



Spotlight Initiative

To eliminate violence against women and girls

———— POLICY BRIEF ON ————

COVID-19 AND THE JUSTICE SYSTEM'S RESPONSES IN EMERGENCY SITUATIONS

———— IN ZIMBABWE ————



POLICY BRIEF ON COVID-19 AND THE JUSTICE SYSTEM'S RESPONSES IN EMERGENCY SITUATIONS IN ZIMBABWE

(November 2020)

Women and Law in Southern Africa (WLSA) and the Legal Resources Foundation (LRF) with support from the UNDP under the Spotlight Initiative (to eliminate violence against women and girls)

Published by the Spotlight Initiative with Women and Law in Southern Africa (WLSA) and the Legal Resources Foundation (LRF), Harare, 2021

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Cover design: Fungai Barwe and Julius Kazomba

Printed by Mzone Creative, Harare

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Acronyms

CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CRPD	Convention on the Rights of Persons with Disabilities
CSW	Commission on the Status of Women
DVA	Domestic Violence Act
GBV	Gender-based Violence
HP	Harmful Practice
HRC	Human Rights Committee
ICJ	International Commission of Jurists
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
JSC	Judicial Services Commission
LAD	Legal Aid Directorate
LRF	Legal Resources Foundation
MHCC	Ministry of Health and Child Care
MoJLPA	Ministry of Justice, Legal and Parliamentary Affairs
NGO	Non-Governmental Organization
NPA	National Prosecuting Authority
SGBV	Sexual and Gender Based Violence
UN	United Nations
UNDP	United Nations Development Programme
UNFPA	United Nations Population Fund
UNICEF	United Nations Children's Fund
UNODC	United Nations Office on Drugs and Crime
UN Women	United Nations Women
VFC	Victim Friendly Court
VFU	Victim Friendly Unit
ZIMSTAT	Zimbabwe National Statistics
WHO	World Health Organization
WLSA	Women and Law in Southern Africa
ZWLA	Zimbabwe Women Lawyers Association

1.0 INTRODUCTION AND BACKGROUND

This is a policy brief on access to justice for survivors of sexual gender-based violence (SGBV), harmful practices (HP) and violations of sexual and reproductive and health rights (SRHR) in the context of COVID 19 pandemic and emergencies.

The overall objective of this paper is:

To assess the efficacy (accessibility and effectiveness), level of preparedness and response by both the formal and informal justice systems in Zimbabwe in enhancing access to justice in emergency situations (COVID- 19).

To assess the gendered experiences of women and other vulnerable and marginalized groups who utilize the formal and informal justice delivery system.

The methodological approach used was desktop research. The major findings were that the COVID-19 pandemic caught the justice delivery system unprepared and this has negatively affected access to justice for the general public, especially for vulnerable groups such as women, children and people living with disabilities. It has been difficult for them to report and litigate urgent matters such as domestic violence, GBV, SGBV, HPs, maintenance and custody issues which mainly affect women and children who are the primary caregivers in homes and communities. The formal justice system was inaccessible due to the COVID-19 Regulations which restricted movement of people and barred litigants from prosecuting their cases. The informal courts (primary and community courts as established by Section 10(1) of the Customary Law and Local Courts Act [Chapter 7:05]) which usually complement the formal justice system to adjudicate over limited SGBV cases¹ in rural and hard to reach areas were completely suspended. Thus, survivors were not able to access effective remedies such as protection orders.

2.0 THE PROBLEM STATEMENTS

Violence against women is amplified in emergency, crisis or conflict situations (see UNFPA 2014² and WHO 2005³). The Covid-19 pandemic has also exacerbated SGBV and HP which are pre-existing factors that militate against rights of women and girls, and has led to new forms of violence. Because of pre-existing gender inequalities, deep-rooted

¹ It should be noted that protection orders may only be issued by informal courts in terms of Part IV of the Customary Law and Local Courts Act and Section 18 of the Domestic Violence Act for emotional, verbal and psychological, or economic abuse referred to in section 3(1)© and defined in section 3(2)(c)(i), (ii), (iii) and (iv); or section 3(1)(d) and defined in section 3(2)(d)(i) and (ii) of the Domestic Violence Act.

² Gender-based violence in humanitarian settings.

³ Health in Emergencies (Issue No 20)

discrimination and feminized poverty, the multifaceted consequences of the current COVID-19 crisis have impacted women more than men, while at the same time placing increased responsibilities on women's shoulders.⁴

Article 113 of the Constitution of Zimbabwe permits the President to declare a state of emergency. Article 87 permits limitation or derogation of fundamental rights and freedoms by a written law providing for measures to deal with situations arising during a period of public emergency. However, there are certain rights that are non-derogable in terms of international human rights standards and Constitution of Zimbabwe. These are the right to life, human dignity the right not to be tortured or subjected to cruel, inhuman or degrading treatment or punishment; the right not to be placed in slavery or servitude; the right to a fair trial; and the right to obtain an order of habeas corpus.

The COVID-19 pandemic has caused untold human suffering in the world and has resulted in a serious economic, social and political crisis impacting all facets of people's lives. In Zimbabwe, the COVID 19 pandemic resulted in the declaration of a State of Disaster⁵ by the President and this was followed by Statutory Instruments (SIs) which were promulgated in terms of the Public Health Act (Chapter 15:17). These SIs made several restrictions including freedom of movement except essential services which however excluded the legal profession and the courts. The resultant effect was that people with urgent legal cases failed to access justice either due to closure of the courts or non-availability of lawyers / legal aid services. Other related reasons included unavailability of transport and the requirement to have a clearance letter. The pandemic also affected the economy and people lost their jobs as a result of company closures. Most of those who were self-employed in the informal sector had their businesses closed to curb the spread of the virus while others were forced to go on unpaid leave. Women who constitute the majority of vendors just found themselves without a source of income. The SIs failed to recognise that access to justice is an essential service and that when people have their movement restricted, lost income and livelihoods, there is increased GBV and harmful practices. For example, child marriages can be used as a poverty reduction strategy. Zimbabwe has recorded a 60% increase in GBV calls, in comparison to the pre-lockdown statistics through the national GBV Hotline between 30 March to 7 October 2020⁶. Women constitute 94% of those making reports, and approximately 90% of the cases are intimate

⁴ CEDAW Committee Call for joint action in the times of the COVID-19 pandemic (Statement adopted on 21 April 2020)

⁵ Statutory Instrument 76/2020 Civil Protection (Declaration of State of Disaster: Rural and Urban Areas of Zimbabwe) (COVID-19) Notice.

partner violence. The COVID-19 Regulations limited access to public transport and resulted in high transport fares. This negatively affected access the justice delivery system in that litigants could not easily access public transport, could hardly afford the high transport fares and the lawyers and legal aid providers were not regarded as essential workers.

3.0 FINDINGS

The following are the findings regarding access to justice in relation to COVID 19 pandemic.

