



# THE SOUTHERN AFRICA POWER MATRIX -

COVID-19 AND THE  
SHRINKING  
DEMOCRATIC  
SPACE IN SADC

A CRISIS IN  
ZIMBABWE  
COALITION  
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## EXECUTIVE SUMMARY

The outbreak of the Covid-19 virus in SADC in early March 2020 saw most governments pass emergency laws or declared states of emergency, decisions which have far-reaching consequences for political participation and inclusion, risking a new crisis of democracy. State security institutions were activated and deployed to help enforce the lockdown, stay at home and social distancing policy measures. The Corona virus has provided a perfectly fine accident, which autocrats used to trample upon citizens' basic freedoms and rights, silence critics, muzzle the media and clamp on civil society organisations especially those involved in advocacy, democracy, and human rights. While governments in the SADC region have authority to pass laws imposing lock down regulations when necessary to contain a contagious disease outbreak, the more salient question is how those laws are implemented. However, these powers are not unbounded. The individual's right to liberty, freedom of movement, freedom of assembly, and freedom of expression are enshrined in constitutions to constrain government action. The lock down regulations in South Africa and Malawi were challenged and deemed unconstitutional as the measures were deemed not to meet the objectives of curbing the virus. On the other hand, it should be noted that the legal rules developed in times of emergency may be protected by the judiciary through the status quo bias built into the legislative system or by the formation of bureaucracies and interest groups that coalesce around the new measures and block subsequent efforts to repeal them.

To enforce the lockdown most SADC governments deployed officials and security services in SADC who perpetrated violence against their own citizens. Allegations of abuses committed by the police and soldiers range from forcing people to do physical exercises, arbitrary arrests, assault and in some instances murder in the name of enforcing lockdown regulations. The preferences to deploy the police and the military by SADC countries draws on 'law and order' traditionalism and connect in a reciprocal way with the crony orientation of accumulation and a grip onto power. In addition, another indicator that points to the shrinking democratic space was the used of the pandemic ban many aspects of political and electoral life including modification, postponement, or cancellation of elections in light of the health risks posed by the pandemic. The right to peaceful assembly was persistently under attack even before the advent of Covid-19 in Southern Africa. The pandemic created a convenient excuse for governments to ban public gatherings and demonstrations on the arguments of enforcing social distance and avoiding the spread of infections. Public health interest was advanced, despite that governments and ruling party officials having shown to have acted above the law and being immune from these restrictions.

Another example of the shrinking democratic space in SADC during the COVID-19 pandemic is reflected in the attempted or successful bypassing or suspension of effective democratic controls on government. It should be noted that the emergency regulations were made by the executive branch and therefore did not proceed through the regular primary legislative process where democratic scrutiny is maximized. While this form of enacting delegated legislation is ex ante approved by Parliament, it evades rigorous parliamentary scrutiny at the point of enactment. Democracy can be suppressed not only in the postponement and cancellation of elections and referenda, but in censorship and the stifling of a free media. State officials in SADC have been accused of suppressing narratives about their responsibility in failing to contain the outbreak in their own countries and the hyper-politicization of COVID-19, combined with the devastating consequences of lockdown measures, also created a fertile breeding ground for domestic disinformation activities. Providing transparency and access to information assists in securing proper political accountability and observance of the rule of law, and for the better advancement of measures to contain and slow the spread of COVID

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The adoption of excessive and disproportionate emergency measures during the lockdown period was unnecessary as they infringed and still pose a grave danger to human rights and civil liberties in the SADC region. The insistence on a centralized control of the COVID-19 narrative, and the adoption of a disciplinarian approach to enforcement of viral control measures, are themselves generators of fear and increased reliance on, and deference toward, the emphatic authority of the state. These measures are clearly excessive and disproportionate, and there is a grave danger for these emergency measures to persist for future repurposing. It is common cause that policy choices have long-run consequences and the challenge is to contest the drive towards a permanent centralisation of state power under the cover of Covid-19 and advocate for reforms that would redistribute power to citizen.



## 1. INTRODUCTION

Since the onset of the Covid-19 pandemic in Wuhan, the largest city in Central China in December 2019, the Southern African Development Community (SADC) recorded its first case in early March 2020. Thirteen of the Sixteen SADC countries responded to the pandemic by passing declarations of a state of emergency, which envisaged various measures that included locking down the economy, imposing curfews, restricting international travel, instituting, and imposing quarantine measures, and issuing stay at home orders. Such measures were reinforced by threats of criminal sanction. The police and the military were deployed to enforce the lock down regulations. Reports on allegations of human right abuse committed by the police and soldiers within the SADC region have been documented and these range from forcing people to do physical exercises, arbitrary arrests, bribes, rape assault and in some instances murder.

The pandemic provided a perfect context to curtail fundamental human rights under the legal veil of emergency measures. Rights including the right to privacy, freedom of assembly, freedom of expression, freedom of movement and association were disregarded in ways that were overly excessive and disproportionate. Some political elites took advantage of the panic and pandemonium caused by the Covid-19 pandemic and converted it into a tool to abuse of power, censorship, weakening or shuttering important institutions, often undermining the very systems of accountability needed to protect public health. In some instances, the lock down regulations were used as a pretext to undermine the oversight role of parliament and to disregard the fundamental constitutional and political values in representative democracies.

To make the situation more precarious, the Covid-19 pandemic became a catalyst to a worsening democratic space in the region inundated by restrictive laws and policies coupled with funding restrictions, administrative hurdles, general hostility towards civil society organisations; fuelled by populist rhetoric, media reports, legal persecution and physical attacks on individuals and political interference in the work of Non-Governmental Organisations.

It is conceivable that lock down policy measures adopted by most countries in the SADC region were de-contextualized, ignored a broader macro perspective, were sunk in cost fallacy, power relationships, as well as the inadequacy of voice and democratic governance.

A Wuhan-inspired all-or-nothing approach to viral containment set a dangerous precedent for future pandemics and disasters, with the global copycat response indicating an impending 'pandemic' of a different sort, that is authoritarianist. It should be noted that desperate measures usually have a way of enduring beyond the life of the situations that created them. The adoption and implementation of the emergency measures was to a greater extent excessive and disproportionate, and there is a grave danger for these emergency measures to persist for future repurposing. The ratchet effect has been well documented in policy making in times of crisis, where emergency power originally described as temporary, have been made permanent.

Therefore, a de jure state of emergency can become de facto when measures are extended beyond the stipulated timeframe of a declared state of emergency which is the case for most SADC counties. Hence, the impact of the epidemic in relation to shrinking democratic space is inseparable from the abuse and distribution of power.

## 2. CONCEPTUAL APPROACH

The concept of shrinking space is double faced as it is driven by external and internal factors. The external factors have to do with forces outside civil society, whilst internal forces have regard to internal factors within civil society. External reasons for shrinking space are hinged on arguments of “national security and a focus on counter-terrorism policies; economic interests; fear of a strong civil society; and ‘aid effectiveness.’”<sup>1</sup> Internal reasons are hinged on “self-censorship and a lack of courage” because of fear of governments “doing serious damage to the agency and self-confidence of civil society”.<sup>2</sup> Governments and businesses targeting of media outlets and journalists to avoid being held accountable, to receive criticism or to be scrutinised in public, has a likely intimidating effect for all actors in civil society and the people within it, often creating a tendency of self-censorship.<sup>3</sup> This severely, undermines the realisation of freedom of expression and access to information and eventually citizens’ ability to participate in democratic processes. However, it must be acknowledged that the concept of shrinking of space in Africa is not new and it predates independence as colonialism was one way in which space for citizens was closed as “colonialism and imperialism among other forms of oppression were then the highest expression of how the space was closed for African citizens and their political life”.<sup>4</sup>

These policies, imbedded in racist and self-serving capitalist rationales, had a long-term effect on the health of the formerly colonized because many of them adopted the values and methods of their oppressors when they took over local battles against epidemic disease.<sup>5</sup> Nevertheless, the struggle for opening up the space is not only along political lines but on several fronts, as operating space has been closing due to political harassments, arrests, abductions and torture especially for movements and individuals who operate in the main on human rights and democracy.<sup>6</sup> In addition, to legal and political frameworks, carefully designed public campaigns have been used to discredit civil society organisations and to stir distrust in their leaders.<sup>7</sup>

Civil society’s ability to act rests on three fundamental rights that are integral to the implementation of the 2030 Agenda: Freedom of association, assembly, and expression.<sup>8</sup> This observation concurs with Bethke and Wolff (2020) who also observe that there are “...three key civil rights: the freedoms of assembly, association, and expression”.<sup>9</sup> Therefore, this means at the core of understanding shrinking civic space, lies how these rights are being restricted from time or not enjoyed by civic organisations and citizens. The outbreak of Covid-19 has exacerbated the situation, in a world, already reeling under democratic backsliding. Bethke and Wolff (2020) observe that the “...COVID-19 pandemic has hit the world at a time when a significant number of countries were already moving in the direction of what has been dubbed “closing” or “shrinking civic spaces”, a phenomenon which they argue has been in motion “...since the early 2000s...”, seeing “...government restrictions targeting civil society activists and organizations (CSOs) and limiting their space, autonomy and/or capacity”.<sup>10</sup> They finally conclude that “COVID-19 has provoked an unprecedented, global wave of civic space restrictions...” and , “...in countries that had already been characterized by processes of de-democratization or autocratization COVID-19 seems to reinforce these dynamics.”<sup>11</sup>

<sup>1</sup> European Foundation Center (EFC). ND. The shrinking space for civil society: Philanthropic perspectives from across the globe. pg2.

