

**SUBMISSIONS TO THE SPECIAL RAPPOREUR AT THE OFFICE OF THE
UN HIGH COMMISSIONER ON VIOLENCE AGAINST WOMEN**

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SUBMISSIONS PREPARED BY:

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On behalf of

Legal Resources Centre

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INTRODUCTION - Legal Resources Centre (www.lrc.org.za)

1. The Legal Resources Centre (LRC) is a public interest law clinic that uses law as an instrument of justice for poor and marginalised persons. The LRC focuses on empowering women by providing: legal advice; legal representation and negotiation; and by participating in advocacy and law reform. In seeking to contribute towards the pursuit of equality for women, the LRC utilises creative and effective solutions to achieve its aims; promoting the constitutional rights of these individuals through providing legal advice, legal representation, strategic and impact litigation and by participating in multi-pronged advocacy and law reform.

State of Disaster in South Africa and Covid-19 Lockdown

2. On 15 March 2020 President Cyril Ramaphosa declared a national State of Disaster in terms of the Disaster Management Act 57 of 2002. Between 16 March 2020 and 25 March 2020 certain measures, as provided for in the Disaster Management Act, were put in place to promote 'social distancing'. On 23 March 2020 President Ramaphosa announced a 21-day national lockdown commencing on 27 March 2020.
3. To combat the spread of Covid-19, President Ramaphosa announced a further extension of the national lockdown on 9 April 2020 until 30 April 2020. South Africa commenced easing out of the lockdown from 1 May 2020 in a phased approach that consists of five levels. Important in this regard is the provision of different levels for individual provinces in accordance with the specific province's threat level. Therefore some areas in South Africa will start returning to the 'new normal' sooner than other parts in South Africa.
4. On a continuous basis the government of the Republic of South Africa issues regulations and directions under the Disaster Management Act to regulate the working of, amongst others, the legal system in South Africa during the national lockdown.

5. As a point of departure it is worth noting that the lockdown has a disproportionate effect on indigent persons in South Africa and women-headed households. This means that Covid-19 will have a gendered impact, and the response to the pandemic must be planned through a gender lens.

Submission to OHCHR on the Increase of Domestic Violence during COVID-19

(a) To what extent has there been an increase of violence against women, especially domestic violence in the context of the COVID-19 pandemic lockdowns? Please provide all available data on the increase of violence against women, including domestic violence and femicides, registered during the COVID-19 crisis.

1. Over the last years, South Africa had an increase in gender based violence, this is no different under a national lockdown.
2. Police Minister, General Bheki Cele announced on 5 April 2020, there had been a decrease in serious and violent crimes, however he confirmed that in relation to gender based violence, the number of complaints remained high.¹ The national hotline received over 2 300 calls/complaints over a 4 day period, 27 March 2020 until 31 March 2020 and from those 148 suspects were charged.² For perspective, the figure in relation to calls/complaints over a 3 month period from January to March 2020 stands at 15 924.³
3. More recently, on 22 April 2020 Police Minister Cele reported a decrease in the reporting of domestic violence cases compared to last year. Between 29 March 2019 to 22 April 2019, 9990 cases of domestic violence was reported while

¹<https://www.gov.za/speeches/minister-bheki-cele-welcomes-decrease-serious-and-violent-crimes-attributing-amongst-other>

²<https://www.gov.za/speeches/minister-bheki-cele-welcomes-decrease-serious-and-violent-crimes-attributing-amongst-other>

³<https://www.gov.za/speeches/minister-bheki-cele-welcomes-decrease-serious-and-violent-crimes-attributing-amongst-other>

during the period of 27 March 2020 to 20 April 2020 3061 cases of domestic violence was reported - this is a decrease of 69,4%.⁴

4. The statistics available and the reporting from the Minister of Police are causing confusion over whether South Africa is experiencing an increase or decrease of domestic violence during the lockdown period. One possible interpretation of the data available is that there was an increase in calls to the domestic violence hotline during the first few days of the national lockdown, but a decrease in the actual reporting of crimes at the police station.
5. A reduction of the number of **reported** cases of domestic violence is not an indicator of an actual reduction of domestic violence as women might not be able to leave their house to report a case or make a call to the hotline without their partner knowing about it.⁵ Alarming, in a national address, President Ramaphosa said on 13 May 2020 *'[t]he scourge of gender-based violence continues to stalk our country as the men of our country declared war on the women'*.⁶

(b) Are helplines run by Government and/or civil society available? Has there been an increase in the number of calls in the context of the COVID-19 pandemic?

