

Impact of COVID-19 on Women's Customary Land Rights and Livelihoods in Southern Africa

DECEMBER 2020



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DECEMBER 2020

Advancing Rights in Southern Africa (ARISA)

Front Cover: "How fertile the land"

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List of Abbreviations

- ABA – American Bar Association
- ACHPR – African Charter on Human and Peoples’ Rights
- ARISA – Advancing Rights in Southern Africa
- CEDAW – Convention on the Elimination of all forms of Discrimination Against Women
- COVID-19 – Coronavirus Disease 2019
- CSOs – Civil Society Organisations
- DA – Democratic Alliance
- FAO – Food and Agricultural Organization (of the United Nations)
- FGDs – Focus Group Discussions
- GCB – General Council of the Bar
- GFW – Global Fund for Women
- HRC – Human Rights Committee
- HRDs – Human Rights Defenders
- ICCPR – International Covenant on Civil and Political Rights
- ICESCR – International Covenant on Economic Social and Cultural Rights
- IFAD – International Fund for Agricultural Development
- LSSA – Law Society of South Africa
- NCCC – National Coronavirus Command Council
- NGOs – Non-Governmental Organisations
- OHCHR – Office of the High Commissioner for Human Rights
- SADC – Southern African Development Community
- WFP – World Food Programme
- WHO – World Health Organization
- WLSA – Women and Law in Southern Africa Research and Education Trust
- UN – United Nations
- USA – United States of America
- VAW – Violence Against Women
- ZHRC – Zimbabwe Human Rights Commission
- ZLHR – Zimbabwe Lawyers for Human Rights
- ZRP – Zimbabwe Republic Police

1. Background

With support from USAID, the PROGRESS Consortium is currently implementing the ARISA Program to improve the recognition, awareness, and enforcement of human rights in the region, including protection of the region's most vulnerable and marginalized groups.

Based in Johannesburg, this cutting-edge five-year human rights program is led by Freedom House in collaboration with its partners—American Bar Association Rule of Law Initiative (ABA/ABAROLI), Internews, and Pact—and is working in select SADC countries to:

- Improve the enabling environment for the promotion and protection of human rights;
- Strengthen the capacity of regional and local civil society actors to seek redress of rights violations;
- Increase public demand for improved rule of law and human rights protection; and
- Foster South-to-South communities of practice for knowledge and resource sharing to advance efforts to address human rights violations.

The Program focuses on four main thematic human rights areas, namely; media freedoms and digital rights, women's customary land rights, the rights of indigenous peoples and the protection of the rights of human rights defenders. This report was produced by the ABA under the ARISA Program's women's customary land rights thematic area. The main objective of the report is to assess the Southern African Development Community (SADC) and regional governments' responses to COVID-19 and the implications of those responses on women's customary land rights and their rights to a livelihood.

The report provides recommendations on how regional governments can balance the public health concerns wrought by COVID-19 and the need to protect citizens' rights, including the rights of the most vulnerable populations in the region. It also provides recommendations to other actors, including civil society organisations on actions that they can take to ensure the protection, promotion and enforcement of women's customary land rights and their livelihoods in the context of COVID-19. The ARISA Program considers women to be amongst the most vulnerable populations in Southern Africa. Realizing the reliance by the majority of the region's women on customary land for their livelihoods, it became imperative for the Program to assess how COVID-19 and government responses to the pandemic have impacted this important constituency for the Program and provide recommendations for redress of any violations suffered as a result.

2. Introduction

On 11 March 2020 the World Health Organization (WHO) declared the COVID-19 virus a global pandemic. By that time, considerable effects had already been felt in China and subsequently in Europe and the United States of America (USA). In the SADC region, South Africa registered its first COVID-19 case on 5 March 2020 with various other Southern African Development Community (SADC) countries subsequently registering cases. However, even before the pandemic had reached the shores of Southern Africa, indications were that the virus would disrupt the lives and livelihoods of citizens and that human rights would also suffer as a consequence. Indeed, as the virus wreaked havoc in Southern Africa, regional governments came up with regulations and interventions that sought to protect citizens from infection,

manage the health of those that got infected and address the wider socio-economic and political fallout from the pandemic and measures taken by governments. Some of these regulations and interventions were predictably against the human rights norms and standards as provided for in regional and international human rights principles and national constitutions. Human rights defenders, lawyers, activists, political parties and other citizens raised awareness on the human rights impact of some of the interventions and legislative provisions that were employed by the different governments in the region, with some offering legal assistance to affected citizens.¹

This paper seeks to contribute towards available knowledge on the implications of the COVID-19 pandemic and attendant regulations and interventions on human rights, with a focus on the rights of women in Southern Africa. The paper focuses specifically on the land rights of women who derive their livelihoods from customarily held land, normally at a subsistence level. These women use customary land to produce food for family consumption, and sell any surplus produce in both urban and rural food markets to raise money for everyday necessities like school fees, clothing, health care needs and additional food and other requirements that they cannot obtain directly from their land.² Women constitute 60% of small farmers and provide 70% of the agricultural workforce in the region, making them the dominant gender that derives livelihoods from such land.³ It is also trite that the dominant land tenure system in the region's rural areas is customary tenure, and therefore these women depend on customary land for their agricultural activities.⁴ However, the precariousness of their land rights and access regimes coupled with the low productivity on the farms and the insecure markets that they depend on to sell any excess produce all worked together to negatively impact their livelihoods and those of their families in the face of COVID-19.

In addition to the impact on their livelihoods, rural women have also faced direct threats of infection with COVID-19. Their remote rural location often makes it difficult for them to access accurate and reliable information⁵ on the pandemic as well as resources required for protection such as clean water, soap for hand washing⁶ and healthcare. They have also been affected by lack of access to justice, especially in situations where their land access, control and occupation rights were threatened as a result of competition for the resource in the wake of the pandemic.⁷ The disproportionate impact of COVID-19 on women compared to men in this sub-group is simply because they form the majority of rural residents who depend on customary land for livelihoods in Southern Africa.

¹ In South Africa, a consortium of legal assistance and legal aid organisations composed of Lawyers for Human Rights, Centre for Applied Legal Studies, Centre for Child Law, Section27, Centre for Environmental Rights, Corruption Watch, Equal Education Law Centre, Legal Resources Centre, Ndifuna Ukwazi, ProBono.Org, Women's Legal Assistance Centre and the Socio-Economic Rights Institute came together to provide free legal services to citizens affected by rights violations during the pandemic.

² Example include grocery items such as edible oils, sugar, salt and personal hygiene requirements

³ Mutangadura G (2004), 'Women and Land Tenure Rights in Southern Africa: A Human Rights Based Approach' available at:

https://www.researchgate.net/publication/228803075_Women_and_Land_Tenure_Rights_in_Southern_Africa_A_human_rights-based_approach (last accessed 2 November 2020)

⁴ Quansah E. S. T, (undated), 'Land Tenure System: Women's Access to

Land in a Cosmopolitan Context' available at: <file:///C:/Users/mmakonese/Downloads/84683-Article%20Text-206503-1-10-20130121.pdf> (last accessed 5 November 2020)

⁵ IFAD (2020) 'Making sure rural communities won't be left behind in the response to COVID-19' available at: <https://www.ifad.org/en/web/latest/news-detail/asset/41851548> (last accessed 22 May 2020)

⁶ Vincent Lali et al (2020) 'South Africa: COVID-19 - Washing Hands Is Not Easy When You Have No Running Water' available at: <https://allafrica.com/stories/202003120942.html> (last accessed 22 May 2020)

⁷ As will be detailed below, COVID-19 impacted other sources of livelihood including formal and informal employment in urban areas leading to competition over land.

3. Methodology

The report was compiled using various methodologies, including literature review, focus group discussions and key informant interviews. The literature review focused on analyzing international human rights frameworks and national constitutional provisions and how these interacted with the various regulations that were made to address the COVID-19 pandemic from a human rights based perspective. Other texts providing information on women's customary land rights in relation to COVID-19 and its related challenges and government responses to the pandemic were also reviewed.

The focus group discussions and key informant interviews were held online using platforms such as Zoom, Skype and WhatsApp due to the pandemic, which made it difficult for the ABA to have face to face meetings and interviews. The objective of the focus group discussions and key informant interviews was to assess women's lived realities and experiences in relation to customary land and livelihoods from a human rights perspective as they interacted with the various regulations that were put in place by governments to deal with the pandemic.

The inability of the ABA team to have face to face meetings with interviewees was a limitation in the compilation of the report, as some nuances may have not been captured. Another challenge was that the COVID-19 situation was and continues (at the time of finalising the report) to be very fluid and therefore many adjustments had to be made before the report could be finalized. The fluidity of the pandemic and the attendant responses by governments and non-state actors alike remains a challenge. As such, even as the report was being finalized, it was clear that there were many emerging issues that could not be captured in the final report.

As part of the human rights monitoring and partner engagement leading to the compilation of this report, the ABA undertook various initiatives to address human rights issues as they emerged and as they were reported by partners. The intervening initiatives included holding webinars to discuss the impact of COVID-19 on the enjoyment of the program's thematic human rights, writing opinion pieces in various media and training of partners on human rights programming in the context of the pandemic. The ABA also undertook trial monitoring and observation where citizens were criminally charged in terms of the COVID-19 regulations, supported litigation to protect citizens' rights in the context of the pandemic and made a submission to the United Nations Special Rapporteur on Violence Against Women (VAW) on the Impact of COVID-19 on violence against rural women in Southern Africa.

The specific countries that are covered by this report are Botswana, Namibia, eSwatini, Lesotho, Mozambique, South Africa and Zimbabwe. These countries presented an opportunity to broadly capture the impact of COVID-19 on the program's thematic rights in the region. However, due to the methodological limitations, the extent of coverage of the countries in the report is not uniform as this was informed by the available information for each country from the desk research, the key informant interviews and the FGDs.