<sup>2</sup> Ibid:pg3.

<sup>3</sup> Aho and Grinde. 2017. Shrinking space for civil society: challenges in implementing the 2030 agenda. Pg.7.

<sup>4</sup> Bhekinkosi Moyo. (ND). A letter from an African foundation in 2064, in European Foundation Center (EFC). The shrinking space for civil society: Philanthropic perspectives from across the globe. Pg. 22

<sup>5</sup> Watts, S (1998) Epidemics and History: Disease, Power and Imperialism. New Haven, Yale University Press

<sup>6</sup> Ibid:22

<sup>7</sup> Joachim Rogall. (ND) The shrinking space for civil society: The case of Russia, in European Foundation Center (EFC). The shrinking space for civil society: Philanthropic perspectives from across the globe. Pg18.

<sup>8</sup> Aho and Grinde. 2017. Shrinking space for civil society: challenges in implementing the 2030 agenda. Pg.17.

<sup>9</sup> Bethke, F., Wolff, J. COVID-19 and shrinking civic spaces: patterns and consequences. *Z Friedens und Konfliktforsch* (2020). Available at: <https://doi.org/10.1007/s42597-020-00038-w>

<sup>10</sup> Bethke, F., Wolff, J. COVID-19 and shrinking civic spaces: patterns and consequences. *Z Friedens und Konfliktforsch* (2020). Available at: <https://doi.org/10.1007/s42597-020-00038-w>

<sup>11</sup> Bethke, F., Wolff, J. COVID-19 and shrinking civic spaces: patterns and consequences. *Z Friedens und Konfliktforsch* (2020). Available at: <https://doi.org/10.1007/s42597-020-00038-w>

To understand how Covid-19 has contributed to the shrinking civic space in Africa this paper borrowed three lines of enquiry from Bethke and Wolff:

1. Has restrictive measures adopted in response to the pandemic remained in place beyond the emergency situation;
2. When restrictions expire or are repealed, do persisting changes to the legal order and/or the public discourse likely facilitate the renewed imposition and/or justification of restrictive measures in the future?
3. Does the overall response to COVID-19 contribute to a broader process of autocratization of the political regime, which involves—among other things—a (further) shrinking of the civic space”?<sup>12</sup>

This paper contends that the three questions are in the affirmative and posits that the majority of SADC governments are taking advantage of the Covid-19 to consolidate their power and at the same time shrink civil society operating space.

### 3. Covid-19: Rising authoritarianism and shrinking democratic space

The outbreak of the Covid-19 virus saw more than 100 countries pass emergency laws or declare states of emergency, decisions which will have far-reaching consequences for political participation and inclusion, risking a new crisis of democracy.<sup>13</sup> State security institutions were activated and deployed to help enforce the lockdown, stay at home and social distancing policy measures. Questions have been emerging on some of the strategies adopted by governments as these have also been argued to be promoting authoritarianism<sup>14</sup> under the guise of addressing a public health crisis. The pandemic has provided a perfect mobilising force for authoritarianism as the language of war, fear mongering is used by autocratic rulers to brand critics who question their actions as ‘unpatriotic or even traitorous.’<sup>15</sup> Rutzen and Dutta (2020) cautions on the dangers of pandemics in naturing authoritarianism as they “...are fertile breeding grounds for governmental overreach”.<sup>16</sup> The expansive nature of this overreach is captured by the ICNPL and ECNPL’s ‘Covid-19 Civic Freedom Tracker’ which recorded that ‘94 countries have made emergency declarations, 46 countries instituted measures that affect freedom of expression, 128 countries instituted measures that affect freedom of assembly and 50 countries instituted measures that affect the right to privacy’.<sup>17</sup> The Covid-19 pandemic has arguably, created “...extraordinary circumstances for restricting civil liberties, free speech and human rights while intensifying the possibilities of an emerging authoritarianism”.<sup>18</sup> This has seen widespread reports of heavy handed approach by governments in attempts to enforce the lockdown measures but amidst this has been the trampling of citizens freedoms and democratic rights.

The responses of China in combating the spread of Coronavirus have received widespread praises; yet, they hinged on tyranny, virtual spying on citizens, police bugging into the homes to forcibly take away private citizens to isolation centres in styles reminiscent of Nazi or Gestapo approach. For, instance Yale University professor, Nicholas Christakis, implicitly urged the United States to consider adopting harsher measure, “China has a collectivist culture and an authoritarian government, so its success in fighting Covid-19, while deeply impressive, will not be easy to reproduce elsewhere. The USA must prepare to combat the virus using tools at its disposal.”<sup>19</sup> This growing adulation for despotic measures to resolve a public health problem inadvertently leads to “support for pedagogical apparatuses of spectacularised violence, fear mongering and state

<sup>12</sup> Bethke, F., Wolff, J. COVID-19 and shrinking civic spaces: patterns and consequences. *Z Friedens und Konfliktforsch* (2020). Available at: <https://doi.org/10.1007/s42597-020-00038-w>

<sup>13</sup> Franklin De Vries and Edin Elgsaether. 2020. Covid-19 emergency responses and protection of democratic space. Westminster foundation for Democracy. Available at: <https://www.wfd.org/2020/07/07/covid-19-emergency-responses-and-protecting-democratic-space/>

<sup>14</sup> Shaun Walker. 2020. Authoritarian leaders may you use Covid-19 to tighten their grip. *The Guardian*. Available at: <https://www.theguardian.com/world/2020/mar/31/coronavirus-is-a-chance-for-authoritarian-leaders-to-tighten-their-grip>

<sup>15</sup> Ibid.

<sup>16</sup> Bethke, F., Wolff, J. COVID-19 and shrinking civic spaces: patterns and consequences. *Z Friedens und Konfliktforsch* (2020). Available at: <https://doi.org/10.1007/s42597-020-00038-w>

<sup>17</sup> International Center for Not for Profit Law and European Center for Not for Profit Law. 2020. Covid-19 Civic Freedom tracker: Keep civic space healthy. Available at: <https://www.icnpl.org/covid19tracker/>

<sup>18</sup> Jared Rodriguez. 2020. The Covid-19 pandemic is exposing the plague of neoliberalism. *Truthout*. Available at: <https://truthout.org/articles/the-covid-19-pandemic-is-exposing-the-plague-of-neoliberalism/>

<sup>19</sup> Nicholas Christakis see, <https://twitter.com/NACChristakis/status/1237020541711720449>.

terror...”, therefore “...creating fertile grounds for the cultivation and inclusion of authoritarian politics...”.<sup>20</sup> The reality of this success was built on strategies that pose complex questions for the democratic order. For instance, Rutzen and Dutta (2020) observed “China required citizens to install software on their smartphones which predicts people’s health status, tracks their location, and determines whether they can enter a public place.”<sup>21</sup> The software was alleged that it “appears to share information with the police, setting a template for new forms of automated social control that could persist long after the epidemic subsides.”<sup>22</sup>

#### 4. AFRICA’S PERFECTLY FINE ACCIDENT

In Africa, the Corona virus has provided a perfectly fine accident, which autocrats used to trample upon citizens’ basic freedoms and rights, silence critics, muzzle the media and clamp on civil society organisations especially those involved in advocacy, democracy, and human rights. The Kenyan Political Economist, David Ndiu warned against African governments’ default authoritarian settings:

*We have to guard organise and push back against what I see as an opportunistic clawback of civil liberties in the days of disease emergencies, as well as human rights violations. And I have already talked about default police brutality which is already the default of many of our states with a legacy of repressive regimes. So that is something which I think particularly organised civil society has to be very vigilant because you can see some of these people cynically even using this to suspend civil liberties. They have been trying to do it, even before Corona virus. So now that they have this perfect excuse to do what they want.*<sup>23</sup>

The warning has lived to be true as events across the continent vindicates Dr Ndiu’s observations. The media has been dominated by images of security forces beating or torturing citizens under the guise of enforcing lockdown measures. Security forces in Rwanda, Kenya, Nigeria, South Africa, Uganda, Angola, Madagascar, Mozambique, Lesotho, Zimbabwe, and many other African countries have been accused of using indiscriminate and disproportionate force, murder, rape, beating and public humiliation in a bid to enforce the lockdown.<sup>24</sup> In certain cases, Covid-19 restrictions have been used by political incumbents to consolidate their power at the expense of the opposition or alternative voices. In Uganda, the Police and President Museveni allegedly conspired to arrest presidential challenger, Bobi Wine, who was charged with actions likely to cause the spread of covid-19,<sup>25</sup> something viewed more as a strategy to disrupt the campaigns of the opposition which is drawing huge crowds at its rallies.

