food education (to improve learners’ school attendance, attentiveness and performance), and as such constitutes an important social protection instrument.¹²⁴ The closure of schools has therefore meant that millions of children are not getting their usual meals. SECTION27 and the Equal Education Law Centre (EELC) have approached the court on behalf of a number of learners, parents, teachers and school governing bodies in an attempt to get the government to feed millions of children who have gone hungry since schools closed

117 One of the indicators included in the *Draft National GBV and Femicide Strategic Plan* is ‘Indicator: Resource allocation to ensure provision of support and advocacy services by NGOs, including shelters, helplines, advocacy, counselling and other services.’ See: South African Government, *National Gender-Based Violence and Femicide Strategic Plan, 2020–2030* (12 August 2019) draft available at <https://www.gov.za/documents/national-gender-based-violence-and-femicide-strategic-plan-draft-12-aug-2019-0000> (last visited 25 June 2020).

118 RCPCH, *COVID-19 – research evidence summaries* (9 April 2020) available at <https://www.rcpch.ac.uk/resources/Covid-19-research-evidence-summaries> (last visited 16 June 2020).

119 UN Country Team in South Africa, *South Africa Emergency Appeal for the Impact of Covid-19* (May–November 2020) (1 May 2020) available at <https://reliefweb.int/report/south-africa/south-africa-emergency-appeal-impact-Covid-19-may-november-2020> (last visited 22 June 2020).

120 N Samie-Jacobs, *Helping vulnerable children navigate the COVID-19 pandemic*, UNICEF (30 April 2020) available at <https://www.unicef.org/esa/stories/helping-vulnerable-children-navigate-Covid-19-pandemic> (last visited 22 June 2020).

121 K Mphahlele, *COVID-19: The kids are not all right*, Spotlight (17 April 2020) available at <https://www.spotlightnsp.co.za/2020/04/17/Covid-19-the-kids-are-not-all-right/> (last visited 22 June 2020).

122 Department of Basic Education, *National School Nutrition Programme* (undated) available at <https://www.education.gov.za/Programmes/NationalSchoolNutritionProgramme.aspx> (last visited 25 June 2020).

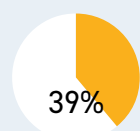
123 S Devereux et al., *School Feeding in South Africa: What we know, what we don’t know, what we need to know*, Food Security SA Working Paper Series 4, DST-NRF Centre of Excellence in Food Security (2018) available at <https://foodsecurity.ac.za/wp-content/uploads/2018/06/CoE-FS-WP4-School-Feeding-in-South-Africa-11-jun-18.pdf> (last visited 25 June 2020).

124 Ibid.

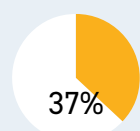
Problems experienced by children during lockdown:



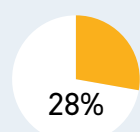
Lack of food



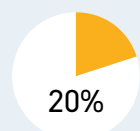
Emotional abuse



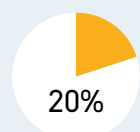
Lack of access to sanitation



Lack of access to water



Mental abuse



Physical abuse

during the Covid-19 lockdown. They indicated that they had hoped that, once schools started reopening, the school feeding schemes, which are planned and budgeted for, would resume in full. However, the Minister and the Department of Basic Education have opted, for now, to only feed Grade 7 and 12 children.¹²⁵ In an affidavit placed before the court, a learner said that:

*'Before school closures commenced due to the national lockdown, I received two cooked meals per day through the NSNP. Since my school closed for the national lockdown, I have not received any meals through the NSNP.'*¹²⁶

South Africa is home to nearly 20 million children.¹²⁷ Section 28 of the South African Constitution guarantees the rights of children, including the right to be protected from maltreatment, neglect, abuse or degradation, the right to basic nutrition, shelter, basic healthcare services and social services. South Africa is also a signatory to the United Nations Convention on the Rights of the Child. This constitutional and international legal framework is further complemented by statutory legislation, including the Child Care Act of 1983 and the Domestic Violence Act of 1998, which are aimed at protecting children from neglect and abuse. They also place positive obligations upon the government to intervene and provide the relevant services to children so they can achieve their full potential.

Almost all CAOs (87%) observed that children within their communities experience food shortages. The other most prevalent problem identified (by 37% of CAOs) is the lack of access to sanitation. This appears to be a particular issue in Limpopo, where 11 of the 14 CAOs reported access to sanitation as a problem affecting children in their community. Almost half of all CAOs (48%) reported that children in their communities were experiencing some form of abuse, most commonly emotional abuse (39%), during lockdown.

More than a half of South Africans (55.5%)¹²⁸ live below the upper-bound poverty line at R1,227 per person per month,¹²⁹ and a quarter (25.5%)¹³⁰ live below the food poverty line at R556 per person per month.¹³¹ When schools closed, as many as 9 million children might have been deprived of their main daily source of food¹³² because many schools have feeding schemes that offer children free meals.

The overwhelming majority of all respondents (91%) said there have been no feeding schemes for children during the lockdown. In all provinces but the Western Cape, more than 90% of CAOs said that there were no school feeding schemes. One CAO has been assisting children with food:

*'Our AO do assist with food for children on Monday and Thursday with money from AO member contribution.'*¹³³

125 Daily Maverick, 'I will collect food from school if it was an option' (12 June 2020) available at <https://www.dailymaverick.co.za/article/2020-06-12-i-will-collect-food-from-school-if-it-was-an-option/#gsc.tab=0> (last visited 25 June 2020).

126 Ibid.

127 Western Cape Government, *Children, know your rights and responsibilities* (2019) available at <https://www.westerncape.gov.za/general-publication/children-know-your-rights-and-responsibilities> (last visited 22 June 2020).

128 PMBEJD (Pietermaritzburg Economic Justice and Dignity Group), *Household Affordability Index* (May 2020) available at <https://pmbelj.org.za/wp-content/uploads/2020/05/May-2020-Household-Affordability-Index-PMBEJD.pdf> (last visited 25 June 2020).

129 R1,227 (in April 2019 prices) per person per month. This refers to the food poverty line plus the average amount derived from non-food items of households whose food expenditure is equal to the food poverty line. See Statistics South Africa, *National Poverty Lines*, Statistical Release P0310.1 (2019) available at <http://www.statssa.gov.za/publications/P03101/P031012019.pdf> (last visited 25 June 2020).

130 PMBEJD, *Household Affordability Index* (May 2020) available at <https://pmbelj.org.za/wp-content/uploads/2020/05/May-2020-Household-Affordability-Index-PMBEJD.pdf> (last visited 25 June 2020).

131 R561 (in April 2019 prices) per person per month. This refers to the amount of money that an individual will need to afford the minimum required daily energy intake. This is also commonly referred to as the 'extreme' poverty line. See Statistics South Africa, *National Poverty Lines*, Statistical Release P0310.1 (2019) available at <http://www.statssa.gov.za/publications/P03101/P031012019.pdf> (last visited 25 June 2020).

132 S Devereux et al., *School Feeding in South Africa: What we know, what we don't know, what we need to know, what we need to do*, Food Security SA Working Paper Series 4, DST-NRF Centre of Excellence in Food Security (2018) available at <https://foodsecurity.ac.za/wp-content/uploads/2018/06/CoE-FS-WP4-School-Feeding-in-South-Africa-11-jun-18.pdf> (last visited 25 June 2020).

133 As reported by one CAO in the 'Other' responses to Question 29.

Daily Maverick cites excerpts from the affidavits submitted in court by SECTION27 and the EELC. The affidavits are a testimony of the catastrophic impact that the lack of access to feeding schemes has on the life of children:

*'We do not have enough food in our house. The food we have does not last us to the end of the month. This is difficult and does not sit well with me. I do try to overcome these difficulties and continue learning.'*¹³⁴

Other challenges mentioned by CAOs might have contributed to the decreased well-being of children in their communities. These include frustration because of being contained at home and not being able to play with other children, and a lack of sporting activities.¹³⁵ In particular, one CAO observed that:

*'[Kids are] [b]ulling each other and [there is a] lack [of] creative toys, because we are buying food only.'*¹³⁶

The relatively high level of CAOs reporting emotional abuse among children might be linked to isolation at home, a lack of interaction with friends, neglect or insufficient care. For example, as a result of the lockdown, the early childhood development (ECD) centres have all been shut down.¹³⁷ Consequently, parents and caregivers are now required to look after young homebound children and may not always have time to do so. It may put children at risk of abuse or neglect, especially if parents are forced to leave their children with people they do not necessarily trust. One CAO noted that neglect may impact children's well-being:

*'There is visible lack of childcare as a number of children still roam the streets.'*¹³⁸

Table 4.7: During the lockdown, what problems are children within the community experiencing?

	Physical abuse	Emotional abuse	Mental abuse	Lack of food	Lack of access to sanitation	Lack of access to water	N
Eastern Cape	7	14	2	29	6	10	32
Free State	3	4	3	9	3	2	11
Gauteng	2	5	4	15	7	5	16
KwaZulu-Natal	6	8	3	24	11	3	28
Limpopo	3	6	5	13	11	5	14
Mpumalanga	1	1	2	6	3	2	6
North West	2	6	3	7	2	3	8
Northern Cape	0	0	1	1	0	1	3
Western Cape	2	5	3	7	4	4	9
TOTAL	26 (20%)	49 (39%)	26 (20%)	111 (87%)	47 (37%)	35 (28%)	127 (100%)

¹³⁴ Daily Maverick, 'I will collect food from school if it was an option' (12 June 2020) available at <https://www.dailymaverick.co.za/article/2020-06-12-i-will-collect-food-from-school-if-it-was-an-option/#gsc.tab=0> (last visited 25 June 2020).

¹³⁵ As reported by one CAO in the 'Other' responses to Question 28.

¹³⁶ Ibid.

¹³⁷ S Shoba, Covid-19: Children at risk as early childhood development centres close, Daily Maverick (20 March 2020) available at <https://www.dailymaverick.co.za/article/2020-03-20-Covid-19-children-at-risk-as-early-childhood-development-centres-close/#gsc.tab=0> (last visited 22 June 2020).

¹³⁸ Ibid.

It is worth repeating that 37% of CAOs reported that children in their communities were experiencing problems with either sanitation or water during lockdown. In Limpopo, 11 out of 14 CAOs (79%) indicated that access to sanitation was the biggest challenge experienced by children. These issues have been emphasised by one respondent:

*'Those [children] in informal settlements do not have water and sanitary facilities.'*¹³⁹

When coupled with the closure of schools which provide feeding schemes for impoverished children (more than 90% of respondents reported a lack of feeding schemes for children in their communities), the pandemic may have a catastrophic and long-term impact on children's emotional and physical development and well-being.

Table 4.8: Is there any local/school feeding scheme currently operating to feed children since the lockdown began?

	No	Yes	N
Eastern Cape	31	1	32
Free State	10	1	11
Gauteng	15	1	16
KwaZulu-Natal	27	1	28
Limpopo	14	0	14
Mpumalanga	6	0	6
North West	8	0	8
Northern Cape	3	0	3
Western Cape	1	8	9
TOTAL	115 (91%)	12 (9%)	127 (100%)



91%

of CAOs indicated that school feeding schemes were no longer operational

139 As reported by one CAO in the 'Other' responses to Question 28.

5

Impact of Covid-19 on Socio-Economic Rights

This chapter discusses the impact of Covid-19 on socio-economic rights during levels 4 and 5 of the lockdown. The chapter categorises and groups responses by CAOs per right involved, starting with healthcare, then food, followed by water and access to electricity and sanitation, housing and lastly the right to education. The chapter analyses to what extent these rights have been affected by the lockdown and other measures, and whether the level of access to basic services has changed since the beginning of the lockdown.

Right to healthcare

Section 27 of the South African Constitution obliges government to ensure the right of all citizens to access healthcare services,¹⁴⁰ including reproductive health, and to ensure that no one is refused emergency medical treatment. This is supported by ‘the right to bodily and psychological integrity’ (Section 12(2)), ‘the right to privacy’ (Section 14) and the right ‘to an environment that is not harmful to their health or wellbeing’ (Section 24(a)).¹⁴¹ Similarly, the International Covenant on Economic, Social and Cultural Rights (ICESCR) provides for the ‘right of everyone to the enjoyment of the highest attainable standard of physical and mental health’ and obliges states to take necessary steps to create ‘conditions which would assure to all medical service and medical attention in the event of sickness’.¹⁴² Since 1994, various laws, policies and initiatives have been put in place to improve the South African health system and its performance, but the implementation and effectiveness of these policies has not been consistent or always reliable.¹⁴³

Before Covid-19, South Africa’s health system was already in crisis.¹⁴⁴ The well-documented causes of the crisis include underfunding, under-resourced facilities, corruption and an overall lack of capacity.¹⁴⁵ Unfortunately, despite the government’s efforts to curb the spread of Covid-19 by ‘flattening the curve’ of infections through the national lockdown, infection numbers have continued to rise. This means that a health system which already had difficulty meeting the needs of its population will be severely strained, and possibly collapse, as Covid-19 infections increase.¹⁴⁶

¹⁴⁰ It also includes mental health access.

¹⁴¹ SECTION27, *The Constitution and public health policy available* (undated) at <https://section27.org.za/wp-content/uploads/2010/04/Chapter2.pdf> (last visited 28 June 2018).

¹⁴² Section 12, ICESCR.

¹⁴³ The National Health Act (NHA) (Act No. 61 of 2003); The Office of Health Standards Compliance (OHSC) established in 2014 through an amendment of the NHA (2003); AM Jamin, B Kaposhi, D Schopflocher and N Mqogi, Strengthening health systems through improved reliability of health information: An evaluation of the expanded programme on immunisation data management in Eastern Cape, South Africa, *Southern African Journal of Public Health (incorporating Strengthening Health Systems)* (September 2014); RJ Burnett et al, South Africa’s first national vaccination coverage survey since 1994, *S Afr Med J.* (2019, 109(5): 12611); DR Murdoch and SRC Howie, The global burden of lower respiratory infections: making progress, but we need to do better, *Lancet Infect Dis.* (2018, 18(11): 1162–3).

¹⁴⁴ TimesLive, *Medical deans call on government to urgently address health crisis* (2 June 2018) available at <https://www.timeslive.co.za/news/south-africa/2018-06-02-medical-deans-call-on-government-to-urgently-address-health-crisis/> (last visited 26 June 2020); L Dentlinger, *SA healthcare system in crisis, needs urgent rehabilitation – Ramaphosa*, Eyewitness News (12 February 2019) available at <https://ewn.co.za/2019/02/12/sa-healthcare-system-in-crisis-needs-urgent-rehabilitation-ramaphosa> (last visited 26 June 2018).

