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**Zimbabwe COVID-19 Lockdown: How and why Government should further improve its legal measures to be more human rights compliant.**

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These are extra-ordinary times. This opinion piece is not offered as a way of merely exposing the inadequacies of Government’s efforts in curbing the spread of COVID-19 or to pontificate on one’s legal expertise. Today our country (and indeed the world) is faced with a disaster which threatens the life of the nation. Therefore, it is time to put all hands on deck from wherever we are to save our country and humanity. This is the spirit with which this piece has been written-to provide government with feedback on how to strengthen its legal measures by making them more human rights compliant. As has already been emphasised by the [United Nations Secretary General](https://news.un.org/en/story/2020/03/1060372) and by our two other compatriots, [Deprose Muchena](https://www.dailymaverick.co.za/article/2020-03-28-southern-africa-covid-19-as-an-emergency-human-rights-issue/) and [Arnold Tsunga](https://www.icj.org/covid-19-pandemic-zimbabwe-must-act-urgently-to-protect-the-right-to-health-of-inhabitants/); making these measures more human rights compliant is an important way of putting people at the centre of the fight against COVID-19. This increases public trust and cooperation, without which the fight against COVID-19 cannot be won.

The President of Zimbabwe has declared that the country will be under total lockdown for 21 days, beginning on the 30th of March 2020. The President is empowered by section 27 (1) of the Civil Protection Act to undertake such measures. This declaration is necessary in order to minimise the movement of persons as a way of mitigating against the spread of COVID-19. Other [countries](https://www.businessinsider.co.za/countries-on-lockdown-coronavirus-italy-2020-3?r=US&IR=T) have taken similar drastic measures.

When a state of disaster has been declared, it is inevitable that the exercise of certain rights become more restricted (than usual) for the duration of the period of national disaster. However, it is important to note that the Constitution of Zimbabwe prescribes that certain rights are absolute and therefore, cannot be limited even during the period of a national disaster. These rights are listed in section 86 (3) of the Constitution and they include the right to 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; right to fair trial and the right to obtain an order of *habeas corpus*. Put simply, a *habeas corpus* is a form of legal recourse which is resorted to by means of making a court application, requesting the court to compel a person believed to be a custodian of a missing person, to bring the missing person to court or to release the person all together. Applications for *habeas corpus* are common in instances where persons are abducted or disappeared for political or any other reasons.

Except for these rights mentioned above, all other human rights can be limited but subject to observing the strict requirements stipulated in section 86 of the Constitution. Of particular importance is the requirement that the exercise of these rights may only be limited if it is “necessary” for the State to address the dangers which have necessitated the declaration of national disaster. Furthermore, the limitation must be “reasonable” in the sense that the state must avoid adopting measures which violate/undermine the rights more than what is needed in order to address the dangers that have necessitated the declaration of national disaster. Thus, the government must ensure that these measures are necessary and proportionate to the exigencies of the disaster. The duty of government to ensure that these measures are proportionate is further underscored in Article 4 (1) of the International Covenant on Civil and Political Rights (ICCPR), to which Zimbabwe is a party. Similar to section 86 of the Zimbabwean Constitution, article 4 (1) of the ICCPR allows the government to undertake measures which limit rights but only to the extent strictly required by the exigencies of the situation. Further guidelines on rights limitations are provided in the [Siracusa Principles](https://www.icj.org/wp-content/uploads/1984/07/Siracusa-principles-ICCPR-legal-submission-1985-eng.pdf).

There can never be any doubt that COVID-19 threatens the life of the nation and the whole world. But, it must be recalled that Zimbabwe has both a domestic and international legal duty to ensure that the raft of measures undertaken or authorised through a national disaster law are restricted to what is “necessary, reasonable and justifiable” in a democratic state. This is the legal framework against which Statutory Instrument 83 of 2020 must be evaluated. Certain measures prescribed in this Statutory Instrument are disproportionate though they may be necessary. They are highlighted in the paragraphs below:

1. **Clause 2** Statutory Instrument 83 of 2020 sets out a list of “essential services workers/persons” who are permitted to move around during the period of lockdown. It omits judicial officers, court officers and members of the legal profession. However, an amendment has since been issued which classifies “criminal courts, and to the extent directed by the Chief Justice-other courts and their support staff” as amongst the essential services workers. Whilst this amendment is indeed a positive development, it does not expressly identify legal practitioners as essential service providers. During a period of national disaster, there is a high likelihood of legal emergencies which will arise especially given that Statutory Instrument 83 of 2020 authorizes arrests and detentions for persons who engage in certain prohibited conduct. Section 86(3) of the Constitution identifies the right to fair trial as amongst rights which cannot be suspended or limited even during periods of national disaster. The right to fair trial includes the right to legal representation of choice. Therefore, lawyers must be classified as essential services providers so that they can be able to consult and represent their clients who may be arrested or detained during the lockdown.
2. **Clause 12 (2)** of Statutory Instrument 83 of 2020, prohibits the hoarding of food stuffs. It criminalizes keeping food that is more than is necessary for the person and his/her family. In Zimbabwe, as a result of inflation and shortage of goods in the local retail shops, there are many families who buy food supplies from the neighboring countries. In order to avoid making numerous trips to neighboring countries, these families buy in bulk and store the food in their homes. This is a [normal practice](https://www.researchgate.net/publication/313880782_The_dynamics_and_impact_of_cross-border_shopping_by_Zimbabweans_in_South_Africa's_border_town_of_Musina_since_the_post-2000_crisis_era) which started well before COVID-19. If found with these food stuffs, these families are at the risk of being arrested and jailed because it is not always easy to prove that they did not buy these stocks locally and as a way of hoarding during the lockdown. In light of this, clause 12 (2) needs to be removed. Instead, the government must enhance policing retailers to ensure against bulk buying.
3. **Clause 14** of Statutory Instrument 83 of 2020 makes it an offense to “publish/communicate false news” whether or not one knew or did not know that the news is false. Free expression can be limited during the period of national disaster and, indeed there is need to deal with the [“fake news virus”](https://www.weforum.org/agenda/2020/03/how-to-avoid-covid-19-fake-news-coronavirus/) to win against the spread of COVID-19. However, clause 14 could be worded much better to avoid arbitrary arrests & unfair convictions. For example, it could have been made as a requirement that “one would be convicted for communicating false news if they knew or reasonably should have known that they are communicating/publishing false information”. Some may argue that the Statutory Instrument is merely replicating what is already prescribed in the Criminal Code. Whilst this is true, it does not make the Statutory Instrument constitutionally compliant. The Criminal Code itself is unconstitutional to the extent that it criminalizes such conduct through overbroad provisions.

In conclusion, it is key for the Government of Zimbabwe as well as governments all over the world, to realise that the success of these lockdowns are ultimately depended on the cooperation of the people. Therefore, governments must be willing to engage with the public in order to continue to update and adapt their national disaster measures. More importantly, the measures adopted must be necessary, reasonable and justifiable in a democratic state. If these measures are unreasonable, many people will fail to comply and there will be too many arrests and flooding of jails/holding cells-and this may increase the spread of COVID-19 to the prisons thereby further endangering national security.