

Balancing the Scales between Government's Response to the COVID-19 Pandemic and the Fulfilment of Women and Girls' Rights in South Africa

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Abstract

In March 2020 the World Health Organisation (WHO) declared COVID-19 had reached a level of a global pandemic and urged governments to take drastic measures to curb the spread of the virus. To this end, the South African government declared the corona pandemic a national disaster and announced measures to combat its further spread as a matter of public urgency. Government handed down regulations and imposed restrictions. On top of the measures taken so far, the rapid spread of the virus led government to enforce a nation-wide lockdown compelling everybody to stay at home. The lockdown measures have considerably impacted people's livelihoods. Notably, the family, the economy, health and business, to name a few sectors, have been badly affected. Furthermore, as a vulnerable group, for many women and girls, their prolonged confinement at home shoulder to shoulder with their potential abusers, has simply intensified their vulnerability and exposure to gender-based violence. To respond to this situation, the government has a twofold obligation. First, it has the responsibility to take measures to curb the spread of the covid-19 pandemic. Second, government also has the obligation to address a further pandemic in the form of the entrenched gender violence that is daily unleashed against women and girls in this country. The main question is how has the government balanced its Covid-19 control measures while still protecting women's rights? The obvious observation is that the onslaught of Covid-19 has highlighted the vulnerability of women and girls in South Africa. The unavoidable question is why it is women and girls, in particular rather than men, who have had to suffer the sharper edge of the impact of the pandemic. The writer has adopted the feminist legal methodology because it holds the tools of critique that are considered necessary to unsettle the hidden and subtle assumptions that are seldom examined in some societies but that operate effectively to the disfavour of women. The article reviews primary and secondary sources of law. On this basis it discusses the impact of the government response to the covid-19 pandemic on women and girls' rights in South Africa. Based on findings submitted, the article makes recommendations that could inform policy formulation in South Africa.

Keywords: COVID-19 pandemic, women and girls' rights; gender sensitivity, violence.



Introduction and Background

Covid-19 is an infectious disease caused by the new corona virus named SARS-CoV-2, recently discovered in Wuhan, China, in December 2019 (Human Rights Watch, 2020). It was reported that many of the early victims who contracted the virus had visited the wholesale food market in Wuhan. Yet others had had no history of contact with the market in Wuhan (WHO Report, 2020). The reason for stating this observation is that the wholesale market was the initial source of the early infections. According to WHO (2020) many early victims who tested positive were stall owners, market employees and customers who did business at the market on a daily basis. Furthermore, ecological samples taken from the market at Wuhan have shown that the Wuhan city was the source of the pandemic or played a huge role in the spread of the outbreak (WHO report, 2020). As a result, on 1 January 2020 the authorities in Wuhan took a decision to close the market. Basically, Covid-19 causes a respiratory infection whose symptoms range from pneumonia, colds, sneezing and coughing. The virus is transmitted from human to human victim or human to animal victim via airborne droplets (Kumar et al, 2020). WHO was concerned at the alarming levels of the spread and severity of the infections and by the alarming general lack of knowledge and understanding about the disease in the population generally (WHO report, 2020). As a result, in March 2020 the international organisation declared that the Covid-19 had reached pandemic proportions globally. As a result, WHO urged governments to take drastic measures to curb the spread of the virus.

It is against this background that the South African government declared the corona pandemic a national disaster and announced measures to be taken to combat its rapid spread. The government imposed regulations and issued directives such as a ban on travel, cancellation of visa applications and imposed restrictions to minimise contact between people, in shops and malls, through social distancing and prohibition of any gatherings of more than 50 people. In this way the numerous restrictions impacted people's enjoyment of human rights and livelihoods as numerous places of employment had had to be closed (SADC, 2020). Families, macro and micro businesses, health systems were affected. Furthermore, confinement at home had unintended consequences in that it increased the risk and exposure of women and girls to sexual and gender-based violence (SGVB) because they were isolated together and rubbing shoulders with their potential abusers. The situation is so alarming that the government has been compelled to employ unprecedented measures to protect people from the pandemic. However, it is submitted that in doing so, the government too cannot ride rough shod over people's rights. It must respect, protect and promote human rights standards (SADC, 2020). *Inter alia* the government carries the obligation to address gender-based violence that is faced by women and girls on a daily basis. At the same time, government has to see to it that female access to essential sexual and reproductive health care services are in constant supply.



In light of the above, this paper seeks to unpack the manner in which the South African government has responded to the challenge of curbing the spread of the Covid-19 pandemic and, at the same time, how government has addressed the protection of women and girls' rights, specifically with regard to gender based violence and other social challenges faced by women and girls in a largely patriarchal society. To this end, the article first theorises the issues of women and girls' vulnerabilities. Second, it contextualises the issue of women and girls' rights internationally, regionally and domestically. Third, it discusses the South African government's response to the need to curb or delay the spread of Covid-19 and the measures it has taken, so far, to cushion women and girls' livelihoods from the impacts of the lock down occasioned by the pandemic. In conclusion, the paper suggests recommendations designed to assist policy makers and other experts in the current and post pandemic situation.