4. COVID-19 and International Human Rights Frameworks

This report uses the human rights based approach as an analytical framework. It is therefore informed by general international human rights law as espoused by various international bodies as well as COVID-19 pandemic specific human rights considerations. One of the major

concerns to emerge regarding COVID-19 regulations and their enforcement was the impact on fundamental human rights and freedoms as stipulated in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and at the regional level, the African Charter on Human and People's Rights.⁸ This is juxtaposed against international human rights frameworks that seek to protect women's rights generally and women's land rights in particular.⁹ It is also informed by the United Nations (UN) and World Health Organisation (WHO) guidelines specific to COVID-19 and human rights.

The United Nations Office of the High Commissioner for Human Rights (OHCHR) noted that "respect for human rights across the spectrum, including economic, social, cultural, and civil and political rights, will be fundamental to the success of the public health response and recovery from the pandemic".¹⁰ This realization highlighted the indivisibility and interdependence of human rights and the fact that a violation of one right often leads to a violation or many other rights.

The limitations on the right to freedom of movement was the most used measure by States to control infections. The right to freedom of movement is central in facilitating the enjoyment of many other rights and therefore restrictions on its enjoyment impacts many other rights as well.

Of particular concern was the impact of the lockdowns and restrictions on movement to women's rights to a livelihood as derived from customary land and their rights to access justice in relation to these rights during the pandemic. The right to a livelihood is linked to women's customary land rights in that access to and control over customary land is ultimately intended to enable women to earn a livelihood and derive other rights such as the right to food, healthcare and education for their children, using proceeds from their customary land-based agricultural activities. The United Nations recognized the impact of the COVID-19 pandemic on livelihoods early on in the outbreak and noted that "extensive lockdowns, adopted to slow transmission of the virus, restrict by necessity freedom of movement and, in the process, freedom to enjoy many other human rights. Such measures can inadvertently affect people's livelihoods".¹¹ The United Nations noted further that "Observing the crisis and its impact through a human rights lens puts a focus on how it is affecting people on the ground, particularly the most vulnerable among us, and what can be done about it now, and in the long term".¹²

The WHO in its guidelines on the pandemic and human rights emphasised that "all countries must strike a fine balance between protecting health, minimizing economic and social disruption, and respecting human rights".¹³ The WHO underscored the importance of

⁸ The United Nations Office of the High Commissioner for Human Rights (OHCHR) (2020), 'COVID-19 Guidance' available at: <https://www.ohchr.org/EN/NewsEvents/Pages/COVID19Guidance.aspx?fbclid> (last accessed 4 November 2020)

⁹ The CEDAW, Maputo Protocol and the SADC Protocol on Gender and Development recognise the need to protect women's rights and gender equality and the need to protect women's land rights.

¹⁰ Ibid

¹¹ United Nations (2020), 'COVID-19 and Human Rights: We are all in this together' available at: https://www.un.org/victimsofterrorism/sites/www.un.org.victimsofterrorism/files/un_-_human_rights_and_covid_april_2020.pdf (last accessed 2 November 2020)

¹² Ibid

¹³ World Health Organisation (2020), 'Addressing Human Rights as Key to the COVID-19 Response' available at: <file:///C:/Users/mmakonese/Downloads/WHO-2019-nCoV-SRH-Rights-2020.1-eng.pdf> (last accessed 25 November 2020)

integrating human rights in the formulation and implementation of responses in order to ensure the success and effectiveness of those responses.¹⁴ It is in light of these guidelines and existing human rights frameworks that governments in Southern were expected to formulate and implement their responses to the pandemic.

Most Southern African countries are party to regional and international obligations that require them to ensure adequate protection and promotion of women's rights as well gender equality and non-discrimination. At the SADC regional level, both the SADC Treaty and the SADC Protocol on Gender and Development espouse these tenets. At the African level, SADC countries have ratified the African Charter on Human and Peoples' Rights (ACHPR) and its Protocol on the Rights of Women in Africa (Maputo Protocol). SADC States have similarly signed and ratified international treaties such as the United Nations International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) which seek to ensure that women are treated on the basis of equality with men and can have access to, control over and ownership of productive resources such as land. As such, national laws are required to conform to these international obligations, including laws that were/are made in the context of COVID-19. Even in situations of pandemics and disasters, international human rights principles require that human rights should be protected and promoted and any limitations should be in line with international law and constitutional standards.

The Saracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights provide "authoritative guidance on government responses that restrict human rights for reasons of public health or national emergency".¹⁵ These principles provide that any limitations on the enjoyment of human rights must be lawful, necessary and proportionate in relation to the desired end and must consider disproportionate impact on specific and marginalized groups. These groups include women and their livelihood sources such as customary land. Regional constitutions have generally embraced these provisions, and provide for Bills of Rights, from which derogation can only take place in exceptional circumstances or never at all, depending on the rights at stake.

5. Regional Overview of COVID-19 Legislative Responses

At the beginning of the COVID-19 outbreak, many of the countries in Southern Africa invoked their emergency, disaster management or public health laws to manage the outbreak. The legislative interventions had different purposes. These included the need to slow down the spread of COVID-19, to channel resources towards fighting the disease and to address the consequent socio-economic impacts of the public health emergency. In Southern Africa, the governments of Botswana, the Democratic Republic of Congo, Lesotho, eSwatini, Namibia, Mozambique, Madagascar, Seychelles and Angola declared "states of emergency". In Zimbabwe, South Africa and Malawi, governments declared "states of disaster". Zambia used its Public Health Act to pass regulations on the management of COVID-19 and Tanzania issued an order banning most public gatherings, including schools, political rallies and sporting

¹⁴ Ibid

¹⁵ Olayede O and Abiona A (2020), 'The Derogation of International Human Rights in a Pandemic' available at: [The Derogation Of International Human Rights in a Pandemic \(lawyard.ng\)](https://www.lawyard.ng) (last accessed 26 November 2020)

events, although it never ordered a lockdown. Mauritius issued a General Notice in Terms of the Public Health Act. In the Comoros, the President initially announced measures to end public gatherings and eventually announced a presidential decree a week later. The different declarations were changed over time, as the different countries followed the spread of the disease and made adjustments to respond accordingly.

Significantly, a majority of the countries declared either a “state of emergency” or a “state of disaster”, leading to the lockdown and stay at home measures that limited the rights to freedom of movement. A general observation regarding these declarations was that they gave leeway to Governments and other quasi-governments institutions to make regulations (statutory instruments/subsidiary legislation/secondary laws) and issue orders or directives with little or no Parliamentary oversight.¹⁶ Parliaments through the Acts/Statutes that they pass can delegate their law-making functions to the different ministers or quasi-government entities in order for them to elaborate on certain issues within the confines of the law. In some of the jurisdictions in the region, under normal circumstances, such regulatory functions outside Parliament must still be submitted to Parliament or a Parliamentary Committee to ensure that any regulations that are made are in line with the provisions of both the enabling Act and the Constitution of the country.¹⁷

However in light of the COVID-19 situation “[r]egulations, [were] made behind closed doors with no consultations, [yet they] were equivalent to legislation that is binding”¹⁸. This included creating criminal offences with associated prison sentences or fines for individuals found guilty of breaking the regulations. After the initial declarations were made by the different countries in the region, there was a flurry of regulations, directives and orders made by the different ministers and other state entities depending on the issues at hand. Due to the fluid nature of the COVID-19 pandemic, new regulations were made, or existing ones were amended in quick succession. In South Africa, one commentator noted that, “even lawyers were struggling to keep up with it all”¹⁹ whilst in Zimbabwe, a legal think tank noted that the “regulations [were] not easy to understand as they [had] been amended quite extensively in the short time they [had] been in operation”.²⁰ However, because of the emergency or disaster situations that the countries were struggling with, the regulations were not subjected to the ordinary review and oversight by Parliaments, nor were citizens involved in their formulation.

Questions were therefore raised about the constitutionality of some of the regulations that were passed in the region. In South Africa, the opposition Democratic Alliance (DA) sued the government²¹ and challenged the constitutionality of the Disaster Management Act in relation to the many regulations, orders and directives that government had given during the COVID-

¹⁶ Griglio E (2020), ‘Parliamentary oversight under the Covid-19 emergency: striving against executive dominance’ in *The Theory and Practice of Legislation*, available at: <https://www.tandfonline.com/action/showCitFormats?doi=10.1080%2F20508840.2020.1789935> (last accessed 26 November 2020).