3.1 THE RESPONSE TO EMERGENCIES AND COVID 19 PANDEMIC

Prior to COVID 19 pandemic, there were various natural and man-made disasters that increased vulnerabilities of people. In particular women and girls were disproportionately affected by recurring droughts, floods and cyclones. “These vulnerabilities took various forms, including physical exposure, socio-economic vulnerability and limited capacity reduce to vulnerability and disaster risk”. The factors that promote one's vulnerabilities include poverty, social class, age, group, and ethnicity and gender relations.⁷ There are tropical diseases, water-borne and vector-borne diseases for both humans and animals. Malaria and cholera are the commonest epidemics that have mostly affected women and children in the previous years.

According to the International Commission of Jurists (ICJ), all persons must have access to legal advice, and to fair and effective judicial proceedings, including to challenge the legality of emergency measures. Where there is declared public emergency which threatens the life of the nation, international human rights law allows for States to derogate from certain human rights obligations, subject to certain conditions including necessity, proportionality, non-discrimination, and time-limitedness.⁸ The essential role that lawyers play in the protection of human rights becomes even more vital in times of crisis or states of emergency.

Some of the laws that respond to emergencies and disasters include the Constitution of Zimbabwe, Environmental Management Act [Chapter 20:27], Public Health Act [Chapter 15:17] and Civil Protection Act [Chapter 10:06]. The Constitution has provisions that

⁶ OCHA, 'Zimbabwe: Cluster status, Protection (Gender Based Violence) last updated 26 October 2020', available at <https://reports.unocha.org/en/country/zimbabwe/card/2XxB9GOV93/> [accessed 4 November 2020].

⁷ UNISDR, UNDP and IUCN, 2009, Making Disaster Risk Reduction Gender-Sensitive Policy and Practical Guidelines at p 24.

⁸ ICJ, 'ICJ briefing paper on the impact of anti-VOVID 19 pandemic measures,' available at <https://www.icj.org/icj-briefing-paper-on-the-impact-of-anti-covid-19-pandemic-measures-on-access-to-justice-in-cis-countries/>

respond to emergencies and disasters. For example, provides for the right to health in terms of Section 76. Section 29(2) of the Constitution of Zimbabwe states that “no one should be refused emergency treatment”. Section 19(2)(c) further protect children from maltreatment, neglect or any form of abuse. The Constitution requires, “the State and all institutions and agencies of government at every level must protect and foster the institution of the family and in particular must endeavour, within the limits of the resources available to them, to adopt measures for (...) prevention of domestic violence”⁹. In relation to access for justice, Section 31 of Constitution of Zimbabwe calls upon the State to “take all practical measures, within the limits of the resources available to it, to provide legal representation in civil and criminal cases for people who need it and are unable to afford legal practitioners of their choice”. This is not a justiciable right but a national objective capable of influencing policies and laws. The Constitution guarantees rights for women and girls that include right to life¹⁰, right to personal security¹¹, right to human dignity¹²; right to freedom from torture or cruel or inhuman or degrading treatment¹³, right to administrative justice¹⁴ and right to a fair hearing¹⁵. Section 78 (2) of the Constitution prohibits forced marriages. In addition, Section 68 of the Constitution provides for limitation of rights in the 'interest of public health'.¹⁶

The preamble to Public Health Act [Chapter 15:17] provides for rights of all parties in the public health system but in essence it is dealing with rights of healthcare providers. The Act was enacted to domesticate the following constitutional provisions: Section 29: Health services; Section 44: Duty to respect human rights and freedoms; Section 76: Right to healthcare; Section 81: Rights of children; and Section 82: Rights of the elderly.¹⁷ However, these rights have not been incorporated into legally enforceable provisions in the Act. It deals with notification of diseases but does not have provisions on addressing stigma and discrimination associated with these diseases.

The Environmental Management Act [Chapter 20:27] promotes the principle of sustainable management of natural resources and protection of the environment and puts people at the centre of development¹⁸. It also promotes that “environmental management must place people and their needs at the forefront of its concern; (...) and anticipated negative impact on the environment and on people's environmental rights shall be prevented, and where they cannot be altogether prevented be minimised and

⁹ Constitution of Zimbabwe, Section 25(b).

¹⁰ Ibid, section 49.

¹¹ Ibid, section 52.

¹² Ibid, section 51.

¹³ Ibid, section 53.

¹⁴ Ibid, section 68.

¹⁵ Ibid, section 69.

¹⁶ Ibid, section 86(1)(b).

¹⁷ See Preamble to the Public Health Act.

¹⁸ Environmental Management Act, preamble.

remedied”¹⁹. These provisions are important in addressing the COVID 19 pandemic because the virus is air-borne. The Act adopts a proactive approach in anticipating disasters.

The Civil Protection Act [Chapter 10:06] provides for special powers aimed at establishing, coordinating and directing the activities of both the public and private emergency service and guidelines for action and maximum use of resources since disaster mitigation requires a multisectoral and interdisciplinary approach. Other than being used in the declaration of disasters, the Act does not deal with disasters but hazards. It also does not deal with phases such as preparatory, emergency response, recovery and transition which are critical in addressing emergencies and crisis.

3.2 LEGAL PROVISIONS REGARDING COVID 19 AND ACCESS TO JUSTICE

The part discusses several Regulations and Practice Directions that were put in place that either had direct or indirect impact on access to justice during the COVID 19 Lockdown.

On 23rd March 2020 the President of Zimbabwe, in terms of section 27(2) of the Civil Protection Act²⁰ declared a State of Disaster in all rural and urban areas of Zimbabwe²¹ caused by COVID-19 Pandemic. The declaration effectively restricted enjoyment of fundamental human rights. On same day, the Minister of Health and Child Care, in terms of section 68 of the Public Health Act²², made regulations²³ through Statutory Instrument (SI) 77 of 2020 declaring COVID-19²⁴ as a formidable epidemic disease with immediate effect till the 20th of May 2020. The object of these Regulations was to enable the implementation of measures to prevent, contain and treat the incidence of COVID-19. The Regulations among other things prohibited public gatherings which were defined as gatherings of 100 or more people. Section 8 of the Regulations empowered the Minister in consultation with the President, to issues orders that imposed restrictions on public traffic and movement of persons among other things.

On 28rd March 2020, the Minister of Health in terms of SI 77/20 and in consultation with the President made an order through SI 83 of 2020²⁵. Section 2²⁶ defined essential services. The list of essential services clearly did not include the provision of legal services

¹⁹ Environmental Management Act, section 4(2)(b) & (f).

²⁰ [Chapter 10:06],

²¹ Statutory Instrument 76 of 2020. Civil Protection (Declaration of State of Disaster: Rural and Urban Areas of Zimbabwe) (COVID-19) Notice, 2020. Interpretation

²² [Chapter 15:17]

²³ Public Health (COVID-19 Prevention and Containment) Regulations, 2020

²⁴ Section 4 of S.I 77 of 2020

²⁵ Public Health (COVID-19 Prevention and Containment AND TREATMENT) (National Lockdown) Order, 2020

²⁶ <http://zimlil.org/zw/legislation/si/2020/83>

or operations of the courts. Section 4 imposed restrictions on the movement of people except those in essential services. This was an impediment to access to the justice delivery system. This had negative effects on victims of SGBV and HP.