Theories Underpinning this Study

As indicated already, this paper seeks to analyse the manner in which the government balances its Covid-19 control measures with the protection of women and girls' rights. Precisely, it begs noting that bias is given to women and girls' interests, as a vulnerable group, given the pre-existing social issues and experiences that affect them adversely. Furthermore, there is also the Covid-19 pandemic and the official restrictions which have had a huge impact on women's lives. As a result, this article is anchored on feminist legal theory within the critical analytic paradigm (Kiguwa,2019).

Basically, a feminist theoretical framework aims at critically engaging women's lived social experiences with the intention to draw attention to the need to change conditions for the better (Kiguwa, 2019). The critical aspect in turn problematizes structural causes of inequalities and critically questions the role of power in society. It can be argued that women experience a disjuncture between their own experience of marginality and the patriarchal nature of the state on whom depends the fulfilment of much of their rightful expectations in life (Babbie and Mouton, 2001).

Research indicates that feminist legal theory was developed in the 1960s (Meintjes, 2019). According to it, law has always been used to subordinate women. This theory advocates that men hold a socially and economically dominant position over women in all spheres of society. It argues that although the law appears to be neutral on the surface, in reality it is biased in favour of men (Meintjes,2019). As a result, feminist legal theory seeks to change women's status through law reform. Bowman and Schneider (1998) explain that the feminist legal theory has evolved into four major schools: namely, formal equality theory, 'cultural feminism', dominance theory and post-modern or anti-essentialist theory. Formal equality theory advocates that women should be treated the same as men. However cultural feminism holds the view that there is a difference between men and women that



should be taken into account. In support of their standpoint the proponents of cultural feminism rely on the experience of pregnancy and motherhood (Bowman and Schneider, 1998). Instead, the dominance theory circumvents both theories but places greater emphasis on the embedded structures of power that tend to install male characteristics as the dominant standard that defines the axis from which the difference between man and woman rotates. The dominance theory notes the harms of violence against women in areas such as the family (domestic violence), rape (law and order) and sexual harassment (culture) (Bowman and Schneider, 1998). The post-modern theory posits that there is no single female category. As a result, it focuses on the need to take into account the range of feminist perspectives that arise from race, ethnicity and cultural difference (Bowman and Schneider, 1998). Given the fact that this article analyses the manner in which the state balances the protection of women's rights and the control measures in response to Covid-19, it can be stated that the article is animated by female legal theory which places an emphasis on the dominance theory. The dominance theory unmasks the structural inequalities which tolerate patriarchal structures of power in society. In turn, the patriarchal structures of power condone the marginalisation of women and the resultant perpetuation of social violence against them.

The section below unpacks progress made thus far in relation to international and domestic legislation in respect of women and girls' rights, the context of violence against women in South Africa and the impact of the government responses to the challenges posed by the Covid-19 pandemic.

Contextualising Women and Girls' Rights and the Forms of Violence Women Face in South Africa

Firstly, this section highlights current international and regional human rights instruments that protect women and girls' rights. As a background, it bears noting that, as a group, women and girls constitute a vulnerable segment of the population in South Africa. Hence it is understandable that observers note certain forms of violence, which are experienced by and directed at women, not as citizens, but primarily as members of a different sex.

International and Regional Context of Women and Girls' Rights

Article 8 of the United Nations Charter on Human and People's Rights guarantees equality between men and women. In this way equality is considered a fundamental right guaranteed in the Charter. As a result, Article 8 prohibits restrictions against men and women to participate whether 'in its principal or subsidiary organs'. The UN's position implies that as early as 1945, even the UN promoted respect for women's rights. Furthermore, in 1948 the Universal Declaration of Human Rights (UDHR) also guaranteed equal entitlements in respect of men and women's rights. For instance, article 1 provides



that 'All human beings are born free and equal in dignity and rights'. Without any doubt whatsoever, the UDHR's use of the term 'all human beings' includes men and women without discrimination on the basis of colour, race, ethnic origin, disability, class, age or sexual orientation. The rights enshrined in the UDHR comprise all the economic, social, political, cultural and civic rights. These rights are inalienable entitlements of all people (United Nations, 2015). Moreover, women rights are also guaranteed in two international covenants, namely the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESR). Eventually, article 2 of the ICCPR indicates that States Parties to the covenant have an obligation to respect and ensure that every individual's rights are recognised without discrimination. The term 'individual' includes both men and women's rights and is not provocative viewed through the feminist or gender perspective. This statement is clearly elaborated in article 3 of the same covenant. It stipulates that 'The States Parties to the present Covenant undertake to ensure the equal rights of men and women to the enjoyment of all civil and political rights set forth in the present Covenant'. Similarly, the ICESR also provides that States Parties need to ensure equal rights for men and women while enjoying economic, social and cultural rights. It should be noted that both covenants are legally binding on the State Parties that have signed and ratified them. From an analysis of the above statement it can be seen that much effort has been made to protect women's human rights.