¹⁴⁵ LC Rispel et al., Achieving high-quality and accountable universal health coverage in South Africa: A synopsis of the Lancet National Commission Report. In: T Moeti and A Padarath A (eds.) *South African Health Review 2019* (Durban: Health Systems Trust, 2019, at 72) available at https://www.hst.org.za/publications/South%20African%20Health%20Reviews/06%20SAHR_2019_Achieving%20a%20high%20quality%20health%20system.pdf (last visited 26 June 2020).

¹⁴⁶ South African Lancet Commission (2019), as cited by LC Rispel et al. (fn 148).



46%

of CAOs said that access to healthcare had worsened during lockdown

This effect is already apparent nationwide. Despite the diverted government funding to boost the health system in preparation for the virus's spread, most CAOs (46%) reported that access to healthcare has worsened during the lockdown. CAOs in the Free State and Gauteng were most likely to agree that access to healthcare has become worse since the beginning of the lockdown.

Table 5.1: Changes in access to healthcare since lockdown

	Better	The same	Worse	N
Eastern Cape	5	12	15	32
Free State	1	3	7	11
Gauteng	1	6	9	16
KwaZulu-Natal	5	12	11	28
Limpopo	3	5	6	14
Mpumalanga	1	2	3	6
North West	2	3	3	8
Northern Cape	1	1	1	3
Western Cape	0	5	4	9
TOTAL	19 (15%)	49 (39%)	59 (46%)	127 (100%)

Table 5.2: Have you been experiencing problems with accessing healthcare during lockdown?

	Yes	No	N
Eastern Cape	27	5	32
Free State	9	2	11
Gauteng	14	2	16
KwaZulu-Natal	22	6	28
Limpopo	12	2	14
Mpumalanga	5	1	6
North West	6	2	8
Northern Cape	1	2	3
Western Cape	5	4	9
TOTAL	101 (80%)	26 (20%)	127 (100%)

A large majority (80%) of CAOs reported that their communities had experienced problems accessing healthcare during lockdown. The main obstacles identified were transport (75% of CAOs) and the unusually high demand for healthcare (32%). At least half of all provinces cited transport as the main obstacle to accessing healthcare. Since South Africa has not reached the peak in terms of infections, it is not unexpected that the prioritisation of Covid-19 has been the least-cited obstacle in accessing healthcare facilities. Moreover, the Covid-19 crisis has been largely localised with a number of defined hotspots (with the Western Cape accounting for the large majority of cases) and with designated hospitals to treat the Covid-19 patients.¹⁴⁷

The overwhelming majority (80%) of those who have been able to access healthcare during the lockdown have continued to access it through their local clinics. More than two thirds of CAOs (with the exception of the Northern Cape) reported that community members continued to go to their local clinics during the lockdown. The low rate of usage for new mobile healthcare methods (door-to-door and mobile clinics) may be attributed to long waiting times and overcrowding, lack of transport, or lack of awareness about accessing these services particularly in rural communities.¹⁴⁸

The health system is the backbone of the public health emergency response to Covid-19. However, South Africa's health system was already severely strained before Covid-19 hit South Africa. The deficiencies of the health system were exaggerated during the crisis and are likely to bring into sharper focus existing inequalities in terms of access to healthcare. In particular, the crisis has demonstrated why South Africa desperately needs a more equitable healthcare system, as envisaged with the design of the National Health Insurance (NHI) system.¹⁴⁹ At the same time, the coordinated response to Covid-19 by both private and public health systems, working in tandem for the benefit of all in the face of Covid-19, has seen renewed efforts to implement the NHI.¹⁵⁰ In this sense, as pointed out by the President, the response to Covid-19 has been based on the principle of 'universal access to healthcare' regardless of one's ability to pay.¹⁵¹ Despite the diverted government funding to boost the health system in preparation for the virus's spread, most respondents (46%) say that their access to healthcare has worsened during the lockdown. The results seem to indicate, however, that the worsened access to healthcare during the lockdown is not caused by the direct health impact of Covid-19, but rather on the lockdown restrictions on travel. It also appears that even though travel for medical reasons was expressly allowed in the lockdown regulations, many people might have had to forego treatment for non-life-threatening conditions.

Moreover, despite the new mobile methods of accessing healthcare, the large majority of respondents said that their communities have continued to access their local clinics. This is concerning since the mobile methods could mitigate the spread of the virus by decreasing the number of people waiting in often long queues at local clinics, and by easing the traffic in the already overwhelmed clinics. Better management of the mobile methods of healthcare would help address some of the main challenges faced by community members in accessing healthcare during the crisis such as a transport, which has largely been unavailable to communities during the lockdown and constituted the biggest impediment to accessing healthcare.



2/3

More than two thirds of CAOs reported that community members continued to go to their local clinics during the lockdown

147 Eyewitness News, *Here's the list of hospitals designated to treat coronavirus patients in SA* (6 March 2020) available at <https://ewn.co.za/2020/03/06/here-s-a-list-of-hospitals-designated-to-treat-coronavirus-patients-in-sa> (last visited 22 June 2020).

148 As recorded from respondents' comments in the 'Other' category.

149 T Boyles, *Covid-19 brings inequality and the NHI into sharp focus*, Daily Maverick (9 March 2020) available at <https://www.dailymaverick.co.za/article/2020-03-09-Covid-19-brings-inequality-and-the-nhi-into-sharp-focus/#gsc.tab=0> (last visited 22 June 2020).

150 Q Hunter, *Ramaphosa says govt's Covid-19 response is preparing country for NHI*, News24 (2020) available at <https://www.news24.com/news24/southafrica/news/ramaphosa-says-govts-Covid-19-response-is-preparing-country-for-nhi-20200601> (last visited 22 June 2020).

151 Ibid. See also A Brown, *OPINION: Could SA's NHI have helped with Covid-19?* IOL (2020) available at <https://www.iol.co.za/business-report/opinion-could-sas-nhi-have-helped-with-Covid-19-47084512> (last visited 22 June 2020).



3/4

of CAOs reported that transport was an obstacle to accessing healthcare facilities during lockdown

Table 5.3: Have people encountered any obstacles in accessing healthcare facilities?

	Transport	Covid-19 cases are prioritised	Unusually high demand	N
Eastern Cape	16	5	10	27
Free State	5	2	3	9
Gauteng	11	3	8	14
KwaZulu-Natal	21	3	2	22
Limpopo	11	1	2	12
Mpumalanga	3	0	2	5
North West	3	1	2	6
Northern Cape	1	1	0	1
Western Cape	4	0	3	5
TOTAL	75 (75%)	16 (16%)	32 (32%)	101 (100%)

Table 5.4: How have people accessed healthcare during the lockdown?

	Door-to-door visits from health officials	People have visited mobile clinics stationed in the community	People continue to go to the local clinics	N
Eastern Cape	0	2	28	32
Free State	0	0	10	11
Gauteng	1	4	13	16
KwaZulu-Natal	2	4	23	28
Limpopo	0	4	9	14
Mpumalanga	1	0	5	6
North West	1	1	6	8
Northern Cape	2	1	2	3
Western Cape	2	1	9	9
TOTAL	9 (7%)	17 (13%)	105 (82%)	127 (100%)

Right to food



Although the government has previously implemented a number of programmes to address the issues around the right to food security including food and water, these have not been sufficient and have not delivered the expected results.¹⁵² A recent (2019) Statistics South Africa (StatsSA) report on food security indicates that in 2017, 20% of South African households had inadequate or severely inadequate access to food, and 10% of the population experienced hunger.¹⁵³ In our survey results, the most serious implication of the lockdown is its negative impact on the right to food, with food price inflation (prices increased by 7.8% between March and May 2020)¹⁵⁴ and food parcel theft exacerbating the existing hunger crisis.¹⁵⁵ Additionally, food parcels' nutritional value has been questioned, and the new grants intended to mitigate the effects of the virus and lockdown do not cover groceries for the average family.¹⁵⁶ The access to food is particularly important during the pandemic as adequate nutrition strengthens immune systems and lowers risk of chronic illnesses and infectious diseases, thus making infection less likely.¹⁵⁷

The South African Constitution (Section 27(1)) stipulates that everyone has the right to access food and water. South Africa is also bound by its international obligations to ensure the right to food.¹⁵⁸ The Universal Declaration of Human Rights states 'Everyone has the right to an adequate standard of living for himself and his family, including food.'¹⁵⁹ The UN Special Rapporteur on the right to food in terms of states' obligations posits 'the right to food requires that States refrain from taking measures that may deprive individuals of access to productive resources on which they depend when they produce food for themselves (the obligation to respect), that they protect such access from encroachment by other private parties (the obligation to protect) and that they seek to strengthen people's access to and utilization of resources and means to ensure their livelihoods, including food security (the obligation to fulfil)'.¹⁶⁰

Covid-19 has exacerbated the hunger crisis as food has been the most difficult basic service to access during the lockdown

- 152 Some examples include: the National School Nutrition Programme implemented by the Department of Basic Education; the Early Childhood Development Programme (ECD); Community Nutrition Development Centres (CNDs); as well as social grants.
- 153 O Shisana et al., *South African National Health and Nutrition Examination Survey (SANHANES-1)* (Cape Town: HSRC Press, 2013) available at [http://hsrc.ac.za/uploads/pageNews/72/SANHANES-launch%20edition%20\(online%20version\).pdf](http://hsrc.ac.za/uploads/pageNews/72/SANHANES-launch%20edition%20(online%20version).pdf) (last visited 26 June 2020); BusinessTech, *This is how many people go hungry in South Africa* (15 May 2016) available at <https://businesstech.co.za/news/lifestyle/123621/this-is-how-many-people-go-hungry-in-south-africa/> (last visited 26 June 2020); Statistics South Africa, *Towards measuring food security in South Africa: An examination of hunger and food inadequacy*, Report No. 03-00-14 (2019).
- 154 Trading Economics, *South Africa food inflation* (undated) available at <https://tradingeconomics.com/south-africa/food-inflation> (last visited 26 June 2020).
- 155 T Mahlangu, *Government to tackle food parcel corruption*, Corruption Watch (24 April 2020) available: <https://www.corruptionwatch.org.za/government-to-tackle-food-parcel-corruption/>. See also: SA News, *President Ramaphosa bemoans alleged food parcel theft* (20 April 2020) available at <https://www.sanews.gov.za/south-africa/president-ramaphosa-bemoans-alleged-food-parcel-theft> (last visited 22 June 2020).
- 156 PMBEJD, *Research Report: Food, hunger, and Covid-19* (26 May 2020) available at <https://pmbejd.org.za/wp-content/uploads/2020/05/PMBEJD-Research-Report-26052020.pdf> (last visited 26 June 2020).
- 157 Physiopedia, *Covid-19 and Nutrition* (undated) available at https://www.physio-pedia.com/COVID-19_and_Nutrition (last visited 22 June 2020); WHO, *Nutrition advice for adults during the COVID-19 outbreak* (2020) available at <http://www.emro.who.int/nutrition/nutrition-infocus/nutrition-advice-for-adults-during-the-Covid-19-outbreak.html> (last visited 22 June 2020).
- 158 Article 11(1), International Covenant on Economic, Social and Cultural Rights (ICESCR); Article 28(1), Convention on the Rights of Persons with Disabilities. See also CESCR General Comment No. 12: The Right to Adequate Food (Art. 11) Adopted at the Twentieth Session of the Committee on Economic, Social and Cultural Rights, 12 May 1999 (Contained in Document UN Doc. E/C.12/1999/5), par.4 which provides that the right to food is 'inseparable from social justice, requiring the adoption of appropriate economic, environmental and social policies, at both the national and international levels, oriented to the eradication of poverty and the fulfilment of all human rights for all'.
- 159 Article 25, Universal Declaration of Human Rights; Article 11(1), International Covenant on Economic, Social and Cultural Rights (ICESCR); Article 28(1), Convention on the Rights of Persons with Disabilities.
- 160 'Access to Land and the Right to Food', Report of the Special Rapporteur on the right to food presented at the 65th General Assembly of the United Nations UN Doc. A/65/281, 21 October 2010, par 2.

1/3

of CAOs reported that communities didn't have access to food from local spazas/supermarkets



Table 5.5: Since the lockdown, has your community had more difficulty accessing food?

	Yes	N
Eastern Cape	25	32
Free State	8	11
Gauteng	14	16
KwaZulu-Natal	24	28
Limpopo	13	14
Mpumalanga	6	6
North West	5	8
Northern Cape	2	3
Western Cape	4	9
TOTAL	101 (80%)	127 (100%)

The overwhelming majority of CAOs (80%) reported that their community had experienced increased difficulty in accessing food during the lockdown. In Mpumalanga, all six CAOs reported increased food scarcity because communities had difficulty accessing food. The increased difficulties have been mirrored to some extent in the survey on the impact of Covid-19 in South Africa by the Human Sciences Research Council (HSRC), which found that hunger has been a major challenge and the pandemic has increased food insecurity. The study found that *'just under a quarter (24%) of residents had no money to buy food'* and *'that more than half (55%) of informal settlement residents had no money for food. About two-thirds of residents from townships also had no money for food.'*¹⁶¹ These findings have been demonstrated by long queues of people trying to get food parcels in townships and informal settlements.

The decreased access to food can be attributed to a loss of income or an increase in food prices, exacerbated by the slow, and at times insufficient, delivery of food parcels. According to the Pietermaritzburg Economic Justice and Dignity Group's (PMBEJD) Household Affordability Index, the cost of a household food basket has increased by R250 in the past two months, and 13.8% in the past year.¹⁶² This is more than twice the increase in the consumer price index (CPI). The cost of a basket which includes core foods and vegetables,¹⁶³ has increased substantially during the lockdown, with some items increasing in price by as much as 58% in only two months.¹⁶⁴ This increase coincides with the pandemic and the lockdown where many low income earners, self-employed people and workers in precarious employment are forced to stay at home in adherence to lockdown regulations.

Only 67% of CAOs said that food and basic supplies were available in their communities through local shops – this leaves 33% of communities without local access to these essentials. However, the ability to access food from local sources did not appear to affect perceptions of food shortages.

¹⁶¹ HSRC, *HSRC Study on COVID-19 indicates overwhelming compliance with the lockdown* (2020) available at <http://www.hsrc.ac.za/en/media-briefs/general/lockdown-survey-results> (last visited 22 June 2020).

¹⁶² PMBEJD, *Research Report: Food, hunger, and Covid-19* (26 May 2020) available at <https://pmbejd.org.za/wp-content/uploads/2020/05/PMBEJD-Research-Report-26052020.pdf> (last visited 26 June 2020).

¹⁶³ Such as rice, bread, white sugar, beans, potatoes, onions, tomatoes, cabbage and carrots.

