



Equality Research Brief

Left Behind: The Impact of the Covid-19 Pandemic on Vulnerable Groups **March 2021**





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CORONAVIRUS

COVID-19

1 INTRODUCTION

South Africa remains one of the most unequal countries in the world.¹ It has been reported by the World Bank that the richest 20% of people in the country control almost 70% of the resources.² Although significant progress has been made since the attainment of constitutional democracy, much remains to be done to ensure the transformation of South African society. For the majority of South Africans, income and wealth determinants continue to be varied by race and gender. Poverty persists along racial lines, with black people experiencing endemic and structural inequality, which results in inequitable education, a lack of adequate housing and the inability to access healthcare services.³ It is therefore not surprising that when the nationwide lockdown was announced by President Cyril Ramaphosa in response to the COVID-19 pandemic, the most adversely affected population groups were poor, black South Africans and non-nationals residing in South Africa.

The lockdown was announced on the 23rd of March 2020 by the President to curb the spread of the Coronavirus Disease 2019 (COVID-19). It was also the intention of the government to allow the health care system to be prepared for an influx of infected patients. By the time the first lockdown was announced, the number of confirmed cases had increased from 61 cases to 402 cases. The announcement of the lockdown by the President followed the declaration of a national state of disaster in terms of section 27 of the Disaster Management Act, 57 of 2002. The national state of disaster was declared to enable the government to develop an integrated and coordinated disaster management strategy that would reduce the impact of the outbreak.⁴

1 Stats SA 'How Unequal is South Africa?' (4 February 2020) *Stats SA* <<http://www.statssa.gov.za/?p=12930>>. See generally The World Bank *Overcoming Poverty and Inequality in South Africa: An Assessment of Drivers, Constraints and Opportunities* (2018) and SAHRC *Equality Report 2017/18: Achieving Substantive Economic Equality through Rights-based Radical Socio-economic Transformation* (2018).

2 Oxfam South Africa *Reclaiming Power: Women's work and income inequality in South Africa* (2020) <<https://www.oxfam.org.za/wp-content/uploads/2020/11/oxfam-sa-inequality-in-south-africa-report-2020.pdf>>.

3 Ibid.

4 *Statement by President Cyril Ramaphosa on measures to combat COVID-19 epidemic* (15 March 2020). <<https://www.gov.za/speeches/statement-president-cyril-ramaphosa-measures-combat-covid-19-epidemic-15-mar-2020-0000#>>.

The implications of the regulations on the lives of South Africans and non-South Africans were immense and several rights were limited by the measures announced by the President. During the first period of lockdown,⁵ all South Africans were required to stay at home except under strictly controlled circumstances, such as essential work, to access medical care, purchasing food or medicine or the collection of social grants. Furthermore, there was an automatic placement of South African citizens and residents arriving from high-risk countries under quarantine for 14 days, while the arrival of non-South Africans from high-risk countries was banned. The National Defence Force was deployed to assist the South African Police Service (“SAPS”) with the enforcement of lockdown regulations. As the lockdown measures had been categorised into different risk-adjusted alert levels, each alert level had its own regulations published and communicated by the responsible Minister.

While the pandemic and ensuing lockdown measures mentioned above had a negative impact on all South Africans, vulnerable groups were disproportionately affected by these measures.⁶ For instance, the United Nations reported that while these measures are said to have negatively affected all people living in South Africa, asylum-seekers, refugees, and undocumented migrants disproportionately experienced the adverse impact of these measures because of the existing vulnerabilities affecting this population and other vulnerable groups.⁷ Research also shows that “Black people are more likely to contract Covid-19, less likely to be tested and treated, and more likely to die, if they contract the virus, due mainly to the history of systemic racism in the world.”⁸ The research demonstrates that the impact of the pandemic has been discriminatory and thus perpetuates existing, structural inequality in communities.

In this brief, the impact of the COVID-19 pandemic and the subsequent lock down regulations put in place to curb the spread of the virus, are both assessed on certain vulnerable groups, in light of the right to equality guaranteed in the Constitution of the Republic of South Africa, 1996 (“Constitution”) and the principle of Leave No One Behind (“LNOB”) that underlies the sustainable development agenda.⁹

5 SA News *President Ramaphosa announces a nationwide lockdown* (23 March 2020) <<https://www.sanews.gov.za/south-africa/president-ramaphosa-announces-nationwide-lockdown>>.

6 FC Mukumbang, AN Ambe & BO Adebisi ‘Unspoken inequality: how COVID-19 has exacerbated existing vulnerabilities of asylum-seekers, refugees, and undocumented migrants in South Africa’ (2020) 19 *Int J Equity Health* 3.

7 United Nations Policy Brief- COVID-19 and People on the Move (2020) <https://www.un.org/sites/un2.un.org/files/sg_policy_brief_on_people_on_the_move.pdf>.

8 B Mohale ‘It’s no coincidence that Covid-19 disproportionately infects and kills black people’ (4 August 2020) Daily Maverick <<https://www.dailymaverick.co.za/opinionista/2020-08-04-its-no-coincidence-that-covid-19-disproportionately-infects-and-kills-black-people/>>.

9 UN General Assembly *Transforming our World: the 2030 Agenda for Sustainable Development* (2015) A/RES/70/1.



2 MANDATE

The South African Human Rights Commission (“Commission”) is mandated by section 184 of the Constitution to promote respect for human rights and a culture of human rights; to promote the protection, development and attainment of human rights; and to monitor and assess the observance of human rights in South Africa. The Commission does so through several means, one of which is by conducting research.¹⁰

In addition, the Commission is competent and obliged by the South African Human Rights Commission Act 40 of 2013 (“SAHRC Act”) “to make recommendations to organs of state at all levels of government where it considers such action advisable for the adoption of progressive measures for the promotion of human rights within the framework of the Constitution and the law, as well as appropriate measures for the further observance of such rights”.¹¹

Finally, although this provision remains inoperative, section 28(2) of the Promotion of Equality and Prevention of Unfair Discrimination Act, 4 of 2000 stipulates that the Commission must include in its annual report, an “assessment on the extent to which unfair discrimination on the grounds of race, gender and disability persists in the Republic, the effects thereof and recommendations on how best to address the problems”.

10 S 184(2)(c) of the Constitution.

11 S 13(a)(i) of the SAHRC Act.

STAY SAFE
STAY HOME
SAVE LIVES

3 METHODOLOGY

The Commission engaged with the Government in an effort to ensure that the lockdown regulations adopted were compliant with human rights norms and standards. Several meetings were held with law-makers, where the concerns and challenges facing vulnerable groups were presented by the Commission.¹² The Commission also provided recommendations and input on draft Regulations, such as those pertaining to basic education and schools. The Commission furthermore participated in, or established, several participatory platforms at national level to monitor housing, water/sanitation, and education in times of the pandemic.¹³

Administrative data regarding complaints received by the Commission, as well as monitoring and promotion data generated by the Commission's nine Provincial Offices, are relied on for purposes of this research brief. However, independent monitoring of facilities that render services to persons with disabilities was severely curtailed during the national state of disaster. As a result, data demonstrating the full extent of the impact of the pandemic and lockdown measures in respect of such persons could not be adequately evaluated.

This information is supplemented with the reports of international organisations and civil society. A qualitative methodology was therefore adopted, and desktop research was conducted for the reporting period of 1 January to 31 December 2020.