1. There is a helpline run by the Government and there are helplines run by Civil Society.
2. The South African Government has a National Call Centre to combat Domestic Violence. The Centre employs social workers who are responsible for call-taking and call referrals.⁷

⁴<https://www.dailymaverick.co.za/article/2020-05-11-gender-based-violence-during-lockdown-looking-for-answers/> (accessed 15 May 2020)

⁵<https://www.dailymaverick.co.za/article/2020-05-11-gender-based-violence-during-lockdown-looking-for-answers/> (accessed 15 May 2020)

⁶<https://www.gov.za/speeches/president-cyril-ramaphosa-south-africas-response-coronavirus-covid-19-pandemic-13-may-2020>

⁷ <http://gbv.org.za/about-us/>

3. The national hotline received over 2 300 calls/complaints over a 4 day period, 27 March 2020 until 31 March 2020 and from those 148 suspects were charged.⁸
4. The Call Centre receives between 500 and 1 000 calls a day from women and children confined to their homes.⁹ The Centre's data shows that in the first four days of South Africa's three-week lockdown, the number of daily calls doubled.¹⁰ Data free messages to the Centre's phone number increased more than tenfold and SMSes streamed in at double the usual daily rate too.¹¹
5. By 11 April 2020, the Centre had received 8 764 calls since the start of the lockdown.¹²
6. Rina van der Berg, who runs the Grace Help Centre, explained that over 26 days they have received a higher number of calls and reports from police which are related to gender-based violence.¹³

(c) Can women victims of domestic violence be exempted from restrictive measures to stay at home in isolation if they face domestic violence?

1. President Ramaphosa announced on 13 May 2020¹⁴ that women seeking assistance because they are victims of domestic violence are exempted from the requirement of having to produce a permit to leave the house or performing an essential service. This exemption allows women to leave their places of residence to find safe accommodation and/or apply for a protection order and/or open a case of domestic violence at the police station.

⁸<https://www.gov.za/speeches/minister-bheki-cele-welcomes-decrease-serious-and-violent-crimes-attributing-amongst-other>

⁹<https://www.news24.com/SouthAfrica/News/home-sweet-hell-calls-for-help-surge-from-women-locked-down-with-abusers-20200414>

¹⁰ Ibid.

¹¹ Ibid

¹² Ibid

¹³ <https://health-e.org.za/2020/04/29/covid-19-lockdown-provides-perfect-storm-for-sas-gbv-crisis/>

¹⁴<https://www.gov.za/speeches/president-cyril-ramaphosa-south-africas-response-coronavirus-covid-19-pandemic-13-may-2020>

2. New Regulations published on 14 May 2020¹⁵ provides, amongst others, for movement of persons necessitated due to domestic violence. If a person is required to move to a new residence or travel between provinces, metropolitan area or district because of domestic violence, they are allowed to undertake such movement with a protection order as evidence for the movement motive.
3. Mandisa Dlamini, founder and executive director of the Gugu Dlamini Foundation states that organisations are trying to find interventions that could assist survivors of gender-based violence.¹⁶ These interventions include boosting their toll-free numbers and getting governments to understand that restrictions need to take into consideration that women and children suffer the burden of the lockdown, especially if women are trapped in their homes with their abusers.

(d) Are shelters open and available? Are there any alternatives to shelters available if they are closed or without sufficient capacity?

1. Shelters in South African remain open during COVID-19. However shelters are experiencing capacity concerns. On 17 April 2020, The Portfolio Committee on Police noted with concern the warnings that domestic shelters for women and children are reaching full capacity.¹⁷ Tina Thiart, the founding member of 1000 Women Trust, stated that Domestic Violence shelters in South Africa are reaching capacity and are unable to take new victims due to lockdown and social distancing measures.¹⁸

¹⁵ Available at: https://www.scribd.com/document/461401215/COGTA-Regulations-14-May-2020#from_embed (accessed 15 May 2020)

¹⁶ <https://www.dailymaverick.co.za/article/2020-04-21-women-and-children-need-more-protection-during-lockdown/>

¹⁷ <https://www.gov.za/speeches/parliament-receives-report-police-and-ipid-coronavirus-covid-19-lockdown-%C2%A0-17-apr-2020-0000>

¹⁸ <https://www.msn.com/en-za/news/crime/shelters-taking-strain-as-domestic-violence-rises-during-covid-19-lockdown/ar-BB12BYur>

2. Claudia Lopes, a project Manager at Heinrich Boll Foundation states that the government must release funding grants as soon as possible, she further stated that no funding meant no support or reduced support to victims.¹⁹
3. Social Development MEC Sharna Fernandez, states “Four shelters have been identified as Stage 1 shelters to admit at-risk victims of crime and violence. Only referrals from a social worker with a safety risk assessment and the SAPS will be accepted. After 14 days, clients will be transferred from Stage 1 shelter to a Stage 2 shelter.”
4. Rina van der Berg, who runs the Grace Help Centre, states that the number of people who have walked through her doors during the lockdown has increased dramatically which has led to the Centre reaching its maximum capacity.²⁰
5. There are no current alternatives, if there is no shelter the victim will be required to find a place to stay.