¹⁶⁴ See the price of onions, from March to May 2020 in PMBEJD, *Research Report: Food, hunger, and Covid-19* (26 May 2020) available at <https://pmbejd.org.za/wp-content/uploads/2020/05/PMBEJD-Research-Report-26052020.pdf> (last visited 26 June 2020); BusinessTech, *Food prices in South Africa have spiked, particularly these items* (27 May 2020) available at <https://businesstech.co.za/news/finance/402157/food-prices-in-south-africa-have-spiked-particularly-these-items/> (last visited 26 June 2020).

Table 5.6: Does the community have access to food and basic supplies from local spazas/supermarkets?

	No	Yes	N
Eastern Cape	8	24	32
Free State	4	7	11
Gauteng	7	9	16
KwaZulu-Natal	11	17	28
Limpopo	3	11	14
Mpumalanga	5	1	6
North West	3	5	8
Northern Cape	0	3	3
Western Cape	1	8	9
TOTAL	42 (33%)	85 (67%)	127 (100%)

The majority of CAOs (81%) reported that food parcels had been distributed in their community. Gauteng appears to be the only exception when analysing the data by province – only 8 of the 16 CAOs in this province indicated that food parcels had been distributed in their community. There were complaints about the low numbers of parcels distributed (from 7 of the 103 CAOs) and that the distribution process was biased or corrupted (from 10 of the 103 CAOs). All of the allegations of corruption occurred when either local government or the Department of Social Development has been identified as the source of the food parcels. The CAOs in the Eastern Cape were particularly dissatisfied with the distribution process – 8 of the 28 CAOs in this province indicated that the food parcels were insufficient (4 CAOs) or that the distribution process was corrupt (4 CAOs).

Respondents reported other obstacles to the proper delivery of food parcels, including 'favouritism' (political parties distributing parcels to their supporters and affiliates exclusively), organisational difficulties between SASSA and government within communities, confusion about how to apply for and collect the parcels, and community members being asked to pay for food parcels.¹⁶⁵

For instance:

'The local government/local leaders have been taking the food parcels for their families and friends also for their own benefits forgetting about the community members who desperately need those parcels.'

'The community may not receive the food parcels because the Government is subscribing to the promotion of the political party. DSD [Department of Social Development] may not use ward [councillors], ward committee while they are constitutionally obliged to administer NPO Act but they are undermining all the registered organisation with them. If the department is not biased why did they choose to involve the organisation that are not registered with them and leave the NPO complying organisation out.'

'The distribution of food parcels is very low in our community due to the fact that SASSA and our Local Government not having proper implementation plans. People have been applying, however many have not received the so called "Social Relief of Distress"'.¹⁶⁶

¹⁶⁵ As recorded from respondents' comments in the 'Other' category.

¹⁶⁶ All quotes taken from responses to the 'Other' category.

Table 5.7: Are there food deliveries in your community?

	Yes	No	N
Eastern Cape	28	4	32
Free State	9	2	11
Gauteng	8	8	16
KwaZulu-Natal	23	5	28
Limpopo	11	3	14
Mpumalanga	6	0	6
North West	7	1	8
Northern Cape	3	0	3
Western Cape	8	1	9
TOTAL	103 (81%)	24 (19%)	127 (100%)

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of CAOs said
there were no
food deliveries in
their area during
lockdown



Civil society appears to have played a more significant role in food parcel distribution in Gauteng (6 of 8 communities) and the Western Cape (6 of 8 communities).

One CAO respondent notified the FHR that they distributed 2,267 parcels of food to their community, which may mitigate the extremely low rates of food parcel delivery to some extent. Other CAOs also reported their engagement in the distribution of food parcels, which is a good example of how CAOs have been adapting their operations in the new reality of Covid-19. One CAO explained how a community has been dealing with food parcel distribution:

*'More people are sending their list of food parcels through WhatsApp and others nominate two or three members of the community to submit their food parcel request list.'*¹⁶⁷

CAOs have consistently reported that the largest impact of Covid-19 on communities has been increasing food insecurity. The result from this survey must be understood in context, as CAOs operate predominantly in marginalised and disadvantaged communities already vulnerable to food insecurity before lockdown, and who are among the most affected by unemployment and poverty. It is apparent that the lockdown has exacerbated these conditions. The large majority of respondents (80%) said that food has become more difficult to access, while one third (33%) of respondents indicated that food and basic supplies were unavailable in their communities.

Several organisations, including the SAFSC and the National Food Crisis Forum (NFCF) have increased their reach and efforts to find solutions to the food crisis which extend beyond Covid-19. It is important to focus on similar long-term, sustainable solutions to food insecurity and food sovereignty to mitigate the hunger crisis in South Africa.

167 'Other' responses to Question 19.1.

Table 5.8: Who has been delivering food parcels in your community?

	Local government	NGOs/CSOs	Private donors	N
Eastern Cape	13	10	6	28
Free State	4	1	4	9
Gauteng	1	6	4	8
KwaZulu-Natal	11	9	7	23
Limpopo	8	2	1	11
Mpumalanga	2	3	0	6
North West	1	1	3	7
Northern Cape	2	1	0	3
Western Cape	4	6	2	8
TOTAL	46 (45%)	39 (38%)	27 (26%)	103 (100%)

Right to water, access to sanitation and electricity

One in ten South Africans live in informal dwellings, either in backyards or in informal settlements,¹⁶⁸ and about one third of the population has limited access to running water.¹⁶⁹

One of the main preventative measures against the spread of Covid-19 is the regular washing of hands with soap. This means that people in communities with limited or no access to water and sanitation are at a higher risk of contracting and spreading the virus. This issue is exacerbated by the crowded and often poor sanitary conditions in informal settlements, where social distancing remains difficult if not impossible. To address water scarcity in certain communities and its potential impact on the spread of Covid-19, the SAFSC has launched a Water Stressed Communities Map, which allows community members to report water scarcity in their community and upload a picture if possible. At the time of writing this report, the tool had identified 79 communities that are water-stressed across the country.¹⁷⁰ As a partial solution to this issue, government committed to providing 41,000 water tanks, and by 19 May, 17,962 tanks had been delivered, 11,978 of which have been installed.¹⁷¹ However, some of the communities reported challenges such as an irregular delivery of water, incorrect installation of tanks or inadequate numbers of tanks.¹⁷²

Although the overall demand for power has dropped due to decreased industrial activity,¹⁷³ electricity demand at the household level may have risen as people spent more time at home – particularly with the increased use of power for home-schooling as well as heating during the winter months. Access to electricity therefore remains critical for families and households to cope with the lockdown.

168 SEJA Baseline Survey Report (2018), at 6.

169 A further quarter (23%) had a tap in their yard, while one in ten (12%) used a neighbour's or communal tap to get water. Ibid, at 8.

170 SAFSC, *Water stressed communities: Report no. 3*, Public Statement and Press Release (26 May 2020) available at https://www.safsc.org.za/wp-content/uploads/2020/05/Press-Statement_Water-stressed-communities3_-26-May-2020.pdf (last visited 22 June 2020).

171 Ibid.

172 Ibid.

173 P Stevens, *Energy demand, hit by coronavirus crisis, is set to see record drop this year, IEA says*, CNBC (20 March 2020) available at <https://www.cnbc.com/2020/04/30/energy-demand-set-to-fall-the-most-on-record-this-year-amid-coronavirus-pandemic-iea-says.html> (last visited 22 June 2020).

Table 5.9: How has access to water and electricity changed since the lockdown began?

	Better	The same	Worse	N
Eastern Cape	4	19	9	32
Free State	2	5	4	11
Gauteng	3	8	5	16
KwaZulu-Natal	5	19	4	28
Limpopo	4	3	7	14
Mpumalanga	1	3	2	6
North West	2	4	2	8
Northern Cape	0	3	0	3
Western Cape	0	8	1	9
TOTAL	21 (17%)	72 (57%)	34 (27%)	127 (100%)

Almost one third of all CAOs (27%) indicated that access to water and electricity had worsened since the lockdown began. Respondents from Limpopo were among the most dissatisfied with the provision of water and electricity during the lockdown as half of them said that it had worsened (50%).

Despite the efforts to address water scarcity in some communities during the lockdown, our study found that almost one third of CAOs reported that their communities had not received any emergency deliveries of water and electricity. This was particularly the case in Gauteng (10 of 14 CAOs). This correlates with the national distribution of informal settlements where access to water and sanitation is typically limited as Gauteng and Western Cape have the most populated informal settlements by far.¹⁷⁴

In the instances when emergency water and electricity were delivered to communities, the majority of CAOs (61%) noted that the delivery was done by local government. Delivery of emergency water and electricity by local government was most common in the Eastern Cape (26 of 32 CAOs, 81%) and KwaZulu-Natal (21 of 28 CAOs, 75%).


27%

of all CAOs indicated that access to water and electricity had worsened since the lockdown began

174 Statistics South Africa, *Community Survey*, Statistical Release P0301.(2020) available at http://cs2016.statssa.gov.za/wp-content/uploads/2016/07/NT-30-06-2016-RELEASE-for-CS-2016-_Statistical-releas_1-July-2016.pdf (last visited 22 June 2020).

28%

of all CAOs reported there have been no emergency deliveries of water and/or electricity during lockdown

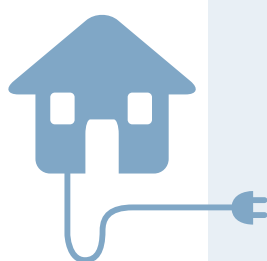


Table 5.10: Who has been making emergency deliveries of water and/or electricity during the lockdown?

	Local government	NGOs/ CSOs	Private donors	There have been no deliveries	N
Eastern Cape	26	0	0	5	32
Free State	5	0	0	4	11
Gauteng	4	0	0	10	16
KwaZulu-Natal	21	1	0	6	28
Limpopo	7	1	0	5	14
Mpumalanga	4	1	1	1	6
North West	6	1	1	1	8
Northern Cape	1	2	2	0	3
Western Cape	3	1	0	4	9
TOTAL	77 (61%)	7 (6%)	4 (3%)	36 (28%)	127 (100%)

When asked about stakeholders responsible for delivering water and electricity to communities, some of the respondents who selected 'Other' said that the 'municipality' was delivering emergency services. Others had the following to say:

'People are still struggling with electricity and water. The electricity issue has been referred to [ProBono].'

'The people looked for water themselves.'

'The Local Municipality delivered few water tanks without water so people experience same problem.'

One respondent indicated that water has not been an issue since the community has access to clean water.

Water is essential in the fight against Covid-19 as washing with soap and water is one of the most effective ways to neutralise the virus and prevent its spread. The increasing limits on access to water and electricity have only increased the potential negative consequences of the virus, especially on poorer communities. Additionally, the severe droughts in many parts of the country further decrease access to water. Notwithstanding the long-standing Eskom energy crisis, access to electricity remains imperative for working and attending school remotely, as well as for heating homes during winter. CAOs' reports of inadequate responses are indicative of the mounting difficulties faced by the most vulnerable in South Africa. The majority of poor, most often black, populations continue to struggle with these burdens in addition to the building threat of Covid-19, which does not bode well for their endurance of this pandemic.

Right to housing

South Africa is subject to its Constitution and the international treaties it has ratified which implicate the right to housing, such as the ICESCR. Both of these legal frameworks emphasise the right to adequate housing and the continuous improvement of living conditions.¹⁷⁵ However, the *SEJA Baseline Survey* found in 2018 that 10% of respondents in South Africa continue to live in informal dwellings either in backyards or in informal settlements.¹⁷⁶ It is important to bear in mind that informal housing is a reality across all geographic types – the proportion of SEJA respondents living in informal dwellings was consistent across metropolitan (10%), urban (10%) and rural (9%) areas.

Forty percent of CAOs reported that people in their community did not pay rent/mortgages during the lockdown. The most common reason for this was that people were given a relief period from paying rent/mortgages by their landlords. Other reasons include a loss of income and the offices of local municipalities being shut down. For example:

'Due to the lockdown people haven't been working and are unable to make [ends] meet.'

Despite the encouraged discretion regarding rent in lockdown conditions by government,¹⁷⁷ 61% of community members continued to pay rent during the lockdown. This was most common in the Western Cape and Gauteng.

While most people still paid rent during the lockdown, the CAOs who participated in the survey noted very few instances (only 18% of CAOs) of evictions. However, it should be noted that under lockdown, evictions were not permitted by government, which makes the evictions that did occur across the country illegal.¹⁷⁸ The highest proportion of those communities who continued to experience evictions during lockdown is in Gauteng and the Free State (both at 33%).

The uneven enforcement of regulations related to evictions is cause for serious concern, as the poorest communities appear to be bearing the financial brunt of this crisis. This is because they are not only subject to unevenly regulated rules, but they are also most likely to be unemployed or in a precarious employment situation, especially given restrictions on movement.



61%

of community members continued to pay rent, despite the encouraged discretion regarding rent in lockdown conditions by government

¹⁷⁵ South African Constitution, Article 2(26) available at <https://www.gov.za/documents/constitution/chapter-2-bill-rights#26>. ICESCR, Article 11(1) available at <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>

¹⁷⁶ *SEJA Baseline Survey Report* (2018), at 6.

¹⁷⁷ 'A tenant is usually expected to pay rental and comply with his/her obligations in terms of the lease agreement for as long as he/she is in occupation of the leased premises, unless he/she can demonstrate that he/she was directly affected by the lockdown and accordingly does not have beneficial occupation of the leased premises' [emphasis added]. The Department of Human Settlements (Western Cape Government), *Summary: Frequently asked questions – landlords and tenants during the Covid-19 lockdown* (2020) available at <https://www.westerncape.gov.za/general-publication/frequently-asked-questions-landlords-and-tenants-during-Covid-19-lockdown> (last visited 26 June 2020).

¹⁷⁸ *Ibid.*

Table 5.11: Are people in the community still paying rent/mortgages?

	No	Yes	N
Eastern Cape	10	19	29
Free State	3	5	8
Gauteng	5	10	15
KwaZulu-Natal	10	18	28
Limpopo	8	5	13
Mpumalanga	3	3	6
North West	4	3	7
Northern Cape	1	2	3
Western Cape	2	6	8
TOTAL	46 (39%)	71 (61%)	117 (100%)

Table 5.12: Have evictions continued during the lockdown in the community your CAO serves?