SI 84 of 2020 amended SI 83 of 2020 by, inter alia, defining essential services to include all criminal courts and other courts covered by a Practice Direction that was issued by the Chief Justice together with the support staff of those courts. This partially enhanced access to justice.

On the 29th of March 2020 the Chief Justice of Zimbabwe issued Practice Direction 1 to cover gaps in the COVID-19 Regulations. The Practice Direction only applied to the formal courts²⁸. This means the customary/informal courts (primary and community courts as established by Section 10(1) of the Customary Law and Local Courts Act [Ch 7:05]) were not included and their operations were suspended in terms of the Regulations. It is instructive to note that, generally, customary courts are the courts which are easily accessible to most rural women for resolution of disputes. Women have used these courts to get relief in cases of domestic violence, GBV, HP and maintenance. Women were unable to access the community courts due to transport and travel restrictions that were imposed by the Regulations. Accessibility to these community courts could have been helpful since they were in proximity to the communities and within distances that did not require clearance letters or transportation. The closure of customary courts was a hard blow for poor rural and marginalised women who sought justice.

Paragraph 3 of the Practice Direction provided that the filing of new cases and all processes and pleadings would be suspended for the duration of the 21 days except for initial remands, urgent applications and bail applications. The implication was that all new cases related to protection orders, custody cases, maintenance and peace orders could not be filed for the 21-day period. The Practice Direction failed to recognise that domestic violence cases are regarded as urgent cases that is why interim protection orders are granted pending hearing of the applications. However, the civil courts were closed and only criminal courts were functional at the Magistrates Court. Women who went to the courts seeking assistance in domestic violence cases were referred to the police. Generally, most women prefer protection orders instead of the criminal justice system when it comes to domestic violence because they usually do not want the perpetrators to be arrested²⁹. This

²⁷ Practice Directive 1 of 2020, 'COURT OPERATIONS DURING THE 21 DAY COVID-19 NATIONAL LOCKDOWN', available at [https://www.jsc.org.zw/jscbackend/upload/Publications/PRACTICE%20DIRECTION%201%20OF%202020%20\(%20COURT%20OPERATIONS%20DURING%20NATIONAL%20LOCKDOWN%20PERIOD\).pdf](https://www.jsc.org.zw/jscbackend/upload/Publications/PRACTICE%20DIRECTION%201%20OF%202020%20(%20COURT%20OPERATIONS%20DURING%20NATIONAL%20LOCKDOWN%20PERIOD).pdf).

²⁸ Magistrates Courts, High Court, Labour Court, Supreme Court, Constitutional Court.

²⁹ Magorogosho Rebecca, 'Two years after enactment': Assessing the efficacy of protection orders in terms of the Domestic Violence Act (chapter 5:16) no. 14/2006: a study conducted in Harare, Norton and Chitungwiza', available at http://www.searcwl.ac.zw/index.php?option=com_docman&task=doc_download&gid=176&Itemid=96 [accessed 27 October 2020], at 79.

is because the perpetrators are breadwinners and their arrest usually result in the victim, especially in intimate violence relationship, being banished from the family home. The relief that they would be seeking is to stop the perpetrator from abusing them so that they live in peace. Women could not therefore get their preferred relief.

In terms of Paragraph 8 (a) of the Practice Direction, all civil matters that were pending at the Magistrates Court were deemed to have been postponed to the following business day following the last day of the lockdown. The effect was that all maintenance, domestic violence or custody cases were effectively suspended resulting in the victims' inability to access the courts at all. Paragraph 10 states that all pending criminal cases on remand were rolled over for a period of at least 24 calendar days. In terms of paragraph 12, all summons and subpoenas relating to accused persons and witnesses were cancelled for the period between the 30th of March and the 19th of April 2020 and were to be reissued after the expiry of the lockdown period. The net effect was that there was no access to the criminal court for victims of HP, GBV and SGBV. For example, evidence is required from witnesses in the criminal justice system and such delays compromised it. The young children and traumatised women tend to forget the sequence of the events of their abuse and this potentially prejudices their cases. This underscores the fact that justice delayed is therefore justice denied.

Another Practice Direction No 2 of 2020 was issued on 19th of April 2020 to amend Practice Direction 1 of 2020. In terms of paragraph 1 of Practice Direction 2, all pending criminal cases were further remanded by a period of a month. Similarly, all subpoenas, all summons which directed accused persons and witnesses to appear in court between the 28th of April and the 3rd of May were cancelled. It specifically stated that Practice Direction 1 would remain in effect until the expiry of the lockdown period. The effect therefore was that all new and pending civil cases remained suspended. This meant the court users could not bring new matters before the courts.

Practice Direction 3 of 2020 was issued on the 2nd of May and was to take effect from the 11th of May 2020. It was to going remain in force until the expiry of level 2 of the lockdown period. The Practice Direction replaced the operational instructions contained in Practice Directions 1 and 2 of 2020 and again applied only to the formal courts. The informal courts were excluded again.

In terms of court operations, this Practice Direction allowed courts to be operational with effect from the 11th of May 2020. The opening times were only during weekdays between 0800 hours and 1500 hours. In practice, the courts were closing earlier than their normal

business hours and this was in line with the travel restrictions which obviously affected access to justice for litigants.

Regarding court attendances, this Practice Direction required litigants to be subjected to among other things, temperature checks, sanitisation of hands and wearing of face masks. These conditions hindered access to justice for victims of domestic violence in that those who failed the temperature checks or could not afford the face masks were denied access into the courts. The litigants who either required travelling or were required to attend court in a province other than where they resided were required to have clearance letters from their nearest police station. The implication was that those who failed to get clearance were prejudiced because they were unable to attend the court proceedings. The issuance of clearance letters was at the discretion of the Police and those who failed to get the clearance letters were denied their constitutional right to access the courts. The Police had certain times of issuing these clearance letters. For example, at the Central Police Station in Harare, people started queuing at dawn. They provided or bought affidavits which were only signed in the morning. There was a single queue for all the people who wanted clearance letters to attend funerals and court processes among other reasons. This meant that clearance letters for court attendance were not prioritised. In addition, the Police were interested in restricting movement in order to contain COVID 19 Pandemic but did not fulfil its other mandate of receiving reports of SGBV, HP and violations of sexual and reproductive health rights as well as maintaining peace and order among the communities.

A Practice Direction 4³⁰ was issued on the 17th of May 2020 and came into effect from the 18th of May 2020. It sought to amend Practice Direction 3 of 2020³¹. In terms of paragraph 1 of Practice Direction 4, court registries were supposed to open for litigants, legal practitioners and members of the public for the period stated in the applicable court rules. Effectively, this Direction extended the operating hours for the courts thereby enhancing access to justice for victims of SGBV, HP and SRHR. For the first time during the lockdown, organisations that provide free legal aid services resumed operations such as Helpdesk activities at the courts.