12 SAHRC Joint Media Statement: SAHRC and Minister of Cooperative Governance and Traditional Affairs to cooperate in further human rights (14 July 2020) <<https://www.sahrc.org.za/index.php/sahrc-media/news-2/item/2404-joint-media-statement-sahrc-and-minister-of-cooperative-governance-and-traditional-affairs-to-cooperate-in-further-human-rights>>.

13 SAHRC Media Statement on the Decision by the Department of Basic Education to Postpone the Reopening of Schools (15 January 2021) <<https://www.sahrc.org.za/index.php/sahrc-media/news-2/item/2547-media-statement-on-the-decision-by-the-department-of-basic-education-to-postpose-the-reopening-of-schools>>.





4 LEGAL AND POLICY FRAMEWORK

a) International and Regional Framework

In terms of international law, the State is obliged to implement the International Convention on the Elimination of all forms of Racial Discrimination (“ICERD”); the Convention on the Elimination of all forms of Discrimination against Women (“CEDAW”); and the Convention on the Rights of Persons with Disabilities (“CRPD”).

Regionally, the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (the “Maputo Protocol”) is one of the instruments that South Africa has ratified. The Maputo Protocol provides for the protection of women and girl-children, as well as for the eradication of discrimination against women. Additionally, unfair discrimination is explicitly prohibited by the African Charter on Human and Peoples’ Rights (“Banjul Charter”). The Banjul Charter provides for equality before the law and equal benefit and protection of the law under Article 3.

At a global policy level, the Sustainable Development Goals represent the global community’s commitment to pursue pertinent development goals to achieve greater socio-economic justice. Significantly, SDG 10 aims to reduce inequalities within and amongst countries.¹⁴ Regionally, Agenda 2063 expounds the transformative agenda for Africa’s sustainable development, with non-discrimination being a key theme that characterises the attainment of various transformation objectives.¹⁵

¹⁴ SAHRC State of Human Rights Report (2020) 37.

¹⁵ Ibid.



5 LEFT BEHIND: THE UNEQUAL ENJOYMENT OF RIGHTS BY VULNERABLE GROUPS

Prior to the COVID-19 pandemic, nearly half of the South African population lived in poverty.²¹ Poverty is skewed along race and gender lines, whereas more than 62% of children were in multidimensional poverty with black African children more likely to experience multidimensional poverty than other population groups.²² Those who live in poverty, including children, are inherently vulnerable. Nevertheless, for purposes of this research brief, focus is placed on certain²³ vulnerable groups who are poor, but simultaneously face multiple forms of disadvantage based on race, gender, nationality and disability status.

a) Women

As of 2015, women had a poverty gap of 17,5% based on the Lower Bound Poverty Line, while men had a poverty gap of 15,7%. While the difference between men and women had narrowed in 2015, women still had a higher poverty gap, indicating that their experience of poverty was more intense than that of their male counterparts. Between 2011 and 2015, this proportion increased by 2,5 percentage points for females and 2,2 percentage points for men.²⁴

21 Stats SA 'Five Facts about Poverty in South Africa' (4 April 2019) Stats SA <<http://www.statssa.gov.za/?p=12075>>. It should be borne in mind that this estimate by Stats SA is according to the Upper Bound Poverty Line prevalent in 2015, and that developments (including an increase in Value Added Tax) have occurred since that time.

22 Stats SA Child Poverty in South Africa: A Multiple Overlapping Deprivation Analysis (June 2020) <<http://www.statssa.gov.za/publications/03-10-22/03-10-22June2020.pdf>>.

23 Older persons, detainees, farm workers and other groups are also vulnerable.

24 Stats SA Poverty Trends in South Africa An examination of absolute poverty between 2006 and 2015 (2017) 30 <<https://www.statssa.gov.za/publications/Report-03-10-06/Report-03-10-062015.pdf>>.

A combination of factors, including reduced access to social protection and inequalities ingrained in political, cultural, social and economic systems, will lead to women being disproportionately affected by the adverse impact of COVID-19.²⁵ In particular, the United National Development Programme South Africa predicted that informal workers and women-headed households are at the highest risk of exacerbated unemployment.²⁶ The same study found that the effects of the pandemic have further complicated income exclusion, which mostly affects the already-disadvantaged black population. Those at greatest risk of descending (deeper) into poverty are thus unskilled and semi-skilled workers, and female-headed households with at least two children.²⁷

For the Government to create effective, equitable policies and interventions to address issues affecting women,²⁸ it is necessary to adopt a gendered approach in response to the pandemic. Women suffered the negative consequences of the resulting social and economic downturns and school closures disproportionately, in that they were more greatly impacted by job losses and childcare responsibilities.²⁹ Due to lower levels of education and less marketable skills, many women are self-employed or are forced to engage in precarious work.³⁰ Women who work in the informal sector thus suffered a significant loss of income due to the COVID-19 pandemic and concomitant lockdown measures. This scenario differs for men, who are commonly engaged in higher-income, waged employment.³¹ During the lockdown, the average monthly earnings of women were also disproportionately lower when compared to those of men. Real monthly earnings fell both among employed women and men but more so for women.³²

Moreover, the majority of women aged between 18 and 59 years will not enjoy access to social security, since this form of social assistance is usually linked to formal employment. The fact that many women are employed informally or temporarily will result in them not receiving social protection such as pension and unemployment benefits, paid sick leave, maternity leave, and health insurance.³³ The failure to acknowledge unpaid care work and other reproductive work mostly performed by women, has consolidated deeply ingrained structural inequalities, since long before the advent of the pandemic.³⁴ Civil society's calls for social assistance for able-bodied adults of working age (ie those not receiving a disability, child support or old age grant) have thus redoubled in the face of

25 United Nations Policy Brief - The impact of COVID-19 on women (2020) <<https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2020/policy-brief-the-impact-of-covid-19-on-women-en.pdf?la=en&vs=1406>>.

26 UNDP South Africa Covid-19 in South Africa: Socio-economic impact assessment (2020) 10.

27 Ibid 11.

28 C Wenham, J Smith & R Morgan 'COVID-19: The gendered impacts of the outbreak' (2020) *The Lancet* 846.

29 National Income Dynamics Study (NIDS) – Coronavirus Rapid Mobile Survey (CRAM) D Casale & D Shepherd The gendered effects of the Covid-19 crisis and ongoing lockdown in South Africa: Evidence from NIDS-CRAM Waves 1–3 (2021) 1 <<https://cramsury.org/wp-content/uploads/2021/02/4.-Casale-D.-Shepherd-D.-2021-The-gendered-effects-of-the-Covid-19-crisis-and-ongoing-lockdown-in-South-Africa-Evidence-from-NIDS-CRAM-Waves-1-3.pdf>>.

30 The SAHRC's Eastern Cape Provincial Office received a complaint during 2020 that a woman informal trader's container, from which she conducted business during the pandemic, was confiscated by the municipality. This demonstrates the additional hurdles faced by women engaged in informal work during the pandemic. SAHRC State of Human Rights in the Eastern Cape (2021).

