Image of San art, Kuru Art Project, D'Kar, Botswana © Kuru Art Project

The Impact of COVID-19 on the Rights of Indigenous Peoples in Southern Africa

Contents

About the Advancing Rights in Southern Africa (ARISA) program

The Advancing Rights in Southern Africa program at Freedom House (ARISA) is a 5-year program that seeks to improve the recognition, awareness and enforcement of human rights in the region, including the protection of the region's most vulnerable and marginalized groups. The program, led by Freedom House, in collaboration with partners—the American Bar Association Rule of Law Initiative (ABA/ROLI), Internews, and Pact—works at a regional level in select countries to:

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

Abbreviations and Acronyms

ACHPR	African Commission on Human and Peoples' Rights
ARISA	Advancing Rights in Southern Africa Program at Freedom House
ABA/ROLI	American Bar Association Rule of Law Initiative
CEDAW	Convention on the Elimination of all Forms of Discrimination against Women
CEACR	ILO Committee of Experts on the Application of Conventions and Recommendations
CERD	Convention on the Elimination of all Forms of Racial Discrimination
CPA	Communal Property Association
CRC	Convention on the Rights of the Child
CSOs	Civil Society Organisations
FAO	Food and Agricultural Organisation of the United Nations
FPIC	Free and Prior Informed Consent
GBV	Gender Based Violence
ICCPR	International Covenant on Civil and Political Rights
IPs	Indigenous Peoples
IPOs	Indigenous Peoples' Organizations
ILO	International Labour Organization
SADC	Southern African Development Community
UN	United Nations
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
WHO	World Health Organisation

1. Introduction and Rationale

The COVID-19 pandemic has taken a toll on Southern Africa's struggling health systems and other public services, impacting people's lives, health and livelihoods. It has had a disproportionate effect on the most marginalized and vulnerable groups. These include persons with disabilities, those living with chronic health conditions, and people facing social and economic vulnerability such as women, young people and indigenous peoples, often left on the margins of society. Government measures in response to the pandemic have seldom considered the needs of marginalized communities and have affected their fundamental rights and freedoms. Although the pandemic appears to have waned or not taken as much of a hold in Africa,[1] a second wave of infections in other parts of the world such as Europe, parts of Asia and the United States makes it likely that the continent will remain at risk of further waves of infection. This necessitates responses that respect the rights of all people.

This report assesses the human rights impact of COVID-19 on indigenous peoples in Angola, Botswana, Namibia and South Africa.[2] In the face of a lack of significant qualitative and quantitative data on indigenous peoples' realities, it provides some insight into the situation of indigenous peoples during this crisis. It highlights the threat of COVID-19 to indigenous peoples' livelihoods and food security and the inadequacy of government response measures in addressing the situation of indigenous peoples, including lack of access to health services, information, and adequate assistance interventions. It provides information on more targeted measures to the pandemic anchored in the realities of indigenous peoples and responsive to their needs. The report provides recommendations to governments in the region, the regional bloc, the Southern Africa Development Community (SADC), civil society organizations (CSOs) and the donor community for managing the pandemic, whilst mitigating its rights impact on indigenous peoples.

The report is based on information gathered by the ARISA team during virtual meetings, telephone calls and email correspondence with representatives of indigenous communities and indigenous people's organizations (IPOs) from Angola, Botswana, Namibia and South Africa. In addition, ARISA conducted a literature review and analysis of relevant laws and regulations related to COVID-19 in Southern Africa. The San community make up the largest group of indigenous peoples of this population. As a result, this paper mainly focuses on the impact of COVID-19 on the rights of the San indigenous community.

The information collected for the report would have been further strengthened by in-person interviews and field data collected by indigenous communities themselves. This was unfortunately not possible due to travel and movement restrictions as a result of the pandemic. Due to the evolving crisis and movement restrictions, the team was unable to fully capture emerging issues. The absence of disaggregated data on indigenous peoples in Southern Africa also makes it difficult to present a fuller picture of their situation.