¹⁷ See for example sec 152 (3) (c) of the Constitution of Zimbabwe and sec 101 (4) (a) and (b) of the Constitution of South Africa,

¹⁸ Marriane Merten (2020) ‘Lockdown regulations, a case of state power by ministerial directive’ available at: <https://www.dailymaverick.co.za/article/2020-04-08-lockdown-regulations-a-case-of-state-power-by-ministerial-directive/> (accessed 5 May 2020)

¹⁹ Vuyani Ngalawa (2020) ‘Do COVID-19 regulations pass the constitutionality test in SA’ available at: <https://www.iol.co.za/sundayindependent/analysis/do-COVID-19-regulations-pass-the-constitutionality-test-in-sa-47474336> (accessed 4 May 2020)

²⁰ VERITAS (2020) Bill Watch 23/2020

²¹ The party filed its application with the Constitutional Court on the 15th of May 2020

19 pandemic. The opposition party argued that ‘the National Coronavirus Command Council (NCCC) [was] able to take ‘irrational’ decisions because it [was] acting without any checks and balances. There was no parliamentary oversight, which [meant] the executive wrote the laws without any debate’.²² After this initial court challenge, many other individuals and civil society organisations in the country followed suit and sued or threatened to sue government over the coronavirus regulations and their implementation, citing violations of human rights.²³ In response to one such challenge, the High Court of South Africa sitting in Pretoria declared the regulations that were made by government to implement stage 4 and stage 3 of the national lockdown invalid and unconstitutional,²⁴ thereby throwing the government’s COVID-19 regulatory and management framework into disarray. The Government of South Africa however applied for leave to appeal the judgment and this application was granted in respect of only one of the four grounds; namely that the court had declared the regulations unlawful in their entirety without considering the regulations individually.²⁵

Under normal circumstances, law-making is not the sole preserve of a select few (Parliament, Government or quasi-government entities) but a collective process that brings citizens on board. In all of the countries in the region, laws are subjected to scrutiny and input by citizens through public consultations and public comment processes. In General Comment Number 25, the Human Rights Committee (HRC) affirmed the right of citizens to participate in public affairs as provided for in Article 25 of the International Covenant on Civil and Political Rights (ICCPR).²⁶ Such participation was defined to include participation in law-making processes, requiring law makers to consult and get input on laws from members of the public, before such laws are passed by Parliament.²⁷ The constitutions in the region also provide for such consultations in the law-making process, thereby giving citizens an opportunity to participate in their countries’ governance and on issues that impact or affect them.²⁸ The absence of or limited public participation in the making of COVID-19 regulations therefore removed this important public oversight layer that would otherwise be available during normal law-making processes. Given that many of the regulations are already in place, it calls for increased public scrutiny of these regulations to assess whether they are in consonance with the dictates of constitutionalism and human rights, and where they are not, to ensure that they are rectified. Civil Society Organisations in particular must lead citizens in undertaking the examination of such laws for constitutionality and human rights observance.

²² Law Society of South Africa and Juta (2020), Legal Brief: LSSA Weekly, Issue 412 (15 May 2020)

²³ Organisation such as AfriForum, the Institute of Race Relations, the Hellen Suzman Foundation and the Solidarity Movement, in addition to private citizen groups either approached the courts or threatened to approach the courts to challenge the COVID-19 regulations.

²⁴ I. De Beer and Others v Minister of Cooperative Governance and Traditional Affairs (21542/2020) [2020] ZAGPPHC 184 (2 June 2020)

²⁵ ENSafrica (2020), ‘Update: Leave to appeal granted on narrow grounds in relation to the Pretoria High Court judgment which declared the level 3 and 4 regulations unconstitutional’ available at: <https://www.lexology.com/library/detail.aspx?g=2841afcc-6013-42da-8ab6-f53d34454305> (last accessed 2 November 2020)

²⁶ UN Human Rights Committee (1996), ‘UN Committee on Human Rights, General Comment 25, "The Right to Participate in Public Affairs, Voting Rights and the Right to Equal Access to Public Service," 1510th meeting (fiftyseventh session). Available at: <https://www.osce.org/files/f/documents/4/a/19154.pdf> (last accessed 4 November 2020)

²⁷ Ibid

²⁸ For example, Article 17 (1) of the Constitution of Namibia, Sec 141 (b) of the Constitution of Zimbabwe, sec 195 (1) (e) of the Constitution of South Africa amongst others.

Of particular concern is that lack of public participation in the making of the regulations resulted in failure to take into cognizance the reality of the citizens on the ground. The lockdown and stay at home measures in particular failed to appreciate the informal nature of Southern African economies and citizens' livelihoods, and how lockdowns would make it impossible for citizens to derive such livelihoods. Whilst the restrictions on freedom of movement are normally associated with civil and political rights, in the context of COVID-19, the impacts extended to failure by women farmers to move in order to sell their agricultural produce and derive a livelihood. A participatory approach in the formulation of these regulations would have helped in addressing some of the challenges by ensuring identification of potential rights violations and devising measures to mitigate the impact. In Malawi, the High Court suspended the lockdown measures after agreeing that they failed to put systems in place to cushion the poor and their livelihoods during the proposed lockdown.²⁹ The fact that citizens had to approach the courts for relief following the imposition of the lockdown regulations was an indication of the failure of the regulations to protect citizens' rights.

6. Impact of COVID-19 Regulations on Select Rights

This section will look at the impact of COVID-19 regulations on select women's customary land and livelihoods rights. This is in light of the realization that access to and control over customary land is linked to the livelihoods of many of Southern Africa's small scale rural farmers, the majority of whom are women. They form the mainstay of food production and food security in many of the countries in the region. These women farmers also live in remote areas and therefore often face challenges in marketing their produce, even under "normal" circumstances. Given that farming is a supply-chain based sector, uninterrupted connectedness through efficient transport systems between the farm and the market is important. However, because the majority of these small-scale farmers are women working on customary land,³⁰ they work on land that they do not own or control and are therefore disadvantaged even outside of pandemics like COVID-19. The pandemic therefore aggravated such challenges and violations.

The Global Fund for Women (GFW) estimates that women produce 80% of the food in Africa but "are excluded from conversations that determine agricultural policies, while discriminatory laws and practices deprive them of their land, their rights, and their livelihoods".³¹ The disadvantages that are faced by rural women farmers including those who work on small scale rural farms that are held in terms of customary tenure have been laid bare by the responses of Southern African governments to COVID-19. The limited participation and the content of the legislation did not capture the lived realities of these women, amongst other vulnerable population. The result was that governments came up with responses that could not facilitate realistic and locally grounded interventions, whilst enforcement mechanisms by state security, such as the police and the army impacted their rights to a livelihood

²⁹ *S v. President of Malawi and Others; Ex Parte: Kathumba and Others* (Judicial Review Cause No. 22 of 2020) [2020] MWHC 7 (17 Apr. 2020).

³⁰ UN Women estimates that 80% of women in Africa live in rural areas, with 60% of them dependent on agriculture for their livelihoods (see <https://africa.unwomen.org/en/news-and-events/stories/2018/03/empower-women-and-girls-in-rural-areas>)

³¹ Global Fund for Women (undated). Keeping food on the table in Sub-Saharan Africa. Available at: <https://www.globalfundforwomen.org/keeping-food-on-the-table-in-sub-saharan-africa/>. Last accessed 21 April 2020

6.1 Right to Access to Information and Right to Participation

Access to information³² and participation in decision-making³³ are key tenets of any democratic society. Access to information facilitates effective public participation in decision-making, with public participation in turn ensuring that government decisions and programs are informed by the needs of the citizens and their lived realities. However, as detailed above, due to the emergency or disaster characterization of the COVID-19 pandemic, as well as its fluid nature, governments made regulations, orders and decisions to respond to a situation in flux. As a result, many of the regulations were made without public participation and were enforced before members of the public were fully aware of their existence or contents or before they could put in place the means and mechanisms to comply.

In Zimbabwe it was noted that members of the public were not aware of the existence of the regulations, and as a result, nearly 20,000 people had been arrested for violating the regulations by the beginning of May 2020³⁴ and by 29 July 2020, the Zimbabwe Republic Police (ZRP) reported that they had arrested 120 023 people for violating the regulations.³⁵ In eSwatini,³⁶ Botswana,³⁷ Zimbabwe,³⁸ and South Africa³⁹ governments relaxed the initial lockdowns and regulations, only to reinstate them, either fully or partially as the number of infections increased. The result therefore was that citizens were not always aware of or did not fully grasp the import of the changes in legislation or the orders as they were promulgated and changed. This was particularly challenging for the rural population in the different countries and rural women with limited access to modern communication tools such the internet/data, smart phones and even the radio and television. Yet, in times of crisis, it is the most vulnerable that are impacted the most.⁴⁰ Rural women farmers count amongst some of the most vulnerable that have been impacted by lack of information in relation to both their farming activities and their health in response to COVID-19. For example, in Zimbabwe, the Human Rights Commission (ZHRC) noted this challenge and urged the Government of Zimbabwe and the Zimbabwe Republic Police...to communicate the regulations more clearly.⁴¹ The Commission noted further that “some fresh produce farmers [had] been inconvenienced and suffered losses due to lack of clarity on how and where they [were] expected to operate from.”⁴²

Current and future responses at national and regional level in Southern Africa must therefore target the information needs of such vulnerable populations and in particular ensure that the

³² Article 19 (2) of the International Covenant on Civil and Political Rights (ICCPR)

³³ Article 21 (1) of the Universal Declaration of Human Rights

³⁴ VERITAS (2020), Bill Watch 23/2020

³⁵ http://www.zrp.gov.zw/index.php?option=com_content&view=category&layout=blog&id=45&Itemid=743

³⁶ DispatchLive (2020) ‘Eswatini reinstates lockdown rules as infections rise’ available at: <https://www.dispatchlive.co.za/news/africa/2020-04-22-eswatini-reinstates-lockdown-rules-as-infections-rise/> (accessed 5 May 2020)

³⁷ Botswana’s initial lockdown ended on 15 June 2020 but at midnight on 30 July 2020, a lockdown of the Greater Gaborone Area was effected, lasting until 13 August 2020

³⁸ On 21 July 2020, the Government of Zimbabwe imposed a curfew and reinstated tight lockdown measures citing an increase in the number of cases.

³⁹ On 12 July 2020 the Government of South Africa re-imposed a night curfew and a ban on alcohol sale as the number of cases increased.

⁴⁰ IFAD (2020) ‘Making sure rural communities won’t be left behind in the response to COVID-19’ available at: <https://www.ifad.org/en/web/latest/news-detail/asset/41851548> (accessed 5 May 2020)

⁴¹ Zimbabwe Human Rights Commission (ZHRC) Statement on the Human Rights Situation in the Extended Phase of the National Lockdown in Response to the COVID-19 Pandemic. Issued on 22 April 2020.

⁴² Zimbabwe Human Rights Commission (ZHRC) Statement on the Human Rights Situation in the Extended Phase of the National Lockdown in Response to the COVID-19 Pandemic. Issued on 22 April 2020.

legislative measures that are put in place are adequately communicated before or as the laws are enforced. It is accepted that the nature of COVID-19 required and will continue to require governments to act swiftly and decisively as they respond to the pandemic. As such, governments may therefore not always have the time to fully communicate the legislative measures before enforcement. However, efforts must be seen, and the communication and public information dissemination must be a continuous process, more so during disaster or emergency situations.