Furthermore, in 1967 the Declaration on the Elimination of Discrimination against Women was adopted. Although it did not have a legally binding force, the declaration emphasised the point that discrimination against women is an offence against human dignity (United Nations, 2014). A call was made to States Parties to abolish all laws discriminating against women. Meanwhile, a proposal for a binding treaty was put together and adopted in 1979. It resulted in the Convention on the Elimination of All forms of Discrimination against Women (CEDAW). Article 3 of this convention expanded the protection of women's rights in all areas. CEDAW encompasses both civil and political rights as well as economic, social and cultural rights. Furthermore, CEDAW targets issues of women trafficking, including special challenges facing women in rural areas, as well the plight of women in situations where they are potentially at risk of not deriving the full enjoyment of their rights, such as in marriage and the family (United Nations, 2014). Moreover, it should be noted that CEDAW is legally binding specifically on the State Parties that have signed and ratified it. Article 6 of the convention requires State Parties to strive to eliminate all social, cultural and traditional patterns that permit harmful gender stereotypes. This provision implies that states should at all times strive to develop societies that promote the full realisation of women's rights. In 1993, the UN general assembly proclaimed the Declaration on the Elimination of Violence against Women (DEVAW). The purpose hereof was to strengthen and complement the provisions of CEDAW. DEVAW emphasises that women and children



should be protected because they are vulnerable to violence. Similarly, the 1999 Protocol to CEDAW encouraged victims to bring complaints directly to the committee, because it is entitled to investigate women rights violations. In addition, in respect of a girl child, article 29 of the Convention on the Rights of the Child (CRC) also prohibits discrimination on the ground of sex. It is obvious that these specific conventions protect women and girls at international level.

At the regional level the Organisation of African Unity, now the African Union (AU) adopted the African Charter on Human and People's Rights in 1981. Basically, article 2 of the Charter prohibits discrimination on any ground whatsoever including sex. Furthermore, in 2003 a Protocol to the African Charter on Human and People's Rights on the rights of women in Africa (Maputo Protocol) was adopted to supplement the provisions of the African Charter. Article 2(a) of the Maputo Protocol emphasises that States Parties should include in their national constitutions the 'principle of equality between men and women and ensure its effective implementation'. In addition, article 3 of the African Charter on the Welfare of the child (ACWC) provides that every child shall enjoy their rights and freedoms without discrimination. It should also be noted that the AU put in place human rights institutions such as the African Commission, the African Court and the African Committee of experts on the Rights and Welfare of the Child to manage the implementation of human rights (Budo, 2018).

Against this backdrop, it can be argued that at the international as well as the regional level, states have taken preventive measures to respect, promote and fulfil women and girls' rights. Even the universally sustainable development includes a specific goal 'to eliminate all forms of violence against all women and girls in the public and private spheres, including trafficking, sexual and other forms of exploitation' (UN, 2015). However, despite all the mechanisms put in place to advance the cause of women and girls' rights, violations of women and girls' rights still pose a widespread challenge. The section below focuses on the violation of women and girls' rights in South Africa.

Analysing Violence against Women and Girls in South Africa

South Africa has committed herself in respect of the human rights treaties she has signed and ratified both at international and regional level. As far as women and children treaties, such as CEDAW and the CRC are concerned, government has committed itself to take preventive measures to promote, protect and respect these rights. To this end, the Constitution of the Republic of South Africa (the Constitution) contains an entrenched and justiciable Bill of Rights which protects everyone within the Republic. Although women rights are not specifically singled out, section 9(1) of the Constitution indicates that 'everyone is equal before the law'. This implies that women are not excluded from the equality provision. Yet feminist legal theorists would always argue that when viewed from



the vantage point of implementation, law is biased. Furthermore, section 9(3) prohibits discrimination while section 28 of the Constitution provides for children's rights. These constitutional provisions indicate that the Constitution promotes and protects the right of women and girls to enjoy the equality provision'. It needs underlining that equality between men and women is a human rights issue (Ntlama, 2003). Moreover, South Africa has passed several laws protecting women's rights. The Maintenance Act 99 of 1998, the Recognition of African Customary Marriages Act 120 of 1998, the Choice on Termination of Pregnancy Act 92 of 1996 and the Domestic Violence Act 116 of 1998 are good examples, to name just a few. Despite the promulgation of these progressive statutes, the lived reality is that women and girls are still experiencing several manifestations of violence in South Africa. Several forms of violence, such as sexual as well as domestic violence, harmful practices embedded in cultural practices and beliefs, violence emanating from the violation of maternal healthcare rights and female reproductive rights are rife in South Africa, to put it mildly (Chalira and Ndimurwimo, 2018). At the moment of writing it is noted that South Africa has in the mean while passed a bill to address gender-based violence.

