



**REPORT OF ZOOM: VIRTUAL MEETING**

**FRIDAY, 08 2020**

**10:30-11:45**

***Are we curbing human rights or coronavirus?***

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## ACRONYM

- ACHPR = African Charter on Human and Peoples Rights
- BOCONGO = Botswana Council of Non-Governmental Organisations
- BPN = The Basotho National Party
- BTV = Botswana Television
- COVID-19 = Corona Virus
- CSO'S = Civil Society Organisations
- Ditshwanelo = The Botswana Centre for Human Rights
- FXI = Freedom of Expression institute
- HURISA = Human Rights Institute of South Africa
- NCC = National Government Council
- NGO = Non-Government Organisation
- PANAF =
- PM = Prime Minister
- PPE = Personal Protective Equipment
- SANDAF = South African National Defense Force
- UNHCR = United National High Commissioner for Refugees



## REPORT OF ZOOM: MEETING

FRIDAY, 08 2020

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*Are we curbing human rights or coronavirus?*

### Brief Summary

A Zoom media panel discussion was conducted on Friday, 8 May 2020, with a view to launch a Human Rights & COVID-19 publication by the Human Rights Institute of South Africa (HURISA), DITSHWANELO -The Botswana Centre for Human Rights, the Transformation Resource Centre (Lesotho), and the Freedom of Expression Institute of South Africa. The panelists shared information about how the novel COVID-19 virus has been dealt with in Botswana, Lesotho and South Africa and to review the impact on human rights, of the new measures introduced by the various governments. South Africa was commended for setting a precedent on the continent for responding swiftly to COVID-19. President Cyril Ramaphosa announced the State of National Disaster and placed the country on a stringent lockdown between 27 March and 30 April 2020, after the first case of coronavirus was announced in early March 2020. The decision to put the country under lockdown was taken as a measure to prevent the spread and save lives of South Africa for infection of the virus. This was welcomed by the public, opposition party leaders and business community, in spite of the economic implications for the country. Civilians were only allowed to travel to shops to buy food or to receive medical care, among other limited purposes. The President deployed the SANDF - 2820 members of the force were employed to cooperate with the South African Police Services to maintain law and order and border controls to combat the COVID-19 pandemic. The cost of deployment of the army was calculated to be more than R641 Million for the 21 day lockdown period. The deployment of the army to support the police to enforce law and order left mixed feelings countrywide. However, information was provided that this is a Section 18 deployment of the SANDF, which will not use force in supporting police in keeping law and order”<sup>1</sup>. The number of soldiers joining this law enforcement was increased to 73 000, with a revised budget of

<sup>1</sup> Military analyst Helmoed Heitman provided his view on various they could play in assisting the police. These could be road blocks to mitigate movement of people, man vehicle checkpoints. Protect shops, hospitals and that there was no reason for people to fear because they would use minimum force. He also provided Coronavirus Hotline Number: 0800 029 999 from 8am to 4pm, Monday to Friday

R4.9 billion. These included the air force, navy, military health services, military police, military intelligence, legal services, operational communication, technical services and finance accounting, among others.

Unfortunately, the security forces have been accused of gross human rights violations, including assaults and murder of civilians. As early as 3 April 2020, the media was reporting that at least eight people had been killed by security officers.<sup>2</sup>

By the time President Ramaphosa relaxed the lockdown from Level 5 to Level 4 (allowing limited movement and some businesses to operate), reports indicated that almost 100 cases of police brutality were being investigated.<sup>3</sup>

In one of the most disturbing incidents, police and the military were accused of killing Collins Khosa, a resident in South Africa's most densely populated township Alexandra. Security officers allegedly found him drinking alcohol in his yard and assaulted him following an altercation. Khosa later died of his injuries.<sup>4</sup> The family approached the Constitutional Court on an urgent basis for orders to prevent further brutality by security forces, and for the Court to order the SA National Defence Force to adopt a code of conduct. The Court however refused to hear the matter arguing that there were no good grounds for seeking direct access to it.<sup>5</sup> The family has since taken the matter to the High Court in Pretoria.