31 Ibid 14.

32 National Income Dynamics Study (NIDS) – Coronavirus Rapid Mobile Survey (CRAM) D Casale & D Shepherd The gendered effects of the Covid-19 crisis and ongoing lockdown in South Africa: Evidence from NIDS-CRAM Waves 1–3 (2021) 11 <<https://cramsury.org/wp-content/uploads/2021/02/4.-Casale-D.-Shepherd-D.-2021-The-gendered-effects-of-the-Covid-19-crisis-and-ongoing-lockdown-in-South-Africa-Evidence-from-NIDS-CRAM-Waves-1-3.pdf>>.

33 UNCTAD COVID-19 requires gender-equal responses to save economies. (2020) <<https://unctad.org/en/pages/newsdetails.aspx?OriginalVersionID=2319>>.

34 International Labour Organization Care Work and Care Jobs for the Future of Decent Work (2018) 165-166 <https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_633166.pdf>.



the devastating impact of COVID-19 and ensuing lockdown measures.³⁵ Renewed focus on a Basic Income Grant is framed in terms of section 27(1)(c) of the Constitution, which guarantees social assistance to “everyone” in need thereof:

(1) *Everyone has the right to have access to—*

(c) *social security, including, if they are unable to support themselves and their dependents, appropriate social assistance.*

The Government sought to progressively realise³⁶ this crucial right under the negative conditions of the pandemic, by introducing a Social Relief of Distress Grant (the “special COVID-19 grant”) of R350 per month for a limited time. Conditions for eligibility for the grant include not receiving any other form of a social grant. This indirectly discriminates against women who receive a Child Support Grant, since they are excluded from receiving the special COVID-19 grant, yet do not receive the Child Support Grant in their own right. They are accordingly left destitute and unable to meet their own needs. The Government sought to bridge this gap by introducing an additional form of Social Relief of Distress allowance of R500 per recipient of the Child Support Grant. Importantly, the R500 was not provided per child, but per caregiver. This special allowance expired at the end of October 2020,³⁷ rendering caregivers without any social assistance other than the Child Support Grant, which should benefit the child concerned and not the caregiver. The response appears to contradict the prohibitions against unfair discrimination on the ground of gender as contained in section 9(3) of the Constitution, and section 6 read with section 8 of PEPUDA. Significantly, section 8(g) of PEPUDA explicitly prohibits “limiting women’s access to social services or benefits, such as health, education and social security”.

35 SAHRC Policy Brief: Basic Income Grant (2018) <<https://www.sahrc.org.za/home/21/files/A%20Policy%20Brief%20on%20a%20Basic%20Income%20Grant%202017-2018.pdf>>.

36 S 27(2) of the Constitution.

37 Amendment to the Directions issued in terms of Regulation 4(5) of the Regulations made under Section 27(2) of the Disaster Management Act, 2002 in Government Gazette No. R. 517 of 9 May 2020.

Another challenge that is faced by women entrepreneurs is the fact that they are often discriminated against when attempting to access credit. This is despite the fact that section 8(e) of PEPUDA regards “any policy or conduct that unfairly limits access of women to land rights, finance, and other resources” as a prohibited form of discrimination on the ground of gender. In the context of the economic hardships brought about by the pandemic and lockdown restrictions, accessing credit will become crucial for the survival of women owned businesses. The United Nations Conference on Trade and Development Division (“UNCTAD”) has reported that as a result of COVID-19 lockdowns and restrictions (which will lead to a lack of favourable lines of credit), many female entrepreneurs will be forced to close their businesses.³⁸ The graph below from UNCTAD reflects access to credit in different countries:

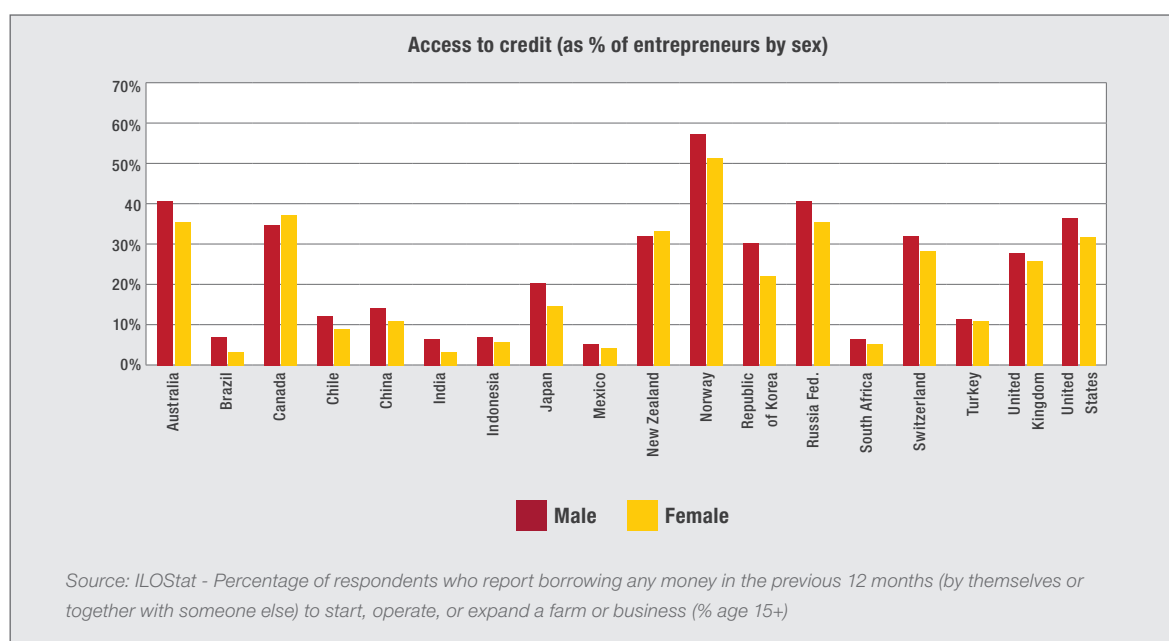


Figure 1: Access to credit³⁹

Section 9(1) of the Constitution guarantees everyone the right to enjoy the equal benefit and protection of the law. Section 9(2) goes on to guarantee the equal enjoyment of all rights and freedoms. However, women in South Africa experience extreme levels of Gender-Based Violence (“GBV”), essentially nullifying these constitutional protections. Women who experience GBV routinely have their rights to equality (section 9), human dignity (section 10), freedom and security of the person (section 12) and even their right to life (section 11) violated. For example, it is reported that during the 2019/20 financial year, 2 695 women were murdered in South Africa, which equates to a woman being murdered every three hours.⁴⁰ Furthermore, research indicates that links exist between GBV and various negative health outcomes,⁴¹ thereby also threatening the right of access to health care services⁴² as well as the right to the highest attainable standard of physical and mental health as enshrined in Article 12 of the International Covenant on Economic, Social and Cultural Rights

38 UN Women COVID-19 and gender: What do we know; what do we need to know? (13 April 2020) <<https://data.unwomen.org/features/covid-19-and-gender-what-do-we-know-what-do-we-need-know/>>.

39 Ibid.

40 Africa Health Organisation Gender Based Violence Fact Sheet: South Africa (14 January 2021) <<https://aho.org/news/gender-based-violence-fact-sheet-south-africa/>>.

41 Ibid.

42 S 27(1)(a) of the Constitution.

("ICESCR"). This phenomenon is compounded when gender intersects with other characteristics such as race, disability, socio-economic status, nationality, sexual orientation, gender identity and expression. Black women bear the brunt of health inequity.⁴³ Significantly, Section 8(a) of PEPUDA specifically prohibits GBV as a form of unfair discrimination against women.