	No	Yes	N
Eastern Cape	27	4	31
Free State	6	3	9
Gauteng	10	5	15
KwaZulu-Natal	25	3	28
Limpopo	10	3	13
Mpumalanga	6	0	6
North West	6	1	7
Northern Cape	2	1	3
Western Cape	6	2	8
TOTAL	98 (82%)	22 (18%)	120 (100%)

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of CAOs reported
continuing evictions
during lockdown



Right to education

The right to basic education and further education are found in Section 29(1)(a) of the Constitution and are not restricted to citizens, but apply to everyone in South Africa. The ICESCR recognises the right of everyone to education and sees it as an empowerment right because it can aid in the fulfilment of other rights.¹⁷⁹ With this in mind, education acts as the driver for socio-economic development out of poverty, especially for marginalised populations.¹⁸⁰ Inadequate education within the population is considered as a significant impediment to employment, which is largely race-based because of the historical context of apartheid. This context created the 'Bantu' education system and the systemic disenfranchisement of black people.

While the most recent statistics for throughput in terms of the matric pass rate (before the pandemic) of 81% may seem promising, this is not the whole story.¹⁸¹ These matric candidates represented less than half of their cohort. In other words, 53% of the matric class of 2019 had dropped out of school by the time they should have written their matric exams last year.¹⁸² Given this context, the additional impediments on the education system after two months of remote learning are significant. It is important to note that the Department of Basic Education initially set the date for the country to return to school as 1 June 2020, the day the nation moved to level 3 of the national lockdown. However, on 31 May, this return date was changed to 8 June, following meetings which highlighted the concern of schools and governing bodies about children returning to school despite South Africa's rising Covid-19 infection rate.¹⁸³ This has not been adhered to, however, as Western Cape learners did return to school on 1 June.¹⁸⁴

Remote learning presented a huge challenge to the majority of learners, with high data costs and lack of internet access being key obstacles. While 71% of respondents said their communities are aware of remote learning platforms, it is concerning that the remaining 29% are not. This means that many children may not have been able to continue their schooling for at least the two full months of levels 5 and 4 of lockdown, which will be a significant setback academically. The worst provinces by far in this regard are Gauteng (9 out of 16 CAOs said that their communities were unaware of remote learning platforms, 44%) and the Western Cape (6 out of 9, 33%).

Another significant concern is the potentially devastating impact this disruption of education may have on learners between grades 10 and Matric. There is a high drop-out rate of high school students generally, especially after grade 10, which has increased steadily since 1995.¹⁸⁵ This could be because learners are legally allowed to leave school at 15, which they may do to mitigate the effects of poverty. For adolescent girls, other issues may contribute to this low throughput rate such as an early pregnancy. The total number of pupils who fall pregnant has decreased, from 18,537 learners in 2014 (from primary and secondary school) to 9,639 in 2016.¹⁸⁶ When combined with socio-economic circumstances in which women are the primary caregivers and economic challenges that may disproportionately affect adolescent girls (e.g. taking on high-risk work for their economic survival), adolescent girls and young women are at higher risk of not returning to school.

179 ICESCR, Article 13, available at <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx> (last visited 26 June 2020).

180 *Governing Body of the Juma Masjid Primary School and Another v Ahmed Asruff NO and Others* (Juma Masjid) 2011(8) BCLR 761 (CC) para. 41, as cited by F Veriava, *Realising the right to basic education in South Africa, Socio-economic Rights Progressive Realisation?* (Johannesburg: Foundation for Human Rights, 2016).

181 Department of Basic Education, *School Realities* (2009), at 2; *School Realities* (2017), at 3; *Report on the National Senior Certificate Examination* (January 2020), at 7, 55.

182 Ibid.

183 B Dzulane, *Maimane files papers in ConCourt to halt phased reopening of schools*, Eyewitness News (2 June 2020) available at <https://ewn.co.za/2020/06/02/maimane-files-concourt-papers-to-halt-phased-reopening-of-schools> (last visited 28 June 2020); L Isaacs, *SAHRC urges Motshekga to postpone reopening of schools by a week*, Eyewitness News (30 May 2020) available at <https://ewn.co.za/2020/05/29/sahrc-urges-motshekga-to-postpone-reopening-of-schools-by-a-week> (last visited 28 June 2020).

184 C Kilbane, S Fisher and S Schaffer, *WCED was within its rights to resume classes today*, Eyewitness News (1 June 2020) available at <https://ewn.co.za/2020/06/01/schaeffer-wced-was-within-its-rights-to-resume-classes-today> (last visited 28 June 2020).

185 Institute of Race Relations, *2019 Socio-Economic Survey of South Africa* (Johannesburg: Institute of Race Relations, 2019: 515).

186 Ibid., at 502. See also: <https://www.education.gov.za/Newsroom/MediaReleases/tabid/347/ctl/Details/mid/5986/ItemID/4306/Default.aspx>

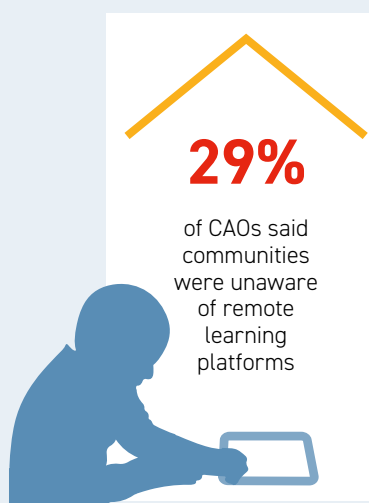
Table 5.13: Is the community aware of remote learning platforms for children?

	No	Yes	N
Eastern Cape	9	23	32
Free State	3	8	11
Gauteng	9	7	16
KwaZulu-Natal	3	25	28
Limpopo	4	10	14
Mpumalanga	0	6	6
North West	2	6	8
Northern Cape	1	2	3
Western Cape	6	3	9
TOTAL	37 (29%)	90 (71%)	127 (100%)

Most CAOs (81%) reported that learners in their communities had access to some form of remote learning. CAOs in the Western Cape (5 of 9, 56%), Gauteng (10 of 16, 62%) and the Free State (7 of 11, 64%) were least likely to report the use of remote learning platforms. This means that about one fifth of school learners in these communities did not have access to schooling during the lockdown at all. The implications of this will be dire, and could disadvantage an entire cohort of learners across all grades, not to mention matric pupils. As schools return on 1 June 2020, it would be prudent to monitor learners' progress with this context in mind.

The most common form of remote learning reported was through the use of radio and television programmes (69% of CAOs), with a slightly smaller proportion (60%) reporting the use of internet platforms (including WhatsApp, Facebook, YouTube and web-based programmes). Some respondents commented that TV and radio programmes do not cover all grades, an issue which should be investigated and addressed. Other respondents pointed out that CAOs have supported remote learning efforts. Respondents also noted some mobile applications (apps) which have aided in their communities' remote learning, such as Vodacom E School and Matric Live.¹⁸⁷

Education has been particularly hard-hit during lockdown. Issues regarding internet access, coverage and costs, as well as already low throughput rates have placed severe burdens on all learners this year, and especially those in matric. Limited, if any, access to education was the norm during lockdown as a result of these significant obstacles to remote learning. The consequent two-month lapse in schooling may have knock-on effects on this cohort's ability not only to complete their education, but to find stable employment and participate in the economy in the future. It may also have implications for current grades 11 and 9, as they will need to move into grades 10 and 12 next year. If there are high numbers of learners this year who need to repeat their grade 12 or 10 due to the break in school, then that may lead to less



187 As recorded from responses in the 'Other' category.

space for pupils entering those grades as well. The knock-on effect may also be seen in admissions into higher education and training or universities – these institutions may see a reduction in enrolment, or a push to lower the standards required for admission as a response to the difficulties learners faced during Covid-19. It means that more learners may require additional support on entering university including bridging courses, with many universities lacking the relevant capacity in this regard. The severity of this cannot be understated, and it is imperative that measures are put in place to mitigate these consequences of the lockdown for children.

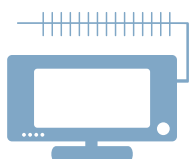
Table 5.14: Did the children in your community have access to remote learning during the lockdown?

	Yes	No	N
Eastern Cape	27	5	32
Free State	7	4	11
Gauteng	10	6	16
KwaZulu-Natal	27	1	28
Limpopo	11	3	14
Mpumalanga	6	0	6
North West	7	1	8
Northern Cape	3	0	3
Western Cape	5	4	9
TOTAL	103 (81%)	24 (19%)	127 (100%)

Percentage of communities using these remote platforms:

TV/Radio:

69%



Mobile:
app/tablet/internet

60%



Table 5.15: What platforms are the community using for remote learning?

	Radio/TV	Internet platform	N
Eastern Cape	20	21	32
Free State	7	3	11
Gauteng	10	7	16
KwaZulu-Natal	24	18	28
Limpopo	9	8	14
Mpumalanga	5	5	6
North West	7	6	8
Northern Cape	2	3	3
Western Cape	3	5	9
TOTAL	87 (69%)	76 (60%)	127 (100%)

Access to social grants and unemployment assistance

The level of unemployment in South Africa was already high before the lockdown, at 29.1% by the narrow definition¹⁸⁸ and at 38.7% using a wider definition.¹⁸⁹ Covid-19 has directly impacted millions of workers and employees in South Africa, particularly those in the informal sector, and is likely to have further negative long-term economic and labour market impacts. Statistics South Africa's survey on the impact of lockdown on employment shows that 8.1% of respondents reported that they lost their jobs or had to close their businesses, while 1.4% became unemployed.¹⁹⁰ For a concerning 25%, income decreased during the lockdown.¹⁹¹ According to the Treasury, up to 7 million people in the country are expected to become unemployed because of the lockdown. If the lockdown is protracted, the Treasury projects that unemployment will rise to over 50%, from its current rate of just below 30%.¹⁹² Notwithstanding the social and fiscal packages aimed at mitigating the impact of the lockdown, the economic and employment predictions for South Africa are dire. There is therefore a need for government to seriously reconsider the introduction of the Universal Basic Income Grant, which would be available to every individual unconditionally.

The Universal Declaration of Human Rights provides that everyone has the right to work and that *'Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.'*¹⁹³ The ICESCR sets out obligations of states regarding the conditions of work, which includes *'the right of everyone to the enjoyment of just and favourable conditions of work'* and *'fair wages'* that give workers *'a decent living for themselves and their families'*.¹⁹⁴ The right to work entails an ability of a person to live in dignity and ensure the survival of the individual and that of his/her family.¹⁹⁵ The African Charter states that *'Every individual shall have the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work.'*¹⁹⁶ The South African Constitution ensures fair labour relations under Section 23.

Covid-19 has directly impacted millions of workers and employees in South Africa, particularly those in the informal sector, and is likely to have further negative long-term economic and labour market impact

188 Statistics South Africa, *Quarterly Labour Force Survey, Q4:2019* (2019) available at <http://www.statssa.gov.za/?cat=31> (last visited 28 June 2020).

189 E Stoddard, *SA's shocking unemployment rate remains unchanged*, Daily Maverick (11 February 2020) available at <https://www.dailymaverick.co.za/article/2020-02-11-sas-shocking-unemployment-rate-remains-unchanged/#gsc.tab=0> (last visited 22 June 2020).

190 SA Government, *Statistics South Africa on respondents losing jobs or businesses due to Coronavirus Covid-19 Lockdown* (20 May 2020) available at <https://www.gov.za/speeches/respondents-lost-jobs-20-may-2020-0000> (last visited 22 June 2020).

191 Ibid.

192 By the narrow definition of unemployment. T Maeko, *South Africa on track to move to phase three of its Covid-19 economic response*, Mail & Guardian (13 May 2020) available at <https://mg.co.za/business/2020-05-13-south-africa-on-track-to-move-to-phase-three-of-its-Covid-19-economic-response/> (last visited 28 June 2020).

193 Article 23.

194 Articles 6 and 7.

195 Committee on Social, Economic and Cultural Rights, General Comment No. 18: A Right to Work adopted on 24 November 2005 – Article 6 of the International Covenant on Economic, Social and Cultural Rights, UN Doc. E/C.12/GC/18, 6 February 2006.

196 Article 15.

Table 5.16: Has there been any assistance to the unemployed in your community during the lockdown?

	Yes	No	N
Eastern Cape	16	16	32
Free State	4	7	11
Gauteng	7	9	16
KwaZulu-Natal	15	13	28
Limpopo	8	6	14
Mpumalanga	4	2	6
North West	4	4	8
Northern Cape	2	1	3
Western Cape	6	3	9
TOTAL	66 (52%)	61 (48%)	127 (100%)

*Nearly half
of all CAOs
reported that the
unemployed in
their communities
had received no
assistance*



Almost half of the CAOs reported that the unemployed in their communities have not been assisted during the lockdown. The CAOs in the Free State (64%) and Gauteng (56%) were the most likely to cite the lack of assistance to unemployed people in their communities.

The most common source of assistance has been CSOs/NGOs (24%), including many of the CAOs participating in this survey. It is notable that only 14% of respondents identified government as a source of support. It appears that some CAOs have adapted to better respond to community needs in the face of Covid-19. Some CAOs have been assisting in the delivery of food parcels. As reported by one of the CAOs:

'The issue of unemployment grant is still a problem as the Minister in the social cluster failed to clarify the details. The government has also failed to provide food to the poor and to use CAOs in some areas to assist with food distribution.'

According to some CAOs, there have been reports of corruption in the distribution of food parcels and they have taken preventative action. The role played by the CAO in monitoring the food distribution by the ward councillors is captured in the response below:

'Indeed most ward councillors were working with private donors in food parcels distributions and the main roles of the wards councillors were to identify families which were in desperate need for food parcels. And in that case the organization was part of the process but they main intention in that regard was to monitor and see to it that food parcels are directed to the most deserving and rightful families in the community. We did that monitoring as an organization because ward councillors in some areas were alleged to hijack food parcel distributions and give them to their families and friends as it happened in the Gauteng Province. Therefore as an organization we did not want similar situation to happen in the communities that the organization is serving.'

Table 5.17: Who has been assisting the unemployed in your community during the lockdown

	Government	NGOs/CSOs	Private donors	N
Eastern Cape	6	10	0	32
Free State	1	2	1	11
Gauteng	2	4	1	16
KwaZulu-Natal	4	8	3	28
Limpopo	3	4	1	14
Mpumalanga	2	2	0	6
North West	0	3	1	8
Northern Cape	0	2	0	3
Western Cape	0	5	1	9
TOTAL	18 (14%)	30 (24%)	8 (6%)	127 (100%)

Since the CAOs largely operate in disadvantaged and marginalised communities with high levels of unemployment, it is particularly worrying that 88% of CAOs across all provinces said that the self-employed and employees in the informal sector were unable to access financial assistance from government. It seems that despite the significant mitigating financial packages, those most in need have not been able to benefit from them. It is particularly alarming that all respondents from Gauteng, the North West and Mpumalanga said that the unemployed in their communities could not access financial assistance.