Again, Practice Direction 4 did not provide for a provision on how the informal courts were going to operate. All the Practice Directions facilitated access to justice to the formal

³⁰ Judicial Service Commission, 'PRACTICE DIRECTION 4 OF 2020 OPERATIONAL DIRECTIONS FOR THE COURTS DURING LEVEL 2 LOCKDOWN AMENDMENT NOTICE' available at <https://jsc.org.zw/jscbackend/upload/Publications/COVID%2019-%20PRACTICE%20DIRECTION%204%20OF%202020.pdf>

³¹ Judicial Service Commission, Practice Direction 3 of 2020, 'Operational Directions for the Courts During Level 2 Lockdown', available at <https://zimlil.org.zw/blog/COVID%2019%20PRACTICE%20DIRECTION%203%20OF%202020.pdf>

courts as opposed to informal courts.

SI 102 of 2020 was gazetted on the 6th of May 2020 and provided for the opening of the formal, commercial and industrial sectors. Interestingly, the legal profession was viewed as being part of the commercial sector. Statutory Instrument 110 of 20 gazetted on the 17th of May 2020 extended the Lockdown period indefinitely from the 31st of May 2020.

3.2 The Role Played by both the Formal and Informal Justice Systems in Zimbabwe in Enhancing Access to Justice in Emergency Situations such as COVID 19 Pandemic.

Zimbabwe is a party to several international agreements such as the International Covenant on Civil and Political Rights (ICCPR) (1966), International Covenant on Economic, Social and Cultural Rights (ICESCR) and Convention of Eradication of all forms of Discrimination against Women (CEDAW). These treaties spell obligations for States. According to international law, all trials must be open to the public to ensure transparency of proceedings and provide an important safeguard for the interest of the individual and society as a whole. The Human Rights Committee (HRC) for the ICCPR, issued a Statement on derogations from the Covenant in relation with the COVID-19 pandemic. The HRC affirms, inter alia, reaffirms that,

*“States parties may not resort to emergency powers or implement derogating measures in a manner that is discriminatory, or that violates other obligations that they have undertaken under international law, including under other international human rights treaties from which no derogation is allowed. Nor can States parties deviate from the non-derogable provisions of the Covenant (...) or from other rights that are essential for upholding the non-derogable rights found in the aforementioned provisions and for ensuring respect for the rule of law and the principle of legality even in times of public emergency, including the right of access to court, due process guarantees and the right of victims to obtain an effective remedy”.*³²

In addition, “Deviating from fundamental principles of fair trial, including the presumption of innocence, is prohibited at all times”³³. Article 14(3)(b) of the ICCPR provides that a person charged with a criminal offence is entitled “[t]o have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing”. The HRC provides that the right to communicate with a lawyer of one's

³² Human Rights Committee, Statement on derogations from the Covenant in connection with the COVID-19 pandemic, 24 April 2020, <https://www.ohchr.org/Documents/HRBodies/CCPR/COVIDstatementEN.pdf>

own choosing is an important element of the guarantee of a fair trial and an application of the principle of equality of arms.³⁴

The right to free legal assistance

The right to free legal assistance for criminal defendants who are unable to afford a lawyer is a widely accepted principle of law and an essential component of the right to a fair trial. Legal aid provides a foundation for a fair and effective justice system based on the rule of law³⁵. During the lockdown period this right was severely limited in Zimbabwe. The legal profession was not regarded as an essential service exempted from the COVID 19 restrictions. The result was that this fundamental right was not enjoyed by criminal defendants who could not access free legal aid services. In fact, the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems³⁶ provide that States should put in place a comprehensive legal aid system that is accessible and effective, has a nationwide reach and is available to all without discrimination³⁷. So, in this regard, Zimbabwe was found wanting.

Monitoring women's access to justice

The CEDAW Committee has recommended to States Parties to “develop effective and independent mechanisms to observe and monitor women's access to justice in order to ensure that justice systems are in accordance with the principles of justiciability, availability, accessibility, good quality and effectiveness of remedies. This includes the periodical audit/review of the autonomy, efficiency and transparency of the judicial, quasi-judicial and administrative bodies taking decisions affecting women's rights.”³⁸ It would be important to consider whether legal aid should not be made available from the very first contact with the Police, so that advice could be provided at the earliest stage, to support the victim in seeking justice. In SGBV cases, a timely handling is essential. In addition, time is of the essence because the survivor requires post-exposure prophylaxis within 72 hours to reduce exposure to HIV infections and Emergency Contraception Pill to prevent unwanted pregnancies. This may contribute, with other aforementioned factors, to the frequency of denial of statements by women and their decision not to proceed with the case. The creation of a domestic violence hotline may help address the

³³ General Comment No. 32: Article 14: Right to Equality before Courts and Tribunals and to Fair Trial, CCPR/C/GC/32 (2007), para 6. See also General Comment No. 29: States of Emergency (Article 4), CCPR/C/21/Rev.1/Add.11 (2001), paras 11 and 16.

³⁴ Ibid.

³⁵ Third International Conference on ACCESS TO LEGAL AID IN CRIMINAL JUSTICE SYSTEMS.

³⁶ UN General Assembly, United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems : resolution / adopted by the General Assembly, 28 March 2013, A/RES/67/187, available at: <https://www.refworld.org/docid/51e6526b4.html> [accessed 11 November 2020].

³⁷ Ibid.

³⁸ CEDAW General Recommendation No 33, paragraph 20(a).

problem of under reporting which is extremely common in GBV cases.

If urgent action is not undertaken, the effects of COVID-19 are likely to derail the fragile progress made towards the implementation of the 2030 Agenda for Sustainable Development, including SDGs 5 on gender equality and 16 on peaceful, just and inclusive societies.³⁹ It considers the issue of the legislative framework governing the restrictive measures, as well as the problems of access to lawyers and courts in relation to the COVID-19 restrictions. During emergency situations, international human rights law continues to apply.⁴⁰

Geographical location and access to justice

In Zimbabwe, the geographical coverage for access to legal services is limited. There are two Supreme Courts in Harare and Bulawayo, respectively. There are also four (4) High Courts located in Harare, Bulawayo, Masvingo and Mutare Towns. Notably, most of the formal courts are located in urban or peri-urban areas and yet 67.79% of Zimbabweans and 48% children live in rural areas.⁴¹ Traditional justice systems frequently fill the gap between the needs of the community and the services offered by the formal court system.⁴² According to the Rapid Assessment on Legal Aid in Zimbabwe, the traditional courts handled many legal and non-legal issues due to their proximity to rural areas and accessibility. Most rural populace were more attracted to the informal justice system because it was accessible, provided instant remedies and justice, there was no need for legal representation and mediation and conflict resolution mechanisms were available.⁴³ In terms of the COVID 19 Regulations, these traditional courts remained closed because their activities were suspended. Those who relied on these courts could therefore not access them and in the process, justice was denied to them.