In essence, article 1 of DEVAW defines violence against women as 'any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering of women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life'. Furthermore, article 1(j) of the Maputo protocol defines violence against women as 'all acts perpetrated against women which cause or could cause women physical, sexual, psychological, and economic harm, including the threat to take such acts; or to undertake the imposition of arbitrary restrictions on or deprivation of fundamental freedoms in women's private or public life, whether in peace time or during situations of armed conflict or war.' From this definition, one could argue that economic harm which could result in loss of income, profit or opportunity, should also be considered violence against women. It should also be noted that the Maputo protocol was the first regional instrument to outlaw female genital mutilation in the continent (Chalira and Ndimurwimo, 2018).

Furthermore, within the South African context the Domestic Violence Act 116 of 1998 is regarded as a progressive legislation to combat domestic violence. Article 1 defines domestic violence as:

(a) physical abuse; (b) sexual abuse; (c) emotional, verbal and psychological abuse; (d) economic abuse; (e) intimidation; (f) harassment; (g) stalking; (h) damage to property; (i) entry into the complainant's residence without consent, where the parties do not share the same residence; or (j) any other controlling or abusive behaviour towards a



complainant, where such conduct harms, or may cause imminent harm to, the safety, health or wellbeing of the complainant.

The above definition implies that domestic violence comprises physical, sexual, emotional, financial and psychological abuse (Chalira and Ndimurwimo, 2018). Unfortunately, children have not escaped these forms of domestic violence. It should be noted that gender-based violence is intertwined with domestic violence given the fact that it seldom occurs outside the parameters of a domestic environment (Ntlama, 2003). In addition, Sithole and Shai (2016) also confirm that domestic violence and sexual assaults are pervasive in South Africa and are mostly directed towards women, specifically in spaces where women should otherwise feel protected and safe. Paradoxically the violence comes mostly from men whom women think they should rely on. Having noted the above, it comes as no surprise that 'one in every three South African women is raped and one in six suffers in an abusive domestic relationship' (Sithole and Shai, 2016). Ultimately, women are subjected to sexual violence and rape by their partners; the girls by their fathers and other family members.

In addition, on account of deep-seated patriarchal biases, community members seldom believe in or accept vocalizations of women and girls' concerns about gender-based violence. In other words, people tend to be noncommittal when a woman steps forward to narrate her story of victimization or brutalisation (Sithole and Shai, 2016). It is often preferred that the violation is kept 'a secret'. This results in the perpetuation of a vicious cycle of victimisation of women and girls by family members who often escape prosecution or evade justice.

The reality is that South Africa is not the only country in Africa that is dealing with the challenge of the violation of women and children's rights. A brief introspection easily reveals that various unmitigated forms of patriarchy are still embedded in some of the African cultures and thus condoned in traditions. For instance, in Nigeria it is generally accepted that a woman's best place is in the kitchen, that her role is to give birth to and raise children (Oyasande, 2020). For this reason, it is expected and accepted that the woman must stay at home and raise children. That is the Nigerian definition of a "good" wife who is never expected to participate in high income generating economic occupations (Oyasande, 2020). Hence in the South African context violence against women is not a post-apartheid matter. Violence against women has always been part of South Africa's social fabric too which applies to all cultures and racial groupings. It is just that African male attitudes towards women are more chauvinistic and unashamedly exculpatory. As a result, violence towards women is more unabashed while in other racial groups, it tends to be subtle and is seldom publicly defended. (Sithole and Shai, 2016; Oyelade, 1996). What the perpetrators of violence against women should know clearly is that gender is not physiologically determined but is a social construct. As such, according to Harawa-Katumbi,



it is merely an organising principle for the production, consumption and distribution of resources in society (Harawa-Katumbi, 2012). As a social construct, there is nothing fixed about gender. It is merely contingent. It could be otherwise. Sithole and Shai (2016) persuasively argue that every social group in the world is characterised by its own set of cultural practices that are linked to values and beliefs. Some are beneficial to the group, while others prove detrimental to specific groups such as women and children. For instance, in Africa, practices such as early forced marriages, virginity testing, widow rituals and female genital mutilation are examples of cultural practices which violate women's rights. Oddly, such practices still take place in societies in Southern Africa as well. As a result, some critical commentators (Ntlama, 2003) correctly point out that there is a need to deconstruct many traditional power structures which are perpetuated and defended as cultural heritage and assumptions which tend to undergird several gender related biases and stereotypes. Against this general observation, it is not surprising that Ntlama remarks that South African society is characterised by patriarchal beliefs and attitudes which are coupled with norms and values that are based on the acceptance of male dominance (Ntlama, 2003). It has been suggested that communities should be held accountable given the fact that generally speaking violence against women and children is condoned and tolerated in African societies (Ntlama, 2003). For instance, instead of seeking legal advice or approaching the court for solutions, many families generally prefer to resolve problems through traditional structures. Sithole and Shai (2016) conclude that the reluctance to resolve disputes outside inherited structures has wreaked havoc on women and children's rights in Africa. Given the above, it becomes clear that to address gender inequalities generally proves to be a complex challenge. Against the foregoing exposition it becomes understandable why the writer has elected to espouse the feminist tools of critical reflection and analysis because without self-analysis any society tends to take longer to self-examine and thus to self-correct.