Table 5.18: Are self-employed people and those in the informal sector able to access government financial assistance?

	No	Yes	N
Eastern Cape	28	4	32
Free State	9	2	11
Gauteng	16	0	16
KwaZulu-Natal	24	4	28
Limpopo	12	2	14
Mpumalanga	6	0	6
North West	8	0	8
Northern Cape	2	1	3
Western Cape	7	2	9
TOTAL	112 (88%)	15 (12%)	127 (100%)

Table 5.19: How has access to social grants changed since the lockdown began?

	Better	The same	Worse	N
Eastern Cape	6	9	17	32
Free State	2	3	6	11
Gauteng	3	5	8	16
KwaZulu-Natal	4	10	14	28
Limpopo	2	3	9	14
Mpumalanga	1	1	4	6
North West	3	2	3	8
Northern Cape	1	2	0	3
Western Cape	0	2	7	9
TOTAL	22 (17%)	37 (29%)	68 (54%)	127 (100%)

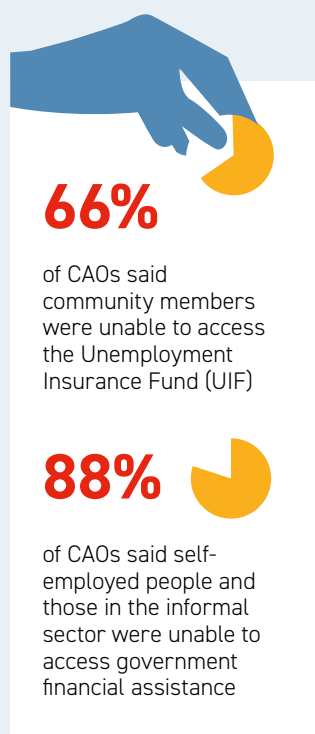
Many of the measures and interventions aimed at mitigating the impact of the lockdown on the most marginalised and disadvantaged communities have seemingly remained inaccessible. Most CAOs across the country (54%) reported that access to social grants in their communities worsened during lockdown, as opposed to 29% who said it stayed the same. One in five respondents (22%) said that access to social grants improved. CAOs in the Western Cape were the most likely to be dissatisfied with social grant access during the pandemic (7 out of 9 CAOs). The perceived decrease in accessibility of social grants might be linked to a number of factors, including lack of transport during the lockdown; insufficient knowledge about the new grants available; slow implementation processes at SASSA; or long queues to collect the grants. One CAO observed that despite the increases in social grants and Covid-19 social relief grants, communities are still not able to access them:

*'The SASSA unemployment grant is still not functional since it was announced by the President.'*¹⁹⁷

The results from the previous question are mirrored in the question that dealt with communities' access to the UIF. According to respondents, the majority (66%) of communities have not been able to access the UIF. The situation appears to be more positive in the Western Cape – 7 out of 9 CAOs indicated that workers in their communities have been able to access the unemployment fund. When asked why governmental financial assistance remains inaccessible for the most marginalised and disadvantaged, the most common responses include: lack of information about possible financial assistance; the distance many need to travel to reach Department of Labour offices (for some communities around 60–70km), which is exacerbated by a lack of transport; the lack of internet access (both because internet cafés are closed and the cost of data is too high); and the closure of government offices, including the mobile ones, due to the lockdown; and the long procedures at the Department of Labour. As one CAOs explains:

'Payments to employers have been slow, contrary to the messaging past by government through the Department of Labour and Employment. The reluctance of employers to make use of the on-line applications offered by the department is another impediment as recent statistics indicate that just over 200,000 of more than 1,6 million employers

197 'Other' responses to Question 30.



have submitted claims. Those who have been paid do not pass on the dues to employees which leads to delays in accessing the claims.'

Other reasons cited were the reluctance of employers to apply on behalf of their employees, the fact that employees were not eligible to claim assistance from the UIF, and employers were not registered with the UIF. In a press conference in April, Minister in the Presidency Jackson Mthembu urged all employers to apply for the Temporary Employment Relief Scheme (TERS). According to Mthembu, very few employers applied on behalf of their workers and employees for this UIF relief benefit.

'We are asking them to do so, particularly in the farming sector and in the domestic sector. We are really appealing to all our employers to use this facility because there are vulnerable workers who could benefit,' the Minister stated.¹⁹⁸

Table 5.20: Are community members able to access the Unemployment Insurance Fund (UIF)?

	No	Yes	N
Eastern Cape	26	6	32
Free State	10	1	11
Gauteng	11	5	16
KwaZulu-Natal	17	11	28
Limpopo	8	6	14
Mpumalanga	4	2	6
North West	5	3	8
Northern Cape	1	2	3
Western Cape	2	7	9
TOTAL	84 (66%)	43 (34%)	127 (100%)

Employers, on the other hand, have reported that the UIF's website has been inefficient and that the UIF does not communicate with them regularly. The delays in payment and some employers' experiences as reported in the media imply that the UIF is overwhelmed, which impedes employers from claiming their dues. In cases where employers have been able to do so, some have withheld funds from their employees.¹⁹⁹

Some CAOs reported on additional issues faced by the communities, including those pertaining to workers' rights, in particular the labour rights of farm workers and dwellers. One respondent has observed that:

'People working in farms are dismissed unfairly (1 Case Reported). One worker was not paid his April 2020 salary. Farm workers are still vulnerable to unfair labour practices because department of labour is not visiting.'

198 S Shoba, *A painful process: Businesses battle to access UIF relief*, Daily Maverick (2020) available at <https://www.dailymaverick.co.za/article/2020-05-11-a-painful-process-businesses-battle-to-access-uif-relief/> (last visited 22 June 2020).

199 Ibid.

Similar views have been expressed by the Covid-19 People's Coalition – '*workers are being laid off without pay during the lockdown*'.²⁰⁰ Furthermore, the precarious situation in which workers find themselves during Covid-19 forces them to move to other areas in search of employment. This puts them at risk of contracting the virus and spreading it in communities where access to healthcare may be more difficult. It remains to be seen if the Covid-19 Social Relief of Distress grant will assist the unemployed and workers that have lost their incomes.

South Africa's already high unemployment rates are projected to increase following the lockdown. Faltering employment rates during this time have impeded access to other rights such as housing and food, deepening the chasm of inequality across the country. The apparent lack of assistance for the unemployed, despite government initiatives to do so, in addition to organisational and logistical issues with grants, only add to this negative picture. Moreover, the Covid-19-related grants instigated by government do not cover the average family's groceries²⁰¹ and food parcel delivery has been uneven, unreliable and deeply embroiled in corruption at local level.²⁰² Even though the next round of support will largely focus on the allocation of vouchers rather than food parcels, this may come with its peculiar set of problems, such as who in the household controls the money. Many CSOs and other stakeholders should be engaged on how to mitigate these effects, especially as we approach a severe global and national recession. Both the SAFSC and the Covid-19 People's Coalition have indicated to government that the Covid-19 grants should be a first step in providing a basic income grant to all.

Faltering employment rates during this time have impeded access to other rights such as housing and food, deepening the chasm of inequality across the country



200 Covid-19 People's Coalition, *Labour rights violations threaten workers, communities and food security* (8 May 2020) available at <https://c19peoplescoalition.org.za/labour-rights-violations-threaten-workers-communities-and-food-security/> (last visited 22 June 2020).

201 G Isaacs, *Covid-19: Unpacking President Ramaphosa's rescue package*, GroundUp (22 April 2020) available at <https://www.groundup.org.za/article/unpacking-president-ramaphosas-rescue-package/> (last visited 22 June 2020).

202 E.g. The Citizen, *DA slams 'shameless' Gauteng officials who allegedly 'stole' food parcels* (15 April 2020) available at <https://citizen.co.za/news/south-africa/society/2269354/da-slams-shameless-gauteng-officials-who-allegedly-stole-food-parcels/> (last visited 28 June 2020). See also: SABC News, *DA calls on Lesufi to investigate food parcel theft* (26 April 2020) available at <https://www.sabcnews.com/sabcnews/da-calls-on-lesufi-to-investigate-food-parcel-theft/> (last visited 28 June 2020); eNCA, *Alex councillor accessed of food parcel corruption* (6 May 2020) available at <https://www.enca.com/news/councillor-accused-food-parcel-corruption> (last visited 28 June 2020); O Shisana et al., *South African National Health and Nutrition Examination Survey (SANHANES-1)* (Cape Town: HSRC Press, 2013) available at [http://hsrc.ac.za/uploads/pageNews/72/SANHANES-launch%20edition%20\(online%20version\).pdf](http://hsrc.ac.za/uploads/pageNews/72/SANHANES-launch%20edition%20(online%20version).pdf) (last visited 26 June 2020).

6

The Inclusion and Participation of all Stakeholders

According to the Covid-19 Disaster Response Directions (under the Disaster Management Act), protocols must be implemented by all premiers, members of executive councils (MECs) responsible for local government in the provinces, the President of the South African Local Government Association (SALGA), all mayors and traditional leadership institutions.²⁰³ Because of this, it is paramount that the response to Covid-19 involves multiple and diverse stakeholders throughout all communities in the country. Leadership roles and qualities in a crisis can be context-dependent, but key components of leadership – such as coordination of relief efforts, awareness of safety protocols and effective and adequate management of the crisis – are imperative to control the spread of the virus. Similarly, the UN has encouraged states to guarantee the meaningful participation of all sectors of society and diverse civil society actors in decision-making processes for the Covid-19 response.²⁰⁴

However, when asked whether local government and community leaders have played a meaningful role during the pandemic, the vast majority (67%) of respondents said no. In Gauteng, all 16 respondents agreed that community and local government leaders did not play an important role in addressing the crisis. Similar views were expressed by at least two thirds of respondents in the Eastern Cape (69%), Western Cape (67%), and the Free State (64%). Half of KwaZulu-Natal respondents reported leadership didn't play an important role during the crisis. It is concerning that so many communities feel they have not been led during this time. It is imperative that this leadership vacuum be filled to adequately mitigate the virus and its effects.

67%

of CAOs did not think that local government and community leaders played a meaningful role during lockdown



Table 6.1: Have community and local government leaders played an important role in this crisis?

	No	Yes	N
Eastern Cape	22	10	32
Free State	7	4	11
Gauteng	16	0	16
KwaZulu-Natal	14	14	28
Limpopo	8	6	14
Mpumalanga	5	1	6
North West	5	3	8
Northern Cape	1	1	2
Western Cape	6	3	9
TOTAL	84 (67%)	42 (33%)	126 (100%)

203 Dullah Omar Institute of the University of the Western Cape, *Municipalities and COVID-19: A summary and perspective on the national disaster management directions* (2020) available at <https://dullahomarinstitute.org.za/multilevel-govt/local-government-bulletin/volume-15-issue-1-march-2020/municipalities-and-covid-19-a-summary-and-perspective-on-the-national-disaster-management-directions> (last visited 28 June 2020).

204 UN Secretary General, *Covid-19 and Human Rights: We are all in this together* (April 2020) available at https://www.un.org/victimsofterrorism/sites/www.un.org.victimsofterrorism/files/un_-_human_rights_and_covid_april_2020.pdf (last visited 24 June 2020).

Specific issues raised by respondents are detailed below and pinpoint key areas which need to be addressed.

'We only heard about the ward councillors who distributed some food parcels to their favourite people and not to the needy.'

This seems to be a common problem as many respondents cited discrimination against community members or nepotism as a trend which has limited the community's access to food relief.

A related issue raised concerns about the political motivations of community leaders, as illustrated in this comment:

'All are closed behind doors, and we only see councillors in the evening. Politicians who only need votes during elections were no[where] to be found and religious leaders who took tithes in the past, now they are silent.'

Several respondents noted that the 'selective' distribution of food parcels is linked to the political party affiliation of community members. Some respondents took this even further by highlighting the issue of corruption concerning food parcels in their area:

'Councillors are playing a role but the problem is when they got food parcels and [sanitizers] they sell it to foreigners at amount of R300 to R700 and one of councillors has been [arrested] for [fraud].'

To prevent these and other issues, many CAOs helped with the reception and distribution of food parcels:

'most ward councillors were working with private donors in food parcels distributions and the main roles of the wards councillors were to identify families which were in desperate need [of] food parcels ... [Our CAO] was part of the process ... because ward councillors ... were [allegedly] hijacking food parcels [for] their families and friends like ... in Gauteng Province.'



The reported vacuum in local leadership is seen as one factor that may have exacerbated the food crisis

The significant issues raised in this report are recognised and understood by many stakeholders, including the CAOs who participated in this survey. This understanding and willingness to assist should be leveraged by government, as many CAOs have been under-utilised despite having the capacity and knowledge required to assist with these issues. Many CSOs, CAOs, NGOs and other organisations have banded together during the lockdown, with groups such as the Covid-19 People's Coalition and the NCF being created specifically to deal with the knock-on effects of Covid-19 and the lockdown. Government should not ignore these efforts but leverage them as powerful localised tools to assist in the revival of South Africa's society and economy. In particular, the government should restrain from promulgating regulations aimed at hindering the work of CSOs and other actors attempting to ease the effects of the lockdown. One example of such a regulation has been a recently announced ban on soup kitchens and a requirement that CSOs and individual donors distributing food parcels present a relevant permit. The Democratic Alliance filed a court case against Social Development Minister Lindiwe Zulu over the food distribution restrictions.²⁰⁵

205 Democratic Alliance, *DA takes Lindiwe Zulu to court today over food distribution restrictions* (22 May 2020) available at <https://www.da.org.za/2020/05/da-takes-lindiwe-zulu-to-court-today-over-food-distribution-restrictions> (last visited 22 June 2020).

7

Community Response to Covid-19

As the pandemic has spread across the country, government has issued a number of preventative guidelines and mandatory measures that must or should be taken to curb the spread of the virus. The government has also embarked on a communication campaign with daily updates by the Department of Health led by the Minister of Health, Dr Zweli Mkhize, about the epidemiological progress of the pandemic (the number of people tested, positive cases, recoveries, deaths and new cases); new preventative measures and regulations, as well as possible directions in which the virus might be further unfolding.²⁰⁶ Some of the preventative measures under levels 5 and 4 of the lockdown have included wearing a mask when going out in public, social distancing, a series of obligatory screening measures in the businesses which have reopened under level 4, exercising between 6 and 9 in the morning, or a limited number of customers in shops. The regulations have been relaxed recently under level 3.²⁰⁷

As regulations are updated and directions are issued by government ministers, it is useful to understand the measures that communities have taken to prevent the spread of the virus and the involvement of local government insofar as this is concerned. This chapter discusses the extent to which Covid-19 awareness campaigns have been conducted in communities, which preventative measures have been implemented successfully, which initiatives the communities have been engaged with to prevent the spread of Covid-19, and whether the communities have had access to PPE.