It has been observed that in Southern Africa, “There is mounting evidence showing that governments are increasingly cracking down on dissent by using excessive force to suppress public criticism of their failure to protect human rights, especially the rights of the poor and economically vulnerable during the Covid-19 lockdown measures”.<sup>26</sup> This has led the Southern Africa People’s Solidarity Network (SAPSN) to petition SADC and ensure a process of, “Demilitarising lockdowns and ensuring that law enforcement agencies uphold human rights-based principles of policing.”<sup>27</sup> The human rights situation in SADC has been deteriorating as governments have been failing to provide social services to citizens a phenomenon observed by Tsunga, Mazarura and Heywood (2020), “ the lack of government support for most citizens in the region has been exacerbated by the excessive use of force by authorities in the name of enforcing

<sup>20</sup> Jared Rodriguez. 2020. The Covid-19 pandemic is exposing the plague of neoliberalism. Truthout. Available at: <https://truthout.org/articles/the-covid-19-pandemic-is-exposing-the-plague-of-neoliberalism/>

<sup>21</sup> Rutzen, Doug, and Nikhil Dutta. 2020. Pandemics and human rights. *Just security*. Available at: <https://www.justsecurity.org/69141/pandemics-and-human-rights>.

<sup>22</sup> Rutzen, Doug, and Nikhil Dutta. 2020. Pandemics and human rights. *Just security*. Available at: <https://www.justsecurity.org/69141/pandemics-and-human-rights>.

<sup>23</sup> The Elephant. 2020. The political economy of the Corona virus. Available at: <https://www.theelephant.info/videos/2020/04/01/the-political-economy-of-coronavirus-dr-david-ndiu-speaks/>

<sup>24</sup> Trevor Nnabugu. 2020. Extreme cases of covid-19 lockdown measures in Africa. Ventures Africa. Available at: <http://venturesafrica.com/extreme-cases-of-covid-19-lockdown-measures-across-africa/>

<sup>25</sup> Human Rights Watch. 2020. Ugandan authorities weaponise covid-19 for repression. Available at: <https://www.hrw.org/news/2020/11/20/uganda-authorities-weaponize-covid-19-repression>

<sup>26</sup> Arnold Tsunga, Tatenda Mazarura and Mark Heywood. 2020(b). Democracy in Lockdown: Authorities clamp down on pro-democrats and civilians under cover of Covid-19 restrictions. The Daily Maverick. Available at: <https://www.dailymaverick.co.za/article/2020-05-22-democracy-in-lockdown-authorities-clamp-down-on-pro-democrats-and-civilians-under-cover-of-covid-19-restrictions/>

<sup>27</sup> SAPSN. 2020. Southern Africa: SADC Petitioned Over Shrinking Regional Democratic Space During COVID-19 Lockdown. Available at: <https://allafrica.com/stories/202005240098.html>

lockdowns.”<sup>28</sup> In fact, Covid-19 in Southern Africa has acted as a pretext for attacking media freedoms and journalists and to this effect amnesty International observed that:

*From Madagascar to Zambia, we have seen governments criminalizing journalists and shutting down media outlets that are perceived to be calling out poor government responses to covid-19. Southern African authorities must respect the right to freedom of expression and media freedom and stop treating the media with contempt and open up the civic space for journalists to do their work freely and safely. the real enemy is covid-19, not the media.*<sup>29</sup>

The attack on journalists and media freedoms is coming at a time when citizens need credible and accurate information to prepare themselves to respond to the Corona virus as well as making duty bearers accountable.

The Covid-19 pandemic has seen personal and civil liberties — such as freedom of movement, freedom of enterprise, and freedom of assembly severely restricted. Democratic life has also been curtailed, including through the postponement of elections and suspension of parliamentary work rights and freedoms.<sup>30</sup> The UN has thus warned that the Covid-19 pandemic is fast becoming a human rights crisis: “Against the background of rising ethno-nationalism, populism, authoritarianism and a pushback against human rights in some countries, the crisis can provide a pretext to adopt repressive measures for purposes unrelated to the pandemic”<sup>31</sup>

## 5. OVERVIEW OF SADC COVID-19 LOCKDOWN REGULATIONS

SADC governments responded to the Covid-19 outbreak by initiating several measures through the issuing of state of emergency orders which caused a complete lockdown of cities and entire countries.<sup>32</sup> Thirteen of the sixteen countries of the regional bloc imposed national lockdowns which were more or less similar in their development and implementation. These measures included stay at home orders, curfews, 14 day quarantines and bans on public gatherings, prohibition of the use of public transport except in emergencies, all land borders, airports, and maritime ports of entry were closed to passenger transit. All private commercial establishments were closed except those businesses identified in the decrees of emergency or health regulations which were deemed to be ‘essential services. These commercial establishments included banks, telecommunication companies, restaurants, pharmacies, grocery stores and fuel stations among others. Businesses considered essential such as hospitals, waste collection, energy and water services and security services were also in operation. SADC countries which imposed the initial 21- or 14-days lockdown, extended them for another 14 days, with further extensions being made depending on levels that were set by respective governments. Lockdowns and physical distancing measures confined people to their homes and upending their ability to meet, organize, and advocate.<sup>33</sup> These requirements were enforceable by the police and military who were empowered to direct a person to return to their place of residence, or remove a person to that place using reasonable force if necessary. In the process police and the military are reported to have applied excessive force and committed human rights abuses.<sup>34</sup>

The stringency of the lockdown measures varied from country to country. The infographic hereunder is a stringency index of the lock down regulations in Africa and it indicates that most of SADC countries adopted strict measures which fell within the range of 60-100 in terms of the

<sup>28</sup> Arnold Tsunga, Tatenda Mazarura and Mark Heywood. 2020(a). Democracy in Lockdown: Authorities clamp down on pro-democrats and civilians under cover of Covid-19 restrictions. The Daily Maverick. Available at: <https://www.dailymaverick.co.za/article/2020-05-01-is-covid-19-in-danger-of-killing-electoral-democracy-in-southern-africa/>

<sup>29</sup> Amnesty International. 2020. Southern Africa: COVID-19 a pretext for surge in harassment of journalists and weakening of media houses by states. Available at: <https://www.amnesty.org/en/latest/news/2020/05/southern-africa-covid19-a-pretext-for-surge-in-harassment-of-journalists-and-weakening-of-media-houses-by-states/>

<sup>30</sup> See Célia Belin And Giovanna De Maio Democracy After Coronavirus: Five Challenges For The 2020s [https://www.brookings.edu/wp-content/uploads/2020/08/FP\\_20200817\\_democracy\\_covid\\_belin\\_demaio.pdf](https://www.brookings.edu/wp-content/uploads/2020/08/FP_20200817_democracy_covid_belin_demaio.pdf)

<sup>31</sup> See: <https://www.un.org/en/un-coronavirus-communications-team/we-are-all-together-humanrights-and-covid-19-response-and>, last accessed 27.4.2020

<sup>32</sup> Joseph, A and Ogbolosingha, Singh, A (2020) COVID-19 pandemic: Review of impediments to public health measures in Sub-Saharan Africa. American Journal Of Preventive Medicine And Public Health, 2020 VOL 6, NO. 3, page 68-75

<sup>33</sup> Brechenmacher, A. Carothers T and Young, R(2020) *Civil Society and the Coronavirus: Dynamism Despite Disruption. Global Pandemic: Corona Virus and Global Disorder*. Carnegie Endowment for International Peace

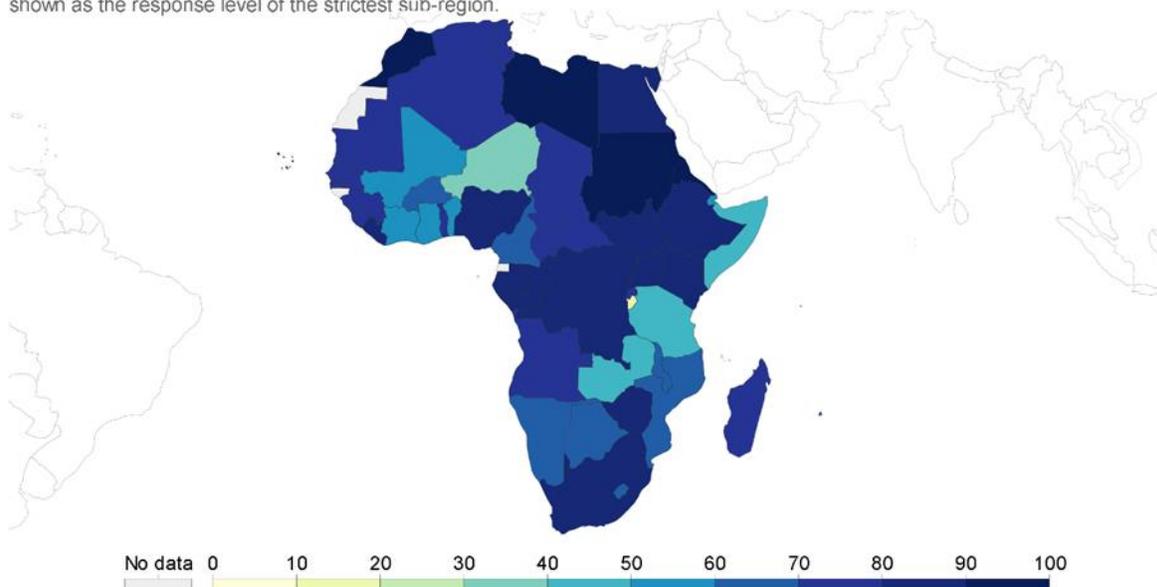
<sup>34</sup> Ibid note 35

stringency meter. This therefore represents that the Covid-19 responses for SADC region ranged from moderate to excessive in terms of their stringency.