Goldblatt holds a convincing view that this paper strongly supports too. He argues that violence against women and the prevalence of poverty are closely related. For government to combat or eliminate violence against women, government should first tackle the social and economic factors that feed gender inequality. To this end, promoting and respecting social and economic rights offers a possibility to look beyond punishing perpetrators of violence against women. What is needed is more preventive measures that can take account of given systemic inequalities in societies (Goldblatt, 2019).

Overall, South Africa has made good progress regarding to the improvement of the marginality of women and girls in South Africa. As indicated above already, the government enacted several pieces of legislation as well as initiated numerous mechanisms nationally to curb gender exploitation and violence against women. For example, in South Africa the cabinet includes a ministry headed by a woman, dedicated to women's issues, children's



rights and the special needs of people living with disabilities (Sithole and Shai, 2016). In this vein it is also worth noting that women are adequately represented in parliament as well. In that regard South Africa has acquitted herself remarkably well as, in fact, clearly one third of parliamentarians, including the speaker of the National Assembly, are women (Sithole and Shai, 2016). Furthermore, women constitute one-third of government ministers. As a result, South Africa is among the top eleven countries in the world with a high representation of women in government. (Sithole and Shai, 2016). Nevertheless, it is a matter of concern that despite the increasing representation of women in Parliament, there has been no corresponding practical improvement in the promotion and respect for women's rights in society. According to Statistics South Africa (2018) the murder rate of women victims has skyrocketed to more than five times the global average. It is a matter of concern that even today, women leaders still rely on their male colleagues to drive women's rights agendas in parliament (Sithole and Shai, 2016). It can be argued that women's rights can only be promoted, advanced and respected if the drive to advance the right to equality is addressed substantively rather than formally. The reality is that many South African women face several threats such as poverty, patriarchal attitudes and assumptions that condone various forms of gender violence. For example, the majority of women still carry the greater brunt of the HIV/AIDS impact because they are largely excluded from the economy. As such they are in the receiving end. Largely because of their economic marginality women are in no position to negotiate safer sex practices in the family or in a love relationship. Needless to repeat, women's exclusion from the economic opportunities open to their male counterparts is exacerbated by the culturally embedded inequalities referred to already.

Currently the whole world is battling against an unplanned and unwelcome COVID-19 onslaught. The onslaught required all the states, globally, to take precautionary measures to curb the rapid spread of the virus. South Africa, among other countries, has also taken preventives measures as required by WHO. In this pandemic it does not require complex arithmetic to realize the extent to which the impact of the COVID-19 lockdown has had on the fragile social location of women and their rights, through job losses, tension in the family and the constant burden of having to draw water, find fire wood and food to place a meal on the table in a world economy that is straitened and depressed beyond description (Oyasande, 2020). As UN (2020) Emphasises 'the pandemic is deepening pre-existing inequalities, exposing vulnerabilities in social, political and economic systems which in turn amplifying the impacts of the pandemic'.

To this end, the section below explores the extent to which the South African government has responded to the task of curbing the spread of the virus. The task of government has been two-fold in the sense that, while prioritizing the COVID 19 pandemic, it must also find strategies to promote the rights of women and girls.



South African Government's Response to Curb COVID-19 and its Impact on Women and Girls' Rights

First, this section discusses the measures the government has taken so far during the lockdown. Second, it elaborates on the impact these measures have had or are likely to have on the rights of women and girls.

South African Government's Response to COVID-19

As mentioned above, the first COVID -19 case was confirmed in Wuhan, China in December 2019. Thereafter it spread across the globe. In March 2020 approximately 168 000 people had tested positive to COVID 19 (South African Government (SAGov), 2020). In South Africa the first case was confirmed in March 2020. Subsequently, South Africa had to put in place measures to contain the spread of the virus and to treat those who were infected. Although early figures of those infected were as low as below 100 cases, the number of infections has grown so exponentially that in less than four months, South Africa was sitting at just above 168, 000 confirmed Covid-19 cases. Sadly, that figure is expected to keep growing before a plateau is reached.

To this end on 15 March 2020, Ramaposa, His Excellency the President of the Republic of South Africa, responded by declaring a state of national disaster in terms of the Disaster Management Act 57 of 2002 (DMA). The reason behind the declaration was to slow down the rapid spread of the virus, to gain more time to enable the health sector to consolidate capacity and to hammer out an emergency plan to soften the severity of the pandemic (SAGov, 2020).