It would unfortunately seem that from the earlier overwhelming goodwill extended to the government by the citizenry, matters have reached such a low point that many people have now begun to question the constitutionality and lawfulness of some of government's decisions. In a media article, senior counsel Vuyani Ngwalana questioned the constitutionality of the National Command Council (NCC) - the body set up by the President to coordinate cabinet's efforts at the national level in response to the pandemic.<sup>6</sup> He argued that the body lacked constitutional legitimacy, as it is not clear under which section of the Constitution it is established. He added that strangely, the NCC excludes certain members of cabinet including the Deputy President. Ngalwana also criticized the violation of individual rights and liberties by police and the military.<sup>7</sup>

In Lesotho the government used COVID-19 as a pretext to prorogue parliament to prevent it from voting the Prime Minister out of power pending his murder accusations. It has been reported that the government prorogued parliament and even extended the state of emergency without parliament's approval. In a letter to His Majesty the King on 20 March 2020, the Prime Minister (PM) of Lesotho prorogued parliament until 19 June 2020 under the auspices of the novel COVID-19 (**Prorogation of Parliament Legal Notice No. 21 of 2020**). While the Prime Minister cited the prevalence of the threat posed by COVID-19 as having necessitated this move, the move has also come under great scrutiny and opposition from other political parties in parliament (mainly opposition), civil society organisations and most notably from one of his ruling coalition partners, the Basotho National Party (BNP).

### **(ABC & 6 Others and Prime Minister & 4 Others Constitutional Case No. 0006/2020)**

Since the prorogation, which was later declared null and void, thanks to the constitutional case filed by the ABC and BNP as part of 7 other applicants, the period has been littered with political power struggles, human rights violations and

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<sup>2</sup> Suné Payne, Daily Maverick, 7 May 2020, *Police reportedly using 'sjamboks, hammers and irons to assault people,' committee hears*. Available at <https://www.dailymaverick.co.za/article/2020-05-07-police-reportedly-using-sjamboks-hammers-and-irons-to-assault-people-committee-hears/>. See also Daneel Knoetze, Citizen, 3 April 2020, *Eight people allegedly already killed by police during lockdown – more than the virus*, <https://citizen.co.za/news/south-africa/crime/2265100/eight-people-allegedly-already-killed-by-police-during-lockdown-more-than-the-virus/>

<sup>3</sup> Daneel Knoetze, GroundUp, 6 May 2020. *Covid-19: Slain Alex man's case highlights failures of police and army watchdogs*. Available at <https://www.groundup.org.za/article/slain-alex-mans-case-highlights-police-oversight-failings/>

<sup>4</sup> This case was widely reported in South Africa mainstream and social media. See e.g. SABC, *Family of Alexandra man allegedly killed by soldiers doesn't trust SANDF probe*. <https://www.sabcnews.com/sabcnews/family-of-alexandra-man-allegedly-killed-by-soldiers-doesnt-trust-sandf-probe/>

<sup>5</sup> Franny Rabkin, Mail and Guardian online, 27 Apr 2020. *Khosa case: Going straight to the Constitutional Court isn't always the right path*. Available at <https://mg.co.za/article/2020-04-27-khosa-case-going-straight-to-the-constitutional-court-isnt-always-the-right-path/>

<sup>6</sup> Vuyani Ngwalana, SC, Sunday Independent, 2 May 2020: *Do Covid-19 regulations pass the constitutionality test in SA?* <https://www.iol.co.za/sundayindependent/analysis/do-covid-19-regulations-pass-the-constitutionality-test-in-sa-47474336>. The much longer legal opinion by the writer is titled: *Do the Covid-19 Regulations Pass the Rationality and Constitutionality Test in South Africa?*

<sup>7</sup> Ibid.

allegations of corruption which all took place under the environment chiefly characterised by the State of Emergency and the lockdown. The security agencies are excessively enforcing the nationwide lockdown in curbing the spread of the novel Covid-19 against the citizens.