Informal courts are also attractive in that there are perceptions to the effect that access to justice has been affected by lack of transparency and accountability as well as corruption associated with reporting mechanisms and court processes.⁴⁴ However, it was indicated that the Traditional Leaders had very low understanding of women rights and children rights which were often violated as a result of gender and social norms. Though they promoted mediation and conflict resolution mechanisms and remedies for the survivor, their processes were not survivor-centred and rights-based but in the interest of promoting family and community cohesion. In addition, they were unable to properly interpret the

³⁹ <https://www.idlo.int/covid-19-sparks-urgency-around-justice-women-new-report-calls-action>

⁴⁰ <https://www.idlo.int/covid-19-sparks-urgency-around-justice-women-new-report-calls-action>

⁴¹ Spotlight SGBV and Formal Justice Draft Report- Unpublished.

⁴² Ibid.

⁴³ Mushayavanhu D, (2018) Rapid Assessment on Legal Aid in Zimbabwe (Unpublished).

⁴⁴ Ibid.

constitutional rights and international human rights and regional standards that address SGBV, HP and SRHR. This was also attributed to absence of court rules and standards to adhere to as they handled matters. Women and Law in Southern Africa (WLSA) and Zimbabwe Women Lawyers' Association (ZWLA) participated and monitored the chief's court processes. The Judicial Services Commission (JSC) official also added that:

*The formal justice remains best for redressing issues to do with cases such as SGBV. The informal justice system has too many loopholes. People may use traditional systems such as matare emhuri [family dispute resolution platforms] and this only leads to some form of fines and the perpetrator remains free to do whatever he wants as he is not thrown in jail or anything. At times, because it is a relative who may be a perpetrator, family members connive and quickly cover up the issue. This presents a risk of having cases recurring. The formal justice orders are also easily enforceable because we have the police as the law enforcement officers who enforce Protection. Orders is, they are violated, and violators of these order will be arrested.*⁴⁵

Lawyers' ability to access clients

The restrictive measures introduced impacted on the lawyers' ability to freely move and have access to clients, for example, those who were in detention facilities. Some lawyers had to work remotely from home. These limitations resulted in inability of lawyers to meet with their clients. During the Lockdown, mobile telephone operators increased tariffs for voice, message and data to surf the internet thereby limiting access to legal information and assistance to that that needed it most. Following the uncertainties and concerns whether the restrictions on the restricted travel, movement and transportation that were applicable to the legal profession, the Chief Justice issued Practice Direction 1⁴⁶ which specifically stated that it was meant to cover gaps in the COVID-19 Regulation. Paragraph 3 of the Practice Direction provided that courts could only handle initial remands, urgent applications and bail applications. However, the legal profession was still not included in the list of the professions authorized to carry out professional duties. This included the Legal Aid Directorate and other law-based institutions/legal aid services providers whose target groups include women, children and persons with disabilities. These groups were disproportionately affected by the Lockdown Regulations due to increased abuse and human rights violations.

The restrictive measures introduced through the COVID-19 Regulations significantly and negatively impacted on the ability of lawyers to carry out their duties thereby impeding

⁴⁵ Interview, JSC, Mutasa District.

⁴⁶ Judicial Service Commission, 'Practice Direction 1 of 2020: Court operations during the 21 day COVID-19 National Lockdown', available at [https://www.jsc.org.zw/jscbackend/upload/Publications/PRACTICE%20DIRECTION%201%20OF%202020%20\(%20COURT%20OPERAT](https://www.jsc.org.zw/jscbackend/upload/Publications/PRACTICE%20DIRECTION%201%20OF%202020%20(%20COURT%20OPERAT)

access to litigants. Due to non-inclusion of the legal profession on the list of the professions authorised to move freely, concerns were expressed over lawyers' ability to see clients, to attend courts, detention facilities and ultimately enjoyment of human rights of those in detention under national and international law.⁴⁷

The Zimbabwe justice system failed to enhance access to justice to litigants during the COVID-19 pandemic. Other jurisdictions used technology to cover the gap. For example, on March 20, 2020 the Chief Justice of Kenya gazetted Practice Directions on Electronic Case Management to guide the integration of ICT in judicial proceedings.⁴⁸ The Directions enabled the electronic filing of urgent matters, including for redress in cases of SGBV, GBV and HP; and they allowed video conferencing technology for judgments and rulings.⁴⁹ In addition, by its decision of 19 March and 23 April 2020, the Supreme Court of Azerbaijan recommended that the courts postpone the consideration of all cases with the exception of urgent ones and the cases which do not require oral court hearing and that hearings be held via the "Electronic Court" information system in civil cases and commercial disputes. It also recommended submission of complaints by post or email and seeking consultation by internet or telephone on account of the closure of the court buildings for the public.⁵⁰

3.3 The level of preparedness and response by both the formal and informal justice systems in Zimbabwe in enhancing access to justice in emergency situations (COVID-19).

It was noted that during the Covid-19 Lockdown, most essential services were not readily available. As noted by one key informant in Mutasa '*...our courts are closed. Mine was one of the first to close... the headmen are not operating as well. As it's a primary court and people gather.*'⁵¹ Others also noted that:

Distance to reach certain areas means some people are left without services, movement restrictions due to COVID-19 Lockdown means normal services such as mobile clinics cannot be carried out.⁵² Yes, it was during the first 21 days lockdown. I went and reported this matter to the headman who is also a police officer, but he told me to see how lockdown proceeds before my order could be enforced.⁵³

⁴⁷ <https://www.icj.org/icj-briefing-paper-on-the-impact-of-anti-covid-19-pandemic-measures-on-access-to-justice-in-cis-countries/paragraph38>

⁴⁸ Judiciary of Kenya, 'Statement on Justice Sector operations in the wake of COVID-19,' available at <https://www.judiciary.go.ke/statement-on-justice-sector-operations-in-the-wake-of-the-covid-19-pandemic/>

⁴⁹ Ibid.