The content of the above declaration by government reveals the following measures:

First, it became imperative to limit contact between infected people and uninfected South African citizens. As a result, a travel ban on foreign nationals from high risk countries was imposed with effect from 18 March 2020 (SAGov, 2020). Second, the risk of the spread had to be limited. Consequently, gatherings of more than 100 people were prohibited. Mass celebrations such as the national day were cancelled. Schools and other educational institutions were closed. In the same vein the sale of alcohol was prohibited after 17h00. Liquor outlets remained closed throughout Fridays, Saturdays and Sundays. The third measure was related to surveillance and testing. Government had to identify isolation and quarantine sites in each district and metro. The president urged everybody to wash hands with soap or use a sanitizer for at least 20 seconds, to cover their nose and mouth with a tissue or a bent elbow when coughing or sneezing and to avoid close contact with anyone



with a cold or flu-like symptom (SAgov, 2020). To put it briefly, the South African government made contingency arrangements as directed in section 27 of the DMA.

Furthermore, a week after declaring the state of disaster on 23 March 2020, government introduced a nation-wide lock down with effect from midnight on Thursday 26 March 2020. The rationale behind this lockdown was to save millions of South Africans from infection (SAgov, 2020). As a result, everyone was urged to stay at home, while health workers, in public and private sectors, emergency personnel, those in security services respectively, the police, traffic officers, military medical personnel, soldiers and other essential personnel were exempted from the lockdown (SAgov, 2020). Each ministerial department had to publish a list of essential services, chief among which was the production, distribution and supply of food and basic goods, bank services, the maintenance of power, water and telecommunications services, laboratory services and the provisions of medical and hygiene products (SAgov, 2020). Meanwhile, people were prohibited from leaving their homes except to seek medical care, to buy medicines, to collect social grants and to buy food. With regard to homeless people, temporary shelters had to be built or identified to accommodate them. Similarly, all shops and businesses had to close except the JSE, supermarkets, petrol stations and health care providers (SAgov,2020). Given that these measures brought economic distress, government organised quick interventions, firstly to support the vulnerable. Government set up a Solidarity fund where South African business organisations and individuals and members of the international community could deposit their contributions. Second, government decided to support people whose livelihoods were affected. To be specific, companies in distress owing to the Covid-19 pandemic qualified for a limited state bailout through a defined subsidy formula. As a result, a proposal was made to assist employees with a temporary Employee Relief Scheme. Thirdly, businesses in distress were to be assisted through the tax system. In addition, government provided a tax subsidy of up to R500 per month for the next four months for private sector employees with a salary below R6500. In addition, tax compliant businesses with a turnover of less than R50 million were allowed a delay of 20% pay-as-you earn liabilities over four months. Together these interventions have shown that Government had to play a significant part to assist vulnerable employees and businesses.

Two weeks after the inception of the lockdown, President Ramaposa announced the extension of the lockdown on 9 April. Government took this step to save lives and to protect livelihoods. As a result, he presented a strategy comprising three parts: first, an intensified public health to slow down and reduce the spread of the virus; second, a comprehensive package of economic support measures to assist businesses and individuals affected by the pandemic; third a programme of increased social support to protect poor and vulnerable groups. It should be noted that for three months the



president, deputy president, ministers and deputy ministers' volunteered to cut their salaries by a third, all reductions to be paid into the Solidarity Fund (SAGov,20202).

Seven weeks later on 23 April 2020 the president emphasised that in as much as the lockdown was the most effective way to curb the spread of the corona virus, the lockdown would not continue indefinitely. As a result, a gradual and scientifically based return to economic activity had to commence immediately. Therefore, a risk calculated approach was adopted to ease the lockdown restrictions (SAGov, 2020). Despite the approach, five corona virus levels were indicated.

Level 5 means that drastic measures are required to contain the spread of the virus to save lives.

Level 4 means that some activity can be allowed to resume subject to extreme precautions required to limit community transmission and outbreaks.

Level 3 involves the easing of some restrictions, including work and social activities, to address a high risk of transmission.

Level 2 involves the further easing of restrictions, but the maintenance of physical distancing and restrictions on some leisure and social activities to prevent a resurgence of the virus.

Level 1 means that most normal activity can resume, with precautions and health guidelines followed at all times.

What emerges from the above discussion is that after seven weeks of the national lockdown, the president announced that on the 1st of May 2020, the country would move to level 4. As was indicated, under level 4, few activities resumed. At the time of writing this article, South Africa enters day 80 under level 3 of the lockdown. It was only on 13 May 2020, several weeks since the lockdown, that the president mentioned his grave concern over the increased levels of gender-based violence in the country. He mentioned an emergency pathway of survivors of gender-based violence to ensure that survivors are taken care of (SAGov, 2020). As a result, regulations had to be adjusted to include the manner in which women could leave their homes to report abuse, without fear of being fined, intimidated or mistreated.