Data from the United Nations demonstrate that since the outbreak of COVID-19, violence against women and girls has increased "as security, health, and money worries create tensions and strains accentuated by the cramped and confined living conditions of lockdown".⁴⁴ This has indeed been the experience in South Africa, where reported GBV incidents soared under lockdown despite of the persistent problem of under-reporting.⁴⁵ Following the murders of 21 women and children during a two-week period under lockdown, President Ramaphosa declared the scourge of GBV as the second pandemic that South Africa faces.⁴⁶

In addition to the restriction of movement under lockdown, many structural issues have a discriminatory impact on women and may worsen experiences and feelings of insecurity amongst this vulnerable group. For example, the Asivikelane survey results demonstrate that poor lighting in informal settlements have caused women to fear using sanitation facilities in these areas.⁴⁷ Whereas structural challenges may demand significant resources to be addressed, it should be borne in mind that GBV costs South Africa between R28.4-billion and R42.4-billion per year – the equivalent of providing National Health Insurance to a quarter of the population.⁴⁸ Efficient resource expenditure is therefore necessary and justified in this context. Prior to the pandemic, in October 2019, the President and Parliament committed R1.6 billion of reprioritised funds to a six-month emergency response plan after a spate of killings.⁴⁹ Subsequently, the government approved the National Strategic Plan on Gender Based Violence and Femicide in March 2020.⁵⁰ The President has called for weekly progress reports on the implementation of the National Strategic Plan.⁵¹ To strengthen the rule of law and thereby improve women's protection by and benefit of the law, three Bills have been introduced and are pending with Parliament, namely the Domestic Violence Amendment Bill [B20-2020]; the Criminal and Related Matters Amendment Bill [B17-2020]; and the Criminal Law (Sexual Offences) Bill [B16-2020].⁵²

43 Africa Health Organisation South African poor, black women are the face of health inequity (15/12/2020) <<https://aho.org/news/south-african-poor-black-women-are-the-face-of-health-inequity/>>.

44 UN Women *Covid-19 and Ending Violence Against Women and Girls* (2020). <<https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2020/issue-brief-covid-19-and-ending-violence-against-women-and-girls-en.pdf?la=en&vs=5006>>.

45 ENCA "It just got worse": Domestic violence surges under SA lockdown' (2 May 2020) ENCA <<https://www.enca.com/analysis/it-just-got-worse-domestic-violence-surges-under-sa-lockdown>>. With the alarming levels of GBV in the country and in some areas in the Cape Metro such as Nyanga as known hotspots, SAPS and Cesvi held an advocacy programme in the area as a build up to the official launch of 16 Days of Activism. They partnered with the Gift of the Givers who in turn assisted victims of gender-based violence with food parcels and sanitary products for abused women at the Sizakuyenza Women's shelter in Phillipi. SAHRC State of Human Rights in the Western Cape (2021).

46 E Ellis 'Gender-based violence is South Africa's second pandemic, says Ramaphosa' (18 June 2020) Daily Maverick <<https://www.dailymaverick.co.za/article/2020-06-18-gender-based-violence-is-south-africas-second-pandemic-says-ramaphosa/>>.

47 Asivikelane - Improving the lives of women in informal settlements starts with fixing basic services (2020) <<https://www.internationalbudget.org/wp-content/uploads/asivikelane-brief-5.pdf>>

48 Africa Health Organisation Gender Based Violence Fact Sheet: South Africa (14 January 2021) <<https://aho.org/news/gender-based-violence-fact-sheet-south-africa/>>.

49 Department of Women, Youth and People with Disabilities Submission to the Special Rapporteur on Violence Against Women (2020) <<https://www.ohchr.org/Documents/Issues/Women/SR/Femicide/2020/States/submission-south-africa.pdf>>.

50 Republic of South Africa National Strategic Plan on Gender Based Violence and Femicide (2020) <<https://www.justice.gov.za/vg/gbv/NSP-GBVF-FINAL-DOC-04-05.pdf>>.

51 Department of Women, Youth and People with Disabilities Submission to the Special Rapporteur on Violence Against Women (2020) <<https://www.ohchr.org/Documents/Issues/Women/SR/Femicide/2020/States/submission-south-africa.pdf>>.

52 Ibid.

In addition to the various violations of constitutional rights and PEPUDA that women have endured since the onset of the pandemic,⁵³ the achievement of Sustainable Development Goal 5 – which aims to achieve gender equality and empower all women and girls – has also been jeopardised. The United Nations have reported that the “effects of the COVID-19 pandemic could reverse the limited progress that has been made on gender equality and women’s rights” and further that the “coronavirus outbreak exacerbates existing inequalities for women and girls across every sphere – from health and the economy, to security and social protection”.⁵⁴ Both national and global mobilisation and cooperation will be required to stem the damage caused by the pandemic to the Sustainable Development Agenda 2030 and its central principle of Leave No-one Behind.

b) Sex workers

There are approximately 158,000 sex workers in South Africa, most of whom are women. Due to the criminalisation of sex work, the occupation of sex workers is illegal and they face significant, intersecting forms of discrimination, which were present even before the advent of the pandemic. Sex workers are forced to operate on the margins of society, and often have to endure dangerous work conditions.⁵⁵ Black women sex workers who identify as LGBTQI+ and are undocumented migrants, face the most serious forms of intersecting discrimination based on the grounds of sex, gender, sexual orientation, gender identity and expression, and nationality. As is the case with other vulnerable groups, the COVID-19 pandemic and ensuing lockdown measures have severely impacted sex workers’ capabilities to enjoy various constitutional rights that are guaranteed to “everyone”, regardless of their work- or migration status. This includes the right to the equal benefit of the law and the equal enjoyment of rights,⁵⁶ the right not to be discriminated against,⁵⁷ the right to human dignity,⁵⁸ the right to sufficient food and water, the right to social assistance, the right to access health care services,⁵⁹ the right of access to adequate housing,⁶⁰ and the right to freedom and security of the person.⁶¹ Pre-existing inequalities have thus been exacerbated and entrenched.

In particular, due to the illegal status of their work, many sex workers have been further stigmatised and discriminated against in attempting to access food aid and medical care under lockdown.⁶² Undocumented migrant sex workers are systematically excluded from all relief efforts due to their irregular migration status.⁶³ The fact that sex workers have been neglected and excluded from

53 S 9(3) and (4) of the Constitution; see further ss 6, 8, 13(2)(a) and the definition of ‘prohibited grounds’ in PEPUDA.

54 United Nations Goal 5: Achieve gender equality and empower all women and girls <<https://www.un.org/sustainabledevelopment/gender-equality/>>.

55 UPCHR, Sisonke & SWEAT Press Statement: Human rights organisations call on South African government to address the plight of sex workers during COVID-19 crisis in the interest of all South Africans (6 May 2020) <<https://www.chr.up.ac.za/covid19-statements/2076-press-statement-human-rights-organisations-call-on-south-african-government-to-address-the-plight-of-sex-workers-during-covid-19-crisis-in-the-interest-of-all-south-africans>>.