⁵⁰ <https://www.icj.org/icj-briefing-paper-on-the-impact-of-anti-covid-19-pandemic-measures-on-access-to-justice-in-cis-countries/paragraph28>

⁵¹ Interview, traditional leader, Mutasa District

⁵² Interview, CSO, Mutasa District

⁵³ Interview with survivor, Hurungwe District

Interviews with the Police also confirmed that, operations continued during lockdown albeit limited by the constrained movement of the people. A Police Officer with VFU noted that, *'Our operations did not stop when the lockdown was introduced. The only thing we stopped doing were community engagements as we had to adhere to restrictions against gathering and encourage people to stay home.'*⁵⁴

There is need for rapid and decisive action by the Government in order to ensure that the most vulnerable people have the necessary legal support and access to channels to address their legal problems, thus highlighting the importance of a broad and coordinated policy response that includes strengthened provision of basic legal services, coordination with other social services such as protection, health care and housing support and business services in terms of advice on bankruptcies, labour issues or salary-related services. Failing to do so risks deepening inequalities, possibly creating new divides and undermining the resilience of societies.⁵⁵ However, it should be noted that whilst the Government developed a COVID-19 Preparedness Plan which made reference to the need for an initial capacity assessment and risk analysis to be carried out, including mapping of vulnerable populations;⁵⁶ the Plan is silent on the need to ensure a gendered perspective in the analysis and response to the pandemic. In addition, the Plan is silent on how socially constructed roles may affect vulnerability to COVID-19⁵⁸, the need for COVID-19 responses to be based on sex-disaggregated data, and the need for COVID-19 financial responses to be gender responsive. The Plan is further silent on the potential impact of COVID-19 on women and their interaction with the political, economic and social spheres.⁵⁹

3.4 The gendered experiences of women and other vulnerable and marginalized groups who utilize the formal and informal justice delivery system

The COVID-19 pandemic impacted more severely on vulnerable and disadvantaged groups especially those in precarious employment or financial conditions, the socially isolated⁶⁰ and the poor. It put women and children at further risk of violence as it restricted women's ability to deploy their usual safety strategies; for example, not being able to stay with relatives or send children out to play when the level of abuse is escalating.⁶¹

⁵⁴ Interview, VFU, Mutasa District

⁵⁵ Interview, VFU, Mutasa District.

⁵⁶ https://www.oecd.org/gov/Impact_of_COVID19_on_Access_to_Justice_Draft_agenda.pdf

⁵⁷ AU Guidelines on Gender Responsive Guidelines to COVID-19 June 2020, p 3.

⁵⁸ Ibid.

⁵⁹ Impact on Women's physical and psychological integrity, Impact on Women's Political Participation, etc. See AU Guidelines on Gender Responsive Guidelines to COVID-19 June 2020

⁶⁰ https://www.oecd.org/gov/Impact_of_COVID19_on_Access_to_Justice_Draft_agenda.pdf

⁶¹ https://www.oecd.org/gov/Impact_of_COVID19_on_Access_to_Justice_Draft_agenda.pdf

UNICEF also reported in March 2020 that children were facing heightened risk of abuse because of COVID-19.⁶² In the Guidance Note, the United Nations CEDAW Committee also reported in April 2020 that while many States consider restrictions on freedom of movement and physical distancing necessary to prevent contagion, such measures may disproportionately limit women's access to health care, safe shelters, education, employment and economic life. Reporting on Zimbabwe, UNFPA also announced that an increase in GBV is expected as an indirect consequence of COVID-19 infection prevention measures, including the restriction of movements, increased demand and limited access to public services and basic commodities.⁶³

It is instructive to note that, being young and female can be a potential source of intersecting forms of discrimination, placing girls and adolescents at much higher risk for gender-based violence, especially during crisis situations, and a heightened likelihood for rape, early marriage, sexual exploitation, abduction and trafficking.⁶⁴ Self-isolation and limited mobility due to a look-down were likely to impact women's and girls' ability to access basic family resources, such as water and food, which may increase tension within the household and led to an increased risk of intimate partner violence.⁶⁵ The levels of SGBV spiked in Zimbabwe as households were placed under the increased strains that came from concerns of health, psychosocial, and income, and many women and girls are under look-down with their abusers.⁶⁶ A respondent explained the increase in violence by arguing that *'hunger is an issue which triggers violence in the homes. Before the lockdown, some women could source for provisions and income through vending and avoided disputes about provisions or could visit friends or relatives for temporary relief if there was abuse in the home.'*⁶⁷

According to the Zimbabwe Cluster Status: Protection (Gender-based Violence), “The national GBV Hotline (Musasa District) recorded a total of 2,768 GBV calls from the beginning of the lockdown on 30 March until 13 June (1,312 in April, 915 in May 2020 and 541 from 1 June to 27 June), with an overall average increase of over 70 per cent compared to the pre-lockdown trends. About 94 per cent of the cases are women. The most dominant forms were physical violence (38 per cent of total cases) and psychological violence (38 per cent), followed by economic violence (19 per cent) and sexual violence (5 per cent). About 90 per cent of cases are IPV cases.”⁶⁸ In Mutasa District, a young married woman reported spousal abuse increased under lockdown because she was consistently

⁶² <https://www.unicef.org/zimbabwe/stories/covid-19-children-heightened-risk-abuse>

Spotlight SGBV and Formal Justice Draft Report- Unpublished

⁶³ https://www.unodc.org/pdf/criminal_justice/WA2J_Consolidated.pdf at page 23

⁶⁴ Ibid.

⁶⁵ Spotlight Communications officer at: <http://zw.one.un.org/newsroom/news/urgent-action-looming-violence-against-women-during-covid-19-pandemic>

⁶⁶ Interview, Survivor 2, Umzingwane District.

⁶⁷ Last updated 10 July 2020. See <https://reports.unocha.org/en/country/zimbabwe/card/2XxB9GOV93/>

asking the husband to provide money for food.⁶⁹ The COVID 19 Lockdown coincided with a sharp increase in SGBV especially within the home. Musasa Project, a Non-Governmental Organisation (NGO) that runs toll free GBV help lines, reported that there was a 100% increase in calls related to domestic abuse since start of the Lockdown in March 2020.

In emergency situations, it is also easy to suspend certain human rights as the State takes central control to avert the pandemic situation, at the same time it is easy for Government actors to be blind to how they reproduce certain vulnerabilities and violate human rights. For example, the right to free movement in Zimbabwe was suspended and negatively affected SGBV survivors' access to services. A key informant from the JSC argued the following:

JSC's operations have continued even during the lockdown and the crisis we find ourselves in. There is no day that anyone came and did not receive assistance. Access to justice is a human right, thus it should always be available. The challenge was actually people failing to come. They cannot access the courts because they do not have transport. For instance, here we do not have Zimbabwe United Passenger Company (ZUPCO) buses (Government owned buses which were the only buses allowed to operate during the lockdown). People have to use private informal taxes (mushika-shika) which are expensive and can actually ask for up to US\$5 to get here from some rural areas. People are not working, and lockdown has made it worse so many people cannot afford that. We do not know how to help people in such situations. Another challenge that comes with people not being able to access the courts is that the court dates that were set prior to the movement restrictions lapsed. Some people are now worried whether justice can still be served and if it will, when will it be served? People are very impatient with the formal justice system. How then do we restore the faith that people in this area were starting to build when it comes to justice delivery? It is a disaster on its own.⁷⁰

Some key informants highlighted cases which involved women who were being denied access to services as Police at roadblocks demanded letters that justified that these people were in essential services. This meant that those who wanted to access services such as courts or medical supplies were denied movement. This was disregarded the fact that reports can be made either by calling the Police or in persons. Key informants indicated that most SRHR related cases come through walk-in clients on cases such as SGBV, rape

⁶⁹ Spotlight SGBV and Formal Justice Draft Report- Unpublished
⁷⁰ Interview JSC, Mutasa District.

and indecent assaults.⁷¹

However, in Mutasa District, women's shelters run by civil society organizations remained open for survivors, but access was problematic given the restrictions on movement. The stakeholders called for specific guidelines that govern provision of SRHR services in the context of disasters and health emergencies.⁷²

- Lack of safe shelters for survivors was a big challenge to survivors of GBV who were being abused by family members. The survivors became even more vulnerable where perpetrators were either not arrested, on warrant of arrests or released from prison on bail. Most survivors of GBV are forced to go back and stay with the same perpetrators in their families, or in the same community;
- Limited or no knowledge of constitutional provisions protecting women, girls and children;
- Lack of clarity on the criminal law on child marriage and gaps in implementation of strategies to reduce child marriage; and
- In Beitbridge District, many maintenance and domestic violence cases are still pending because the perpetrators have left the country to escape from justice.