The Impact of Government's Response to the Pandemic on Women and Girls' Rights

Although government has taken unprecedented measures to curb the spread of COVID-19 and to save lives, that was not the end of its charge. It still faced the challenge of fulfilling its constitutional obligation to uphold all the rights including those of women and children, in terms of s7(2) of the Bill of Rights in the 1996 Constitution. It bears noting that the COVID-19 pandemic has been world-wide in its onslaught. South Africa has not been the only country in the region to be affected. A number of states in the Southern African



Development Community (SADC) also adopted various measures in response to the pandemic. The measures made serious inroads into the people's enjoyment of human rights. These rights include the livelihoods of people in the informal sector (SADC, 2020). In South Africa, the lockdown measures affected families, economies, health and business operations (Oyasande, 2020). This situation has proved to be challenging with reference to women and girls as their civil and political rights as well as their socio-economic rights had of necessity to be affected adversely. To some extent civil and political rights that have been affected include the right to equality, the right to life, human dignity, freedom of speech, freedom of religion, the right to vote, the right to belong to a political party, the right to freedom of movement and freedom of association, to name a few (Meintjes, 2019). Socio-economic rights include the right to enjoy access to housing, the right to health care and reproductive health care services and the right of access to sufficient food and water. The right to education and labour rights have also been negatively impacted by COVID-19 (Tolmay and Morna, 2020).

More significantly, in respect of civil rights, the rights of women and girls that have been affected during the lockdown are the right to equality, right to life and the right to human dignity. Arguably, South Africa is currently portrayed as a country with a femicide rate that is five times the global average (Tolmay and Morna, 2020). In her statement, Minister Nkoana-Mashabane expressed her grave concerns at the persistent killing and rape of women and children in South Africa. She called upon men to step up and denounce the senseless cruelty against women (SAGov,2020). It was reported that during the lockdown a 47- year-old woman was found murdered in her house at Willovale. The body of her 18-month old baby was found lying next to her (SAGov, 2020). In addition, a girl was raped and murdered while on an errand. Her body was found lying in a bush at eMndeni extension in Soweto (SAGov, 2020). A recent killing that shocked the nation was that of Pule Tshegofatsi. Her lifeless body was found hanging from a tree with multiple stab wounds in a suburb in Johannesburg (BBC Africa, 2020). What rent the hearts of many women is that Pule was just a few days before giving birth. There is no doubt that the COVID-19 lockdown has fuelled the increasing rate of femicide. As Nkoana-Mashabane clearly states 'women remain under threat even behind closed doors in their homes'(SAGov,2020). During this lockdown while there is almost no one on the street, a simple errand such as going to buy an item of food from a local may be a matter of life and death for women and girls' (SAGov, 2020). In addition, Calitz (2020) stresses that the rapidly increased rate of gender-based violence during lockdown is a matter of concern. As women and girls are compelled to stay at home, some are beaten and abused by their partners. This is clearly an infringement of the right to human dignity and bodily integrity. Yet the stay-at-home rule is the only method available to slow down the pace of the spread of the virus (UN, 2020).



In the wake of the pandemic socio-economic rights are under threat. Specifically, the right to health care services and access to sufficient water, as provided in section 27 of the Constitution, the right to education as provided in section 29 of the Constitution, as well as labour rights, as provided in section 23, have definitely taken a knock. First and foremost, with the issue of water, most women living in the informal settlements do not enjoy access to clean and potable water (Calizt, 2020). As for health and access to healthcare services, it should be noted that, for many women and girls, the outbreak of the pandemic has reduced whatever limited access they enjoyed to sexual and reproductive health care services such as contraceptives, safe abortion and HIV medications. In this way the restriction has placed women and girls' health, physical and psychological wellbeing at increased risk (Amnesty, 2020). In addition, pregnant women, newborn and children's health care services have also come under threat as most of the health resources have had to be used to address the COVID-19 pandemic (Tolmay and Morna, 2020). Afterwards, with regard to the right to education, many schools have had to close due to the pandemic. If not gainfully occupied with school, girls specifically are at risk of sexual exploitation and its attendant rise in early teenage pregnancies. In other words, the long-term impact of the lockdown has yet to be calculated, specifically with regard to the gender imbalance in education opportunities as many girls will have had to drop their studies. Last but not least important, the right to work is jeopardised. Tolmay and Morna (2020) mention that 8% of the workforce in South Africa is made up of domestic workers who provide support to their families. However, during the lockdown many domestic workers and other women were compelled to stay at home. This compulsion resulted in countless job losses. Arguably, the loss of regular income has increased the atmosphere of tension in homes. For instance, in some cases children and members in the extended family expect the mother 'to pull out a magic wand' and place food on the table. Should she fail, the husband will surely hurl abuse, or even assault her (Oyasande, 2020).

Furthermore, the perpetuation of violence against women is intertwined with social and economic relations (Phalatse, 2020). Phalatse (2020) notes that women play a central role in direct and indirect care. Most women support their children and elderly people around them directly. The added burden of the woman is the cooking and water fetching roles. These roles are considered 'care work' which society regards as 'women's work'. The point to bear in mind is that in this jobless economy the lockdown measure has magnified the marginality of the woman with her unpaid work. She is central in the running of the household machinery. Though the woman is at the centre of things, so to say, the point needs making that she is not empowered or remunerated for her services. Focusing on women and girls exclusively does not necessarily mean that men have not experienced violence or were not adversely affected during the lockdown. Arguably, women have less



access to social protections and their capacity to absorb social and economic shock is therefore less than of men (Burki, 2020).