Campaigns and raising awareness

In over one in four (27%) communities across the country, there have not been any local awareness campaigns. This is highly concerning, as a large number of respondents raised the lack of awareness about Covid-19 and low adherence to lockdown regulations.²⁰⁸ The highest proportion of communities with no awareness campaigns are in Gauteng (7 out of 16 CAOs, 44%) and the Free State (4 out of 11 CAOs, 36%). For Gauteng, this is worrying considering that the province has some of the country's Covid-19 hotspots and the largest population. It is equally disturbing that the Free State has had a low number of community campaigns as it is the third most dissatisfied province with the provision of water and electricity, and the province with the highest proportion of CAOs who stated that there has been no emergency delivery of water and electricity in their communities.

Most (58%) of the awareness campaigns have been conducted by the Department of Health. The CAOs themselves have played an important role in raising awareness of Covid-19. The awareness raising initiatives by CAOs were at 34% across all nine provinces. Other actors including NGOs, community leaders and the security forces have been equally engaged in the awareness campaigns (between 22 to 26%).

Other ways of raising awareness that CAOs mentioned were campaigns aired on community radio stations or campaigns about the preventative measures coordinated jointly by CAOs and NGOs.²⁰⁹

²⁰⁶ Department of Health, *Covid-19* (undated) available at <http://www.health.gov.za/covid19/> (last visited 22 June 2020).

²⁰⁷ BusinessTech, *Level 3 lockdown rules in South Africa – here are all the changes from today* (1 June 2020) available at <https://businesstech.co.za/news/government/403657/level-3-lockdown-rules-in-south-africa-here-are-all-the-changes-from-today/> (last visited 22 June 2020).

²⁰⁸ We found that 35% of the communities face a challenge of low adherence to lockdown regulations in Question 22.

²⁰⁹ 'Other' responses to Question 19.

Table 7.1: Who has been conducting Covid-19 awareness campaigns in your area?

	My CAO	Department of Health	Security forces	NGOs	Local community leaders	N
Eastern Cape	17	20	13	9	13	32
Free State	6	4	1	4	1	28
Gauteng	2	11	3	3	3	16
KwaZulu-Natal	6	14	4	6	5	14
Limpopo	4	7	1	3	3	11
Mpumalanga	2	4	2	2	2	9
North West	2	6	2	1	1	8
Northern Cape	2	2	0	1	1	6
Western Cape	7	6	2	4	4	3
TOTAL	48 (38%)	74 (58%)	28 (22%)	33 (26%)	33 (26%)	127 (100%)

Many CAOs made suggestions as to what should be improved with regard to awareness raising. Some CAOs emphasised that loud hailers and pamphlets, newsletters and flyers in local languages should be distributed. Similar recommendations resonated from the HSRC survey on the awareness and impact of the lockdown, which stated that *'tailored and culturally appropriate messages need to promote voluntary behaviour actions (hand washing, social distancing and masks)'*.²¹⁰ Similarly, the UN Secretary General has recommended that governments should *'ensure that reliable, accurate information reaches all, by making it available in readily understandable formats and languages, including indigenous languages and those of minorities, adapting information for people with specific needs, including the visually and hearing impaired, and reaching those with limited or no ability to read, or who lack access to the Internet and usual media sources'*.²¹¹ One of the CAOs had the following to say about language barriers to information shared about Covid-19:

'People phoned us especially on the office telephone and Cellphone. Most informed us that they did not understand the speeches made by the President and his ministers as they spoke only in English and Indigenous languages were not used, and we have had to explain everything about Covid19.'

Another CAO stressed that campaigning through loud hailers would help improve circumstances:

'If we can have loud hailer to rove around the villages and educate and sensitise people about Covid 19 without any contact with them can assist a lot because many people did not understand about this due to lack of information and they are confused now about the fake news that we heard from social media. Also provide mask and sanitisers for the community.'

210 HSRC, *HSRC Study on COVID-19 indicates overwhelming compliance with the lockdown* (26 April 2020) available at <http://www.hsrc.ac.za/en/media-briefs/general/lockdown-survey-results> (last visited 22 June 2020).

211 UN Secretary General, *Covid-19 and Human Rights: We are all in this together* (April 2020) available at https://www.un.org/victimsofterrorism/sites/www.un.org.victimsofterrorism/files/un_-_human_rights_and_covid_april_2020.pdf (last visited 24 June 2020).

Some of the CAOs also suggested that different stakeholders such as traditional leaders, community leaders, churches, paralegals and NGOs should be engaged in the campaigns. They also emphasised the importance of raising awareness and education in public spaces such as taxi ranks, supermarkets, grant collection points, clinics or ‘outside all our fellow foreign shops in the community’.²¹²

A number of CAOs stressed the importance of door-to-door awareness-raising initiatives, if conducted according to the relevant precautionary measures. This could indeed be a good way of educating the public about the pandemic, its possible impact and the available assistance from the government. The CAOs also observed that door-to-door campaigns would allow CAOs to monitor human rights violations such as domestic violence, and to identify communities needing the distribution of food parcels.

‘Door to door campaigns will assist a lot to educate people on Covid 19 epidemic and monitoring if the intended outcome is met. Also to understand if the special benefits that government is providing during this lock-down period is accessible to community at large or what because we have discovered that most area did not get food parcels and those that were supplied are complaining that food was given to friends and families of municipal workers and councillors.’

The idea of using social media and common platforms such as WhatsApp was mentioned by numerous CAOs:

‘Create group on WhatsApp and Facebook so we can share ideas ... and those who have no cell phones we will make group of 10 people, ask for class at community hall to talk about this issue.’

Awareness remains one of the most important elements of responding to the pandemic in a context of limited internet access and illiteracy. Despite their importance, in more than one in four (27%) communities across the country, there have not been any awareness campaigns. This is highly concerning as several respondents raised the lack of awareness about Covid-19 and the low adherence to lockdown regulations as key issues in their communities. Human rights awareness has been one of CAOs’ regular activities, which could be used effectively in combating the pandemic. Awareness and understanding of the virus could assist with many secondary issues, such as adherence to regulations and the use of mobile healthcare options. This is a primary step which will only improve South Africa’s response to the virus, and should thus be emphasised. Balancing rights with the need to contain the virus is critical; the disaster situation should not become an excuse to quash dissent, silence human rights defenders or journalists, or to take any other steps that are not strictly necessary to address the health situation. For example, the recent actions taken to silence Professor Glenda Gray were disproportionate.²¹³



27%

of CAOs reported that there have not been any local awareness campaigns in their communities



²¹² ‘Other’ responses to Question 19.

²¹³ S Evans and K Cowan, SAMRC investigation into Glenda Gray is a ‘witch hunt’ – Adam Habib, News 24 (25 May 2020) available at <https://www.news24.com/news24/southafrica/news/samrc-investigation-into-glenda-gray-is-a-witch-hunt-adam-habib-20200525> (last visited 22 June 2020).

Adherence to disaster regulations

The need for awareness campaigns is clearer when one closely looks at the use of PPE in communities. As observed by one CAO:

*'Awareness campaign would be much appreciated as we have noticed that in rural area youth and community members are still gathering as normal with very little adherence to the regulation.'*²¹⁴

In 42% of communities served by CAOs, very few or no community members are using PPE. In Gauteng, 10 of the 16 CAOs reported that very few/no members of the community are using PPE (63%). This is concerning, particularly as the government continues to ease the lockdown and people are allowed to travel for work in between provinces under level 3.

Although the level of adherence to the preventative measures (i.e. PPE, social distancing) in spazas/supermarkets is higher than among community members, 34% of CAOs said that spaza/supermarket employees have not been using PPE. There was non-compliance with PPE regulations in the Northern Cape and Mpumalanga, as all CAOs surveyed responded that the shop employees did not adhere to PPE regulations. The low level of compliance has also been reported by CAOs in Gauteng and Limpopo. This shows some correlation between low levels of compliance and no awareness-raising campaigns, as Gauteng is also the province with the lowest rate of such campaigns.

Table 7.2: Has the community been using personal protective equipment (PPE)?

	Some community members are using PPE	The majority of community members are using PPE	Very few/no community members are using PPE	N
Eastern Cape	12	8	12	32
Free State	5	1	5	11
Gauteng	4	2	10	16
KwaZulu-Natal	9	8	11	28
Limpopo	5	2	7	14
Mpumalanga	2	4	0	6
North West	0	3	5	8
Northern Cape	2	1	0	3
Western Cape	5	1	3	9
TOTAL	44 (35%)	30 (24%)	53 (42%)	127 (100%)



42%

of CAOs said that very few or no community members were using PPE during lockdown

214 'Other' response to Question 19.1.

Table 7.3: Have employees of spazas/supermarkets in the community been using personal protective equipment (PPE)?

	No	Yes	N
Eastern Cape	7	25	32
Free State	4	7	11
Gauteng	8	8	16
KwaZulu-Natal	10	18	28
Limpopo	7	7	14
Mpumalanga	0	6	6
North West	4	4	8
Northern Cape	0	3	3
Western Cape	3	6	9
TOTAL	43 (34%)	84 (66%)	127 (100%)

The low adherence to regulations must be understood in tandem with the low levels of awareness-raising campaigns. In 42% of communities across the country, very few or no community members are using PPE. One third of all CAOs also reported a lack of adherence to PPE regulations by the employees in the spazas/supermarkets. This should be urgently addressed as most communities will be buying food to cook and serve to their families from these establishments, and Covid-19 could spread quite easily without sufficient PPE.

Prevention measures

The major challenges to effective preventative measures identified by respondents were the low adherence to lockdown regulations (80% of CAOs) and the lack of masks for community members (72% of CAOs). The unavailability of soap and water (34%) was also identified as a significant obstacle. As observed by one CAO, *'In deep rural communities, the shortage of water is still a problem and hand sanitizers are expensive to buy.'*²¹⁵ With respect to accessing PPE, one respondent stated:

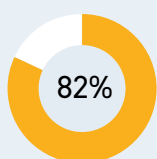
*'Many people do not have access to masks and gloves. If the masks are for sale, people do not have money to buy them. The unemployed and SASSA beneficiaries remain a challenge for our CAO.'*²¹⁶

The challenges in taking preventative measures against Covid-19 as indicated by CAOs are likely to be further exacerbated by the lockdown's already adverse impact on marginalised and disadvantaged communities. In this case, there are a number of intersecting challenges that prevent communities from protecting themselves against Covid-19. Some communities might have seen low adherence to the lockdown regulations given the struggle of vulnerable communities to deal with hunger and to access food, which is worsened by the loss of income, with the most vulnerable forced to go out in search of food and employment. This has been emphasised by one of the CAOs:

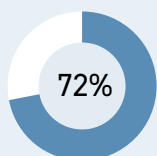
215 'Other' responses to Question 22.

216 As shown in Table 7.4 with answers to Question 22.

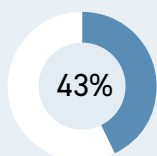
What challenges does the community face in taking preventative measures against Covid-19?



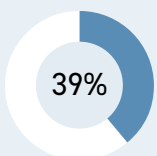
Low adherence to the lockdown & social distancing



Lack of masks for community members



Lack of clean water and soap



Lack of masks for employees of local spazas/supermarkets

*'Only 40% stay at home and 60% don't stay at their home because of lack of food they go out to seek for food.'*²¹⁷

Similarly, some people cannot afford to buy masks and soap due to the lack or loss of income. In this regard, many CAOs mentioned the need for distributing face masks and sanitisers in the communities as one way of raising awareness about Covid-19.²¹⁸

When asked 'What have people in your community done to prevent the spread of Covid-19', most respondents (73%) cited 'making their own masks', followed by 'staying at home as much as possible' (59%) and observing 'social distancing' (36%). Only a small fraction of CAOs (5%) indicated that people in their communities have been doing 'nothing' to prevent the spread of Covid-19. Other measures that may help in containing the virus – such as designating one person to do groceries, paying online for electricity or doing groceries outside of peak hours – have been less common among communities. The low percentage of online use to access services is not surprising, as the CAOs stated that access to the internet and the cost of data are a challenge. The differences between the provinces were not significant.

CAOs were further asked whether there have been any other initiatives in their communities to prevent the spread of Covid-19 and some stated that there are measures taken by supermarkets to observe social distancing.²¹⁹ Most of the CAOs who responded to this question, however, expressed concern over how some people have not been observing lockdown regulations. For instance:

*'The condition in [our community] is bad. Life is normal, children are playing soccer on the streets and parents are moving as usual.'*²²⁰

'People are going to town in numbers especially during social grant pay out and they do not observe social distancing unless there is an official who is enforcing those stipulations.'

One respondent attributed the above challenges to a lack of awareness, which could have been mitigated had their advice office been allowed to operate during the lockdown to assist community members. The CAO made the following observation:

'Communities make their own masks and very few of them use the masks. Adherence to the regulation of social distancing is being overstepped. If you visit any supermarket or taxi rank now you would also notice. You would see for yourself that a lot more had to be done before our commander in chief had to lockdown our advice offices instead of giving us the opportunity to prepare our fellow brothers and sisters.'

The responses from the CAOs pertaining to campaigns around the pandemic and challenges in taking preventative measures show that some CAOs feel under-utilised and that they are willing to play a more active role in raising awareness about the pandemic, which they feel is still lacking in their communities.

The lack of face masks and sanitisers has been a recurring issue raised by CAOs throughout the survey as one of the main challenges to preventing the spread of Covid-19 in communities. While community members have been actively engaged in making their own masks, it seems a more comprehensive and coordinated approach is required that could also involve CAOs more meaningfully.

217 'Other' responses to Question 23.

218 'Other' responses to Question 19.1.

219 Responses to Question 23

220 The name of the community has been removed.

Table 7.4: What challenges does the community face in taking preventative measures against Covid-19?

	Lack of clean water and soap	Lack of masks for community members	Lack of masks for employees of local spazas/supermarkets	Low adherence to the lockdown & social distancing	N
Eastern Cape	14	22	10	26	32
Free State	4	7	4	10	11
Gauteng	8	13	8	15	16
KwaZulu-Natal	9	18	4	22	28
Limpopo	9	11	11	9	14
Mpumalanga	2	4	2	5	6
North West	3	7	6	6	8
Northern Cape	1	2	0	3	3
Western Cape	4	8	4	8	9
TOTAL	54 (43%)	92 (72%)	49 (39%)	104 (82%)	127 (100%)

Table 7.5: What have people in your community done to prevent the spread of Covid-19?