South Africa was one of the countries that widely consulted with stakeholders in passing COVID-19 regulations, including publishing the draft regulations for public input.⁴³ However, these consultations were limited to urban areas and with actors such as political parties⁴⁴, business, labour, the taxi industry and others. The government also consulted with traditional leaders.⁴⁵ However, there was no deliberate effort by government to consult with grassroots people in rural areas and rural women and farmers given the peculiar challenges they face in relation to access to information. Public consultations were mainly online, with citizens being asked to make such submissions through the government dedicated coronavirus website.⁴⁶ The limitations on movement in the context of the lockdown meant that physical meetings with rural women and farmers were not possible, yet they largely lacked the other available means of communication and participation. Yet public participation is particularly important when government decisions have a direct impact on the lives and livelihoods of affected citizens.

The result was a community that had limited information about the pandemic, the laws that were made to manage the pandemic and how they could cope amid the crisis.⁴⁷ In Zimbabwe, it was noted that whilst the regulations were supposed to be accessible to members of the public, one could only access them from the Government Printer in hard copy print. The Government Printer is only available in cities or town centers and the regulations were made at a time when people could not travel both within and between the cities and towns due to the lockdown regulations. This effectively cordoned off the Government Printer locations⁴⁸ and limited accessibility to the written regulations.

6.2 Women's Rights to a livelihood

The COVID-19 pandemic had negative implications on women's customary land based livelihoods. Available research shows that "while most commercial farming and corporate supply chains [remained] intact [in countries such as South Africa], production and distribution chains in the informal food system were severely disrupted or closed down completely...small-scale farmers and fishers [were] either unable to continue with production, or unable to access their normal markets".⁴⁹ Workers in supermarkets who continued to risk their lives to ensure

⁴³ Before easing the lockdown to Level 4, Government published draft regulations for input and it announced that 70, 000 submissions were received in response (see <https://www.sanews.gov.za/south-africa/sas-level-4-new-normal>)

⁴⁴ SABC (2020) 'President Cyril Ramaphosa meets political parties over COVID-19' available at: <https://www.youtube.com/watch?v=pTkLm5ZXmIA> accessed 5 May 2020

⁴⁵ The Deputy President met with traditional leaders on 24 March 2020 and the President also consulted with traditional leaders on 23 May 2020

⁴⁶ www.sacoronavirus.co.za

⁴⁷ Some of the people living in rural areas for example argued that "coronavirus doesn't come this far" in reference to their locations away from the major urban areas (See <https://www.news24.com/news24/SouthAfrica/News/it-doesnt-come-this-far-how-some-rural-south-africans-view-coronavirus-20200503>)

⁴⁸ Veritas (2020). COVID-19 and the Law: Part 2, Bill Watch 15/2020. Available at: <https://www.veritaszim.net/node/4075> (last accessed 13 September 2020)

⁴⁹ Ruth Hall & Jaap de Visser (2020). The lockdown may be unconstitutional – unless school feeding and social grants are fixed. Available at: <https://www.dailymaverick.co.za/article/2020-04-21-the-lockdown-may-be-unconstitutional-unless-school-feeding-and-social-grants-are-fixed/>. Last accessed 21 April 2020

that everyone in lockdown was able to access food were acknowledged and praised. Such recognition was absolutely necessary and the hope is that COVID-19 will help governments and businesses to appreciate and properly remunerate front line workers in all sectors, who as the pandemic has shown, are the people that make businesses and industry function against all odds. However according to the International Fund for Agricultural Development (IFAD) even with such recognition for those in the glare of the news in urban areas, “[w]hat we [didn’t] see [were] the small-scale producers working in remote areas far from the cameras, who continue[d] to grow food that [was] critical for national food security in developing countries”⁵⁰ during this pandemic.

Similarly, at a glance, the various national regulations in the region allowed essential services, including any business or entity involved in the manufacturing, supply, or provision of an essential good or service⁵¹ to remain operational. Whilst this was clear in relation to large scale operations such as food manufacturing factories, supermarkets and their supply chain operations, there was no similar clarity in relation to informal traders, and in particular vendors and open-air food market traders.

The initial lockdown measures in almost all the SADC countries required informal traders and vendors to vacate their trading sites. In many instances these bans remained largely in place even at a time when the countries were relaxing their lockdown regulations.⁵² The bans on street vendors included those selling fruits, vegetables and other food, yet providers of food in the formal sector were classified as essential and therefore allowed to continue with their businesses. This has had an impact on rural women farmers who sell or supply their agricultural produce mainly to street vendors and informal food markets. Some of the rural women farmers travel to the urban markets during the day to sell their produce and retire to their rural homes in the evenings. Fresh farm produce ready to harvest therefore deteriorated and decomposed leading to loss of income for the rural women and other small scale farmers.⁵³ This also impacted incomes and access to food for the poor and vulnerable in urban areas who mostly depend on informal markets and street vendors for food, since they offer lower prices compared to large supermarkets.⁵⁴

In South Africa large central fresh produce markets in urban areas continued operating throughout the lockdown period, even at the beginning when street vendors were ordered to stop trading. Street traders were eventually declared as essential services in the country on 2 April 2020.⁵⁵ The opening of the large central fresh produce markets in the absence of the small scale traders and vendors was however not adequate given their centralization and resultant inaccessibility when compared to street vendors. In many instances vendors who sell in city centers and in the townships or residential areas, procure their fresh food items from the central

⁵⁰ Marie Haga (2020). Don’t allow the coronavirus to open up another front. Available at: <https://www.ifad.org/en/web/latest/blog/asset/41846623> (Last accessed 18 May 2020)

⁵¹ South Africa, Regulation 11 (B) (1) (g)

⁵² In South Africa, as part of the initial lockdown measures, Government issued Directions to all municipalities in the country ordering the closure of all markets, including street vendors, other than food markets. In Zimbabwe, vendors were ordered to stay away as the country relaxed its lockdown regulations and allowed other sectors of the economy such as manufacturing, banks etc. to re-open.

⁵³ <https://www.freshplaza.com/article/9209303/namibia-small-scale-farmers-suffering-under-lockdown/>

⁵⁴ Webster D (2020), ‘Not all Joburg’s street traders are trading’ available at: <https://www.newframe.com/not-all-joburgs-street-traders-are-trading/> (last accessed 5 November 2020)

⁵⁵ Webster D (2020), ‘Not all Joburg’s street traders are trading’ available at: <https://www.newframe.com/not-all-joburgs-street-traders-are-trading/> (last accessed 5 November 2020)

fresh produce markets for resale at decentralized locations.⁵⁶ Banning the vendors therefore reduced demand on the fresh produce, impacting both women informal traders and women producers. In the context of lockdown, the street vendors would also be more accessible to citizens, compared to centrally located fresh produce markets, given the limitations on free movement of people that were in place.⁵⁷

In eSwatini, rural women farmers and artefact traders were equally impacted by the COVID-19 regulations and the restrictions on movement.⁵⁸ Following the promulgation of the Corona Virus (COVID-19) Regulations 2020, the Ministry of Industry and Commerce prescribed essential services in terms of Section 23 (1) of the regulations. The list of essential services included “food and agriculture” as well as ‘retail and consumer goods suppliers’ such as ‘food retailers, food outlets and farmers’ as well as “those involved in the transportation, logistics and packaging” of these essential goods.⁵⁹ The use of terms such as “retail” and “outlets” denoted formal trading spaces as opposed to vending stalls that are used by most rural women or the people that they supply their produce to in urban areas. In addition, most rural women use informal means of transport such as taxis⁶⁰ to take their produce to the markets as opposed to the formal transportation and logistics routes that were envisaged by the legislation. As a result, many rural women farmers were stuck with their produce during the COVID-19 outbreak as the movement of people and taxis were both constrained during the period. The Swaziland Rural Women Assembly highlighted some of the challenges that rural women farmers in eSwatini were experiencing as a result of COVID-19 and the attendant regulations and restrictions. Many of them were stuck with their produce because of limited movements, especially in the Shiselweni region where they farm sweet potatoes and sell in Manzini.⁶¹

The Swaziland Rural Women Assembly also reported that some of the women in the country sell their produce at the bus stations in the main cities but were unable to do so as a result of the lockdown. Some also feared COVID-19 infection as they did not have personal protective equipment to protect themselves, and therefore decided not to venture out to sell at their usual points. Under normal circumstances, some of the women distribute and sell their produce on credit and collect their money at the end of the month when urban workers receive their monthly salaries. The initial lockdown in Swaziland came towards the end of the month in March 2020 and many of the women were unable to travel to the urban areas to collect their money. The Swaziland Rural Women Assembly reported that this impacted the women’s household incomes, leading to domestic violence as family members, especially men demanded food, which the women were unable to provide.⁶² The impact of the lockdown in this case therefore went beyond loss of income for the rural women farmers, but also had secondary effects in the form of domestic violence.

⁵⁶ Joburg Market (undated), ‘Joburg Market – South Africa’s Premier Food Hub’ available at: http://www.joburgmarket.co.za/aboutus_intoduction.php (last accessed 5 November 2020)

⁵⁷ Wegerif M. C. A (2020), ‘Informal’ food traders and food security: experiences from the Covid-19 response in South Africa’ available at: <https://link.springer.com/article/10.1007/s12571-020-01078-z> (last accessed 5 November 2020)

⁵⁸ Report submitted to ARISA by the Swaziland Rural Women’s Assembly as part of this research.