In Makoni and Bindura Districts, most men were unemployed hence they defaulted on maintenance payment. Children continued to be denied their rights, resulting in a continuum of violation of children's and women's basic rights; and the right to a fair trial under Article 14 of the ICCPR, including the right to private communication with a lawyer.⁷³

Rural women live in locations where the availability of formal justice institutions may be limited, resulting in substantial direct and indirect costs of accessing justice, that is, traveling long distances and being restricted from movement due to absence of clearance letters from the Police. For women who experience extreme poverty, high levels of illiteracy and lack knowledge of their rights and available services, the obstacles are much greater.⁷⁴ In many instances, survivors of SGBV, HP and SRHR have limited to no access to

⁷¹ Spotlight SGBV and Formal Justice Draft Report- Unpublished

⁷² Spotlight SGBV and Formal Justice Draft Report- Unpublished

⁷³ <https://www.icj.org/icj-briefing-paper-on-the-impact-of-anti-covid-19-pandemic-measures-on-access-to-justice-in-cis-countries/>

⁷⁴ CEDAW General Recommendation No. 34 (2016) on the Rights of Rural Women (CEDAW GR 34)

information on legal aid services and where to get these services. Additionally, the information to which these survivors have access is usually not as detailed as it should be in terms of raising awareness of relevant laws that address SGBV, HP and SRHR; rights of survivors and how to assert them; directory of services providers and where they are located; and nature of legal aid services offered by these providers and how one can apply for protection orders as well as compensation. The information that is available often comes in English language that is neither simplified nor translated into vernacular languages information in Braille and sign language, making it difficult for different categories of survivors to understand. At times, the information may not be uniform or standard resulting in confusing the survivors. Empirical research studies have attributed the lack of confidence in the Domestic Violence Act [Chapter 5:16] to lack of knowledge about the laws, provisions that regulate GBV and how to activate the protection mechanisms such as the protection orders. In addition, there are instances where people were unaware of the fact that physical, psychological, and emotional abuse constitutes justification for a protection order that can remain in force when a protected person is living with the perpetrator. The general lack of awareness of rights means that people with no legal training will most likely need the services of a legal practitioner or legal aid provider to identify and assert their rights.⁷⁵

4.0 LESSONS LEARNT FROM COVID 19 LOCKDOWN IN ZIMBABWE

The following lessons were drawn during the COVID 19 Lockdown:

4.1 Lessons learnt for state-actors

- a. Human rights, especially rights of survivors of SGBV and HP should be promoted at all times including during emergencies and health crises. This will ensure protection from discrimination, GBV, sexual exploitation, neglect and early child marriages. This means discriminatory laws or provisions that fuel violence against women and girls should be repealed.
- b. It is important for the justice chain actors to effectively respond to crisis in preparatory, response and recovery phases.
- c. Remote technologies and virtual services are important in promoting legal aid services and psychosocial support for women and girls facing SGBV, HP and violations SRHR.
- d. Decentralisation of legal aid services to district and community levels can promote access to justice for survivors of domestic violence.

⁷⁵ Spotlight SGBV and Formal Justice Draft Report- Unpublished

- e. Informal justice systems could have complemented the formal justice system by resolving disputes at the community level.
- f. Increased number of safe houses and shelters are required. They become very handy in times of crisis which are characterised by increased human rights violations and domestic violence.

4.2 Lessons learnt for non-state actors

- g. Strengthened institutional capacities for legal aid providers is needed in addressing SGBV, HP and SRHR so that they are able to provide legal aid services to victims using telephone-based hotlines, address concerns of women and girls, provide comprehensive free legal aid and psychosocial support.
- h. Community paralegal models provide legal aid services in remote and marginalised communities that may not have to access mobile phones, laptops and tablets which they could use to access legal aid materials. Paralegals are resident in the communities and are not affected by Lockdown travel restrictions beyond 5km radius.
- i. It is important to invest in development of legal literacy, legal education and human rights and legal assistance in print, media, disability-readable formats and Social Media such as WhatsApp, Facebook, Twitter and Short-Messaging Texting (SMS) Platforms. These will ensure that no one is left behind in accessing justice during emergencies.
- j. It is important to strengthen law-based institutions so that they assist survivors in claiming and asserting their rights that were violated during COVID 19 Lockdown using strategic litigation, class actions and advocating for policy and legal reforms.

5.0 LESSONS LEARNT FROM OTHER JURISDICTIONS

Good practices could be drawn from Ukraine, where lawyers continued to practice normally, including visiting detention facilities. The Ukrainian National Bar Association called on the Government to provide masks and other protection equipment and facilitate the transportation of lawyers providing free legal aid to their clients.⁷⁶

In March 20, 2020 the Chief Justice of Kenya gazetted Practice Directions on Electronic Case Management to guide the integration of ICT in judicial proceedings.⁷⁷ The Directions enabled the electronic filing of urgent matters, including for redress in cases of SGBV, GBV and HP; and they allowed video conferencing technology for judgments and rulings.⁷⁸

⁷⁶ <https://www.icj.org/icj-briefing-paper-on-the-impact-of-anti-covid-19-pandemic-measures-on-access-to-justice-in-cis-countries/>

⁷⁷ Judiciary of Kenya, 'Statement on Justice Sector operations in the wake of COVID-19,' available at <https://www.judiciary.go.ke/statement-on-justice-sector-operations-in-the-wake-of-the-covid-19-pandemic/>

⁷⁸ Ibid.

In Kazakhstan, all court hearings were recommended to be held via videoconference, including via mobile app TRUECONF or other applications and with any device. For example, the ICJ observed several online court hearings in the Kazakhstan courts via an online platform. During the period of 26 - 31 March the courts held 7 thousand hearings of which 3 thousand hearings were with the participations of the parties. Kazakhstan aimed to hold 100% of the hearings on-line by the end of April. In all courts the general public was banned from attending court hearings and there were arrangements for participation of the public online. In Ukraine it was reported that only some courts organized online streaming of hearings, which would compensate the physical absence of the public during the hearing.⁷⁹

The Supreme Court of the Uzbekistan recommended that all documents to be submitted to courts in electronic form or by post.⁸⁰ The courts in almost all the countries assessed for this policy paper were reported to experience technical problems while trying to change their way of work in a short period of time. This slowed down the work of court system making it inefficient.⁸¹ Some countries did not use online systems prior to the COVID-19 pandemic, and they appeared to face significant issues in switching to online platforms on a larger scale.