	Designating one healthy person to collect food	Making their own masks	Staying at home as much as possible	Observing social distancing	Paying for electricity etc. online	Avoiding peak times for doing groceries	Nothing	N
Eastern Cape	3	26	16	14	0	2	1	32
Free State	3	7	5	3	2	5	1	11
Gauteng	3	10	8	4	3	3	1	16
KwaZulu-Natal	2	22	17	12	3	5	1	28
Limpopo	5	10	10	4	2	4	1	14
Mpumalanga	1	2	6	2	0	2	0	6
North West	1	6	5	3	0	2	1	8
Northern Cape	2	2	2	0	1	0	0	3
Western Cape	3	8	6	4	0	4	0	9
TOTAL	23 (18%)	93 (73%)	75 (59%)	46 (36%)	11 (9%)	27 (21%)	6 (5%)	127 (100%)

8

Impact of the Lockdown on CAO Operations

As observed by some respondents, the CAOs as a sector have not been designated as ‘essential services’ under the lockdown levels 5 and 4 regulations. Some of the CAOs have, however, continued their operations and have been delivering ‘essential services’ such as the distribution of food or provision of services to the survivors of GBV.

When asked how the lockdown affected their operations, the majority of CAOs (45%) responded that they have shut down their operations entirely and have not been providing any services. One CAO mentioned that they were closed during the level 5 lockdown but partially reopened when level 4 was introduced.²²¹ These results are reasons for concern as it means that ‘regular’ community issues – such as GBV, access to HIV/AIDS treatment and broader issues of access to justice that the CAOs assisted with pre-Covid-19 – are not being resolved. Most importantly, the results show that the CAOs could have played a more meaningful role during the pandemic by providing social and paralegal assistance. In particular, they could have assisted with raising awareness about Covid-19 and associated measures, and with supporting community members applying for economic and social packages. About one third of all CAOs surveyed (33%) managed to work remotely, whereas only one in five (22%) has been declared an essential service and managed to continue as usual.

Table 8.1: How has the lockdown affected your operations?

	We are an essential service and are able to continue as normal	Our staff are able to work remotely	We have shut down entirely, no services are being provided	N
Eastern Cape	9	13	8	30
Free State	1	4	5	10
Gauteng	1	4	10	15
KwaZulu-Natal	7	4	14	25
Limpopo	3	6	5	14
Mpumalanga	1	0	5	6
North West	0	4	3	7
Northern Cape	1	1	1	3
Western Cape	3	3	3	9
TOTAL	26 (22%)	39 (33%)	54 (45%)	119 (100%)

²²¹ As reported by one CAO in the ‘Other’ responses to question 4.

The CAO sector in Mpumalanga has been the most affected, with five out of six CAOs being forced to close down due to the lockdown, none of the CAOs being able to work remotely and only one out of six operating as usual (27%). Two other provinces where most CAOs were forced to close their operations entirely are Gauteng (67%) and KwaZulu-Natal (56%). It is concerning that Gauteng, one of the Covid-19 hot-spots, is also the province with the second-lowest rate of CAOs (7%) operating. About one third of all CAOs (between 30% and 33%) have operated as usual in the Western Cape and Eastern Cape. One of the reasons why many CAOs have managed to operate in these provinces could be because they have the highest proportion of CAOs with the capacity and systems in place to assist GBV survivors. The latter has been recognised as an essential service under the lockdown regulations.

CAOs in the Eastern Cape (43%), Limpopo (43%) and the Free State (43%) are most likely to have continued to operate remotely. One CAO respondent reported that they were unable to work from home due to the lack of resources, and have therefore been operating only two days per week from the office.²²²

There were a number of detailed responses about CAOs current state of operations, explaining their role in distributing food parcels or supporting emergency and relief activities:

*'We work on call during this period and we are stand-by for distribution of food parcels if we received them from Hlanganisa.'*²²³

Another respondent said that:

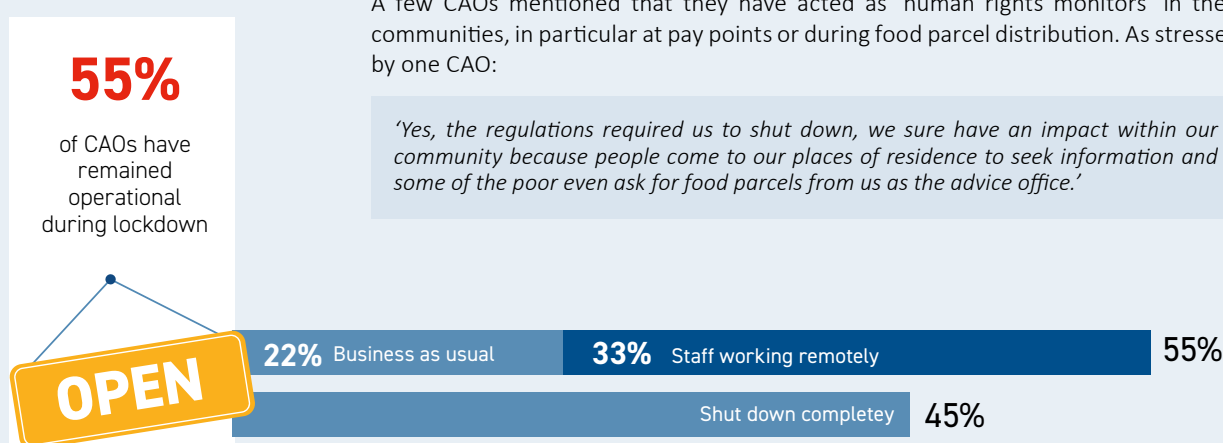
*'Since we are involved in food distribution we managed to visit some villages through work permits.'*²²⁴

Some CAOs cited permits as an impediment to continuing their operations as usual. Another CAO indicated that it applied to the SAHRC for a permit. In particular, this CAO said:

'The major challenges are sanitizers for staff and clients, permits issue also impacted the CAO. We are waiting for permits from SAHRC at present I am working alone as a director to attend urgent issues.'

A few CAOs mentioned that they have acted as 'human rights monitors' in their communities, in particular at pay points or during food parcel distribution. As stressed by one CAO:

'Yes, the regulations required us to shut down, we sure have an impact within our community because people come to our places of residence to seek information and some of the poor even ask for food parcels from us as the advice office.'



222 As reported by one CAO in the 'Other' responses to Question 4.

223 Hlanganisa is an NGO operating in South Africa, see: <http://www.hlanganisa.org.za>

224 As reported by one CAO in the 'Other' responses to Question 4.

Some CAOs reported that clients would visit them at home to seek advice, while others would provide advice telephonically. A number of CAOs have not closed entirely but have downsized their operations, working part-time or providing ad-hoc assistance. In particular, as observed by one CAO staff member:

*'As Human rights activists, we cannot just fold arms when there is violation of human [rights] next to you, we are partly working in our corners and visiting town.'*²²⁵

This account by one of the CAOs best summarises the situation in the communities:

'It is not easy; there are people in our community affected and isolated in hospital. [When it comes to our] Staff we have shortage of PPEs eg sanitizer, masks; people are starving due to lock down; more people, more cases are reported to us as we started with donations but seeking more assistance; information sharing is very much needed to the community.'

Almost the same proportion of CAOs responded that the number of people seeking their services has increased (45%) and decreased (47%). Only 8% of CAOs across all provinces said it had stayed the same. It is likely the CAOs that have shut down or shifted to a home office have noted a decrease in the number of people seeking their services, while those that continued operating observed the increase, especially those that engaged in the distribution of food parcels.

Mpumalanga, with the highest rate of closed CAOs, reported the highest proportion of CAOs (67%) indicating that the number of people seeking advice decreased. The situation in Gauteng (50%) and KwaZulu-Natal (61%) also follows this pattern.

Table 8.2: Has there been a change in the number of people seeking CAO services since the lockdown began?

	It has decreased	It has increased	It has stayed the same	N
Eastern Cape	14	17	1	32
Free State	3	7	1	11
Gauteng	8	5	3	16
KwaZulu-Natal	17	9	2	28
Limpopo	5	8	1	14
Mpumalanga	4	2	0	6
North West	5	2	1	8
Northern Cape	1	2	0	3
Western Cape	3	5	1	9
TOTAL	60 (47%)	57 (45%)	10 (8%)	127 (100%)

225 As reported by one CAO in the 'Other' responses to Question 4.

When asked how community members accessed CAO services, the majority of respondents across all provinces said by phone (87%), followed by WhatsApp (59%) and walk-ins (24%). It appears that most services offered by CAOs were accessed remotely due to lockdown restrictions. These results can be further explained by the fact that CAOs operate in disadvantaged and marginalised communities likely to be located in peri-urban (townships) and rural areas.²²⁶ In many of those areas, internet access may be limited, and when coupled with high data costs, phone calls are preferred. The patterns in data usage by CAOs further confirm this.

During the lockdown, CAOs reporting 'walk-in' services also emphasised that these were 'minimal'.²²⁷ One CAO said:

*'Walk in were made by people who stay in the same area where I stay since they know where my house is.'*²²⁸

Other means of accessing CAO services include Facebook, SMS, radio or visits to clients' homes. As previously explained, in some instances clients would visit CAO staff members at their homes. Accordingly, one CAO reported that *'Clients come to Director's house to ask questions and get advice.'*²²⁹

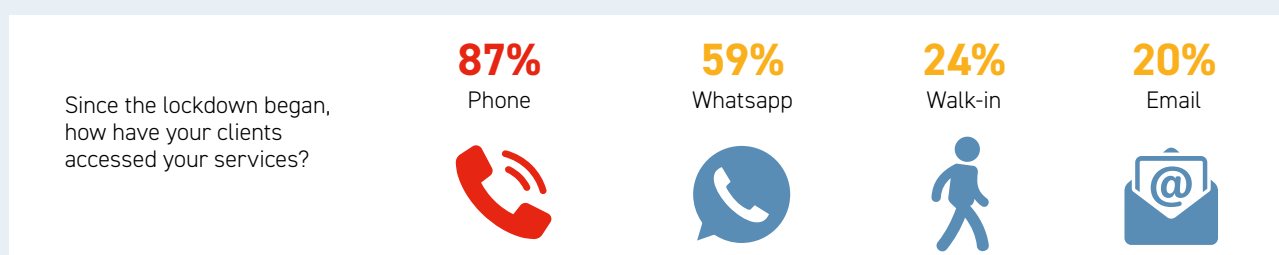


Table 8.3: Since the lockdown began, how have your clients accessed your services?

	WhatsApp	Email	Phone	Walk-in	N
Eastern Cape	21	2	26	14	32
Free State	8	1	9	2	11
Gauteng	10	4	15	2	16
KwaZulu-Natal	12	2	25	6	28
Limpopo	7	6	14	2	14
Mpumalanga	1	2	5	0	6
North West	6	1	8	0	8
Northern Cape	2	1	2	0	3
Western Cape	8	6	6	4	9
TOTAL	75 (59%)	25 (20%)	110 (87%)	30 (24%)	127 (100%)

²²⁶ Z Alimpc, *A Survey of Community-based Advice Office (CAO): Sustainability Study (Draft)* (Johannesburg: Foundation for Human Rights, 2018).

²²⁷ As reported by one CAO in the 'Other' responses to Question 5.

²²⁸ Ibid.

²²⁹ Ibid.

Internet access and digital services come with high costs, as confirmed by data collected from our survey. A large majority of CAOs (65%) across the country indicated that their staff have been using personal data connections to work from home. This seems to be a regular trend within the CAO sector, even outside the lockdown. Our 2018 CAO survey found that *'While a large majority of the CAOs have access to computers (89%) and the internet (77%) many of the advice office staff admitted that they access the internet predominantly from their smart phones for which they personally fund the data.'*²³⁰ Using personal data was the case for most respondents in the Free State (10 out of 11 CAOs, 91%), followed by KwaZulu-Natal (19 out of 28 CAOs, 68%) and Limpopo (9 out of 14 CAOs, 64%).

Limited internet access due to high data costs ranked second, with more than 40% of CAOs selecting this response.

About one in ten CAOs noted that staff members have been using office internet (14%) and only 13% of CAOs across provinces could afford to provide their employees with mobile data to work from home. It is not surprising that the Western Cape has the highest proportion of CAOs that have provided data to their staff to work from home as it is also the province with the lowest rate of CAOs that considered the high cost of data a limitation to accessing the internet. None of the CAOs from the Free State and Northern Cape were able to provide their staff with data to work from home. Because of high data costs and CAOs' limited resources, staff members were obliged to use personal internet connections when working from home.

Table 8.4: Describe your internet use during the lockdown

	Staff are using office internet	Staff have been provided with data to work from home	Staff are using their personal internet connections to work from home	Internet access is limited due to its high cost	N
Eastern Cape	6	6	20	16	32
Free State	1	0	10	3	11
Gauteng	1	2	9	11	16
KwaZulu-Natal	2	1	19	10	28
Limpopo	4	2	9	5	14
Mpumalanga	0	1	1	4	6
North West	0	1	6	4	8
Northern Cape	1	0	2	1	3
Western Cape	3	3	6	2	9
TOTAL	18 (14%)	16 (13%)	82 (65%)	56 (44%)	127 (100%)

230 Z Alimpic, *A Survey of Community-based Advice Office (CAO): Sustainability Study (Draft)* (Johannesburg: Foundation for Human Rights, 2018).

Even though most CAOs closed their operations due to the lockdown (45%), a significant number of CAOs have remained operational either because they have been recognised as an essential service and obtained the required permits (22%), or because they have been working remotely (33%). The results from the survey also suggest that a number of people seeking advice both increased and decreased because of some offices closing down or downsizing their operations, and others, continuing their operations as usual. Those CAOs that have seen an increase in activities are likely the ones who have maintained their operations. A need for a more meaningful participation of CAOs in the lockdown has been a recurring issue throughout the survey. A number of CAOs have suggested that the CAO sector as a whole should have been classified as an 'essential service'. A number of CAOs have also adapted their operations in order to better respond to the current needs of community members by, for example, distributing food parcels, conducting human rights monitoring or raising awareness. The CAO sector has once again proved how effective and adaptive it is when faced with difficulties.

The survey has revealed how the lack of a regulatory framework for the CAO sector has impeded the meaningful engagement of CAOs in the Covid-19 response. Had the sector been regulated, a number of state initiatives could have been channelled through the CAOs, including awareness-raising and other campaigns. It would allow for a more coordinated and better managed monitoring of the impact of Covid-19 in the most disadvantaged and marginalised communities, and a better coordinated involvement of CAOs in the distribution of food parcels. On a number of occasions, CAOs reported that the distribution of food parcels has been marred with irregularities, corruption, favouritism and theft. In this context, the CAOs could also ensure that when the state is faced with a disaster and the far-reaching impact of a lockdown, it remains accountable to its citizens.