56 S 9(1) and (2) of the Constitution.

57 S 9(3) and (4) of the Constitution.

58 S 10 of the Constitution.

59 S 27 of the Constitution.

60 S 26 of the Constitution.

61 S 12 of the Constitution.

62 UPCHR, Sisonke & SWEAT Press Statement: Human rights organisations call on South African government to address the plight of sex workers during COVID-19 crisis in the interest of all South Africans (6 May 2020) <<https://www.chr.up.ac.za/covid19-statements/2076-press-statement-human-rights-organisations-call-on-south-african-government-to-address-the-plight-of-sex-workers-during-covid-19-crisis-in-the-interest-of-all-south-africans>>.

63 Ibid.



economic relief programmes such as the Temporary Employee Relief Scheme (TERS) and excluded from accessing essential services, may undermine the Government's efforts to curb the spread of COVID-19 while trying to prevent the further entrenchment of poverty and inequality. Due to sex workers' inability to observe social distancing while performing their work, many sex workers have lost their income, thereby also losing their existing access to housing through an inability to pay rent. Furthermore, increased law enforcement presence during the lockdown means that sex workers may face more harassment and abuse at the hands of law enforcement officials.⁶⁴

As a result of the lockdown, a number of sex workers have experienced violence, including GBV from their partners, in the light of their loss of income.⁶⁵ Sex workers are also exposed to ill treatment in custody,⁶⁶ and to arbitrary fines. The lockdown has intensified stigma and discrimination against sex workers, who are amongst the most vulnerable members of society.⁶⁷ Another challenge is that as sex workers' clients self-isolate, sex workers find themselves even more vulnerable, and in some instances with no means to provide for themselves and their families:⁶⁸

64 SWEAT Sex Workers and the Law under Lockdown in South Africa (August 2020) < <http://www.sweat.org.za/wp-content/uploads/2020/08/Lockdown-Booklet-Edition-1-Aug-25-2020.pdf>>.

65 SWEAT Sex Workers and the Law under Lockdown in South Africa (August 2020) <<http://www.sweat.org.za/wp-content/uploads/2020/08/Lockdown-Booklet-Edition-1-Aug-25-2020.pdf>>.

66 For example, Robyn Montsumi, a sex worker arrested on a drug charge, died in police custody in April 2020. L Human 'Human Rights Commission under fire for 7-month silence on sex worker death in custody' (28 October 2020) GroundUp <<https://www.groundup.org.za/article/human-rights-commission-under-fire-7-month-silence-sex-worker-death-custody/#:~:text=Robyn%20Montsumi%2C%20a%20sex%20worker,commission's%20investigation%20seven%20months%20later.>>. Generally, conditions in many police cells during the pandemic pose a health threat to detainees and officials, for example where insufficient water is available for hygiene purposes, thereby violating section 27(1)(b) of the Constitution. SAHRC State of Human Rights in the Eastern Cape (2021). According to the SAHRC's Northern Cape Provincial Office:

"The incidence of abuse against vulnerable groups in police custody is unknown owing to low levels of reporting by victims and the lack of available complaints mechanisms. Research indicates that women (and particularly sex workers, who are at higher risk due to their type of work) have been raped by police members in police cells and that lesbian, gay, bisexual, transgender and intersex (LGBTI) persons are at increased risk of violence and other forms of abuse in detention. The absence of regular and independent monitoring of police cells is worsened by the freedom enjoyed by members of the South African Police Service (SAPS) and contributes to the continued violation of human rights of persons in police custody. During [provincial] monitoring it was found that persons in police custody are typically detained in joint cells that are overcrowded, poorly lit and have bad ventilation, with temperatures becoming hot during the day especially in the [Northern Cape] province during summer season." SAHRC State of Human Rights in the Northern Cape (2021).

67 L Platt 'Sex workers must not be forgotten in the COVID-19 response' (2020) 396 *The Lancet* 9.

68 UNAIDS Sex workers must not be left behind in the response to COVID-19 (8 April 2020) https://www.unaids.org/en/resources/presscentre/pressreleaseandstatementarchive/2020/april/20200408_sex-workers-covid-19>.

According to a report conducted by [Sex Workers Education & Advocacy Task force (SWEAT)], South Africa has about 158 000 sex workers, most of them women. A 2013 study published in the South African Medical Journal found that female sex workers were responsible for supporting “a median of four adult and/or child dependents”. A 2017 study about sex workers in Soweto found that only 13.2% of female sex workers did not have children, 32.2% had one child, 33.5% had two children and 21.1% had three or more children.⁶⁹

In addition to the stresses that ordinarily attach to engagement in an illegal occupation, the potential for abuse, and the risk of contracting and spreading HIV, the pandemic has caused sex workers to become even more vulnerable. Anxiety for the safety of self, family, clients and peers exacerbates sex workers' sense of insecurity. At the same time, general desperation for survival causes sex workers to be more impacted because of the risk they are forced to take in response to the lack of adequate support. The impact to sex workers extends to their children and extended family members, who are often dependent on their income.

As a result of the lockdown, some sex workers were unable to collect contraceptives and other medication, in contravention of the constitutional right of access to health care services, including reproductive health care.⁷⁰ This has led (in some instances) to pregnant sex workers being unable to access termination of pregnancy facilities, as they could not travel to hospitals.⁷¹ Although sexual and reproductive health care services were deemed essential in terms of the regulations published under the Disaster Management Act, the government appears to have failed to protect the sex workers' constitutional rights in this regard.⁷² Instead of protecting sex workers, law enforcement officers are reported to have been responsible for the loss of life of at least one sex-worker in custody.⁷³

c) Non-nationals

“Everyone” has the right to social assistance under section 27(1)(c) of the Constitution. The State is obliged to take reasonable legislative and other measures, within its available resources, to progressively realise this right (section 27(2) of the Constitution). In the seminal Constitutional Court judgment of *Khosa and Others v Minister of Social Development and Others, Mahlaule and Another v Minister of Social Development (Khosa)*⁷⁴ the court explicitly drew a link between the right to social assistance and the right to equality:

In dealing with the issue of reasonableness, context is all important. We are concerned here with the right to social security and the exclusion from the scheme of permanent residents who, but for their lack of citizenship, would qualify for the benefits provided under the scheme. In considering whether that exclusion is reasonable, it is relevant to have regard to the purpose served by social security, the impact of the exclusion on permanent residents and the relevance of the citizenship requirement to that purpose. It is also necessary to have regard to the impact that this has on other intersecting

69 C Collison 'How Covid-19 affects South Africa's sex workers' (7 April 2020) New Frame <<https://www.newframe.com/how-covid-19-affects-south-africas-sex-workers/>>.

70 S 27(1)(c) of the Constitution.

71 Spotlight COVID-19: Sex workers say they struggle to access contraception, abortion and other services (3 August 2020) <<https://www.spotlightnsp.co.za/2020/08/03/covid-19-sex-workers-say-they-struggle-to-access-contraception-abortion-and-other-services/>>.

72 Ibid. See further s 27(1)(a) of the Constitution.

73 IOL 'Call to probe death of Cape Town sex worker while in police custody' (4 June 2020) IOL <<https://www.iol.co.za/capeargus/news/call-to-probe-death-of-cape-town-sex-worker-while-in-police-custody-48958630>>.

74 2004 (6) SA 505 (CC).