⁵⁹ The eSwatini Coronavirus (COVID-19) Regulations, 2020, sec 23 (1)

⁶⁰ Also called kombis or mini-buses in other countries in Southern Africa

⁶¹ Manzini is the second largest urban area in eSwatini and is considered as the economic hub of the country

⁶² Report submitted to ARISA by Swaziland Rural Women’s Assembly as part of this research

Women in eSwatini who rear small livestock such as chickens also faced challenges in acquiring feed for their livestock.⁶³ This was because stock feed was not locally available, and the women normally travel to the urban areas to acquire the feed. The limitations on travel meant that they could not acquire the feed and had to improvise to ensure that their chickens would not die. As a result, the chickens were fed less quantities or were given inappropriate feed, leading to poor quality meat, and loss of income. Such challenges highlighted the need for governments to provide adequate and functional supply chains for rural farmers, not only for purposes of transporting produce to the markets, but for the rural farmers to access agricultural inputs. It is particularly important that such inputs are made available through local rural suppliers to limit disruptions and reduce costs, especially during times of crises like the COVID-19 pandemic.

Lesotho was the last country in Africa to record a COVID-19 case.⁶⁴ It however put in place stringent COVID-19 regulations well before recording any case, including being one of the first countries in Africa to close its borders for fear of importing the disease from South Africa⁶⁵. A State of Emergency was declared on 18 March 2020 and various regulations and legal notices were subsequently promulgated over time. The Notice of the State of Emergency which was published on the 27th of March 2020⁶⁶ outlined the closure of many businesses except those providing essential goods and services. The Notice specifically stated that supermarkets and grocery shops⁶⁷ would remain open but mentioned no other places such as open markets and vending sites that normally sell food and food products. It also stated that “special operations on agriculture”⁶⁸ would remain operational. Although the special operations were not defined in this particular Notice, subsistence and small-scale agriculture which is undertaken on customary or rural land would hardly fit that description. It therefore follows that the initial Legal Notice missed, neglected or deliberately left out specific provisions that would protect rural women farmers and agricultural produce traders in the context of COVID-19. Efforts by the small-scale farmers and informal food traders to continue with their business would therefore have been a violation of the lockdown regulations. The conclusion that can be drawn from all these regulations is that they failed to protect rural women’s customary land based livelihoods, hence the need for the regulations to be reviewed to ensure protection of these rights

⁶³ Report submitted to ARISA by the Swaziland Rural Women’s Assembly as part of this research.

⁶⁴ The country recorded its first COVID-19 case on 13 May 2020, more than two months after South Africa recorded its first case on 5 March 2020. Lesotho is an enclave that is totally encircled by South Africa.

⁶⁵ Lungile Matsuma and Nady Weitza (2020) ‘COVID-19: Lesotho seals borders amid infection fears while SA tourism suffers’ available at: <https://www.iol.co.za/the-star/news/COVID-19-lesotho-seals-borders-amid-infection-fears-while-sa-tourism-suffers-44770854> (last accessed 12 May 2020)

⁶⁶ Legal Notice 26 of 2020, Declaration of COVID-19 State of Emergency Notice, 2020

⁶⁷ Sec 3 (a) (iv)

⁶⁸ Sec 3 (a) (viii)

7. Broader Impacts of COVID-19 on Women's Customary Land Rights and Livelihoods

COVID-19 demonstrated how pandemics and disasters can have far reaching consequences on the rights of citizens. This includes the exacerbation of existing violations and claw-backs on gains in the promotion, protection and enforcement of human rights. As will be detailed below, available research shows that phenomena such as urban-rural migration and the interplay between various disasters were some of the challenges that impacted women's customary land rights during the COVID-19 pandemic. The case study from Lesotho illustrates that the pandemic had the impact of reversing gains achieved in that country in the promotion and protection of women's customary land rights. The lesson to be learnt from these insights is that it is important for governments, civil society and other actors to address the COVID-19 pandemic and any other disasters or emergencies from a broad-based perspective instead of pursuing monolithic responses. This helps in identifying many of the attendant violations and ensuring that any detected violations are addressed.

7.1 Urban-Rural Migration and Conflicts over Customary Land

When the COVID-19 induced lockdowns began in Southern Africa, many low income urban dwellers (and even some with means) decided to move back to their rural homes, with many fearing that the lockdowns would make it difficult for them to earn an income to pay for food and rentals.⁶⁹ However, like in other regions of the world, concerns were raised that urban-rural migration could lead to the spread of the coronavirus to rural areas, which have largely seen low infections for most of Southern Africa.⁷⁰ Any such movements therefore had to take into consideration the vulnerabilities of the rural populations, such as the limited access to healthcare and water to practise handwashing and what an unmonitored and uncontrolled movement from urban to rural areas meant for these populations. Governments in the region had to stay vigilant and ensure that such movements did not place extra challenges on rural populations, including the women farmers who face intersectional vulnerabilities linked to COVID-19, gender and their precarious livelihood sources.

Migration patterns in Africa show that under normal circumstances, there are more people migrating from rural to urban areas compared to those migrating from urban to rural areas, with Sub Saharan Africa being the fastest urbanising region in the world.⁷¹ Many of the migrants lack skills to participate in the formal economy. The lack of skills and the shrinking job markets in the urban areas means that many of them end up in the informal economy when they arrive in the urban areas. For Sub-Saharan Africa "Cities' growth has been mostly supported by the

⁶⁹ Africa Research Journal (2020), 'Zimbabwe: Coronavirus Lockdown' available at: <https://onlinelibrary.wiley.com/doi/10.1111/j.1467-825X.2020.09393.x> (last accessed 5 November 2020)

⁷⁰ OECD (2020), 'Policy Implications of Coronavirus on Rural Development' available at: <http://www.oecd.org/coronavirus/policy-responses/policy-implications-of-coronavirus-crisis-for-rural-development-6b9d189a/> (last accessed 5 November 2020)

⁷¹ Jamal Saghir and Jena Santoro (2018) 'Urbanization in Sub-Saharan Africa: Meeting Challenges by Bridging Stakeholders' available at: https://csis-website-prod.s3.amazonaws.com/s3fs-public/publication/180411_Saghir_UrbanizationAfrica_Web.pdf (last accessed 14 May 2020)

expansion of informal activities which has resulted in limited increase of average income, and sometimes persistent poverty levels.”⁷² This means that the livelihoods of these migrants and many other poor people in urban areas are very precarious. Emergencies such as COVID-19 only work to increase that vulnerability and limit the options available to most of the urban poor outside of government assistance. Organisations such as LANDac have noted that “the loss of employment and informal life support systems in urban settings [during COVID-19] have caused a move out of the cities”.⁷³ LANDac has therefore flagged the negative implications of this out-migration on the land rights of women in the rural areas.

Efforts by many of the governments in the region in response to COVID-19 have to date fallen far short of offering meaningful relief to many of those in need, including in urban areas.⁷⁴ Under the circumstances, there have been proposals and support for reverse migration, with the urban poor being encouraged to migrate to rural areas, where there might be better food security and access to land for agriculture. Some have argued that “Migration to rural areas to access agricultural land...provides an important type of informal safety net”⁷⁵ in the context of COVID-19. Urban-rural migration is a trend in Africa in situations of crises, and indeed often helps those in precarious occupations to “breathe” whilst the attendant crises taper off. This translocality and circular migration has been used in Africa as a strategy of resilience in tough times and in the case of COVID-19 “the rural areas, to which many African urban residents have an intimate connection, offer a potential alternative source of livelihoods and a space to weather the viral storm”.⁷⁶

Whilst the benefits of urban-rural migration during crises such as COVID-19 cannot be denied, this reverse migration can lead to land conflicts, especially in relation to land that is customarily held.⁷⁷ In many instances in the region, women have an opportunity to hold onto customary land if men are able to earn a living in the urban areas.⁷⁸ In the absence of crises, and as long

⁷² Sara Mercandalli et al (Undated) ‘Rural migration and the new dynamics of structural transformation in Sub-Saharan Africa’ available at: <https://agritrop.cirad.fr/586469/7/ID586469.pdf> (last accessed 23 May 2020)

⁷³ LANDac (2020), ‘Online Hub: Land Governance and the COVID-19 Pandemic’ available at: <https://www.landgovernance.org/online-hub-land-governance-and-the-covid-19-pandemic/> (last accessed 6 November 2020).

⁷⁴ Even in South Africa, the country with the biggest COVID-19 social and economic response program in Africa, many of the urban poor have fallen through the cracks or have faced various challenges in accessing the assistance from Government. In Zimbabwe, even though Government announced a \$600 million (ZW \$) social assistance fund, not much of the money was actually distributed to the vulnerable citizens.

⁷⁵ Astrid R. N. Haas and Rachel Strohm (2020) A novel idea: integrating urban and rural safety nets in Africa during the pandemic. Available at: https://theconversation.com/a-novel-idea-integrating-urban-and-rural-safety-nets-in-africa-during-the-pandemic-137532?utm_medium=email&utm_campaign=Latest%20from%20The%20Conversation%20for%20May%203%202020%20-%201611015445&utm_content=Latest%20from%20The%20Conversation%20for%20May%203%202020%20-%201611015445+CID_aa85171b018258435b19d9a0d031d30d&utm_source=campaign_monitor_africa&utm_term=explain. (last accessed 18 May 2020)

⁷⁶ Leslie Bank (2020). Rural retreat: Allowing people to return home during lockdown could turn a tide. Available at: <https://mg.co.za/article/2020-04-30-rural-retreat-allowing-people-to-return-home-during-lockdown-could-turn-a-tide/> (last accessed 18 May 2020)

⁷⁷ AFRICAPORTAL (2020), ‘How to ensure effective government responses as COVID-19 spreads to rural areas’ available at: <https://www.africaportal.org/features/how-ensure-effective-government-responses-covid-19-spreads-rural-areas/> (last accessed 5 November 2020)

⁷⁸ FAO (undated), ‘Why is Gender an Issue in Access to Land’ available at: <http://www.fao.org/3/Y4308E/y4308e05.htm> (last accessed 5 November 2020)

as the men have a source of income, this precarious form of access may endure for long. However, in times of crises, like the COVID-19 pandemic, and as the urban life becomes untenable, the men will migrate back to the rural areas and seek to repossess customary land for their own benefit leading to the dispossession of women.⁷⁹ In eSwatini, as the lockdown took roots, there were reports of women who were locked in customary land scimmages with their male relatives as the male relatives took advantage of the lockdown to assert their authority over the land.⁸⁰ With the courts in partial lockdown, the women were finding it difficult to have their rights enforced by the courts.⁸¹ Such conflicts and contestations over resources could become commonplace if customary land becomes a source of livelihood for many family members, including those who could otherwise earn incomes from other sources in the absence of COVID-19 and its attendant challenges. As the economic fallout from the pandemic continues to devastate the region, the urban-rural migration is expected to continue for the foreseeable future.⁸² The attendant land conflicts in the rural areas will also continue and these will inevitably impact women more than men, given women's tenuous access to and occupation of customary land and their reliance on the same land for their livelihoods. There is therefore need for governments to put in place measures to protect women's customary land rights in the face of conflict and competition over the resource.