---

[1] Tamar Kahn (2020), 'SA's waning Covid-19 epidemic puzzles experts', *Business Day*, September 16, https://www.businesslive.co.za/bd/national/health/2020-09-16-sas-waning-covid-19-epidemic-puzzles-experts/; Linda Nordling (2020), 'The pandemic appears to have spared Africa so far. Scientists are struggling to explain why', August 11 https://www.sciencemag.org/news/2020/08/pandemic-appears-have-spared-africa-so-far-scientists-are-struggling-explain-why
[2] IWIGIA, https://www.iwgia.org/en/indigenous-world.html

2. Overview of Government Responses to the Pandemic

At the onset of the pandemic in March, SADC countries instituted emergency measures, including partial and total lockdowns, restrictions on domestic and international travel, border closures, bans on public gatherings and the prevention of the movement of people. Additionally, most countries in the region implemented National States of Disasters (Malawi, South Africa and Zimbabwe), States of Emergencies (Angola, Democratic Republic of Congo, Eswatini, Lesotho, Mozambique and Namibia), Declarations of Public Health Emergencies (Botswana, Madagascar)[3] and introduced new laws to contain the pandemic. In South Africa and Botswana, lockdown periods were extended as member states intensified efforts to combat the spread of the disease. In many countries, governments deployed police and the military to enforce emergency measures. Human rights activists reported incidents of killings, beatings, and harassment of people deemed to be in violation of government regulations related to COVID-19.[4]

The pandemic brought into sharp relief the deep socioeconomic inequalities in the region and the daily experiences of local people in accessing basic goods and needs such as healthcare, food and water. A lack of government-supported social safety nets in most countries in Southern Africa meant that under total and partial lockdowns the poorest communities faced difficulties in accessing food, water, health care and other necessities. Across the region, the socioeconomic and political impact of the crisis, combined with often stringent government restrictions on fundamental rights and freedoms, at times led to citizen disgruntlement and unrest. Poor and marginalized communities were most vulnerable to such abuses as they disobeyed lockdown regulations in search of necessities.

Human rights activists, political parties and civil society organizations became increasingly critical of government responses to the pandemic and questioned mandated lockdown regulations in many countries. In several cases, such as Malawi, South Africa and Zimbabwe, human rights activists and the private sector challenged the constitutionality of lockdown regulations or sought to force governments to provide better social and economic protections for citizens, especially vulnerable populations.[5] The measures imposed in response to the pandemic worsened the situation of indigenous peoples and their access to basic economic, cultural and social rights. Increased state security measures and restrictions on movement also impacted indigenous communities.

Whilst lockdown regulations eased across many countries in the months of September and October, new rises in infections leave the possibility of a return to more restrictive measures and the attendant impact on those who are most vulnerable and marginalized such as indigenous peoples.

---

[3] International Centre for Not for Profit Law (ICNL), https://www.icnl.org/post/analysis/african-government-response-to-covid-19

4 Piet Rampedi, Karabo Ngoepe and Manyane Manyane (2020), 'SA lockdown: Soldiers accused of beating Alexandra man to death with sjambok', *IOL*, April 12, https://www.iol.co.za/sundayindependent/news/sa-lockdown-soldiers-accused-of-beating-alexandra-man-to-death-with-sjambok-46619454

[5] Ektaa Deochand, Tendai Mafuma And Mbalenhle Baduza (2020), ' Constitutional conundrums as lockdown court challenges mount', *City Press,* June 12, https://www.news24.com/citypress/voices/covid-19-constitutional-conundrums-as-lockdown-court-challenges-mount-20200612

3. International and African Legal Framework on the Rights of Indigenous Peoples

The rights of indigenous peoples are guaranteed under international law. These laws also include rights that are specific to indigenous peoples and their priorities such as traditional lands, territories, resources, knowledge, cultural preservation, and their human security. ILO Indigenous and Tribal Peoples, 1989 (ILO Convention No. 169) is the main binding international convention governing the rights of indigenous and tribal peoples.[6]

At the level of the United Nations (UN), The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) details "the rights of indigenous peoples in international law and policy, containing minimum standards for the recognition, protection and promotion of these rights."[7] The Expert Mechanism on the Rights of Indigenous Peoples was established in 2007 by the Human Rights Council of which it is a subsidiary body.