Botswana's initial response to the novel COVID-19 was through a declaration by President Masisi of a State of Public Health Emergency for an indefinite period on 31 March as well as his imposition of a national lockdown from 2-30 April 2020. This followed the announcement of the first 3 confirmed cases of coronavirus on 30 March 2020. On 9 April 2020, parliament passed a resolution empowering the State to declare the *State of Emergency to last for six (6) months*. This position was vigorously opposed by opposition parties and civil society organisations. Civil society is concerned that State of Emergency risks being used for purposes other than that for which it has allegedly been declared. In spite of President Masisi stating that "The State of Emergency is intended to deal only with the COVID-19 crisis and will not in any way undermine people's fundamental rights", limitations to freedom of expression and electronic communication, as well as assault, harassment, arbitrary arrests of opposition, and journalists have been reported<sup>8</sup>. The lockdown has also had a negative impact on the rights of the poor, migrants, and refugees. Botswana has also seen an increase in gender-based violence. 'Voluntary repatriations' and deportations of undocumented Zimbabweans, effected prior to the lockdown continued during the lockdown period.

Prior to the lockdown, Botswana carried out its most recent executions of Moabi Seabelo Mabiletsa and Matshidiso Tshidi Boikanya on 28 March 2020. They had been sentenced to death by the court. Another execution had been carried out in February 2020. This brings to three the number of those executed since the beginning of this year.<sup>9</sup> Botswana remains "one of the few democracies to still enforce the death penalty"<sup>10</sup> and as the organisation Fair Planet has commented, it "is the only country in southern Africa that still passes and actually enforces the death penalty."<sup>11</sup> There are more than 50 people currently on death row in the country.<sup>12</sup>

The African Commission on Human and People's Rights, acknowledged the COVID-19 outbreak and challenges in preventing the spread. However, the rights enshrined in the African Charter on Human and People's Rights remain binding on the state in spite of the lockdown. Botswana, Lesotho and South Africa are state parties to the African Charter which place duties on the state to implement. The following human rights, democracy and humanitarian situations need serious attention through our advocacy, research and educational programmes.

### **1. Frontline workers and testing**

While frontline workers are an essential part of the machinery which keeps the country in motion, they face daily risks due to their interacting with hundreds of people in order to render essential services. Of concern is that most of the essential workers are not adequately protected from contamination as they do not have personal protective equipment (PPE).

In Lesotho and South Africa, the health professionals engaged in protests in several provinces demanding PPEs to minimise the risk of exposure to the virus. Lesotho uses South African laboratories for testing COVID-19 cases. This results

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<sup>8</sup>The spokesperson of the Botswana Patriotic Front, Justice Motlhabane, was allegedly assaulted and arbitrarily arrested on 10 April 2020 by the police (BPF President Biggie Butale 11 April 2020); Nicholas Kgopotso of the Umbrella for Democratic Change (UDC), who was allegedly harassed by 12 police officers for allegedly causing noise during the current COVID-19 lockdown; two persons (Neo Dikgole and Thuso Sebinyane) who were allegedly assaulted by the police (Office of the President, 11 April 2020); and three suspects arrested for "... publishing, through electronic communications, offensive statements

<sup>9</sup> Eye Witness News online. Botswana executes two convicted murderers. Available at <https://ewn.co.za/2020/03/28/botswana-executes-two-convicted-murderers>

<sup>10</sup> Ibid.

<sup>11</sup> Fairplanet: Latest hanging dashes hopes for end to death penalty in Botswana. Available at <https://www.fairplanet.org/story/latest-hanging-dashes-hopes-for-end-to-death-penalty-in-botswana/>

<sup>12</sup> Ibid.

in undue delay in releasing results to people and further risk to transmission of virus. Although there has been no positive case been reported yet, intensive testing should be encouraged.

In Botswana, as part of its strategy, the government had initially sought to conduct random testing of 20 000 persons in communities across the country after noticing a number of local transmission cases. As of 8 May 2020, there have been about 9 540 persons tested for the coronavirus, 23 confirmed positive cases, 12 recoveries and 1 fatality. However, the government abandoned the community testing and focus is now on tracking, tracing and testing those who have been in contact with persons with confirmed coronavirus or those who have arrived from countries with confirmed cases. This is not the most effective way of curbing the virus because some people may be asymptomatic. Community testing would have provided guidance concerning actual spread and how to zone the country according to levels of risk. Besides this, Botswana now has its own laboratories for testing COVID-19 cases. They began the process of being able to do so in January 2020.<sup>13</sup> Being able to test in-country has reduced the waiting time for results.