7.2 Multiple Natural Disaster Induced Vulnerabilities

The COVID-19 pandemic hit Southern Africa at a time when the region was grappling with many other natural disasters and their effects. In January 2020, the World Food Program (WFP) of the United Nations reported that 45 million people were in need of food aid in Southern Africa as a result of droughts, floods and other factors.⁸³ In 2019, the region was hit by Intense Tropical Cyclone Idai, which devastated entire cities and rural communities in Malawi, Mozambique and Zimbabwe. The United Nations described it as “one of the worst weather-related disasters ever to hit the southern hemisphere”⁸⁴ and attributed the disaster to climate change-related sea level rise and extreme weather.”⁸⁵ More than 1300 people died⁸⁶ as a result of Cyclone Idai. Homes and livelihoods were destroyed and because it hit during the peak of the farming season, entire communities lost their crops as “catastrophic damage, caused by strong winds and extensive flooding, wiped away harvests and destroyed seed stocks. Millions

⁷⁹ For example, the AIDS pandemic led to increased cases of land grabs against women in Africa (See: Augustinus C and Deininger K, ‘Innovations in Land Tenure, Reform and Administration in Africa’ available at: file:///C:/Users/mmakonese/Downloads/capri_brief_land_rights.pdf (last accessed 6 November 2020)

⁸⁰ Report submitted to ARISA by the Swaziland Rural Women's Assembly as part of the research

⁸¹ Report submitted to ARISA by the Swaziland Rural Women's Assembly as part of the research

⁸² In South Africa, the biggest economy in the region, 3 million people lost their jobs due to COVID-19 (See: Business and Human Rights Resource Centre (2020), ‘So. Africa: Three million South Africans have lost their jobs as a result of the Covid-19 pandemic, women most affected’ available at: <https://www.business-humanrights.org/en/latest-news/so-africa-three-million-south-africans-have-lost-their-jobs-as-a-result-of-the-covid-19-pandemic-women-most-affected/#> (last accessed 6 November 2020)

⁸³ Al Jazeera (2020) ‘Record 45 million need urgent food aid in southern Africa: UN’ available at: <https://www.aljazeera.com/news/2020/01/record-45-million-urgent-food-aid-southern-africa-200116161326843.html> (accessed 27 April 2020)

⁸⁴ UN News (2020) ‘Many Mozambicans still struggling to get back on their feet, one year after cyclone’ available at: <https://news.un.org/en/story/2020/03/1059411> (last accessed 19 May 2020).

⁸⁵ UN News (2019) ‘Mozambique cyclones a ‘wake-up call’ to boost resistance: UN weather agency’ available at: <https://news.un.org/en/node/1039381/mozambique-cyclones-a-wake-up-call-to-boost-resistance-un-weather-agency-2> (last accessed 19 May 2020)

⁸⁶ Reliefweb (2020) ‘Learning from Cyclone Idai and Cyclone Kenneth to Strengthen Early Warning Systems in Mozambique’ available at: <https://reliefweb.int/report/mozambique/learning-cyclone-idai-and-cyclone-kenneth-strengthen-early-warning-systems>. Last accessed 19 May 2020.

lost their homes and livelihoods.”⁸⁷ In the three countries that were hardest hit by Cyclone Idai, at least 1 million hectares of crops were smashed.⁸⁸ By the time COVID-19 started spreading in the region, nearly 100,000 people were still living in makeshift structures in Mozambique.⁸⁹ A month after Cyclone Idai, Mozambique was hit by Cyclone Kenneth, a category 4 tropical cyclone which was described as the strongest ever cyclone to make landfall in Africa.⁹⁰ It left equally devastating impacts in its wake. Such cyclones and other natural disasters are expected to become frequent occurrences as a result of climate change, with Africa as the continent most affected by these disasters.⁹¹ It is for this reason that civil society organisations in Mozambique expressed fears that the spread of COVID-19 would devastate rural communities that are already weak and reeling from the impacts of the 2019 cyclones, impacting rural women more in the process.⁹²

Experts predict that COVID-19 will be around for the foreseeable future or might even become endemic.⁹³ As such, climate change, natural disasters and COVID-19 will be intersecting crises for many of the rural populations in Southern Africa, affecting rural women farmers significantly as they form a large section of populations that are affected by intersectional discrimination and intersectional vulnerabilities. With all these challenges, it is imperative for governments to put in place measures that increase the ability of the most vulnerable to cope and adapt to epidemics and disasters when they occur. These include the creation of laws and policies that recognise these intersectional crises, vulnerabilities and devising programs to ensure that those most affected are able to cope and adapt.

As a region, Southern Africa’s lack of a cohesive regional disaster preparedness framework was exposed during Cyclone Idai. The first responses to the disaster were by individual countries such as South Africa (with other countries also responding later), individual Non-Governmental Organisations (NGOs) such as Gift of the Givers and eventually the United Nations. SADC as a regional block “was conspicuously absent for at least a week after the devastation.”⁹⁴ With the COVID-19 pandemic, the region however seemed to have taken some lessons from Cyclone Idai and therefore had a more coherent regional response in place. On the 9th of March 2020, SADC Ministers of Health met in Tanzania to discuss a regional

⁸⁷ Oxfam International (Undated) ‘After the storm: one year on from Cyclone Idai’ available at: <https://www.oxfam.org/en/after-storm-one-year-cyclone-idai> (last accessed 19 May 2020)

⁸⁸ Landry Ninteretse (2019) ‘As cyclones and droughts hit Africa, it’s time to demand climate justice’ available at: <https://mg.co.za/article/2019-05-25-00-as-cyclones-and-droughts-hit-africa-its-time-to-demand-climate-justice/> (last accessed 19 May 2020)

⁸⁹ IOM and Instituto Nacional de Gestao Calamidades (2019) ‘Mozambique: Tropical Cyclone Idai Multi-Sectoral Location Assessment - Round 12’ available at: https://www.iom.int/sites/default/files/dtm/mozambique_-_cyclone_displacement_report_12_20_december_2019.pdf (last accessed 19 May 2020)

⁹⁰ Reliefweb (2020) ‘Learning from Cyclone Idai and Cyclone Kenneth to Strengthen Early Warning Systems in Mozambique [EN/PT]’ available at: <https://reliefweb.int/report/mozambique/learning-cyclone-idai-and-cyclone-kenneth-strengthen-early-warning-systems> (last accessed 19 May 2020)

⁹¹ Landry Ninteretse (2019) ‘As cyclones and droughts hit Africa, it’s time to demand climate justice’ available at: <https://mg.co.za/article/2019-05-25-00-as-cyclones-and-droughts-hit-africa-its-time-to-demand-climate-justice/> (last accessed 19 May 2020)

⁹² View raised by Mozambique Christian Lawyers Association during a regional meeting held on 27 April 2020 to discuss to discuss impact of COVID-19 on women’s customary land rights.

⁹³ World Health Organisation Executive Director of Health Emergencies Program, Dr. Mike Ryan on 13 May 2020.

⁹⁴ Chris Changwe Nshimbi (2019) ‘Southern African countries won’t manage disasters unless they work together’ theconversation. Available at: <https://theconversation.com/southern-african-countries-wont-manage-disasters-unless-they-work-together-114541>. (last accessed 23 May 2020)

response to the pandemic.⁹⁵ The SADC Secretariat also provided daily COVID-19 updates on its website⁹⁶ and produced guidelines such as the “Harmonisation and Facilitation of Cross Border Transport Operations across the Region during the COVID-19.”⁹⁷ Such harmonized responses are critical given that the region is largely one ecosystem, which is likely to be affected by the same kinds of disasters at the same time. A harmonised regional response is therefore critical in ensuring uniformity in response and a resultant effective outcome, and in the process protecting the rights of the most vulnerable in the region. Such regional response would require the creation of regional policies and strategies to guide national governments in their responses to COVID-19 and other pandemics, disasters and emergencies. To this end, the capacitation of the SADC Disaster Risk Reduction Unit is critical in ensuring effective regional responses to the varied disasters that are predicted to hit the region for the foreseeable future and the protection of vulnerable populations such as rural women in the process.

7.3 Case Study 1: Impact on women’s livelihoods derived from leasing customary land in Lesotho⁹⁸

WOMEN RISK LOSING LIVELIHOODS DERIVED FROM LEASING OF CUSTOMARY LAND

The emergency of COVID-19 has brought to the fore many issues that have over the years impacted the lives of the most vulnerable people in SADC countries. For years, governments and other authorities have ignored these issues, despite the need and urgency to address them. In Lesotho, the issue of customary land conflict in the context of cannabis production has affected women, and in particular widows since the country adopted a policy to grow the plant commercially in 2017. According to the Women and Law in Southern Africa Research and Education Trust (WLSA) Lesotho, Cannabis production in the country has provided widows who hold customary land with an opportunity to earn money through renting their land to large scale commercial cannabis farmers.