### COVID-19: Government Response Stringency Index, May 31, 2020



This is a composite measure based on nine response indicators including school closures, workplace closures, and travel bans, rescaled to a value from 0 to 100 (100 = strictest). If policies vary at the subnational level, the index is shown as the response level of the strictest sub-region.



Source: Hale, Webster, Petherick, Phillips, and Kira (2020). Oxford COVID-19 Government Response Tracker – Last updated 23 November, 19:01 (London time)  
 Note: This index simply records the number and strictness of government policies, and should not be interpreted as 'scoring' the appropriateness or effectiveness of a country's response.  
 OurWorldInData.org/coronavirus • CC BY

Most rights ranging from freedom of movement; right to property; right to free economic initiatives; and the freedom of expression were curtailed and disguised as curbing the spread of the virus, a tool used by most authorities to bar and stifle public protests and entrench their hegemony.

As has been highlighted before, not all the countries in the SADC block adopted lockdown measures. Countries like Malawi, Comoros and Tanzania never implemented lockdowns, but they however implemented a raft of measures under the guise of curtailing the spread of Covid-19 which consequently turned out to limit the rights of citizens to democratic participation. For emphasis, the Tanzanian government's response to Covid-19 was characterized by allegations of actions that curtailed freedom of expression, opposition, and access to information as the country approached the October 2020 Presidential elections.<sup>35</sup> The lack of transparency in terms of the extent and impact of the Covid-19 pandemic in Tanzania did not only mask the scale and scope of the crisis but also exposed the government's intimidation and secrecy which is an indicator of an existential threat to the integrity of democracy.

As about the case of Malawi, former President Peter Mutharika announced the imposition of a state of disaster and a national 21-day lockdown, which was to begin on 18 April 2020. However, the President's announcement was not well received as critics argued the former president of Malawi President Peter Mutharika was using the coronavirus outbreak to prolong his stay in power and use it as a scapegoat to continue his rule and avoid a re-run of an annulled election.<sup>36</sup> The President was taken to court by, the Malawi Human Rights Defenders Coalition, which argued that the president had not prepared an adequate safety net to protect the poor. The High Court of Malawi ruled against the president and set aside the lockdown until he had put the necessary socio-economic protection measures in place.<sup>37</sup> The cases of Malawi and Tanzania represent that it does not only require lockdown measures to create a fragile environment that threatens or curtails democratic space, but rather the crisis itself was sufficient to be used as a means of social control and consolidation of power.

To provide a snapshot of the different raft of measures that were adopted after a declaration of the state of emergency by all SADC countries in a bid to curb the spread of the Covid-19 pandemic, the table that follows reflects the measures that were adopted by each country in the region.

<sup>35</sup> See: <https://www.csis.org/analysis/implications-tanzanias-bungled-response-covid-19>

<sup>36</sup> See: Coronavirus in Africa: Whipping, shooting and snooping. Available at <https://www.bbc.com/news/world-africa-52214740>

<sup>37</sup> See: <https://mg.co.za/article/2020-04-23-malawis-president-ordered-a-lockdown-the-court-said-no/>

Table 1: Overview of the raft of measures adopted by SADC Countries

COUNTRY	LOCKDOWN	CURFEWS	INTERNATIONAL TRAVEL RESTRICTIONS	QUARANTINE	BAN ON LARGE GATHERINGS
ANGOLA	√	X	√	√	√
BOTSWANA	√	X	√	√	√
COMOROS	X	√	√	√	√
DEMOCRATIC REPUBLIC OF CONGO	√	√	√	√	√
ESWATINI	√	√	√	√	√
LESOTHO	√	√	√	√	√
MADAGASCAR	√	√	√	√	√
MALAWI	X	X	X	X	X
MAURITIUS	√	√	√	√	√
MOZAMBIQUE	√	√	√	√	√
NAMIBIA	√	√	√	√	√
SEYCHELLES	√	√	√	√	√
SOUTH AFRICA	√	√	√	√	√
TANZANIA	X	X	X	X	X
ZAMBIA	√	X	√	√	√
ZIMBABWE	√	√	√	√	√

Source: Author

Depending on the country, the declaration of the state of emergency followed distinct processes which conferred different powers on the executive, thereby explaining the approaches adopted by different SADC countries. In most cases, a state of emergency gave more extensive powers to the Executive and consequently, drastically reducing civil liberties.<sup>38</sup> The section that follows hereafter, provides for discussion relating to the instruments and forms that were used by different SADC governments to curtail or limit the democratic participation of citizens. While it should be noted that not all SADC countries used the lockdown regulations to consolidate power, it however shows a growing trend or propensity or readiness of most SADC governments to take advantage of the situation and resort emergency powers to shrink democratic space.

### 5.1.1. Due Process and Judicial Oversight

While governments in the SADC region have authority to pass laws imposing lockdown regulations when necessary to contain a contagious disease outbreak, the more salient question is how those laws are implemented. There is no question that the state has the authority to take measures to protect the public's health by exercising its executive powers. However, these powers are not unbounded. The individual's right to liberty, freedom of movement, freedom of assembly, and freedom of expression are enshrined in constitutions to constrain government action. Due process exists to ensure that individuals are not deprived of their rights mistakenly or arbitrarily. Consistent respect for rights is also critical in contagious disease response because public adherence to government control measures is likely to depend on faith in the fairness of those measures. Substantive due process is intended to ensure the government has sufficient justification for limiting individual rights. Procedural due process offers the safeguards needed to ensure that laws are properly applied to those individuals to whom the laws are supposed to apply.

<sup>38</sup> See: <https://issafrica.org/pscreport/psc-insights/the-dangers-of-states-of-emergency-to-combat-covid-19-in-africa>

The dangers of not following a Constitutional approach in dealing with the Covid-19 pandemic were highlighted in a South African case where the following observations were made: <sup>39</sup>

*"The virus may well be contained - but not defeated until a vaccine is found - but what is the point if the result of harsh enforcement measures is a famine, an economic wasteland and the total loss of freedom, the right to dignity and the security of the person and, overall, the maintenance of the rule of law? During a pandemic, government should never lose sight of basic human rights. In fact, it should prioritise their realization and protection of human rights in such a time even more so. In my view, the Bill of Rights has not been given effect to. A pro-human rights lockdown would have perhaps looked much different."*

In South Africa the constitutionality and validity of the lockdown regulations were challenged<sup>40</sup> to determine the rationality of the connection between some of the provisions of the regulations and the stated objective of the declaration of a state of disaster-preventing the spread of Covid-19. The court found that the Government's declaration of national state of disaster and the regulations subsequently promulgated by the government were not rationally connected to the objectives of slowing or limiting the spread of Covid-19. In that regard the Court declared that the lockdown regulations in South Africa were invalid and unconstitutional and it suspended the declaration of invalidity for 14 days to allow the Minister after consultation with relevant Ministers to review, amend and republish the regulations.