9

Additional Issues Raised by Respondents

The last question in the questionnaire asked respondents whether there were any pertinent issues affecting their communities that had not been dealt with in the survey. Eighteen respondents said they had no additional issues to raise. Responses to this question were open-ended. After an initial read-through, these answers were grouped thematically around common issues by searching for key words within the answers and categorising them accordingly. For instance, respondents who used the words 'mask', 'social distancing' or 'testing' were grouped under the theme of Covid-19 mitigation measures. This procedure was repeated for recurring themes in answers to the question.

Covid-19 mitigation measures

The most pressing issue, raised by 32% of respondents, is concern about low levels of testing, PPE distribution and the lack of adherence to regulations within communities. The highest proportion of responses on this issue comes from the Western Cape (50%) followed closely by the Eastern Cape, Gauteng and KwaZulu-Natal (all at 38%). Testing was also flagged as a means by which to inform communities about what to do if they test positive, as

'[there is] not enough information about what to do when infected. It [takes] 6 days to come and test people in the household where one was diagnosed positive'.

Several respondents were especially concerned about schools reopening at the beginning of June, with several worried that schools would not be able to enforce social distancing measures and sanitising standards. Others raised the issue of uneven law enforcement linked to social distancing measures:

'Our taxi commuters and drivers are the most vulnerable in the community and our government isn't doing much in my community, law [enforcement] officers are taking bribes from local shops that still have cigarettes [instead] of enforcing the social distancing regulation.'

Hunger, grants and unemployment

Twelve percent of all respondents raised the issue of hunger during lockdown. As discussed in Chapter 5 dealing with the 'right to food', respondents have reported many issues with the delivery and receipt of food parcels nationwide which have exacerbated the existing conditions for many poverty-stricken families. Accessing government Covid-19 grants and other existing grant systems has also involved administrative issues (such as the lack of internet access) which also contributes to this.

'Farm workers/dwellers have no access to service, even [to the] SASSA COVID 19 food parcel. Nobody is going to their area to service them, and transport [is a] problem for them coming to [the] township or town.'

'City of Cape Town do not have a proper database of residents that needs assistance. Law enforcement agencies do not [enforce] the Covid-19 regulations. No permits [are] issued for people to visit government offices for UIF and [SASSA] grant applications.'

Ten percent of respondents pinpointed grants as a major issue which needs addressing. One respondent explains that:

'Government departments like Home Affairs, SASSA, Labour, etc still [do] not service our Town directly now and clients then have to travel to the nearest town, Riversdale, 30km away to access the services if these departments visit Riversdale. Only SASSA has an office in Riversdale.'

Some respondents suggested that CAOs be used as grant accessing points, as the staff could correct misinformation and assist community members by completing forms. These issues are interlinked, as one respondent states:

'The issue of unemployment grant[s] is still a problem as the Minister in the social cluster failed to clarify, government failure to provide food to the poor and also failure to the government to use CAO in some areas to assist with food distribution and failure by the government to provide screening stations in [a number of communities].'

A major issue related to this is widespread unemployment and the precarious situation of many workers, which has prevented many from buying food. Unemployment was raised by 14% of respondents, and this is an issue that needs to be addressed. All Northern Cape respondents raised unemployment, as did 25% in the Eastern Cape and 19% in Gauteng. Another respondent mentioned that *'SMMEs [small, medium and micro enterprises] are the ones who are struggling as they don't get any help'*. Several respondents commented specifically on the problems faced by farm workers and dwellers:

'People working in farms are dismissed unfairly (1 Case Reported). One worker was not paid his April 2020 salary. Farm workers are still vulnerable to unfair labour practices because department of labour is not visiting.'

Given high levels of xenophobic sentiment in the country, it is interesting to note that many respondents are concerned about foreign nationals and undocumented people in South Africa, even though government has stipulated that identity documents are not required for collecting food packages and they can be collected with an affidavit or letter vouching for a person's identity.²³¹ Additionally, the closure of Home Affairs offices has impeded birth registrations, which is hugely problematic for those receiving child support grants. A respondent explains:

'Food Access is the greatest problem especially to the people without proper documents as there had being the closure of Home Affairs and the people who were supposed to go for the interviews regarding the Late Birth Registration and now those households cannot access the government relief benefits for the unemployed and the registration of the child support grant because of that circumstance they find themselves in they can't access [anything].'


Some note that issues compound each other, as

'people need food they don't know where to go because SASSA satellite office ... is closed ... cases of stolen phones and night break-ins have been discussed around the community which shows that people are [in] need of food. [L]ack of access is making them vulnerable [to crime].'

231 South African Government, *Social Relief of Distress* (undated) available at <https://www.gov.za/services/social-benefits/social-relief-distress> (last visited 28 June 2020).

Additional issues

There are a few other issues which respondents noted as problematic during the lockdown, but at a lower rate than the above-mentioned. These include lack of internet access (noted by 10% of respondents), and not classifying CAOs and paralegals as essential workers who would have been able to alleviate access to justice issues (cited by 7%). One respondent suggested a national hotline for paralegals to assist in the increased number of police brutality cases during lockdown.²³² Several respondents highlighted increased instances of police brutality when enforcing lockdown regulations, such as the case of Collins Khosa discussed in the introduction of this report. Another respondent reported 'harassment of bereaving families by police during funerals'. Others pointed to a lack of transport (4%), which prevented many from accessing food parcels and other assistance. Another area of concern is immune-compromised individuals' heightened risk; one respondent notes that *'Access to medication by people living with HIV/Aids, TB, etc. has been a challenge.'*



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232 K Mokgatlhe and K Ngoepe, *Police brutality on the rise during lockdown*, IOL News/Sunday Independent (5 April 2020) available at <https://www.iol.co.za/news/south-africa/police-brutality-on-the-rise-during-lockdown-46250431> (last visited 28 June 2020).

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Recommendations

This study has revealed that there is clear tension between people's ability to access their rights and the interventions taken to mitigate the effects of Covid-19 in South Africa. This is not the inevitable result of any set of reasonable measures, but reflects the policy choices of the South African government. We believe that alternatives exist that will simultaneously respond adequately to the emergency and respect the rights of citizens, particularly the most vulnerable and marginalised. There will no doubt be future occasions when circumstances demand an immediate and wide-ranging response on the part of the state – the lesson we should learn from our current experience is that undermining rights and livelihoods as part of the immediate set of actions, and then attempting to remedy those faults through further actions is sub-optimal. Integrating the protection of rights of the most vulnerable and marginalised into the initial response is likely to preemptively deal with adverse outcomes, as well as increase trust in and compliance with state directives.

General recommendations

Our survey revealed a leadership vacuum in local governance, with several CAOs expressing disappointment with the manner in which local authorities handled the crisis.

The response to the emergency should engage a broader range of stakeholders, and in particular should include community-based organisations. Studies similar to that on which the current report is based, perhaps extended to include a broader range of CSOs, should be conducted regularly – this will generate valuable feedback on conditions at grassroots level.

CAOs have the organisational capacity and community linkages to provide critical support to many aspects of the state's response to Covid-19. However, when they were most needed, many CAOs were forced to close. The state should engage with CAOs and other community-based organisations to assist in the implementation of lockdown regulations as an important component of an awareness-based adherence strategy, rather than relying solely on enforcement mechanisms. Using local stakeholders to monitor adherence to regulations will also lead to greater compliance from within those communities. At the national level, civil society should be included in the National Coronavirus Command Council in order to diversify and modulate the response to the crisis.

Given the pivotal role played by CAOs in ensuring access to justice, these entities should be classified as an essential service.

There are a number of areas where CAOs could play a particularly useful role – in the design and implementation of programmes that raise awareness about Covid-19, assisting in the implementation of measures to combat the virus, and in the monitoring of human rights violations that may arise from these measures.

The lack of a formal regulatory framework for CAOs has not helped. Such a framework would have provided a formal channel of communication between the state and the sector, as well as a modality through which consolidated action could have taken place.

Gender-based violence

The increase in GBV during the lockdown has been referred to by President Ramaphosa as a second pandemic. Unfortunately, CAOs and their communities are not adequately equipped to address the increase in GBV, with a dearth in shelters and other available services.

Given the ubiquity of GBV (and other gender-based inequalities), the gender perspective should permeate all government policy, and particularly so during emergencies. Decision-makers should continuously engage with CSOs dealing with GBV, to establish context-specific protocols to facilitate the reporting of GBV incidents. CAOs should be supported to implement a minimum arsenal of GBV assistance services across the country to aid survivors. Moreover, shelters and other support mechanisms should be enhanced for the many who require these critical services. GBV is a systemic issue that cannot be solved symptomatically. Beyond GBV, women's vast unpaid labour should be reflected in social protection plans and emergency economic schemes. The newly released National Strategic Plan (NSP) on Gender-Based Violence and Femicide is one important tool that provides a clear roadmap for a more coordinated and effective response to the GBV crisis.

Security forces

In communities where security forces were deployed, nearly 50 complaints (representing 38% of CAOs) were made of harassment and violence by security forces against community members. The excessive use of force by security forces is a key concern.

The SANDF should only be deployed as a last resort, and then only with the prior publication of clear guidelines, and with adequate training in civilian interactions, the Constitution and conflict de-escalation. Even under these circumstances, the SANDF must meet regularly with community members and leaders to clearly communicate deployment plans and accountability mechanisms. Complaint mechanisms should include community-based mechanisms – and here CAOs are again well-placed to play a role as intermediaries.

Children's rights

Large numbers of CAOs have reported increased hunger among children in their community – often linked to the termination of feeding schemes that are the primary source of food. Hunger has severe, potentially long-lasting, impacts on children's physical and neurological development. Further research is needed on the wide spectrum of possible effects (including emotional, mental and physical) of Covid-19 and the lockdown on children.

The departments of Social Development and Basic Education should develop protocols for emergency feeding schemes for children to avoid hunger and its severe consequences for their development. Counselling and psychological services should also be available and accessible to children during and after emergencies, in all official languages.

Education

Education for all learners was negatively impacted by the lengthy closure of schools. Girls are particularly vulnerable to dropping out, which is a key concern for the future economic integration of this cohort. The disproportionate effect of school closures on the most vulnerable and marginalised is also clear – those without access to the internet or whose access was compromised by limited access to electricity have been left without any education for an extended period.

A study on Covid-19's impact on education access, focusing on learners in matric and adolescent girls, should be conducted to assess the extent of the damage for those in school this year. Government must work with civil society and the private sector to create and implement a distance-learning programme that is free and accessible on all electronic devices, in all official languages. A particular focus should be the roll-out of this service to the cohort who have limited or no access to distance-learning platforms. Data access to this service must be zero-rated, with qualified educators available online to assist learners in all official languages.

Right to healthcare

Transport was the key obstacle to healthcare faced by most communities, with surprisingly low use of the new mobile healthcare facilities provided by government.

When transport is restricted, government should provide free, safe transport to people from marginalised communities requiring medical assistance. Increased awareness of mobile healthcare services in local communities is imperative, as is ensuring sufficient capacity to treat communities. Sexual reproductive services, including non-prescription contraceptives, must be available during the crisis. Free delivery of chronic medication for marginalised communities during the crisis is also key.

Right to food

The food crisis has been exacerbated – food was the most difficult basic good to access during the lockdown. CAOs are ideally placed to facilitate and monitor food parcel distribution (as many of our respondents have done) and should be more widely used as hubs for this and other types of assistance. In the long run, the only sustainable solution to food insecurity is food sovereignty: giving people ownership of the means to produce their own food. This can be provided through meaningful long-term engagement between CSOs, CAOs, farms, and the private and informal food sectors. Sustainable food solutions can be reached collaboratively through engagements between CAOs, CSOs and communities throughout South Africa. There is already significant progress in this regard through the South African Food Solidarity Campaign (SAFSC) and National Food Crisis Forum (NFCF), which have increased their efforts during the lockdown as conditions have worsened.

The government should develop a coordination protocol for 'food security management' in case of emergency or disaster. The protocol would serve as a point of reference for the coordination and management of humanitarian and relief efforts during emergencies and disasters and should be based on the decentralisation of the response.

The government must ensure that food corporations and retailers are held accountable for violating the Covid-19 regulations by inflating the price of food and other essentials. Their actions have disproportionately impaired poorer people in South Africa's ability to feed themselves and their families, especially given the increased unemployment during this period.

Right to housing

Evictions during a time of crisis such as emergencies or disasters must be avoided. Perhaps there is a need to introduce a legislative provision to this effect as regulations promulgated by the Minister of Justice were unevenly enforced, with the poorest communities being the worst affected.

Government aid

Despite publicised government assistance to vulnerable groups, the majority of our respondents reported that the promised financial aid has not materialised. There are a number of reasons for this state of affairs – including poor internet access, administrative issues (such as the closure of government offices) and a general lack of awareness about bureaucratic procedures.

Remote access to public assistance must therefore be prioritised. Information about social assistance measures should be publicised widely using a range of media. Access to social assistance should also be better facilitated for the elderly and disabled. This can be achieved by ensuring that government offices remain open to communities, with increased use of PPE and other measures to mitigate the risks of Covid-19. The amount included in a grant should be supported by research on the cost of living for the average household and updated regularly. Once again, CAOs can play an important role in both communicating about, and facilitating access to, public assistance programmes.

Personal protective equipment

Respondents indicated that communities would be more likely to adhere to lockdown regulations if they had access to the necessary PPE, water and other essentials. This means that PPE provision is essential in all work environments in addition to other health and safety requirements. Transport to and from work should also be monitored. Protections should be prepared for reporting regulation violations, and workers must be encouraged to report violations. Business owners must be held personally liable for breaches of regulations, and government should consider how to protect workers unable to return to work due to pre-existing health vulnerabilities.

Conclusion

The state's actions are justified and have been demonstrably successful in flattening the curve of infections, but there is room for improvement, particularly in areas where the rights of vulnerable and marginalised people are affected. Not only are vulnerable and marginalised groups more likely to bear the brunt of the epidemic, they are (as this and other studies have demonstrated) more likely to suffer the adverse effects of the measures implemented to combat the epidemic. This is unlikely to be the last crisis we face (although the ecological crisis may occur at a much slower pace) and there should be no contradiction between addressing the crisis and ensuring that the human rights of all, but particularly the most vulnerable, are protected. The temptation to act upon exigent circumstances without taking into account the interaction with existing patterns of inequality must be resisted. The voices of vulnerable and marginalized communities (as represented here by CAOs) must be a primary input into the response and not an afterthought.

We are only now entering the most difficult period of the Covid-19 pandemic in South Africa. There is still room for immediate action to address the most severe shortcomings in our current approach.



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