## 2. Launch of the Botswana, Lesotho and South Africa online reports

In Botswana, *Advocacy, Public Awareness and Human Rights* work has formed the key communication strategy with the public. On 21 April 2020, a coalition of NGOs working under the CoNGOF COVID-19 Initiative<sup>14</sup> launched two human rights helplines to enable the public to report human rights abuses. On 8 May 2020, through engagement with the PANAF project, the call lines were launched as part of a regional effort. However, as the call lines require messages to be sent by sms or phone calls, public access is limited to those who have money to buy the necessary airtime. There is need for a toll free call line for the reporting of human rights abuses to enable protection of human rights, particularly at a time when civic space is being constrained by COVID-19 protocols. The *Public Awareness* work has entailed information - sharing about the numbers of persons who have tested negative and positive; the number of fatalities as well as the number of recoveries.

Additional public communication is effected through online cartoons in different local languages and messaging, use of information stickers on minibuses and the regular release of press statements addressing issues of public concern. These included April statements on Gender-Based Violence; Political Accountability under the State of Emergency; Human Rights violations under the State of Emergency; and the CSO contribution to the national COVID-19 efforts. On 1 May the Labour Day statement focused on the experiences of informal sector workers.

In South Africa HURISA promotes awareness-raising on COVID-19 preventative measures and respect of human rights in enforcement of the lockdown regulations. Simplified information has been designed to empower `community-based organisations, civil society and human rights defenders to monitor enforcement of lockdown regulations. The Disaster Management Act which is a legal framework implemented to mitigate the virus, recognise non-governmental organisations as important stakeholders in the management of disasters in the country. Their role in monitoring and

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<sup>13</sup> In January 2020, only 2 of the 55 African states had the capacity to test locally – South Africa and Senegal. The African Union provided support to member states and by May 2020, 48 states now have that capacity.

<sup>14</sup> CSOS CALL FOR PROTECTION OF HUMAN RIGHTS UNDER 6 MONTH STATE OF EMERGENCY. 13 April 2020. *Botswana Centre for Public Integrity (BCPI), Botswana Gender Based Violence Prevention and Support Centre (BGBVC), Botswana Labour Migrants Association (BoLAMA), Botswana Network on Ethics, Law and HIV/AIDs (BONELA), CHILDLINE Botswana, DITSHWANELO – The Botswana Centre for Human Rights, Friends of Diversity, Inclusive Directions Botswana, Lesbians, Gays and Bisexuals of Botswana (LeGaBiBo), Molao Matters, Molayakgosi, Putting Women First Trust, Save Widows and Orphans Botswana, Stepping Stones International Turning Point, WoMen Against Rape (WAR), and Youth Alliance for Leadership and Development in Africa (YALDA - Botswana).*

documenting human rights violations at grass roots level remain vital. These include, documentation of the conduct of law enforcement, distribution of humanitarian aid, food relief and grant relief to the needy such as informal traders, domestic workers, refugees, migrants, asylum seekers and survivors of gender based violence. HURISA issues media statements highlighting gross human rights violations involving law enforcement and used radio and TV for wide publicity. CSOs have been empowered to advocate for establishment of Advisory Forums at local municipalities, as stipulated in the Act. HURISA designed hashtag campaigns to reach communities through social media platforms to spread information about the reality of the virus and protect themselves and others. These have been effective in engaging communities in local languages and reaching the grassroots. #HURISAPROTECT-YOURSELF-AND-OTHERS, #HURISAKEEP-SAFE-4-U, #WRMKEEP-SAFE-4-ME, #HURISA-USE-MASK. HURISA collaborates in the Human Rights Forum comprising provincial focal points and diverse constituencies, including Youth ECOSOC Platforms for wide reach of vulnerable communities and indigent groups