*rights. In the present case, where the right to social assistance is conferred by the Constitution on “everyone” and permanent residents are denied access to this right, the equality rights entrenched in section 9 are directly implicated.*⁷⁵

In the light of the symbiotic relationship that exists between the right to social assistance and the right to equality, the Commission observed with concern that the special COVID-19 grant of R350 per month was initially limited to South African citizens, Permanent Residents or Refugees registered with the Department of Home Affairs (DHA).⁷⁶ This exclusion effectively amounted to discrimination based on nationality, ethnic and social origin, and birth:

The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, **ethnic or social origin**, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and **birth**.⁷⁷

Moreover, this exclusion violated section 9(1) of the Constitution in that non-nationals did not receive the equal benefit of the law, as well as section 9(2) of the Constitution, since non-nationals were not able to enjoy the right to social assistance on an equal basis to nationals.

The discriminatory impact of the exclusion on the special COVID-19 grant furthermore appears to contradict the Social Assistance Act’s Regulations,⁷⁸ which provide for a wider pool of beneficiaries under a disaster:

9 Persons eligible for social relief of distress

(1) Subject to the provisions of the Act, a person or representative of a cluster foster care scheme in need of temporary assistance qualifies for social relief of distress if he or she-

- (a) has insufficient means; and*
- (b) is a South African citizen or a permanent resident or a refugee and resides in the Republic and complies with any of the following conditions...*

(5) Notwithstanding the provisions of sub-regulation (1), in the event of a declared or undeclared disaster:

- (a) a person may qualify for social relief of distress if that household has been affected by a disaster as defined in the Disaster Management Act, 2002 (Act 57 of 2002).*

Based on the judgment in *Khosa*, the rights to social assistance and equality guaranteed to “everyone” in the Constitution, the prohibition of unfair discrimination contained in PEPUDA, and the thrust of the social assistance Regulations, it seems uncontroversial that a National State of Disaster will impact everyone negatively, regardless of one’s immigration status. The exclusionary impact of the special COVID-19 grant would thus have a severe impact on non-nationals, especially those whose livelihoods suffered under the lockdown measures and struggled to obtain food during Level 5 of the Risk-Adjusted Strategy for lockdown.

75 Ibid para 44 (emphasis added).

76 Amendment to the Directions issued in terms of Regulation 4(5) of the Regulations made under Section 27(2) of the Disaster Management Act, 2002 in Government Gazette No. R. 517 of 9 May 2020.

77 S 9(3) of the Constitution (emphasis added).

78 Regulations relating to the Application for and Payment of Social Assistance and the Requirements or Conditions in respect of Eligibility for Social Assistance.

The discriminatory effects of the special COVID-19 grant in relation to non-nationals, prompted the Scalabrini Centre of Cape Town to launch a successful legal challenge against the exclusionary eligibility parameters of the grant, relatively soon after the declaration of a state of emergency. The court cited Regulation 9(5), as well as relevant constitutional provisions, to conclude that the rights to equality, human dignity and social assistance were violated by the exclusions. As a result, the special COVID-19 grant is now additionally payable to asylum seekers and special permit holders. Non-nationals with no or irregular immigration status remain wholly excluded from the modest grant.⁷⁹ There thus remains considerable concern about such persons who, on account of their status, remain at the margins of society. Non-nationals are therefore omitted from relief efforts and are unable to claim means of support. In this sense, existing domestic frameworks which are premised on lawful exclusions discriminate when applied in the context of a national state of disaster or global crisis.

The extended payment of the special COVID-19 grant will bring some relief to non-nationals with regular migration status. However, the effects of lockdown measures on undocumented foreigners continue, with undocumented non-nationals losing their jobs, their homes and going hungry. Pre-pandemic inequalities have therefore been exacerbated. Social distancing also became impossible in some instances, as undocumented migrants sometimes found themselves in congested camps with less physical space.⁸⁰ The lockdown measures did not only affect the lives of migrants negatively, but they also created feelings of distress and anxiety leading to mental illnesses in some instances.⁸¹

The closure of DHA offices also had a negative impact on those migrants whose documents had expired as they were unable to renew their papers. This led to them suffering harassment and abuse at the hands of officers who ignored the moratorium on arrests where permits had expired.⁸² Expired documents often lead migrants to fear testing for COVID-19, since officials are prone to arrest them at testing stations when it is discovered that they do not hold valid documents.⁸³ Furthermore, the Commission's Northern Cape Provincial Office⁸⁴ has observed a link between the right to human dignity, and various other rights, in the context of expired papers of non-nationals:

To illustrate the link between human dignity and other rights, are complaints received from non-nationals who applies for renewal of asylum papers or permanent residence where applications are rejected or processes are delayed for unacceptably long periods. Undue delays in processing the applications put the applicants in a position of inferiority, which is incompatible with the respect of human rights. The right to dignity vests in every human being irrespective of his or her status or rank.⁸⁵

79 Scalabrini Centre of Cape Town and Another v Minister of Social Development and Others (22808/2020) [2020] ZAGPPHC 308; 2021 (1) SA 553 (GP) (18 June 2020).

80 FC Mukumbang, AN Ambe & BO Adebisi 'Unspoken inequality: how COVID-19 has exacerbated existing vulnerabilities of asylum-seekers, refugees, and undocumented migrants in South Africa' (2020) 19 Int J Equity Health 3. The SAHRC Free State Provincial Office noted that in most of the police stations that were monitored during 2020, non-nationals were detained pending deportation by the DHA. Although the SAHRC Free State Provincial Office reports that conditions were generally acceptable, it was reported to the SAHRC that non-nationals are sometimes detained for months due to delays on the part of the DHA. SAHRC State of Human Rights in the Free State (2021).

81 Ibid.

82 DHA *Validity of asylum seeker and refugee permits during the lockdown period* (2020) <<http://www.dha.gov.za/index.php/notices/1398-validity-of-asylum-seeker-and-refugee-permits-during-the-lockdown-period>>.

83 African Arguments 'We need to decongest Africa's prisons urgently. For everyone's sake.' (20 March 2020) <<https://africanarguments.org/2020/03/30/decongest-africa-covid-19-prisons-urgently/>>.

84 The SAHRC *State of Human Rights in the Free State* (2021) report indicates that the SAHRC Free State Provincial Office received a complaint in 2020 from a woman whose husband had applied for permanent residence in 2016, without any progress to date.

85 SAHRC *State of Human Rights in the Northern Cape* (2021).



The failure to initially include non-nationals for purposes of the special COVID-19 grant points to deep patterns of systemic discrimination against non-nationals that are ingrained in the laws, policies, systems and practices of South African society. Even where such discrimination is inadvertent and manifests as omissions, it belies prejudice against non-nationals, which is unfortunately common in South Africa. Systemic discrimination filters down to daily interactions that all contribute to a culture of fear, marginalisation and xenophobia. The #PutSouthAfricansFirst movement – largely orchestrated *via* social media but supported by poorly attended marches – demonstrates the constant marginalisation of non-nationals in South Africa. The lack of credible data regarding migrants leads to unsubstantiated claims such as that non-nationals are “stealing” jobs, placing a burden on public services and committing crime.⁸⁶ Increased prejudicial expression communicated *via* social media platforms has prompted the Commission to pursue the development of a Social Media Charter. It is envisaged that the Social Media Charter will constitute a form of self-regulation that seeks to address online prejudicial expression that does not necessarily cross the legal threshold for hate speech. Targeted prejudicial online speech includes xenophobic expression and orchestrated online xenophobia campaigns.