In Malawi, the High Court expressed concern that laws relating to disaster and public health emergencies were drafted before the entrenchment of the Bill of Rights in its Constitution. Justice Kenyatta Nyirenda emphasised that decisions made in response to the pandemic must be authorised in terms of the law. The Court emphasised that the judiciary "were entitled to inquire into the legality of measures taken by the State in response to an emergency or disaster".<sup>41</sup> What both cases show, albeit in different ways, is that procedures do matter. They ensure the soundness of the process, protect against potentially arbitrary decisions, contribute to the stability and solidity of state institutions, safeguard checks and balances, and provide for accountability mechanisms.<sup>42</sup>

Therefore, every instance where "means" are implemented by executive authority in order to obtain a specific outcome an evaluative exercise must be taken insofar as those "means" may encroach on Constitutional rights and to determine whether such encroachment is justifiable. Without conducting such an enquiry, the enforcement of such means, even in a bona fide attempt to attain a legitimate end, would be arbitrary and unlawful. Therefore, one should also be mindful of the fact that the "Covid-19 danger is still with us and to create a regulatory void might lead to unmitigated disaster and chaos."<sup>43</sup>

On the other hand, it should be noted that the legal rules developed in times of emergency may be protected by the judiciary through the status quo bias built into the legislative system or by the formation of bureaucracies and interest groups that coalesce around the new measures and block subsequent efforts to repeal them. Such an observation was noted by Jackson J in the case of *Korematsu v. United States*, with its famous claim:

*Once a judicial opinion rationalizes [an emergency] order to show that it conforms to the Constitution, or rather rationalizes the Constitution to show that the Constitution sanctions such an order, the Court for all time has validated ... [a] principle [that] lies about like a loaded weapon ready for the hand of any authority that can bring forward a plausible claim of an urgent<sup>44</sup>*

### 5.1.2. Police Brutality

During the lock down period, officials and security services in some SADC states perpetrated violence against civilians, detained people arbitrarily without justification, and overstepped their legal authority in the name of enforcing lockdown regulations. Governments used the pandemic as a justification to grant themselves special powers beyond what is reasonably necessary to protect public health. They exploited these emergency powers to interfere in the justice system, impose unprecedented restrictions on political opponents, and undermine crucial legislative

<sup>39</sup> See: <http://www.saflii.org/za/cases/ZAGPPHC/2020/184.html>

<sup>40</sup> See: <http://www.saflii.org/za/cases/ZAGPPHC/2020/184.html>

<sup>41</sup> See: <https://reports.unocha.org/en/country/southern-eastern-africa/#cf-5o8or7SzuZL6VP6E5JSHPL>

<sup>42</sup> See: <https://issafrica.org/pscreport/psc-insights/the-dangers-of-states-of-emergency-to-combat-covid-19-in-africa>

<sup>43</sup> Ibid note 46

<sup>44</sup> *Korematsu v. United States*, 323 U.S. 214, 246 (1944) (Jackson, J., dissenting)

functions. Deploying thousands of soldiers to help the police enforce the lockdown had clear risks and potentially dire consequences. The centralisation and militarisation of the pandemic responses led to violence and human rights violations.

Allegations of abuses committed by the police and soldiers range from forcing people to do physical exercises, arbitrary arrests, assault and in some instances murder in the name of enforcing lockdown regulations. In Zambia, Lusaka Province Minister Bowman Lusambo was reported to have threatened people with whipping if they did not respect the Presidential Directive to stay at home, while police have been recorded beating people with baton sticks on the streets.<sup>45</sup> National police spokesperson Esther Katongo said in a television interview that police in Zambia had adopted a strategy to “hit and detain” anyone found on the streets.<sup>46</sup> In Zimbabwe, police officers in Mutare raided a vegetable market, forcing more than 300 vendors to flee and leave behind their produce. Police carried out the raid despite the agriculture sector being flagged as an “essential service” during the 21-day lockdown. They later disposed of the food, and vendors are yet to be compensated., thereby exercising extra-judicial measures without proper due process of the law as enshrined in their constitution under Zimbabwean Law.<sup>47</sup>

In Madagascar clashes erupted between Madagascar’s security forces and protesters after citizens took to the streets in the eastern town of Toamasina to condemn anti-coronavirus lockdown measures. The tension was sparked after a street vendor was allegedly beaten by a police officer for apparently violating a ban on commercial activities in the afternoon.<sup>48</sup> In Mozambique, the police were accused of heavy handedness in enforcing lockdown regulations as police responses to violations of the lockdown were harsh and violent: ‘People are taken to the police cell and then they are beaten [chamboceado] just for not wearing a mask’.<sup>49</sup> In Mozambique the police were known to implement a non-official curfew in some cities and towns arresting anyone walking the streets who cannot convince the police that they have important business to attend to. The curfew was not an official part of the state of emergency rules, but the police’s way of interpreting their role of enforcing the lockdown and implementing the President’s call to ‘stay at home’.<sup>50</sup>

There have been reported cases of police brutality in South Africa as the South African Police and the South African National Defence Forces have been called out for abuse of power in enforcing the lockdown orders issued by the government. Collins Khosa, a resident of Alexander, was allegedly assaulted, choked and beaten by sjambok-wielding soldiers, who had approached a family member about drinking inside his yard on Good Friday and accused him of breaching lockdown regulations.<sup>51</sup> On 8 May, 2020 in a report by the Independent Police Investigative Directorate (IPID) in South Africa, 11 people (one of whom was a seven-year-old child) had died as a result of police actions between 27 March and 5 May, 2020.<sup>52</sup> The United Nations highlighted that it had received reports of police using rubber bullets, tear gas, water bombs and whips, to enforce social distancing, especially in poor neighbourhoods.<sup>53</sup>

In Angola, the Ministry of Home Affairs reportedly apologized, during a public statement on 9 June 2020, to injured citizens and families who lost their relatives due to excessive force from Defence and National Security officers during the Covid-19 lockdown. At least 10 police officers were accused of killing citizens during the State of Emergency implemented since 27 March 2020.<sup>54</sup> Under the State of Calamity implemented on 26 May, some 1,671 citizens were arrested by the Angolan Defence and Security forces<sup>55</sup>

In the DRC police have seen their opportunities to extort populations dwindle, as fewer people move around through fear of catching the virus or public curfews.<sup>56</sup> In response, officers have

<sup>45</sup> ibid

<sup>46</sup> <https://freedomhouse.org/article/sadc-restrictive-covid-19-regulations-presenting-concerning-ramifications-enjoyment-human>

<sup>47</sup> <https://freedomhouse.org/article/sadc-restrictive-covid-19-regulations-presenting-concerning-ramifications-enjoyment-human>

<sup>48</sup> See Protests erupt in Madagascar over alleged police violence. Available at <https://newsaf.cgtn.com/news/2020-06-06/Protests-erupt-in-Madagascar-over-alleged-police-violence-R5rOjacfyE/index.html>

<sup>49</sup> See: <https://www.diis.dk/en/research/covid-19-in-mozambique>

<sup>50</sup> ibid

<sup>51</sup> See: <https://www.thesouthafrican.com/news/collins-khosa-court-orders-suspension-of-sandf-members/>

<sup>52</sup> See: <https://www.dailymaverick.co.za/article/2020-05-22-the-other-epidemic-an-account-of-police-and-army-violence-in-the-covid-19-pandemic/>

<sup>53</sup> See: <https://www.aljazeera.com/news/2020/04/28/un-raises-alarm-about-police-brutality-in-covid-19-lockdowns/>

<sup>54</sup> See: <https://reports.unocha.org/en/country/southern-eastern-africa/#cf-5o8or7SzuZL6VP6E5JSHPL>

<sup>55</sup> See: <https://reports.unocha.org/en/country/southern-eastern-africa/#cf-5o8or7SzuZL6VP6E5JSHPL>

<sup>56</sup> <https://blogs.lse.ac.uk/africaatlse/2020/10/08/observing-covid19-africa-through-public-authorities-lens-state-actor/>

sought to extract money from those deemed to be breaking the rules on wearing facemasks or curfew. On the DRC's border with Uganda, soldiers have used the crisis as a justification for beating women attempting to cross to tend fields and this has also led to requests for money or sexual favours to turn a blind eye and allow safe passage.<sup>57</sup> In Zimbabwe, the High Court ordered state security forces not to assault citizens while enforcing the country's coronavirus lockdown.<sup>58</sup> In Lesotho, the Prime Minister deployed the army onto streets to 'restore peace and order', claiming law enforcement institutions were undermining democracy. His announcement on national television came a day after the Constitutional Court overturned his 3-month suspension of Parliament as part of the coronavirus lockdown extension declared on 17 April, according to media reports.<sup>59</sup>

The preferences to deploy the police and the military by SADC in some countries draws on 'law and order' traditionalism and connect in a reciprocal way with the crony orientation of accumulation and a grip onto power. A political preference for creating compliant citizenry using police brutality attuned to the interests of those in power combines with a self-interested desire to hide corrupt economic activity.

### 5.1.3. EFFECTIVENESS OF ELECTIONS

Electoral pressures and political freedoms of democratic regimes, improve health, including incentives—median voters desire redistribution, and a norm of equality increases support for accessible health services; information—open media and opposition ensure that information both flows to the public about health and from the public to government about how to calibrate policy; accountability—enabling voters can punish leaders who fail; and association—enabling knowledge networks and interest groups to drive good policy.<sup>60</sup>

The Covid-19 pandemic called into question many aspects of electoral and political life beyond the act of voting. Campaigns and conventions were banned in SADC countries that imposed the lockdown measures. Elections were modified, postponed, and cancelled considering the health risks posed by the pandemic. In Zimbabwe, the Vice President and Minister of Health, Retired General Constantino Chiwenga used the excuse of 'Covid-19 to ban by-elections'<sup>61</sup> as part of the government and ruling party's (ZANU-PF) cocktail of strategies to weaken the opposition, a position that was interpreted as interference into the opposition's factional differences and prop up the ruling party's preference. Political parties matter more and more as time goes on and governments make decisions that shape health and social outcomes.<sup>62</sup> Nevertheless, it demonstrates another attempt to suppress democratic participation during the Covid-19 pandemic.