When government started the cannabis program, women’s rights organisations in the country engaged government to ensure that lease opportunities were given to land holders based on equality between men and women, with a focus on widows. The organisations agreed with Government that widows would be allowed to engage the Cannabis growers to negotiate leases on the customary land that they held, and that no male relatives would be involved. This followed a realisation that because women could not be heirs to customary land, families were appointing male figures to be the leads in land lease negotiations with the cannabis producers, with the rentals accruing to the male figureheads. The lucrative nature of the project meant that male relatives had become overly interested in the land and the projects, even in situations where they had not shown any interest before. Customary law was therefore being invoked to remind women that they could not enter into the lease agreements over customary land with the cannabis production companies, without the consent of the male members of their extended families.

⁹⁵ <https://www.sadc.int/news-events/news/extra-ordinary-meeting-sadc-ministers-health-COVID-19/>

⁹⁶ <https://www.sadc.int/issues/COVID-19/>

⁹⁷ Available at: https://www.sadc.int/files/2015/9293/9080/Revised_SADC_Guidelines_on_Harmonisation_and_Facilitation_of_Cross_Border_Transport_Operations_across_the_Region_During_th.pdf

⁹⁸ Case Study Information supplied by Women and Law in Southern Africa Research Trust (WLSA) Lesotho

For a long time, cannabis has been a major source of income for rural communities in Lesotho, even before the legalization of its production. The crop became critically important following the challenges in the South African economy and the resultant fall in remittances from Basotho migrant workers in South Africa. By 2012, observers were commenting that “Cannabis has filled the resultant gap in income for many Basotho, especially in the rural areas, where it [had become] a major cash crop. In fact, for the country as a whole, cannabis [was] a major source of foreign revenue [with] all observers with knowledge of rural livelihoods in Lesotho agreeing that cannabis is the nation’s most significant cash crop.”⁹⁹ It was therefore not surprising that Lesotho was the first country to issue a commercial cannabis growing license in Africa in 2017.¹⁰⁰ Legalizing the growing of cannabis particularly for the medical industry was therefore an important step in giving rural Basotho a legitimate source of income to sustain their families, through working in the cannabis production chain and through leasing their land to the industry.

The intervention of women’s rights organisations in Lesotho to protect the customary lands rights of women in the country was an important initiative in ensuring that long held prejudicial customs about women and their rights to customary land would not be used to disadvantage them in light of the lucrative cannabis land leases. This was particularly important given that for most of the women, such land is their only source of livelihood, even though customary law does not give them control over such land. It was also one of the few times that the women in the country were able to benefit commercially from customary land.

The outbreak of the COVID-19 however affected the cannabis industry in the country, with the lockdown making it difficult for workers to tend to the crop. The quality of the crop was under threat, and this had the potential to impact yields and the resultant profits. The first batch of the cannabis crop for the season was expected to be ready for harvest by June 2020. However, as a result of the lockdown, the investors were threatening to pull out of Lesotho and abandon the cannabis projects. This would impact women customary land lessors, particularly widows who were receiving good rental fees for their land from the cannabis producers in the country. Although not the typical COVID-19 impact story, the cannabis production issue in Lesotho is a classic example of how the pandemic has impacted people in unimaginable ways, and in this case, how it impacted rural women who depend on customary land for their livelihoods.

8. Enforcement of Lockdown Regulations

At the beginning of the lockdown, the police, army and other security sector agents in the region enforced the lockdown regulations through repression and violence and in the process committed serious abuses and human rights violations. In South Africa, citizens were killed,¹⁰¹ and some abused in different ways¹⁰² whilst in Zimbabwe, citizens were subjected to torture, cruel, inhuman and degrading treatment.¹⁰³ The Zimbabwe Lawyers for Human Rights (ZLHR)

⁹⁹ Neil Carrier, Gernot Klantschnig (2012) ‘Africa and the War on Drugs’ Zed Books Ltd. London and New York.

¹⁰⁰ Bill Weinberg (2020) ‘What Will the Cannabis Economy Mean for Africa?: Small farmers are fighting for their fair share’ available at: <https://www.projectcbd.org/cannabis-in-africa> (last accessed 12 May 2020)

¹⁰¹ By 13 April, reports indicated that at least nine people had been killed by the security forces in South Africa during enforcement of the COVID-19 regulations (see for example, <https://www.iol.co.za/news/politics/saps-and-sandf-selective-in-enforcing-COVID-19-lockdown-regulations-says-notinmyname-4665610>)

¹⁰² Jan Bornman (2020) ‘Law enforcers kill and brutalise during SA lockdown’ available at: <https://www.newframe.com/law-enforcers-kill-and-brutalise-during-sa-lockdown/> (last accessed 14 May 2020)

¹⁰³ Lovejoy Mutongwiza (2020) ‘Zimbabwe: Zimrights Raise Alarm Over Police Brutality During Lockdown’ available at: <https://allafrica.com/stories/202004090375.html> (last accessed 14 May 2020)

had to approach the courts to order the police and army to stop abusing people during enforcement of lockdown regulations.¹⁰⁴ Women in the informal sector, including small scale farmers and those trading in agricultural produce in the different countries in the region similarly faced a number of violations and abuses. These ranged from confiscation of their fruits, vegetables and other products¹⁰⁵ from the market as well as failure to access the markets due to the lockdowns.

In Zimbabwe, it is reported that over 90% of the population survives on the informal economy¹⁰⁶ and the vending of fruits, vegetables and other fresh produce occupies a significant proportion of that economy. COVID-19 regulations however disrupted such livelihood sources. For example, in the City of Masvingo, farmers reported at the beginning of the lockdown that 35 tonnes of bananas, 21 tonnes of avocados and various others quantities of fruits and vegetables decomposed because the biggest market in the town was abruptly closed by authorities as part of COVID-19 regulations implementation. A leader of the Fruit and Vegetables Vendors Association in the town, reported that the closure of the market was announced when the fruits and vegetables had been ordered and delivery trucks were on the way to the town. As a result, “Farmers threw away their tomatoes while bananas and avocados [were] starting to rot.”¹⁰⁷

In Namibia, the City Council of Windhoek closed all informal markets in the country on the 27th of March 2020 but acknowledged that “the ban on open markets and informal trading activities...had serious negative effects on informal traders, especially producers and vendors of fresh food produce.”¹⁰⁸ The City eventually opened some of the informal markets for them to sell food under very strict conditions. The initial closure of markets did not recognize the traders that sold food such as fruits and vegetable, which would otherwise be classified as essential goods and therefore exempted from the COVID-19 bans. In Zimbabwe, even as the economy opened up, the government insisted that informal traders would not be allowed back to their vending sites.¹⁰⁹ The government even hinted that informal transport systems such as kombis (taxis) might also never be allowed back on the roads.¹¹⁰ Yet, as highlighted above, informal transport networks, informal fresh produce vending and rural women farmers form a closely knit ecosystem that drives economies and livelihoods of many individuals. COVID-19 enforcement mechanisms that totally disregard these realities therefore only have the effect of driving many further into poverty and in the process increasing their vulnerability to the

¹⁰⁴ Lenin Ndebele (2020) ‘Don’t beat people up, court tells Zimbabwe’s soldiers and police’ available at: <https://www.timeslive.co.za/news/africa/2020-04-15-dont-beat-people-up-court-tells-zimbabwes-soldiers-and-police/> (last accessed 14 May 2020)

¹⁰⁵ Harding A (2020), ‘South Africa’s ruthlessly efficient fight against coronavirus’ available at: <https://www.bbc.com/news/world-africa-52125713> (last accessed on 6 November 2020)

¹⁰⁶ According to Samuel Wadzai, Executive Director of Vendors Initiative for Social and Economic Transformation (VISET) (see ‘African Street Vendors Feel the Squeeze Under Strict COVID-19 Measures’ available at: <https://allafrica.com/stories/202004090009.html>) (last accessed 14 May 2020)

¹⁰⁷ Masvingo Mirror, ‘35 Tonnes Of Tomatoes And 21 Tonnes Of Avocados Rot In Shut Down Masvingo Fruit And Vegetables Market’ (21 April 2020)

¹⁰⁸ CGTN Africa (2020) ‘Namibia’s capital to re-open informal markets under strict conditions’ available at: <https://africa.cgtn.com/2020/04/20/namibias-capital-to-re-open-informal-markets-under-strict-conditions/> (last accessed 14 May 2020)

¹⁰⁹ Kasambala T (2020), ‘Addressing the impact of government responses to Covid-19 on women human rights defenders and women’s rights’ available at: <https://www.dailymaverick.co.za/article/2020-07-03-addressing-the-impact-of-government-responses-to-covid-19-on-women-human-rights-defenders-and-womens-rights/> (last accessed 6 November 2020).

¹¹⁰ The Zimbabwe Mail (2020) ‘Private kombis will never return onto the streets ever again’ available at: <https://www.thezimbabwemail.com/business/private-kombis-will-never-return-onto-the-streets-ever-again/> (last accessed on 23 May 2020)

pandemic. Failure to obey the regulations was met with violence and arrests. The same poor people, surviving through the informal economy had to part with the little resources they had through payment of fines or could face imprisonment.¹¹¹ They also had to suffer economic loss through the confiscation and destruction of their produce as the case study below shows.

¹¹¹ In terms of Sec 33 (1) of the eSwatini Coronavirus (COVID-19) Regulations, 2020, people could face fines of up to E25, 000 (equivalent to R25, 000) or face imprisonment for a period of up to 2 years for breaking the regulations. The Lesotho Public Health (COVID-19) Regulations provided various penalties including fines ranging from M5,000 – M20,000 (R5,000 – R20,000) and imprisonment (sec 12 and 13).