A culture of prejudice against non-nationals has also manifested as egregious violence in the long-distance trucking industry.⁸⁷ The Commission accordingly convened an inquiry into violence directed at non-nationals, with a focus on the long-distance freight industry, in March 2020. During the inquiry, the All Truck Drivers Foundation denied their involvement in the violent attacks and murders, while repeating the narrative that non-nationals are given employment preference ahead of South Africans. A representative for the African Diaspora indicated that truck drivers were often targeted if they did not speak South African languages, and acknowledged that in certain instances employers preferred to employ non-nationals. The Commission continues to monitor on-going violence directed towards non-nationals.

a) People with psychosocial disabilities

The pandemic has had a significant impact on people with disabilities. Unfortunately, independent monitoring of facilities which render services to persons with disabilities was severely curtailed during the national state of disaster. As a result, the full extent of impact to such persons could not be adequately evaluated.

PEPUDA specifically prohibits discrimination against people with disabilities, since such people constitute a vulnerable group:

86 J Bornman ‘#PutSouthAfricansFirst relies on false claims’ (4 November 2020) *New Frame* <<https://www.newframe.com/putsouthafricansfirst-relies-on-false-claims/>>.

87 New Frame ‘Migrant truck drivers face discrimination’ (16 July 2020) <<https://www.newframe.com/trucking-industry-protests-against-migrant-drivers/>>. See further Human Rights Watch *South Africa: Deadly Attacks on Foreign Truck Drivers: Nationwide Xenophobic Harassment Campaign* (2019).

Prohibition of unfair discrimination on ground of disability

Subject to section 6, no person may unfairly discriminate against any person on the ground of disability, including (a) denying or removing from any person who has a disability, any supporting or enabling facility necessary for their functioning in society; (b) contravening the code of practice or regulations of the South African Bureau of Standards that govern environmental accessibility; (c) failing to eliminate obstacles that unfairly limit or restrict persons with disabilities from enjoying equal opportunities or failing to take steps to reasonably accommodate the needs of such persons.”

The United Nations Convention on the Rights of Persons with Disabilities offers similar protections to people with disabilities. Unfortunately, people with psychosocial disabilities continue to be stigmatised and discriminated against. Psychosocial disability refers to the social and economic impacts of living with a mental health condition.⁸⁸ It remains a poorly understood concept, and is often viewed through the prism of the medical model,⁸⁹ instead of the social model.⁹⁰

During the lockdown period in 2020, issues such as police brutality, loneliness and heightened financial insecurity appear to have raised concerns for the mental wellbeing of South Africans.⁹¹ School closures, and the illness and death of teachers and other educational stakeholders, have also created the need for psychosocial support in schools and their communities.⁹² One survey found that 56% of older persons are suffering from higher levels of emotional and psychological stress than they were before the pandemic.⁹³ Stress and anxiety for poor, older persons were often exacerbated by the lack of social distancing enforced in long queues for social grants.⁹⁴ This survey also found that almost 49% of the individuals who were interviewed were interested in receiving assistance from a therapist or other mental health care practitioners, but were unable to do so as a result of financial constraints.⁹⁵ Furthermore, government has acknowledged the impact of the pandemic on people with psychosocial disabilities:

88 Reimagine *Disability and psychosocial disability* <<https://reimagine.today/what-is-psychosocial-disability/disability-and-psychosocial-disability/>>.

89 The medical model posits that a disability is a health condition. Reimagine *Disability and psychosocial disability* <<https://reimagine.today/what-is-psychosocial-disability/disability-and-psychosocial-disability/>>.

90 The social model posits that disability is the interaction between someone with an impairment and an environment filled with challenges, including physical barriers and social attitudes. Reimagine *Disability and psychosocial disability* <<https://reimagine.today/what-is-psychosocial-disability/disability-and-psychosocial-disability/>>.

91 Bhekisisa *COVID-19 has changed the way South Africa's only toll-free mental health helpline works. Here's why it matters* (11 August 2020) <<https://bhekisisa.org/article/2020-08-11-covid19-mental-health-south-africa-telemedicine-depression-anxiety-group/>>.

92 Department of Basic Education *Keynote Address by the Minister of Basic Education, Mrs Angie Motshemba, MP, at the Psycho-Social Service (PSS) Workshop held at the Sol Plaatje House, DBE Conference Centre* (2 December 2020) <<https://www.education.gov.za/Newsroom/Speeches/tabid/950/ctl/Details/mid/8848/ItemID/7980/Default.aspx>>.

93 Global Citizen 'COVID-19 Is Having a Serious Toll on South Africans' Mental Health: Study' (14 October 2020) *Global Citizen* <<https://www.globalcitizen.org/en/content/covid-19-south-africa-mental-health-impact/>>.

94 SAHRC *Media Statement: South African Human Rights Commission calls for accountability in respect of challenges experienced by Persons with Disabilities and Older Persons in receiving social grants* (5 May 2020) <<https://www.sahrc.org.za/index.php/sahrc-media/news-2/item/2352-media-statement-south-african-human-rights-commission-calls-for-accountability-in-respect-of-challenges-experienced-by-persons-with-disabilities-and-older-persons-in-receiving-social-grants>>; S Tshikalange '91-year-old dies waiting in long social grants queue' (7 May 2020) *Times Live* <<https://www.timeslive.co.za/news/south-africa/2020-05-07-91-year-old-dies-waiting-in-long-social-grants-queue/>>. The SAHRC Western Cape Provincial Office has subsequently met with SASSA officials and is monitoring the situation. SAHRC *State of Human Rights in the Western Cape* (2021).

95 Global Citizen 'COVID-19 Is Having a Serious Toll on South Africans' Mental Health: Study' (14 October 2020) *Global Citizen* <<https://www.globalcitizen.org/en/content/covid-19-south-africa-mental-health-impact/>>.

One aspect that has been indirectly impacted by the COVID-19 pandemic is mental health. As governments across the world imposed restrictions that kept large portions of the general population inside, several psychiatric symptoms and illnesses surfaced as a result of the continued isolation and significantly decreased lack of social interaction with others.⁹⁶ COVID-19 has severely impacted the amount of social interaction that has occurred between individuals which has also included severe limitations on the physical interactions between individuals. This lack of socializing and decreased interactions with the outside environment has had a severe impact on the mental well-being of individuals across the globe.⁹⁷

Concerns have been raised that the stress caused by the pandemic may eventually result in the causation of other permanent mental health disorders.⁹⁸ Another stressor occurred as a result of the fact that individuals were unable to travel from home to clinics to collect medications or see psychiatrists.⁹⁹ Nevertheless, it is worth noting that the challenges that are being experienced in respect of mental health in South Africa are not unique to the country. Studies appear to show that globally, nationwide lockdowns are causing people to have sleeping disturbances, anxiety symptoms and depressive symptoms.¹⁰⁰

Generally, the plight of people with disabilities and older persons was overlooked in respect of policies, planning and protocols in the national response to the pandemic. People with disabilities and older persons therefore have a heightened risk of contracting COVID-19, due to their special needs which often require close contact or make social distancing impossible. The majority of people with disabilities in South Africa reside in homes without access to running water, thereby increasing the risk of contracting the virus. In addition, many services that people with disabilities and older persons rely on, were not deemed to be “essential services” during the strictest levels of lockdown, and were thus closed for a significant period in 2020.¹⁰¹ The failure to consider the special needs of these vulnerable groups in crafting a response to the pandemic, thus points to unfair discrimination through omission.