The United Kingdom developed and adopted a free App, Bright Sky which provided support to survivors of domestic violence. This App has journal function that secures episodes of abuse through text, audio, videos and photographs.⁸² These are used as evidence in court proceedings. Spain launched a WhatsApp Service Forum that is used by women to send instant messages. This Forum has a GPS that can be used to locate women in need of emergency and psychological services. In Palestine, civil society organisations used virtual methods to provide psychosocial and legal services to women. Online hearings were introduced in Canada, while in United States in America emergency services were heard. These included protection orders and temporary restraining orders. In Columbia, virtual services were provided for survivors of domestic violence. The services included legal aid and psychological support. During Lockdown, protection orders were extended for 60 days. In Sierra Leone, Advoc Aid provides services to women deprived of their liberty and affected by violence using paralegals.⁸³

⁷⁹ [https://www.icj.org/icj-briefing-paper-on-the-impact-of-anti-covid-19-pandemic-measures-on-access-to-justice-in-cis-countries/paragraph 35](https://www.icj.org/icj-briefing-paper-on-the-impact-of-anti-covid-19-pandemic-measures-on-access-to-justice-in-cis-countries/paragraph%2035)

⁸⁰ [https://www.icj.org/icj-briefing-paper-on-the-impact-of-anti-covid-19-pandemic-measures-on-access-to-justice-in-cis-countries/Paragraph 33](https://www.icj.org/icj-briefing-paper-on-the-impact-of-anti-covid-19-pandemic-measures-on-access-to-justice-in-cis-countries/Paragraph%2033)

⁸¹ [https://www.icj.org/icj-briefing-paper-on-the-impact-of-anti-covid-19-pandemic-measures-on-access-to-justice-in-cis-countries/2020 paragraph 34](https://www.icj.org/icj-briefing-paper-on-the-impact-of-anti-covid-19-pandemic-measures-on-access-to-justice-in-cis-countries/2020%20paragraph%2034)

⁸² UN Women, Justice for Women Amidst COVID-19, p 28.

⁸³ Ibid, p 29.

The COVID-19 pandemic demonstrates the need for States to further equip courts with all necessary equipment for on-line hearings. Court officials require training and technical assistance to conduct online hearings.⁸⁴

6.0 CONCLUSIONS

The national statutes do not address access to justice issues. The restrictive measures introduced by the COVID-19 Regulations were reactive, ad hoc and impacted negatively on the public's access to justice. The formal courts were partially functional and operations of informal courts were suspended. Women who are the majority of survivors of domestic violence and GBV could not access the courts for protection. Most women and indigent litigants rely on the services of organisations that provide free legal aid services. They could not access these services and their access to justice was hindered. The COVID-19 Regulations were gender insensitive and did not consider legal services as essential. The weakness of the criminal and civil justice systems in Zimbabwe were further exposed by COVID-19 Regulations. The weaknesses include absence of virtual court sittings, absence of electronic case management systems, e-filing and directory of legal aid service providers, absence of paralegal models supported by Government, inadequate printed legal materials and self-assisted litigation materials, a referral system that is weak and uncoordinated, absence of coordinated legal aid services delivery and absence of twenty-four-hour hotlines for survivors.

7. CALL TO ACTION TO THE GOVERNMENT OF ZIMBABWE

7.1. Acknowledge access to justice as an essential service in emergencies. The relevant entity should urgently issue a Practice Direction regulating the operation of the informal court system during the COVID-19 crisis.

- a. Clearly define urgent cases to include cases of domestic violence, SGBV, HP, custody, and maintenance.
- b. Fast-track family law matters such as custody, maintenance and domestic violence and clear backlog occasioned by the suspension of court hearings and filing of new matters from 30 March to 10 May 2020.
- c. Any court process to constitute clearance letter for purposes of movement during the Lockdown period.

⁸⁴ <https://www.icj.org/icj-briefing-paper-on-the-impact-of-anti-covid-19-pandemic-measures-on-access-to-justice-in-cis-countries/paragraph-40>

- d. Provide free masks and other protection equipment to all persons seeking to access justice and facilitate the transportation of lawyers providing free legal aid to their clients.
 - e. Develop simplified resource manuals in local languages and braille on the human rights standards, rights of women of children and access to justice issues for traditional leaders that preside over informal courts.
 - f. Provide training for traditional leaders who preside over informal courts on the human rights standards, rights of women and children and access to justice issues.
 - g. Support the adoption of community paralegal models to enhance legal empowerment approaches such as legal literacy, legal education and legal assistance of women and girls facing SGBV and HP.
2. Repeal discriminatory laws or provisions that fuel violence against women and girls.
 3. Repeal the Civil Protection Act [Ch10;06] and replace with a more comprehensive statute that, inter alia, addresses access to justice in preparatory, response and recovery phases of emergencies and crises.
 4. Introduce automated court systems and referral system
 - a. Introduce online and virtual court sitting where the public should be allowed to participate in the online court hearings to protect the right to a public hearing.
 - b. Introduce e-filing and online service delivery by courts. The Courts should start be able accept court processes by post or email or other virtual platforms.
 - c. Equip all the courts with electronic case management and information systems.

8.0 CALL TO ACTION TO THE CIVIL SOCIETY ORGANISATION

- a. Strengthen law-based institutions so that they assist survivors in claiming and

- asserting their rights that were violated during COVID 19 Lockdown using strategic litigation, class actions and advocating for policy and legal reforms where necessary.
- b. Promote greater coordination of services across sectors such as justice, social workers and the economic sector through the development of a Multi-Sectoral Protocol on Access to Justice during national disasters and public emergencies.
 - c. Support the development of How to Guides (Legal education, Case Management and Advocacy). These can include almost every facet of the legal empowerment strategy ranging from:
 - i. How to Guide on conducting a legal training programme;
 - ii. How to Guide on conducting a conciliation, mediation and arbitration session;
 - iii. How to Guide on writing case reports;
 - iv. How to Guide on advocacy;
 - v. How to Guide on filing and e-filing of cases;⁸⁵
 - vi. How to Guide on appropriate processes for different cases;
 - vii. How to Guide on referral systems from the community to the court;
 - viii. How to Guide on carrying out and attending virtual court proceedings; and
 - ix. How to guide on Role of Paralegal in Emergencies.

⁸⁵ TechZim, 'Judicial Service Commission to Introduce Electronic Case Management System,' available at <https://www.techzim.co.zw/2020/01/judicial-service-commission-to-introduce-electronic-case-management-system/> [accessed 11 November 2020].

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