### 5.1.4. FREEDOM OF ASSEMBLY

With the SADC region at its current peak in population density and interconnectivity; the status quo presented barriers to the containment of the virus in both urban and rural settings thereby making most SADC states to impose restrictions on personal movement and interaction to contain the spread of Covid-19. While such restrictions were motivated by legitimate public health goals, their content and manner of implementation failed to promote those health goals but also eroded civil liberties and fundamental freedoms.<sup>63</sup> Persons who sought to exercise their right to movement were expected to carry with them a typed or handwritten document attesting to the reason for the trip. This attestation served as a legal justification for being in a public place and could be inspected by police and other authorized persons. Such attestations reincarnated the colonial memories where the freedom to movement or assembly were restricted through the provision of the pass system, whereof the African population was restricted from moving in 'white

<sup>57</sup> <https://blogs.lse.ac.uk/africaatlse/2020/10/08/observing-covid19-africa-through-public-authorities-lens-state-actor/>

<sup>58</sup> <https://www.voanews.com/africa/rights-groups-welcome-court-ban-brutal-zimbabwe-covid-19-lockdown>

<sup>59</sup> <https://reports.unocha.org/en/country/southern-eastern-africa/#cf-5o8or7SzuZL6VP6E5JSHPL>

<sup>60</sup> Kavanagh, m, Singh, R (2020) Democracy, Capacity, and Coercion in Pandemic Response: COVID-19 in Comparative Political Perspective Journal of Health Politics, Policy and Law, Vol. 45, No. 6, December 2020 DOI 10.1215/03616878-8641530

<sup>61</sup> Costa Nkomo. 2020. Chiwenga bans by-elections indefinitely. New Zimbabwe. Available at: <https://www.newzimbabwe.com/chiwenga-suspends-by-elections-indefinitely/>

<sup>62</sup> Falkenbach, M., Bekker, M., & Greer, S. L. (2019). Do parties make a difference? A review of partisan effects on health and the welfare state. European Journal of Public Health, ckz133. <https://doi.org/10.1093/eurpub/ckz133>.

<sup>63</sup> <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7543595/>

only' areas with a pass. The reincarnation of the colonial pass system, in a bid or attempt to resolve a pandemic, automatically came with the underlying evils that lay beneath it.

The right to peaceful assembly was one of the freedoms persistently under attack even before the advent of Covid-19 in Southern Africa. The pandemic created a convenient excuse for governments to ban public gatherings and demonstrations on the argument of enforcing social distance and avoiding the spread of infections. Public health interest was advanced, despite that governments and ruling party officials are shown to have acted above the law and being immune from these restrictions. However, for the opposition and civil society, attempting to exercise the right to peaceful assembly has been met with police beatings, arrests and detentions.

In Lesotho, all political rallies were prohibited until further notice and youths protested joblessness and unemployment. Some were arrested for violating the country's COVID-19 lockdown regulations during a protest.<sup>64</sup> In Zambia, on the 22<sup>nd</sup> of June 2020, the Inspector General of Police Kakoma Kanganja threatened to deal with the youth protesters "accordingly" after denying them permission to hold the march in the country's capital Lusaka.<sup>65</sup> The youth activists intended to raise their dissatisfaction with the way the country is being governed. Such intimidatory tactics show how Covid-19 became a convenient excuse for political incumbents in Southern Africa to consolidate their hold on power through stifling dissent. In addition, to the already worsening authoritarian context where public gatherings are governed by the "Public Order Act, a notorious piece of legislation whose constitutionality has been challenged several times on the basis that its provisions are arbitrary and not necessary in a democratic state." Zambians under Covid-19 regulations are now required to get 'authority from the Ministry of Health or the Local Authority to hold public gatherings of more than five people.'<sup>66</sup> However, these restrictions have been selectively applied to the opposition and civil society and ignored where it concerns government and ruling party officials. In defence, the government has claimed that 'it cannot be blamed for people following them around; thus, leading to many Zambians either resenting any restrictions placed on them or believing that the pandemic is a hoax'.<sup>67</sup>

In Zimbabwe, the government also resorted to the Covid-19 regulations and lockdown to thwart national protests corruption which had been scheduled for the 31<sup>st</sup> of July 2020 by civil society organisations. The government introduced a 'dusk to dawn' curfew (1800-1600 hours) and banned gatherings in a bid to ensure that the demonstrations flop. On the day, people were chased from the Central Business Districts of the main towns and encouraged to stay at home. The organisers of the 31<sup>st</sup> of July protests movement were arrested and those who participated were prosecuted for violating lockdown regulations. This saw the AU's Moussa Faki Mahamat, issuing a statement expressing concern about reports of 'disproportionate use of force' by the authorities in Zimbabwe and went on to implore them to exercise restraint in responding to peaceful protests and to uphold the rule of law, allow freedom of the media, freedom of association and assembly, and the right to information.<sup>68</sup> The same situation also played out in Angola. Police in Luanda, had to use teargas to disperse demonstrators protesting rising living costs, unemployment, and the postponement of local elections due to coronavirus and this saw several people arrested and injured.<sup>69</sup> Cases from various Southern African countries shows that governments have taken advantage of the Covid-19 pandemic to muzzle people's rights under the guise of protecting public health interests.

### 5.1.5. Parliamentary Oversight

Another example of the shrinking democratic space in SADC during the COVID-19 pandemic is reflected in the attempted or successful bypassing or suspension of effective democratic controls

<sup>64</sup> African Freedom of Expression Change. Lesotho police shoot journalist during protest .Available at: <https://www.africafex.org/freedom-of-assembly/lesotho-police-shoot-journalist-during-protests>

<sup>65</sup> Southern African Litigation Center. Joint Statement: Zambia Authorities escalates attacks on dissent by denying youth leaders right to protest. 24 June 2020. Available at: <https://www.southernafricalitigationcentre.org/2020/06/24/joint-statement-zambia-authorities-escalate-attacks-on-dissent-by-denying-youth-leaders-right-to-protest/>

<sup>66</sup>Linda Kasonde. 2020. Covid-19, Human Rights and Zambia's new normal. The Daily Maverick. Available at: <https://www.dailymaverick.co.za/article/2020-08-21-covid-19-human-rights-and-zambias-new-normal/>.

<sup>67</sup> Linda Kasonde. 2020. Covid-19, Human Rights and Zambia's new normal. The Daily Maverick. Available at: <https://www.dailymaverick.co.za/article/2020-08-21-covid-19-human-rights-and-zambias-new-normal/>

<sup>68</sup> Alois Vinga. 2020. AU speaks on Zimbabwe crisis, orders Mnangagwa to respect rule of law . New Zimbabwe. Available at: <https://www.newzimbabwe.com/au-speaks-on-zimbabwe-crisis-orders-mnangagwa-to-respect-rule-of-law/>

<sup>69</sup> Mary Harper. Angolan police disperse protesters in Luanda. BBC. Available at: <https://www.bbc.com/news/topics/cjnwl8q4q58t/angola>

on government. It should be noted that the emergency regulations were made by the executive branch and therefore did not proceed through the regular primary legislative process where democratic scrutiny is maximized.<sup>70</sup> While this form of enacting delegated legislation is *ex ante* approved by Parliament, it evades rigorous parliamentary scrutiny at the point of enactment.

Given the public health emergency and physical risk of convening parliaments as usual, opportunity for political debate was severely curtailed. In Lesotho, the Former Prime Minister Thomas Motsoahae Thabane attempted to prorogue parliament with his prime reason being that “due to prevalence of Corona Virus (Covid-19) which has been declared a pandemic by the World Health Organization (WHO) it is advisable not to have large gatherings of people in order to avoid the spread of the virus.”<sup>71</sup> The Prime Minister’s decision to prorogue parliament was controversial as it elicited a clear disregard of the fundamental values which are crucial to the operation of a constitutional system. The actions added fire to an already existing constitutional and political crises which had been engineered by the Prime Minister who “has the propensity and has persistently displayed some *modus operandi* to damage critical arms of government” and demonstrated a “persistent behaviour of indulging in unconstitutional decisions compromising the Kingdom of Lesotho”.<sup>72</sup>

The prorogation of parliament indicated an unambiguous disregard for fundamental tenets of democracy and disregard for constitutional values. The use of Covid-19 as pretext to side-line parliament came at a moment when political decisions of immense importance regarding the pandemic and governance were to be made. Prorogation challenged the core democratic constitutional concept of checks and balances, disregarded the importance of separation of powers and was an attempt to erode the executive’s accountability to parliament. It was undeniable that the Prime Minister used Covid-19 as a reason for prorogation but at the end it was ostensibly clear that it was just a pretext to hold onto power by a complicit collusion between the Prime Minister who is facing a murder charge and his Deputy who would qualify for lifetime deputy ministerial benefits in July 2020.