The UN Special Rapporteur on the rights of indigenous peoples was mandated as a special mechanism by the Human Rights Council in 2007 to, among other things, examine ways of "overcoming existing obstacles to the full and effective protection of indigenous peoples," gather information on violations of the rights of indigenous peoples and provide recommendations on measures to "prevent and remedy violations of the rights of indigenous peoples."

The African human rights system is also comprised of several legal norms and mechanisms that protect the rights of indigenous peoples. These include: the African Charter on Human and Peoples' Rights;[8] the African Charter on the Rights and Welfare of the Child; and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol).

The Working Group of Experts of the African Commission on Indigenous Populations/Communities in Africa was established by the African Commission on Human and Peoples Rights in 2001. The group is mandated to:

- Examine the concept of indigenous populations/communities in Africa;

- Study the implications of the African Charter on the well-being of indigenous communities especially with regard to the right to equality (articles 2 and 3), the right to dignity (article 5), the right to protection of all peoples against domination (article 19), the right to self-determination (article 20), the right to cultural development and identity (article 22);

---

[6] International Labour Organization, C169 – Indigenous and Tribal Peoples Convention, 1989 (No 169). https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169, (accessed November 19, 2020).

[7] United Nations, United Declaration on the Rights of Indigenous Peoples, (2007), https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html, (accessed November 19, 2020).

[8] The peoples' rights or collective rights in Articles 19-24 of the Charter include: the right to equality and to be free from domination by other peoples (Article 19); the right to exist and to self-determination (Article 20); the right to freely dispose of natural wealth (Article 21); the right to economic, social and cultural development (Article 22); and the right to a satisfactory environment favourable to their development (Article 24)

- Consider appropriate recommendations for the monitoring and protection of the rights of indigenous communities.[9]

The governments of Angola, Botswana, Namibia and South Africa have all adopted the UNDRIP.[10] Although Angola ratified the Indigenous and Tribal Populations Convention of 1957 (ILO 107), the predecessor to ILO Convention No.169, the country joins Botswana, Namibia and South Africa in failing to ratify ILO Convention No 169.[11]

4. Inadequate Health Services and Information on COVID-19 Preventative Measures

Indigenous peoples' traditional lifestyles and the remoteness and rural nature of their lives provide a semblance of protection from the spread of viruses such as COVID-19. However, interaction with remote communities by tourists could also spread the disease to these communities, posing a significant health risk. In Botswana, for example, thousands of tourists visit the Okavango Delta, transiting through Maun—the main point of entry to the Delta and a key town for replenishing supplies for indigenous communities in the town and surrounding areas. Realising the risks posed by the continued presence of tourists in Maun,[12] the Government of Botswana locked down the town as soon as the virus was detected in the country in order to combat the spread of the virus.[13] This was an important preemptive measure in preventing the virus from entering and spreading in one of the most marginalised communities in the country.

The United Nations (UN) has similarly noted that COVID-19 poses a grave health threat to indigenous peoples around the world.[14] Due to the remoteness of their settlements, indigenous communities already experience poor access to healthcare, significantly higher rates of communicable and non-communicable diseases, lack of access to essential services, sanitation, and other key preventive essentials, such as clean water, soap and disinfectants. COVID-19 has worsened these challenges. In Namibia, in the Kavango east villages, especially in the Ndama area, there has been an outbreak of scabies, directly attributed to the lack of water and hygiene products.[15]

Local medical facilities, when they are available, are often under-equipped and under-staffed with many indigenous peoples facing stigma and discrimination from staff and other non-indigenous citizens when accessing these facilities. For example, the Women's Leadership Centre in Namibia informed ARISA that they had received reports of San people denied entry

---

[9] African Commission on Human and Peoples' Rights, https://www.achpr.org/specialmechanisms/detail?id=10, (accessed November 19, 2020).