(e) Are protection orders available and accessible in the context of the COVID-19 pandemic?

1. On 26 March 2020, the Minister of Justice and Correctional Services issued directions in terms of the Disaster Management Act regulations. Directive 8 (c) states that courts are open for applications of interim domestic violence protection orders and applications for interim protection orders.²¹
2. Protection orders are therefore available.
3. Accessibility: we received information that on Monday, 4 April the clerk designated to handle Domestic Violence matters at the Randburg Magistrates Court was not available and therefore numerous women could not access the court. The Durban Magistrates Court is closed on 4 and 5 May for

¹⁹ Ibid.

²⁰ <https://health-e.org.za/2020/04/29/covid-19-lockdown-provides-perfect-storm-for-sas-gbv-crisis/>

²¹ https://www.judiciary.org.za/images/Directives/Justice_Disaster_Regulations_2020.pdf

decontamination after a Magistrate tested positive for the virus, it is not clear whether an alternative was made for Domestic Violence matters.

(f) What are the impacts on women's access to justice? Are courts open and providing protection and decisions in cases of domestic violence?

1. In terms of the Directions²² issued by the Department of Justice and Correctional Services under the Disaster Management Act 57 of 2002 courts are open during the national lockdown, however the matters that can be heard are limited to urgent matters which cannot be postponed until after the lockdown.
6. According to paragraph 8(c) of the Directions interim protection orders for domestic violence and protection against harassment can be issued during the national lockdown. Both the Domestic Violence Act 116 of 1998 and the Protection against Harassment Act 17 of 2011 provide for immediate interim protection orders and after an enquiry is held, a final protection order can be issued. As the Directions merely mention the application for 'interim protection orders' we derive that the intention is to postpone the final protection order enquiries to after the national lockdown has ended.
7. The Directions further provide for service of process and writs of executions by sheriffs to be issued on the accused persons in protection order matters,²³ therefore the accused person will be notified of the interim protection order issued against them during the national lockdown.
8. However, on 30 April 2020 the Western Cape Provincial Parliament received a briefing from the Ad hoc Standing Committee on COVID-19 which highlighted the following problems relating to women's access to justice during COVID-19:²⁴

²² Available at

https://www.judiciary.org.za/images/Directives/Justice_Disaster_Regulations_2020.pdf (accessed on 21 April 2020).

²³ Paragraph 5(e) of the Directions.

²⁴ <https://pmg.org.za/committee-meeting/30125/> (accessed 15 May 2020)

- 8.1. All domestic violence cases have been postpone except the most serious incidents;
 - 8.2. No final or interim protection orders have been received from certain courts;
 - 8.3. Certain periodical courts are closed until further notice;
 - 8.4. People are not assisted at courts as security officers do not allow them in to speak to the domestic violence officer;
 - 8.5. A reduction in reported domestic violence cases is likely a result of the national lockdown's restriction on movement, in constant close proximity to the perpetrator and non-availability of public transport;
 - 8.6. Volunteers from Mosaic, a non-profit organisation that assists victims of domestic violence, were denied access to court buildings.
9. In conclusion, even though courts are open and operational for domestic violence matters, it is evident by considering the reports from the Western Cape that the implementation of the lockdown regulations is faulty and creates a real obstacle for women's access to justice.

(g) What are the impacts of the current restrictive measures and lockdowns on women's access to health services? Please specify whether services are closed or suspended, particularly those focusing on reproductive health.

Access to Abortions

1. As medical services are classified as an 'essential service' for the purpose of the national lockdown, public health facilities should still be able to provide abortions during the lock down. Marie Stopes, a private clinic that provides sexual and reproductive health services is also available to women who need access to such services.²⁵ The spokesperson for Marie Stopes advised that women can phone

²⁵<https://www.timeslive.co.za/news/south-africa/2020-03-30-abortion-clinics-stay-open-during-lockdown/> (accessed 21 April 20202)

the clinic for an appointment, and the clinic will provide the women with a letter that will permit them to travel during the lockdown to the facility.