A situational analysis research study has also been conducted on the State of Human Rights and Democracy in the SADC region. This analysis examines the human rights situation in seven southern African countries: Botswana, Lesotho, Mozambique, Namibia, South Africa, Swaziland and Zimbabwe. It provides an overview of the situation in relation to key human rights and freedoms such as the right to life, dignity, privacy, security of the person, property, freedom of expression, political participation, and association and peaceful assembly, amongst others. The organisation collaborated with DITSHWANELO - The Botswana Centre for Human Rights and Transformation Resource Centre to launch the report and publications of the three organizations' work on a media platform. Themes and dynamics that emerged from the virtual report launch meetings covered a broad spectrum from human rights to the humanitarian crisis and its impact on vulnerable groups, including challenges of equitable access to the governments' relief programmes.

### **3. *Relief measures***

Lesotho is implementing the lock down without a concrete plan of action and a clear process for access to humanitarian aid. South Africa provides \$500 billion for implementation of COVID-19 humanitarian aid. Private sector contribution in the national solidarity fund expanded government humanitarian aid plan. However, there are thousands and thousands of people who are at risk of starving to death. They are on the streets begging for food which is often distributed by private companies and individuals. Allegations of corruption in municipalities regarding the distribution of food parcels have been raised and many people are struggling daily in search of food parcels.

There is also a delay in the implementation of the COVID-19 Private Sector Relief Fund to rescue businesses affected by the national lockdown. Many workers are left starving due to the delay in payments, especially factory workers, domestic workers, and the unemployed. The Private Sector relief fund remains difficult to access. This is a big concern because the poor are affected hardest especially the informal traders who have no means of securing livelihoods since social distancing and lockdown protocols constrain their ability to sell goods on street pavements, including, local cars washers, taxi drivers and hairdressers.

In Botswana the distribution of food parcels to households affected by the COVID-19 pandemic lockdown is also a huge challenge. Corruption is reported in the supply of food parcels to communities. Social workers are conducting assessments prior to approval of those households who qualify and the distribution of the food parcels. NGOs have been stepping in to provide humanitarian assistance to vulnerable families and individuals. Refugees are under the care of UNHCR, but have expressed concern about delayed allowances leading to them being unable to make ends meet. NGOs have assisted them. Migrants are not eligible for the government food assistance so NGOs have sought assistance to provide support.



In South Africa, foreign nationals including refugees, migrants, and asylum seekers are recognised for humanitarian aid, food relief and the R350 grant relief. But it has been difficult to access humanitarian aid based on the requirement of a permanent residential permit, refugee permit and asylum seeker permits.

In Mpumalanga Province, NGOs provide food parcels to needy migrants. Botswana NGOs have also began supplying food parcels to vulnerable migrant families, individuals and communities because they are excluded from benefiting in the government humanitarian aid programmes.

This is a big challenge in Botswana because migrants are invisible, especially undocumented migrants are even more invisible. The other challenge in the NGO sector is the limitation of collaboration within the general civil society sector. Due to the segmentation of our work, there has historically not been much collaboration between service-delivery (humanitarian) organisations and advocacy (human rights) organisations. The sooner we recognise that our work compliments the work of the other, the more efficiently we shall be able to work together. There is need for alliance-building and new ways of working in the sector, particularly as donor funding is shifting away from human rights towards humanitarian support and health.

#### **4. *Awareness raising***

Human rights education and awareness about COVID-19 and the protocols do not reach the majority of people, particularly those living rural areas, shack dwellers and the aged. Care - givers are without proper PPE. These vulnerable groups know very little about COVID-19 and few have access to television, radio networks and online platforms. Efforts are made to make information accessible to communities through community radio stations and by use of local languages. In Lesotho, the government has only been using the aforementioned media outlets to raise awareness and to reach out to the public with essential information. There has not been any strategies to reach out to the herd boys or citizens deep in the mountains of Lesotho.

It is important to popularise provisions of the African Charter on Human and Peoples Rights, African Commission press statements and appeal statements which encourage the States to comply with their obligations and to not use COVID-19 regulations as a pretext to suppress protected rights.