#### **5.1.6. RESURGENT NATIONALISM AND POPULISM**

The response to the Covid-19 pandemic by most SADC countries was consistently driven by what was politically feasible rather than by what would have been technically effective. This scenario was further entrenched by the fact that most public health agencies in SADC countries are generally subject to political control and are under the executive arm of the government. In that regard, the ruling elites in a bid to consolidate their power, for their part, took advantage of citizens’ vulnerabilities and insecurities, using immigrants, western forces as scapegoats and exploiting their role as opposition parties unburdened the national crisis management. With lockdown measures limiting avenues for political participation, anti-establishment sentiment could grow deeper out of disconnection from politics. Without a shared approach in enhancing citizens’ participation in the development of recovery efforts, democracies will be vulnerable to a renewed, likely, and even more pernicious wave of populism and nationalism, particularly susceptible to foreign interference. In Zambia, the ruling Patriotic Front supporters raided a radio station accusing them of being unpatriotic and giving too much coverage to the UNPD’s presidential candidate, Hakainde Hichilema during the lock down period thereby threatening and restricting the right to freedom of speech.<sup>73</sup>

#### **5.1.7. Transparency and Access to Information**

The lack of freedom of expression, rigid bureaucratic processes and State censorship, prevention of the flow of information from the local level to the central authorities and the public contributed to transforming a local epidemic in Wuhan into a world pandemic of unprecedented scale.<sup>74</sup> The pandemic was hit hard by disinformation. At a local level, the pandemic was used to create a vocabulary of fear and diversion, directing grievances towards ‘aliens’ and other minorities within

<sup>70</sup> K. Kupferschmidt, The Lockdowns Worked—But What Comes Next? (2020) Science vol 368 issue 6488 218, 218.

<sup>71</sup> <https://hurisa.org.za/human-rights-during-the-lockdown-in-lesotho/>

<sup>72</sup> Ibid note 78

<sup>73</sup> ibid

<sup>74</sup> <https://www.brookings.edu/blog/order-from-chaos/2020/06/16/reopening-the-world-how-the-pandemic-is-reinforcing-authoritarianism/>

the polity and raising hostility towards imagined 'foreign' enemies outside it.<sup>75</sup> Simultaneously, state officials suppressed narratives about its responsibility in failing to contain the outbreak in their own countries and the hyper-politicization of Covid-19, combined with the devastating consequences of lockdown measures, also created a fertile breeding ground for domestic disinformation activities. Providing transparency and access to information assists in securing proper political accountability and observance of the rule of law, and for the better advancement of measures to contain and slow the spread of Covid-19.

In Tanzania the lack of information on the number of people infected by Covid-19 led opposition parties in the country to demand the Government and on repeated occasions, the truth about the Covid-19 outbreak. The Tanzanian government is accused of downplaying the effect of the virus and for allegedly hiding information and misleading the population.<sup>76</sup> President Magufuli is on record for having urged citizens to attend churches and mosques, reasoning Covid-19 is "satanic" and "cannot live in the body of Christ—it will burn instantly." He announced three days of national prayer against Covid-19 and recommended steam inhalation as a "scientific treatment," claimed his own son overcame the virus by drinking a lemon and ginger tincture, and he diverted government funding to the importation of botanical remedies from Madagascar.<sup>77</sup> On 8 June 2020, the President of Tanzania announced that Tanzania was now Covid-19 free, after all patients reportedly recovered the disease. The President attributed the alleged success over the pandemic to prayers and fasting that the people of Tanzania have offered to God.<sup>78</sup> The lesson that can be drawn from the Tanzanian scenario is that, their response to the pandemic was more a politically astute play not to anticipate the crisis, but instead to react as it unfolds, shifting blame for lives lost.<sup>79</sup>

In Zimbabwe, the High Court of Zimbabwe ordered the Ministry of Health and Child Care and the Ministry of Information, Publicity and Broadcasting Services to promote citizens' access to information pertaining to the Coronavirus including the daily Covid-19 updates issued by the Ministry of Health, in all the official languages.<sup>80</sup> Furthermore, governments in the regional block are reported to have used the lock down regulations to arrest journalists who sought to expose the human rights abuses that were being committed. In Zimbabwe, the Police arrested journalists Frank Chikwore and Samuel Takawira for breaching Covid-19 regulations after interviewing the opposition members who had allegedly been abducted and tortured.<sup>81</sup> In the Collins Khosa case in South Africa, it is alleged that neighbours who tried to record the incident of the assault and subsequent murder of Collins Khosa were arrested and allegedly assaulted by the police and soldiers.<sup>82</sup>

It should be noted that politically motivated barriers information gathering, sharing, and reporting may be a profoundly self-defeating strategy as people are likely to die because of misinformation as sacrificing democracy on the altar of public health is not necessary. The lesson is derived from China's approach which was responsible for the initial Covid-19 cover-up, which included silencing whistle-blowers and suppressing information on the nature and scale of the virus. Had there been proper transparency, the virus might have been slowed in its tracks and other countries would have had more time to prepare. There is still no substitute for empowered democratic citizenship when it comes to the protection of basic interests.

### 5.1.8. Freedom of Expression

Independent media has often been stifled during the pandemic, making accountability difficult thus hampering the dissemination of vital information. Journalists covering the crisis were arrested and targeted with violence, harassment, and intimidation. Most SADC governments exerted control over content, revoked news outlets' registrations, suspended printing of newspapers, denied press credentials, and limited independent questioning at press conferences.

<sup>75</sup> See: Cooper, L & Aitchison, G (2020). The Dangers Ahead. Authoritarianism and Democracy. Available at [http://eprints.lse.ac.uk/105103/4/dangers\\_ahead.pdf](http://eprints.lse.ac.uk/105103/4/dangers_ahead.pdf)

<sup>76</sup> <https://reports.unocha.org/en/country/southern-eastern-africa/#cf-5o8or7SzuZL6VP6E5JSHPL>

<sup>77</sup> See: <https://www.csis.org/analysis/implications-tanzanias-bungled-response-covid-19>

<sup>78</sup> See: <https://reports.unocha.org/en/country/southern-eastern-africa/#cf-5o8or7SzuZL6VP6E5JSHPL>

<sup>79</sup> <https://www.stanfordlawreview.org/online/legal-lessons-from-a-very-fast-problem-covid-19/>

<sup>80</sup> <https://zimbabwe.misa.org/2020/04/24/high-court-orders-information-access-on-covid-19/>

<sup>81</sup> See: <https://www.thesouthafrican.com/news/collins-khosa-court-orders-suspension-of-sandf-members/>

<sup>82</sup> Ibid note 88

In Madagascar, a prominent journalist was detained for a month after criticizing President Andry Rajoelina's handling of the coronavirus pandemic and was charged with 'inciting hatred' after running a blog that notably said 'Covid-19, lockdown, Andry Rajoelina, killer.'<sup>83</sup>

Democracy can be suppressed not only in the postponement and cancellation of elections and referenda, but in censorship and the stifling of a free media. In Tanzania the government was swift to prosecute against anyone deemed to be spreading misinformation about the virus, with only the Ministry of Health, the prime minister and the president authorised to share details. Journalists were arrested with harsh sanctions imposed on media coverage.<sup>84</sup> In Eswatini, police detained Eugene Dube, a journalist and editor of Swati Newsweek's online publication, Swaziland News, over an article he wrote criticising the public health strategy of King Mswati III during the Covid-19 pandemic and was charged with treason.<sup>85</sup> In Zimbabwe, the Media Institute for Southern Africa (MISA) observed: "Since the beginning of the implementation of the Covid-19 regulations on 30 March 2020,... at least 30 media violations, including the arrest of journalist Hopewell Chin'ono and the raid on the home of ZimLive editor, Mduduzi Mathuthu"<sup>86</sup> have occurred. The takeaway should be that the pandemic context is that there is no exception to the rule that the cure for bad information is more information. Free speech protections are a key mechanism to promulgate facts and mitigate misinformation in dispersing knowledge that will not only avert the impact of the crisis but will also promote democratic participation of the population in addressing the effects of the pandemic.