As has been seen already, the numerous pieces of progressive legislation have gone a long way to improve the position of women in the family. However, Government has still to go a long way to address or compensate the taken for granted economic unfairness in the home in the face of the COVID 19 pandemic.

Conclusion and Recommendations

The main object of writing this article was to examine the manner in which the South African government has responded to the challenge of curbing the spread of COVID-19. In response this article has identified the need of a differential approach that guarantees the rights of women and girls by the manner of violence and infringement of their civil and socio-economic rights as seen above. To this end the article was divided into four sections.

The first section of this article theorised the issues of women and girls' vulnerabilities. While, the second section contextualised women and girls' rights at international, regional and domestic levels. As a result, it was revealed that several international, regional and domestic conventions, protocols and declarations have been created to protect women and girls' rights. Notably these instruments were the UDHR, ICESR, ICCPR, CEDAW, DEVAW, CRC, MAPUTO protocol and ACWC. As was seen, State parties to these conventions were expected to take preventive measures to respect, promote and fulfil women and girls' rights within their national laws. To achieve this purpose, as a state party South Africa had to put measures in place including numerous pieces of legislation to protect and promote the rights and wellbeing of women and girls.

Furthermore, in respect of the analysis of violence against women and girls in South Africa, it was revealed that women and girls are still abused and that mostly this violence is linked to societal and cultural assumptions based on patriarchy and male dominance. It was noted that South Africa has done admirably well in terms of pushing through progressive pieces of legislation to improve the plight of women and children and increasing the representation of women so as to champion the interests of women and children in parliament. As seen, while these innovative measures are welcome, it is a matter of concern that gender based violence has been on the increase in South Africa and the COVID 19 pandemic has exacerbated their precarious position in society. Against this growing negative trend, the conclusion made is that there is a need to deal with the women's rights more substantively rather than merely formally if South Africa is to move to a genuine social transformation. The third section dealt with government response to the Covid-19 pandemic. As seen already, government took drastic measures nationwide. In addition to urging people to stay at home, the wearing of a mask whenever in public is now prescribed



by law. Transgression of the COVID-19 regulations is punishable in law. Yet the public has complied accordingly (Stiegler and Bouchard, 2020). At the time of writing this article the lock down was moved to level 3 and it was also at this level that the President's address the gender-based violence faced by women during lockdown. This article revealed that women and girls civil, and socio-economic rights have been threatened to some extent infringed. Civil rights relate to right to life, human dignity and bodily integrity. Socio-economic rights comprise of health and health care services, sufficient food and water, education, sexual and reproductive health services and labour rights have been discussed. It can be emphasised that the same rigour that has been adopted to deal with the onslaught of the COVID-19 pandemic can be adopted with regard to the scourge of gender-based violence faced by women and girls in South Africa. Given that the latter is an infringement of women's rights.

Against this background, the last section related to the conclusion and recommendations. In consequence policy makers in government may do well to consider the following substantive recommendations:

- Women are well represented in cabinet and parliament. But there is a need to move beyond symbolic representation of women. As gender injustice and abuse translate into economic marginalisation, women need to be encouraged and empowered to participate in those wider networks of decision-making structures. Specifically, during this pandemic.
- In addition, government has a responsibility to find new methodologies to introduce more creative and imaginative mechanisms whereby women can be encouraged and empowered to participate in the gender forums focusing on the development of gender sensitive structures in society.
- Given the fact that poverty and to some extent unemployment is directly linked to gender-based violence, during this lockdown and in future. Government needs to prioritise a pro-poor, gender-sensitive approach both within and beyond this pandemic. To this end, government needs to secure additional income particularly for women in charge of household.
- Government must ensure that women are educated to participate fully in workshops that impart skills that really empower them. The aphorism that *"to educate a woman is to educate a nation"* couldn't be truer at this juncture.
- While the focus is more on patients infected by COVID-19 and alternatives way of curbing the spread of the virus. Government should ensure that everyone in general and women in particular enjoy the highest possible level of physical and mental health as per international norms. Specifically, women and girls sexual and reproductive health care services should be made available because depriving

them from these essential services is some kind of discrimination against them given that their lives and health are at risk (Amnesty, 2020).

- In respect of education the closure of the schools has shown during this pandemic, in sharp relief, the difference between country life and town life. Country is where most abused and marginalised women struggle to put food on the table. Some private and public schools located in towns and cities have created online classes while those in rural areas are lagging behind because of lack of electricity, water and internet connectivity. There is a need to create a special ministry that will be devoted to the special needs of the rural learner, especially the female learners. Government needs to employ experts to train girls in the acquisition of new skills. The non-profit organisations and other non-governmental agencies should be encouraged to assist in this process. They should not be treated as enemies of the government.

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