[10] United Nations, United Declaration on the Rights of Indigenous Peoples, (adopted 2007), https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html, (accessed November 19, 2020).

[11] International Labour Organization, https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312314 (accessed November 19, 2020).

[12] Thalefang Charles (2020) 'Tourism COVID-19 Voices: Go Thata,' *Mmegi online*, October 30, https://www.mmegi.bw/index.php?aid=87562&dir=2020/october/30

[13] Kago Komane (2020) 'Botswana declares state of emergency, goes on lockdown', *Centre for Investigative Journalism*, https://inkjournalism.org/2093/botswana-declares-state-of-emergency-goes-on-lockdown/

[14] United Nations (2020). 'COVID 19 and Indigenous Peoples' available at: https://www.un.org/development/desa/indigenouspeoples/COVID 19.html (accessed August 21 2020)

[15] ARISA telephone interview with the Women's Leadership Centre, Namibia, November 17, 2020.

into clinics or hospitals because they did not have masks, further infringing on their right to adequate health care.[16]

Government's failure to provide health messaging in indigenous languages and the generalisation of available messaging make access to information fundamentally difficult for indigenous peoples, as the messaging fails to take their specific situations into account. Indigenous peoples have therefore become extremely vulnerable and exposed during the pandemic, due to a lack of access to effective monitoring and early-warning systems and adequate health and social services.[17]

According to the UN, as the number of COVID-19 infections and mortality rates have risen worldwide, including amongst certain vulnerable groups with underlying health conditions, data on the rate of infection amongst indigenous peoples has been either unavailable (even where reporting and testing were available) or has not been recorded. Relevant information about infectious diseases and preventive measures has also not been made available in indigenous languages.[18] This has also been the case in Southern Africa where government *one size fits all* approaches to the pandemic and limited health responses are not in line with the cultural needs and practices of indigenous communities.[19]

Indigenous peoples also face exposure during traditional gatherings, a vital part of their cultural practices. In San communities, decisions are normally made by group consensus during traditional gatherings, where lengthy discussions are held, and conflicts resolved. Living largely in an egalitarian society and sharing such things as meat and tobacco during these gatherings leaves indigenous peoples vulnerable to infection. These important cultural practices are a way of life for the San and form the bedrock of their society.[20]

Well-meaning non-governmental organisations (NGOs) providing food, medicines and other supplies may also unknowingly spread the virus as they undertake work to track the virus in communities that are isolated and virus free.[21] When discussing the issue of the distribution of resources, most indigenous peoples felt that they would be best placed to support and provide the logistics related to such provisions, as it would be less risky than outsiders entering their spaces and leaving indigenous communities vulnerable to infections.

Indigenous peoples also tend to live in multi-generational housing, which puts them and their families, especially the Elders—be they older folk or leaders of the community—at risk. The extreme poverty under which most indigenous communities live in Southern Africa combined with poor nutrition, lack of potable water and access to healthcare makes them highly vulnerable.

5. Impact on Food Security and Traditional Livelihoods

Government measures to prevent the spread of COVID-19, such as restrictions on movement, have impacted indigenous people's livelihoods and access to food and threatened their

---

[16] Ibid.
[17] United Nations (2020). 'COVID 19 and Indigenous Peoples', https://www.un.org/development/desa/indigenouspeoples/COVID 19.html (accessed August 21, 2020)
[18] Ibid.
[19] ARISA virtual conference call with representatives of IPOs from Angola, Botswana, and South Africa, April 23, 2020
[20] Gladman Thondhlana & Sheona Shackleton (2015) Cultural values of natural resources among the San people neighbouring Kgalagadi Transfrontier Park, South Africa, Local Environment, 20:1, 18-33, DOI, 10.1080/13549839.2013.818950
[21] ARISA telephone interview with Job Morris, Natural Justice, Botswana, October 31, 2020

traditional ways of living. The expropriation of indigenous lands and natural resources and the increase in conflicts on their territories were already placing indigenous peoples globally in a particularly precarious situation.[22] Many communities continue to rely on their land and natural resources to survive during the COVID-19 crisis. However, governments in Southern Africa have taken few steps to ensure protection of indigenous peoples against encroachment on their traditional lands, particularly during the pandemic, when land grabbing and/or illegal extraction of natural resources may intensify. As lockdowns continued in numerous countries, indigenous peoples who already faced food insecurity as a result of the loss of their traditional lands and territories, confronted even graver constraints in accessing food.[23] With the loss of their traditional livelihoods, which are often land-based, many indigenous peoples who work in traditional occupations and subsistence economies or in the informal sector have been adversely affected by the pandemic.