8.1 Case Study 2: Enforcement of Lockdown Regulations in Zimbabwe

POLICE BURN FRUITS AND VEGETABLES AS PART OF COVID-19 REGULATIONS ENFORCEMENT

In Zimbabwe small scale farmers, including rural women farmers seeking to take their produce to the market were not spared by the enforcement of lockdown regulations. On the 3rd of April, 2020, the Zimbabwe Republic Police in Mutare, a City in the Eastern Province of Manicaland confiscated and burnt about three tonnes of fresh produce at the province's largest open air fresh food market called Sakubva.¹¹² The police indicated that they burnt the fruits and vegetables as part of enforcement measures for the lockdown following a declaration of state of disaster by the President on 17 March 2020. In a country facing acute food shortages, the actions of the police were roundly condemned, including by the President.¹¹³



Some of the vegetables that were confiscated by the police being burnt in Mutare, Zimbabwe on 3 April 2020.

Credit:

<https://www.herald.co.zw/lockdown-police-confiscate-vegetables/>

It has been noted that such rigid enforcement of the lockdown regulations

by the police and other law enforcement agents may not be the solution for many countries in Africa. Instead, the enforcement authorities should use a harm reduction approach, which takes cognisance of human rights and sensitivity to the contexts that individuals find themselves in.¹¹⁴ Engagement with communities and making them part of the solution as well as explaining the reasons behind the lockdowns and encouraging compliance may be more effective approaches. Such approaches help in removing resentment towards the police and the State, reducing harm to communities and allowing communities to feel that they are still in control of their lives.

9. Access to Justice

The COVID-19 pandemic has had a serious impact on access to justice for many reasons. These include the inaccessibility of the courts, as the courts operated at a reduced level, often attending only to urgent cases, bail hearings, first appearances for those facing criminal charges or resorting to online operations for jurisdictions that had the facilities to do so.¹¹⁵ In addition,

¹¹² The Herald, 'Lockdown: Police confiscate vegetables' (3 April 2020)

¹¹³ Zimeye, 'Mnangagwa Angry At Police Officers Who Destroyed Vegetables While People Starve' (4 April 2020)

¹¹⁴ Karl Roberts, Alex Broadbend and Benjamin T H Smart (2020). Why heavy-handed policing won't work for lockdowns in highly unequal countries. Available at: <https://theconversation.com/why-heavy-handed-policing-wont-work-for-lockdowns-in-highly-unequal-countries-135989>. Last accessed 22 April 2020

¹¹⁵ See for example, South Africa Measures Adopted by the Heads of Court to Curb the Spread of COVID-19 in All Courts - Directive Issued by Chief Justice Mogoeng Mogoeng [2020] ZARC 4 (17 March 2020), Zimbabwe

the limitations placed on the movement of citizens meant that many could not travel to the courts or other administrative and quasi-judicial institutions in order to have their legal issues addressed. Similarly, witnesses could not travel to the courts.

In many of the jurisdictions, lawyers and legal practice were initially not classified as essential services and therefore lawyers could not work or provide legal services to clients. In one survey that was administered to a section of lawyers based in rural areas on the impact of COVID-19 on lawyers' practice in South Africa, '84.5% of the attorneys and advocates surveyed said that the lockdown regulations 'severely' affected legal services to the public.'¹¹⁶ In South Africa, both the Law Society of South Africa (LSSA) and the General Council of the Bar (GCB) noted that whilst COVID-19 and the attendant regulations were impacting the businesses of legal practitioners and law firms, they also had huge impact on access to justice for citizens and especially those in rural areas 'where access to justice is most needed'.¹¹⁷ The impact of this state of affairs on women's customary land rights and their rights to livelihood would be unmistakable.

As most people were at home, conflicts within the home and social settings were on the increase. Some of these conflicts related to women's customary land rights. In eSwatini, a widow in the Lubombo region faced threats of eviction by her brother in law from land which he claimed he had oversight as 'the head of the family' following the death of her husband. The violations persisted and increased during lockdown because the women's rights and legal aid organization that would normally come to her rescue was not accessible to her. She could also not access the courts and as a result, the brother in law took advantage of the lockdown to accelerate and assert his claim over the land.¹¹⁸

In another reported case, a Basotho woman was disinherited of customary land that belonged to her deceased father in favor of a man who claimed to be the male heir of the land.¹¹⁹ The woman was unable to bring witnesses before the elders to support and defend her claim that she was the biological daughter of the deceased and was therefore the rightful heir to the customary land. This was because her witnesses were resident in South Africa and were unable to travel to Lesotho as a result of the border closures in response to COVID-19. Her witnesses were also unable to appear before the elders virtually because there were no appropriate means of facilitating the connection between rural Lesotho and the witnesses. The woman in question was therefore denied her right to inherit and access customary land during the lockdown as the available justice mechanism could not provide the needed facilities for her case to be heard.¹²⁰

As such in times of disaster and other crises, governments must ensure that institutions that assist the most vulnerable including women in accessing justice are fully operational and equipped to provide the required services. These include the courts (including traditional courts), the legal profession and women's rights organisations that normally assist women with legal advice and in taking their cases to courts and other quasi-judicial and administrative bodies for redress of rights violations.

Chief Justice's Practice Direction 1 of 2020 on Court Operations during the 21-day National Shutdown, Roadmap for the High Court of Namibia whilst the State of Emergency declared in terms of Article 26 of the Constitution Persist (COVID-19 Pandemic) amongst others.

¹¹⁶ Law Society of South Africa and JUTA (2020), Legal Brief: LSSA Weekly, Issue 421 (15 May 2020)

¹¹⁷ Law Society of South Africa and JUTA (2020), Legal Brief: LSSA Weekly, Issue 421 (15 May 2020)

¹¹⁸ Submission by Swaziland Rural Women's Assembly to ARISA as part of the development of this report.

¹¹⁹ Submission by FIDA Lesotho to ARISA as part of the development of this report

¹²⁰ Submission by FIDA Lesotho as part of the development of this report

10. Conclusion

The Southern Africa region, like most parts of the world has not been spared the negative impacts of COVID-19. The most vulnerable within the region, including women have faced the brunt of these effects. Pandemics like COVID-19, have the effect of disrupting the day to day lives of nations, communities and individuals. In the area of customary land rights, this report has shown that the resultant challenges ranged from conflicts over access to and control over land, disruption of land and agricultural based livelihoods and challenges in accessing justice; all of which impacted women in a considerable way.

The research also revealed that given the sudden onset of the pandemic, and its novel nature, governments in the region, like any other, were ill-prepared to handle the virus from multiple perspectives. Initial responses focused on the health impacts of the pandemic and failed to address the socio-economic and political dimensions of the pandemic. The result was a violation of rights of the citizens. Women's customary land rights and their livelihoods were violated through failure by governments to put protective measures in the context of the pandemic, such as ensuring access to justice, protection from threats of evictions, ensuring access to information and public participation in decision-making. Governments also directly violated citizens' rights by using repressive lockdown laws that impacted on citizens' rights to freedom of movement and attendant rights, and the deployment of security forces to enforce the regulations in repressive and violent ways.

As the region takes stock of these challenges, it is important that governments take measures to correct the existing challenges, and put in place systems to ensure the protection of citizens' rights in the context of the current COVID-19 pandemic and future ones. The duty to protect and adopting a human rights based approach must inform all government measures and decisions, in order to ensure that government actions in the context of COVID-19 and other pandemics do not exacerbate the suffering of the citizens. Some of the recommendations in this regard are provided below.

11. Recommendations

In view of the issues raised in this report, the following recommendations are provided:

To SADC Governments:

- 1) Governments in Southern Africa must balance the public health interventions for COVID-19 with the need to protect citizens' socio-economic rights.
- 2) Governments must protect the rights of rural women farmers to access to information and public participation in decision-making when coming up with regulations and other interventions for managing the pandemic.
- 3) Governments must build agricultural and food market chains to provide a viable transportation system for rural women farmers to transport their produce to the markets and transport agricultural inputs from urban areas to the farms in order to protect their rights to a livelihood;
- 4) In enforcing disaster management regulations, including in the context of COVID-19, the police and other security apparatuses must use a human rights based approach including protecting the rights of the marginalized and vulnerable and ensuring that such enforcement does not cause further harm;
- 5) Governments must protect citizens' rights to access to justice particularly in the context of COVID-19 and other emergencies, where rights violations are likely to escalate; and

- 6) Governments must protect women's customary land rights by ensuring protection from land dispossessions and evictions in the context of the COVID-19 pandemic and other disasters.

To The Southern Africa Development Community:

- 1) There is need to fully capacitate the SADC Disaster Risk Reduction Unit by ensuring adequate staffing with competent employees, and provide the resources for research, data collection and production of disaster response tools and guidelines for the region; and
- 2) Coordinate and harmonise regional responses to COVID-19 and other pandemics in order to ensure that citizens' rights are not negatively impacted because of delayed or inappropriate responses.

To Civil Society Organizations:

- 1) Civil Society Organisations (CSOs) must analyze current and future COVID-19 regulations in order to identify any provisions that violate human rights and ensure that such provisions are repealed or amended;
- 2) CSOs must monitor and report on human rights violations against marginalized populations such as rural women during states of disaster/emergencies such as COVID-19;
- 3) CSOs must challenge any violations in courts should governments and other actors fail to address the violations;
- 4) CSOs must provide legal aid services to the most vulnerable including women in rural areas to ensure access to justice and the protection and promotion of their rights to customary land and the protection of their rights to a livelihood;
- 5) CSOs Must provide information on COVID-19 to citizens through radios and other innovative media and advise citizens on how they can access their rights and justice in the context of the pandemic;
- 6) CSOs must contribute to government policy and amplify the voices of marginalized or vulnerable voices which may not have direct access to decision makers; and
- 7) Continue to advocate for stronger laws and policies that ensure greater land rights for rural women to ensure that they are less vulnerable to COVID-19 and other pandemics.