2. South Africa has a progressive legal framework regulating abortions, however, even before the pandemic, access to abortion services were already hindered by lack of information, unequal access to health services and victimisation by healthcare providers. Considering the strain the pandemic has placed on health systems in South Africa, medical facilities might feel the need to prioritise the provision of certain health services relating to the response to Covid-19 above sexual and productive health services.
3. Abortions are time sensitive as the legislation states that abortions are available up to 12 weeks of gestation as per the request of the women. After the initial 12 weeks the legislation provides that abortions can only be accessed in listed circumstances and fewer facilities have the capacity to perform second trimester abortions. After South Africa had a 21 day lockdown we began with a 5 level phasing in approach. Consequently, women cannot be expected to wait until after all restrictions on their freedom of movement are lifted, and the pandemic is over, before they can access abortion services.
4. Section 27, a legal NGO focusing on the access to health services, has reported that they have received a number of requests for assistance where women have been refused abortions at public health facilities as the facility does not classify an abortion as emergency services.²⁶
5. On 3 April 2020, the HPCSA published a Notice to Amend Telemedicine Guidelines during COVID-19. It says that while telemedicine should preferably be practiced in circumstances where there is an already established practitioner-patient relationship, where such a relationship does not yet exist, practitioners may still consult using telemedicine provided the consultations are done in the best clinical interests of the patient.

²⁶ <https://www.spotlightnsp.co.za/2020/04/22/covid-19-what-the-lockdown-means-for-sexual-and-reproductive-health-services/> (accessed on 22 April 2020)

6. In this context, the Sexual and Reproductive Justice Coalition (SRJC) briefed the Women’s Legal Centre and Section 27, a two-partner legal group, and wrote a letter on Friday 17 April 2020 to our national Minister of Health and the nine provincial Ministers of Health regarding telemedicine and access to SRHR services. On 20 April 2020, we received a timeous reply from the Provincial Minister of Health of Gauteng Province, with a positive response. Noting that reproductive health supplies were available there, they stated with respect to telemedicine for abortion: *“The Gauteng Department of Health is currently using SMS technology when communicating with patients and is looking at other better means of improving.”*

Access to sanitary products and contraceptives

7. Even though sanitary pads, tampons and condoms are included in the list of essential items that can be sold during the national lockdown, these products remain out of reach for many young girls. Many girls access sanitary products and condoms at school, and as schools are closed for the national lockdown these girls have no access to sexual and reproductive products.
8. Contraceptives are accessed at the local clinic however with the public transport restrictions this makes it extremely difficult for girls to access it. The pandemic will also have an impact on the production of medicines. In relation to sexual and reproductive medicines, this will come at a time when South Africa, like many other countries, are already experiencing shortages of popular contraceptives. As the pandemic persists, we are likely to see even more strain on access to contraceptives and other medicines.²⁷

Restriction on public transport

²⁷ <https://www.spotlightnsp.co.za/2020/04/22/covid-19-what-the-lockdown-means-for-sexual-and-reproductive-health-services/>

9. The majority of South Africans rely on public transport to move around. Under the current national lockdown regulations, public transport is allowed to operate between 05:00 to 10:00 and then again from 16:00 - 20:00. The limited hours that public transport services are available is an additional burden placed on women who wish to access sexual and reproductive health services at a medical facility.

(h) Provide examples of obstacles encountered to prevent and combat domestic violence during the COVID-19 lockdowns.

Access to legal services

1. Legal NGOs which usually provide assistance to women who are survivors of domestic violence are unable to operate as usual during the national lockdown as legal services are essential only for urgent matters. Therefore women's access to legal support is limited. Even though alternative methods of reaching the NGOs are available (as discussed below), these methods are not available to all women as they require access to the internet, data, airtime and/or online information.
2. On 14 April 2020 a collection of NGOs²⁸ wrote to the Minister of Justice and Correctional Services requesting access to essential service permits for legal practitioners to ensure that vulnerable persons, being rendered even more vulnerable as a result of the lockdown, have access to legal services. To date we have received no response from the Minister.
3. On Level 4 lockdown, which commenced on 1 May 2020, essential service permits can be issued to legal practitioners.

Lack of food security and income

²⁸ The collective include: CALS, Centre for Child Law, Centre for Environmental Rights, Corruption Watch, Equal Education Law Centre, Lawyers for Human Rights, Legal Resources Centre, Udifuna Ukwazi, Probono.org, Section 27, Seri and Women's Legal Centre.