For example, the Khomani San of the Kalahari are revered for their intimate knowledge of the bush and land on which they live.[24] They have lived off the land for centuries and the land has supported their most basic needs. Practising these skills commercially and offering hunting packages on the vast tracts of land they own around the Kgalagadi Transfrontier Park, they are creating sustainable livelihoods for their community.[25] The pandemic, however, was unforeseen and unlike people in urban settings, these communities do not have the luxury of forward planning. The resultant lack of tourism in the area has left the community facing starvation. During the lockdown, several community members were charged for poaching after going on a hunt to provide food for the community.[26] The case is ongoing and highlights the contradictions of the law as it pertains to indigenous people.

Pandemic regulations and lockdowns have had a profound impact on indigenous peoples' livelihoods. For example, many San in Botswana work as casual labour on farms. The lockdown impacted their ability to earn a living as they were unable to work on the farms due to movement restrictions. Additionally, while government made efforts to supply food rations, there were limitations to what they could provide and delivery to remote areas were particularly difficult and delayed. The Botswana government also made efforts to deliver water to the remote areas in tanks, but the water was not adequate. Given that access to water is always a challenge for almost all indigenous communities, the inadequacy of deliveries during COVID-19 coupled with lack of basic needs such as soap for handwashing was, and continues to be, life threatening.[27] In Angola, the challenges brought about by the COVID-19 pandemic were compounded by the reduction of the San peoples' hunting areas and limitations on collection of wild fruits due to the implementation of government mega projects, which prohibited communities from accessing areas demarcated by the State for agricultural and mining projects.[28]

Tourism is a vital contributor and mechanism for poverty alleviation, job creation, socioeconomic growth and environmental protection in Southern Africa, particularly for indigenous peoples whose livelihoods are dependent on tourism in most cases. The COVID-19 pandemic has the potential for far reaching impacts on these communities, as within wildlife

---

[22] See Amnesty International, https://www.amnesty.org/en/what-we-do/indigenous-peoples/
[23] United Nations (2020). 'COVID 19 and Indigenous Peoples',
,https://www.un.org/development/desa/indigenouspeoples/COVID 19.html (last accessed 21 August 2020)
[24]‡Khomani San, http://www.khomanisan.com/
[25] Farmers Weekly, https://www.farmersweekly.co.za/lifestyle/agritourism/hunting-traditionally-khomani-san/
[26] ARISA virtual interviews with Ivan Vaalboi, South Africa, September 2020; and community leaders, Kalahari, Northern Cape, South Africa, October 2020
[27] ARISA virtual conference call with representatives of IPOs from Angola, Botswana, and South Africa, April 23, 2020
[28] Ibid

areas, tourism is often the only employer for rural communities throughout Botswana, Namibia and South Africa.

The sale of handicrafts and artwork are frequently the only means of survival for many indigenous peoples. Safaris in Namibia and Botswana often involve excursions into indigenous communities which under normal circumstances allows them to earn a living. In Namibia, for example, the Himba markets[29] are popular tourist destinations, and pose a risk to indigenous peoples due to the high possibility of tourists bringing the virus. Working as tourists guides in Botswana and Namibia also brings indigenous peoples into contact with possible carriers of the virus with it then spreading to the community.

Article 8 of the UNDRIP calls on States to provide effective mechanisms for prevention of, and redress for, any action which has the aim of dispossessing indigenous peoples of their lands, territories or resources.[30] According to Article 14 of Convention No. 169, this protection should extend to lands which, though not exclusively occupied by indigenous peoples, have traditionally been used by them for their subsistence and traditional activities.