In Botswana there is a daily COVID-19 update from the National Botswana COVID-19 Task Force at 6 a.m. on the national radio in both Setswana and English. Botswana Television (BTV) has a regular COVID-19 briefing as part of the daily news. The Government facebook page regularly produces up-to-date COVID-19 information, including statistical information about regulations, movement permits, etc. Of concern is the effective exclusion of civil society from the National Botswana COVID-19 Task Force, in spite of the Botswana Council of Non-Governmental Organisation (BOCONGO) being listed as a member.

South Africa also disseminates educational information and COVID 19 updates to the public through mainstream media including television, SABC channels, ENCA, Newsrooms, and radio. HURISA advocates that the government should use two different approaches to instill responsibility on part of the public by using of local languages understood by the majority. The reality of COVI19 is gradually been acknowledged by regular community intervention through radio, social media and T.V.

## 5. Easing of lockdown regulations

On 7 May 2020, Botswana's Special Parliamentary Meeting passed amendments to the regulations governing the COVID-19 pandemic, which allowed for a relaxation of regulations from 8 May 2020. Parliament voted for people to be able to attend church services with not more than 50 people, the original recommendation from the gazette was 10 people. However churches are expected to comply with these protective measures:

- Take everybody's temperature to ensure that it is not higher than 36 degrees and therefore not showing symptoms of having the virus
- Every member of the congregation is to be registered
- Social or physical distancing of all in the congregation
- Provide hand-washing facilities and/or hand sanitisers for use by all members of the congregation.

Churches will be expected to observe these rules and hold services twice a week - one over the weekend and one during the week. It was also agreed that businesses would resume at 25% capacity. From 15 May to 22 May businesses are expected to resume at 100% capacity. Wearing of face masks in public is now mandatory.

South Africa has also been easing lockdown regulations. The National Command and not parliament has opened some businesses and still keeping large businesses under lockdown rules. Alcohol, cigarettes, hairdressers, car wash might be opened once the country enters level 3 of the Lockdown as from June. It is also noted that the Government was strategic in declaring the national disaster and not a state of emergency which would have required parliamentary intervention process. It implements the national lockdown through National Disaster Act guided by provisions of this Act to manage the disaster in the country.

### Recommendations

- Monitoring of CSOs, HRDs , CBOs to ensure COVID-19 is not used as a pretext for human rights violations
- Lockdowns are being relaxed in Botswana and South Africa. Policy and decision-making should continue to ensure protection of vulnerable groups, in trade, supply of humanitarian aid, provision of PPE; and protection of human rights
- Awareness-raising of the COVID-19 protocols through social media platforms, community radio stations, use of local languages for ensuring protection of all residents, clients, patients, bus drivers, taxi drivers and essential service providers
- Health care workers should be provided with appropriate PPEs
- Intensive testing be implemented for all people in communities irrespective of contact with infected persons
- Social media be used as a tool for curbing COVID-19 , by sending text messages encouraging people to wash their hands, wear masks , keeping hygiene, and advocating for safe water, sanitation, shelter and prohibition of evictions and, shack demolitions
- Advocacy for provision and supply of humanitarian aid, food relief, grant relief for migrants, refugees, asylum seekers, internally displaced persons
- The participants requested that all frontline workers be tested regularly

## **Conclusion**

- The lessons drawn from the zoom meeting were insightful and have helped in exposing the fundamental human rights violations experienced in most countries.

## **We also:**

- Recognise the need to chart new pathways for working together
- Appreciated the contextual realities and the importance that we ensure that work is relevant to those from whom we do it
- Advocacy groups should recognize the value of working together with essential services providers, humanitarian aid organisations, the private sector, and the media
- Recognise the importance of developing innovative strategies for partnership in fostering new actions together, especially in pushing recommendations contributed in this meeting within the CSO sector, government institutions, national institutions
- Recognised the need to adjust our mindset and find new ways of looking, new ways of being as we discover our roles as civil society organisations, human rights defenders, journalists, academicians, environmentalists, women, youth, people with disabilities, people with albinism, sexual orientation, faith-based groups among others. We should welcome the new environment and not relent in advocating for the promotion and protection of human rights.

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