4. Another aggravating factor in violence against women and children during the lockdown is the lack of food security and rising unemployment. Abusers, prone to control the people in their lives, can feel a loss of control caused by the national lockdown, the COVID-19 measures and/or loss of income.²⁹ This sense of loss of control can manifest itself into domestic violence and other forms of violence against women and children.
5. South Africa, already being one of the most unequal countries in the world, has seen a rise in unemployment and is currently in a hunger crisis. A survey conducted by the Human Sciences Research Council revealed that 26% of participants had no money for food during the national lockdown.³⁰ The real and staggering economic consequences of the COVID-19 are therefore another obstacle in the prevention of violence against women in South Africa.

Access to shelters

6. The costs of maintaining shelters for survivors of gender based violence have increased during the last two months. According to the director of Saartjie Baartman Centre for Women and Children in the Western Cape, Bernadine Bachar, the pandemic has pushed the need for safe havens but the cost of taking care of people once they are in the shelter has increased as additional protective clothing is needed for staff, litres of hand sanitiser is used and additional unforeseen medical expenses are occurred.³¹ Due to the lockdown persons are also forced to stay at the shelter for longer than usual and normal exit plans are postponed.
7. Another new financial expense, according to Bachar is private healthcare - persons who get sick while staying at the shelter are sent to a private doctor, paid for by the shelter, as the risk of contracting the COVID-19 is higher at a

²⁹https://bhekisisa.org/features/2020-04-23-the-lockdown-women-planning-their-escape-from-abusive-homes/#.Xqf_FU9PJJI.twitter (accessed 28 April 2020)

³⁰<https://www.news24.com/SouthAfrica/News/lockdown-a-quarter-of-south-africans-have-no-money-for-food-survey-20200426> (accessed 28 April 2020)

³¹https://bhekisisa.org/features/2020-04-23-the-lockdown-women-planning-their-escape-from-abusive-homes/#.Xqf_FU9PJJI.twitter (accessed 28 April 2020)

public health facility where there are long queues and waiting times. These factors contribute to shelters being overfull and facing real financial difficulties.

8. Bachar further explains that shelters only receive about 45% of their money from the Department of Social Development. The rest of the necessary money came from fundraising events such as high teas and golf days³² - events which are now outlawed and not allowed for the foreseeable future.
9. Without additional funding from the Department of Social Development, shelters all across South Africa risk having to close their door to persons seeking a safe haven from violence without anywhere else to go.

(i) Provide examples of good practices to prevent and combat violence against women and domestic violence and to combat other gendered impacts of the COVID-19 pandemic by Governments.

1. On 13 May 2020, President Ramaphosa announced that the government has developed an emergency pathway for survivors to ensure that the victims of gender-based violence are assisted. One of the interventions the government has made is to ensure lockdown regulations are structured in a manner that a woman can leave her home to report abuse without the fear of a fine, intimidation or further violence.³³

(j) Provide examples of good practices to prevent and combat violence against women and domestic violence and to combat other gendered impacts of the COVID-19 pandemic by NGOs and NHRIs or equality bodies.

1. The Commission for Gender Equality (**CGE**), an institution established in terms of Chapter 9 of the Constitution of the Republic of South Africa is empowered to amongst others, monitor and evaluate gender related issues, investigate

³²https://bhekisisa.org/features/2020-04-23-the-lockdown-women-planning-their-escape-from-abusive-homes/#.Xqf_FU9PJJI.twitter (accessed 28 April 2020)

³³<https://www.gov.za/speeches/president-cyril-ramaphosa-south-africas-response-coronavirus-covid-19-pandemic-13-may-2020>

complaints and report on compliance with international conventions. CGE has a toll free number, email, website and social media accounts that members of the public can utilise to register complaints of the following nature during the national lockdown:

- 1.1. Gender based violence;
 - 1.2. Harassment;
 - 1.3. Maintenance (CGE monitors maintenance cases as well as render additional assistance);
 - 1.4. Gender discrimination.
2. The majority of legal NGOs in South Africa rely on either a referral system or a system where the organisation has open consultation hours where clients can approach the organisation for legal assistance. During the national lockdown these organisations have to adjust their method of providing open access legal services as members of the public are confined to their homes. To facilitate this process, a collective of legal NGOs³⁴ have partnered together to form a support hotline operating seven days a week. Members of the public can call the hotline if they require any legal assistance, for example assistance with applying for a protection order, and one of the partnered organisations will provide the member of the public with legal services.

CONCLUSION

We trust that you will find the submissions made in this document useful. Should you have any comments please do not hesitate to contact the author via email at amyleigh@lrc.org.za.

ENDS

³⁴ The collective include: CALS, Centre for Child Law, Centre for Environmental Rights, Corruption Watch, Equal Education Law Centre, Lawyers for Human Rights, Legal Resources Centre, Udifuna Ukwazi, Probono.org, Section 27, Seri and Women's Legal Centre.