## 6. THE IMPENDING 'DEMOCRATIC CATASTROPHE'

The adoption of excessive and disproportionate emergency measures during the lockdown period was unnecessary as they infringed and still pose a grave danger to human rights and civil liberties in the SADC region. These measures were clearly excessive and disproportionate, and there is a grave danger for these emergency measures to persist for future repurposing. It has been commented that desperate measures have a way of enduring beyond the life of the situations that give rise to them.<sup>87</sup> This *ratchet effect* is well documented in policy making, that in times of crisis emergency powers originally described as temporary, have been made permanent. The *ratchet effect* further identifies a putative tendency of emergency policies to "become entrenched over time and thus normalized and made routine .... The maintenance of emergency powers may be accompanied by expansion over time of the scope of such powers."<sup>88</sup> Given the scale of the coercive power seized by SADC states during Covid-19, it shall be difficult if not complicated for some of the coercive policies to be undone after the outbreak abates.<sup>89</sup>

There is evidence that some SADC governments sought to suppress democracy during—and perhaps beyond—the pandemic while using the pandemic as a catalyst for their authoritarianist agenda. The unwarranted authoritarian erosion of civil liberties in the name of protecting public health is counter-productive and self-defeating, as it could trigger an overall decline in public health in the long run and must not be added to the enormous social and economic costs already incurred. The insistence on a centralized control of the Covid-19 narrative, and the adoption of a disciplinarian approach to enforcement of viral control measures, are themselves generators of fear and increased reliance on, and deference toward, the emphatic authority of the state.<sup>90</sup>

The pre-existing social policies enacted specifically to respond to the Covid-19 challenge will shape the extent of compliance with public health measures as well as life after the pandemic. A regression and/or stagnation of democracy has been reflected and include an increasing emphasis on elite/expert governance rather than popular participatory democracy; a growing

<sup>83</sup> <https://www.voanews.com/africa/journalist-critical-madagascar-president-released>

<sup>84</sup> <https://www.chathamhouse.org/2020/05/tanzania-evades-covid-19-lockdown-restrictions-persist>

<sup>85</sup> See <https://ipi.media/alerts/eswatini-journalist-arrested-on-charges-of-writing-ill-about-the-king/>

<sup>86</sup> MISA-Zimbabwe. 2020. Commission raises alarm over Zimbabwe's human rights situations. Available at: <https://zimbabwe.misa.org/2020/10/05/commission-raises-alarm-on-zimbabwes-human-rights-situation/>

<sup>87</sup> See Finn, J (1991) *Constitutions In Crisis: Political Violence And The Rule Of Law*. Oxford University Press

<sup>88</sup> Posner, E, A., and Vermeule, A, (2003). Accommodating Emergencies, *Stanford Law Review* 56 (2003): 3:605-44.

<sup>89</sup> [https://www.researchgate.net/profile/Matthew\\_Kavanagh2/publication/341725495\\_Democracy\\_Capacity\\_and\\_Coercion\\_in\\_Pandemic\\_Response-COVID\\_19\\_in\\_Comparative\\_Political\\_Perspective/links/5f8b3c2e458515b7cf88116e/Democracy-Capacity-and-Coercion-in-Pandemic-Response-COVID-19-in-Comparative-Political-Perspective.pdf](https://www.researchgate.net/profile/Matthew_Kavanagh2/publication/341725495_Democracy_Capacity_and_Coercion_in_Pandemic_Response-COVID_19_in_Comparative_Political_Perspective/links/5f8b3c2e458515b7cf88116e/Democracy-Capacity-and-Coercion-in-Pandemic-Response-COVID-19-in-Comparative-Political-Perspective.pdf)

<sup>90</sup> <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7543595/#fn187>

influence of unelected, unaccountable institutions and expert bodies; the removal of substantive issues of national importance from the political arena to be decided by politicians, experts or supranational bodies behind closed doors; a widening gap between political elites and parties on the one hand and national electorates on the other; and a decline in civil liberties, including media freedom and freedom of speech<sup>91</sup>

## 7. RECOMMENDATIONS

The above discussion on the shrinking democratic space in SADC, raised broader questions about the exercise of power, coercion, and control by the state as threats, the questions that remain are what the short term to long term consequences of the Covid-19 lockdown regulations. It is common cause that policy choices have long-run consequences (So what might come from these policies? The challenge for democrats today is to contest the drive towards a permanent centralisation of state power under the cover of Covid-19 and advocate for reforms that would redistribute power to citizen. Moreover, though such measures are enacted in the context of the Covid-19 pandemic, they are likely to be retained for or resurrected in future public emergencies. Henceforth there is need for action or programmes to counter the ever expanding shrinking democratic space, and what follows hereunder are the recommendations:

- Covid-19 containment measures, like all public health emergency interventions, must always be based on ongoing scientific risk assessments, a commitment on the part of the state to provide its citizens with tolerably safe environments, rigorous enforcement of due process and procedural justice, and implementation of emergency measures that are the least restrictive to constitutionally enshrined rights and liberties.<sup>92</sup> Therefore, it is important for Civil Society organisations to constantly monitor and review the various tools and the extent to which democratic space is shrinking from a local, to national and regional level.
- It is also important for CSOs to broaden their understanding at a local level the impact of the implementation of the lockdown regulations and how they diminished democratic space at that local level. Understanding the impact of the pandemic at a local level will assist in understanding how the lock down regulations affected marginalised communities whose interests are often neglected in policy development and implementation. Therefore, there is need to develop and adopt a clear framework and tools for identifying the shrinking democratic space in SADC that takes into consideration the non-linear and gradual nature of closing space and its effect on the political system at a local and community level.
- CSOs may conduct impact assessments in of the lock down regulations. While this could seemingly add another step in an already long process, of monitoring the shrinking democratic space, it should be applied to ensure that no unintended consequences emerge at a later stage in the process.
- In addition, there is need for CSOs to develop a comprehensive strategy on how they shall respond to the shrinking democratic space so as to ensure that the emergency lock down measures are not repurposed or entrenched after the pandemic has abated.
- Raise awareness of shrinking democratic space through public campaigns and strategic communication measures. It is important that the public is aware of the tolls that are being used to shrink democratic space and their participation in the democratic process, so as to ensure that CSOs receive public support when they engage authorities and governments.
- CSOs should establish a regular, meaningful, inclusive and transparent structured consultation process with government, based on clear guidelines and principles so as to ensure that are consulted and their input taken into account in relevant policy debates. A

<sup>91</sup> Democracy Index 2019. A year of democratic setbacks and popular protest <http://www.eiu.com/Handlers/WhitepaperHandler.ashx?fi=Democracy-Index-2019.pdf&mode=wp&campaignid=democracyindex2019>

<sup>92</sup> L.O. Gostin and L.F. Wiley, Public Health Law: Power, Duty, Restraint (3rd edition) (Oakland: University of California Press 2016) 432-433.

strategy and steps should be taken to ensure there is continuous dialogue between CSOs and government.

- There is need to build capacity in CSOs so as to ensure they adequate skills and competences in terms of monitoring and identifying tools used in shrinking democratic space. There would be need for the provision of providing regular training programmes on shrinking democratic space and encourage knowledge transfer and information related to their various areas of operations.

## 8. CONCLUSION

From the foregoing discussion there is evidence that a link exists between the prevalence of infectious diseases in the local ecology and an authoritarian system of governance which subsequently leads to the shrinking of democratic space.<sup>93</sup> The response to the Covid-19 pandemic by SADC governments in name of public health intervention was characterized by diverse combinations of governmental and administrative overreach, the adoption of excessive and disproportionate emergency measures, overrode of civil liberties and fundamental freedoms, failed to engage in properly deliberative and transparent decision-making, it highly centralized decision-making, and even the suspension of effective democratic control. In a nutshell, the pandemic served as a powerful justification for authoritarianist tendencies—the process by which state authorities ‘slowly undermine institutional constraints on their rule.’<sup>94</sup> Covid-19 can be situated as part of a package of ‘organic’, i.e. genuine, threats to human security that are prone to instrumentalisation by forces hostile to the protection of human rights. The outbreak exacerbated pre-existing social and economic inequalities as well heightened the further closing of democratic space that was already shrinking in Southern Africa. Disinformation flourished over scientific uncertainty regarding the virus and its treatments. It can be surmised that the approach of SADC to Covid-19 was as Watts argues that the ‘responses to .... were a heterogenous hodgepodge which left most ‘lepers’ wandering about at will’ and used as a cultural construct for social formed by the hegemonic few<sup>95</sup> This, in turn, will reinforce authoritarianism, as is currently the case amid the Covid-19 pandemic, during which incumbent rulers weaken institutions of accountability, assault press freedoms, and weaponize technologies in ways that the global community cannot afford to ignore.

<sup>93</sup> The Australian, Coronavirus: China’s Extreme Measures to Tackle COVID-19 (Mar. 24, 2020) (<https://www.theaustralian.com.au/inquirer/coronavirus-chinas-extreme-measures-to-tackle-covid19/news-story/a3dd72aceb7a4f78af0d245ac18f3fc2>).

<sup>94</sup> <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7543595/>

<sup>95</sup> Watts, S (1998) Epidemics and History: Disease, Power and Imperialism. New Haven, Yale University Press