96 Ibid.

97 *Mental Health and Covid-19* (2020) <https://sacoronavirus.co.za/2020/10/22/mental-health-and-covid-19/?gclid=CjwKCAiAi_D_BRApEiwASslbJ6-zGNP5SrvhemsNV-DZOjKMRN0gZeMi5z0I6-WavR_PBSW50XTm1xoCwx4QAvD_BwE>.

98 Ibid.

99 Bhekisisa *COVID-19 has changed the way South Africa's only toll-free mental health helpline works. Here's why it matters* (11 August 2020) <<https://bhekisisa.org/article/2020-08-11-covid19-mental-health-south-africa-telemedicine-depression-anxiety-group/>>.

100 MR Gualano, G Lo Moro et al 'Effects of Covid-19 Lockdown on Mental Health and Sleep Disturbances in Italy' (2020) 17(13):4779 *Int J Environ Res Public Health* 1.

101 EL McKinney, V McKinney & L Swartz 'COVID-19, disability and the context of healthcare triage in South Africa: Notes in a time of pandemic' (2020) 9 *African Journal of Disability* 2 <<https://doi.org/10.4102/ajod.v9i0.766>>.



6 THE WAY FORWARD

COVID-19 does not discriminate. It is therefore essential that government considers the plight and rights at stake for all vulnerable groups, in developing its ongoing response to the pandemic and its fiscal aftermath. Ultimately, the eradication of poverty and inequality will benefit everyone in South Africa.¹⁰²

The President of South Africa has recognised that the scourge of GBV constitutes a second pandemic in South Africa. Entrenched gender inequalities must thus be urgently addressed. In adopting gender-sensitive responses, the hardships faced by other vulnerable groups, such as non-nationals and people with disabilities, should not be overlooked. This is especially important since vulnerable individuals often face multiple forms of discrimination, thereby compounding the infringement of their constitutional rights.

Government should listen to women's organisations and women's voices to ensure that it adopts policies that take into account their concerns. Policies are urgently required to deal with unpaid work by women, including part-time and seasonal workers.¹⁰³ The Commission supports the call by the Minister of Cooperative Governance and Traditional Affairs (COGTA) that the government should adopt gender-responsive budgeting.¹⁰⁴ The Commission furthermore supports the call by UNCTAD that private sector financial support and access to credit should be equally available to women and men.¹⁰⁵ Moreover, immediate psychological support should be provided to GBV survivors.¹⁰⁶ Engagements

102 See generally RG Wilkinson & K Pickett *The Spirit Level: Why Equality is Better for Everyone* (2010).

103 BR Parry & E Gordon 'The shadow pandemic: Inequitable gendered impacts of COVID-19 in South Africa' (2020) *Gender, Work & Organization* 1-12.

104 J Kassen 'Face of poverty in SA continues to be a rural African woman - Dlamini-Zuma' (19 August 2020) *Eye Witness News* <<https://ewn.co.za/2020/08/19/face-of-poverty-in-sa-continues-to-be-a-rural-african-woman-dlamini-zuma>>.

105 UNCTAD *Covid-19-requires-gender-equal-responses-save-economies* (2020) <<https://unctad.org/news/covid-19-requires-gender-equal-responses-save-economies>>.

106 UN Women *Covid-19 and ending violence against women and girls* (2020) <<https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2020/issue-brief-covid-19-and-ending-violence-against-women-and-girls-en.pdf?la=en&vs=5006>>.

should also take place between government and women organisations to devise ways of resolving challenges faced by women.

Sex workers should be included in income support schemes, which will allow government to pay them directly during times of distress such as lockdowns.¹⁰⁷ The Commission supports the call by UNAIDS for all countries “to take immediate critical action grounded in human rights principles to protect the health and rights of sex workers”.¹⁰⁸

Government should work with organisations that assist non-nationals, in order to devise ways aimed at assisting migrants. Furthermore, free testing for COVID-19 should be provided to non-nationals together with access to other health services, regardless of their immigration status. This should be combined with social protection coverage. The Commission supports the call by the International Organization of Migration for foreign-born migrants and displaced persons to be included in “governments’ plans for mental and psychosocial support provision in the context of COVID-19...”.¹⁰⁹ The Commission acknowledges that following court litigation by the Scalabrini Centre of Cape Town, South Africa’s asylum-seekers and special-permit holders will be able to apply for the COVID-19 Social Relief of Distress grant. This step will protect asylum-seekers and special permit holders and prevent the perpetuation of inequality, but is not sufficient to prevent non-nationals from becoming destitute.¹¹⁰ Undocumented non-nationals with irregular migration status remain excluded from eligibility for the special COVID-19 grant.

There appears to be insufficient investment in, and resources available for, mental health care, prevention and promotion. Much more needs to be done to ensure that sufficient funds are allocated towards mental health care to address mental pressures.¹¹¹ Policy reform is required to ensure the “widespread availability of health and psychosocial support services”, including for vulnerable groups such as women, sex workers, GBV survivors, non-nationals, older persons and people with disabilities.¹¹²

Should these and other reforms be implemented, and resources effectively allocated and spent for these purposes, lasting systemic reform for the benefit of all vulnerable groups can be achieved.

107 UNAIDS *Sex workers must not be left behind in the response to COVID-19* (8 April 2020) <https://www.unaids.org/en/resources/presscentre/pressreleaseandstatementarchive/2020/april/20200408_sex-workers-covid-19>.

108 Ibid. These measures include:

Access to national social protection schemes for sex workers, including income support schemes.

An immediate firewall between health services and immigration authorities in order to ensure that migrant sex workers can access health services.

Emergency financial support for sex workers facing destitution, particularly migrants who are unable to access residency-based financial support.

An immediate end to evictions and access to appropriate emergency housing for homeless sex workers.

Stopping raids on sex workers’ homes and sex work premises and ensuring that all measures to protect public health are proportionate.

An immediate halt to arrests and prosecutions for sex work-related activity, moving away from punitive measures and criminalization towards reaching and serving those most in need.

An immediate end to the use of criminal law to enforce COVID-19-related restrictions, including forced COVID-19 testing and related prosecutions.

Automatic extensions on visas due to expire as travel restrictions tighten. Immigration detention systems must support detainees in safe accommodation.

109 International Labour Organization *Policy Brief - Protecting migrant workers during the COVID-19 pandemic: recommendations for policy-makers and constituents* (2020) <https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_743268.pdf>.


110 Scalabrini Centre of Cape Town ‘Victory in Covid-19 Social Relief Grant Court Case’ (19 June 2020) *Scalabrini* <<https://www.scalabrini.org.za/news/victory-in-covid19-social-relief-grant-court-case/>>.

111 iAfrica *South Africans’ Stress Levels Have Been Shot Up By 56% Since Start Of Pandemic: Survey* (2020) <<https://iafrica.com/south-africans-stress-levels-have-been-shot-up-by-56-since-start-of-pandemic-survey/>>.

112 Ibid.





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