Leaving no one behind in the context of legislative responses to COVID-19 therefore implies establishing and implementing targeted responses to address the needs and specific challenges of indigenous peoples, minorities and other marginalized groups within communities. This is particularly true when it comes to food security. The Food and Agricultural Organisation (FAO) of the United Nations notes that "access, utilization and stability of food supplies at global, national, local and individual levels"[31] is vital in the time of COVID-19 as countries try and halt the spread of the pandemic.

6. Impact on Indigenous Women

Indigenous women are the most marginalised communities in the SADC region. Like indigenous women across the globe, they face the triple discrimination of their gender, ethnicity and economic status. They are often the main providers of food and nutrition to their families,[32] but as a result of food insecurity, they have become highly dependent on government handouts, especially during times of crisis such as the COVID-19 pandemic.[33]

Indigenous women remain disproportionately impacted due to their prominent roles in the informal economy and as care givers. Many have been unable to participate in the informal economy as they earn a living selling their handicrafts to tourists. Due to lockdowns, the tourism sectors in Botswana, Namibia and South Africa have been badly affected, and indigenous women have consequently been unable to sustain their livelihoods. Women involved in small enterprises have also been affected, as the pandemic has destroyed their businesses. In Tsumkwe-west in Namibia, indigenous women who sewed clothing for a living were unable to sell their products due to the pandemic and finances being reprioritised towards basic

---

[29]Culture Trip, 'Top markets in Namibia', https://theculturetrip.com/africa/namibia/articles/top-markets-in-namibia/
[30]United Nations, https://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf
[31] Food and Agriculture Organization of the United Nations (2020), 'Legal Considerations in the context of responses to COVID-19 to mitigate the risk of food insecurity', http://www.fao.org/3/ca8615en/CA8615EN.pdf
[32] United Nations (2020). 'COVID 19 and Indigenous Peoples' Resilience', https://www.un.org/en/observances/indigenous-day. (accessed August 21, 2020)
[33] Cultural Survival (2020). '9 Ways Indigenous Rights are at Risk During the COVID 19 Crisis', available at: https://www.culturalsurvival.org/news/9-ways-indigenous-rights-are-risk-during-COVID 19-crisis (accessed August 21, 2020)

necessities.[34] Indigenous women often do not benefit equally from social protection and stimulus interventions to mitigate the socioeconomic impact of the pandemic.[35]

The challenges that the pandemic poses to indigenous women's livelihoods may be further exacerbated within their home environments as the lack of resources create tensions with partners, resulting in Gender Based Violence (GBV). Women and girls are often subjected to GBV, including domestic abuse and rape during crisis periods.[36] This is also true for indigenous women. Most countries in Southern Africa recorded increased numbers of calls to national hotlines and organisations dealing with GBV.[37] Indigenous women informed ARISA that the stay at home policies across the region subjected women and children to escalating levels of violence. They reported that cases of violence and sexual assault against women and children were on the rise due to children being out of school and men being at home due to the lockdown.[38]

A CSO in Namibia reported that community facilitators in Drimiopsis, a small settlement in the Omaheke region in Namibia where most San work as farm labourers, reported an increase in domestic violence. In March, after the lockdown, several workers were dismissed without pay resulting in a lot of pressure and frustration in households and a resultant increase in domestic violence.[39] There has also been an increase in teenage pregnancies and cohabitation of young girls with older men, with poverty and hunger being the main drivers of these relationships. Family planning services in Namibia ran out of contraceptives during the lockdown, and the result has been an increase in teenage pregnancies.[40]

Despite 2020 being a strategic and important year for indigenous women at the United Nations, as it marks the 25th anniversary of the adoption of the Beijing Declaration and Platform of Action,[41] very limited measures were put in place to address the specific needs of indigenous women during this crisis. Although the United Nations described GBV as the shadow pandemic,[42] there has been limited government data on the impact of GBV on indigenous women in Southern Africa. The result is that governments in the region lack the requisite data to use in developing programs and interventions that can effectively address GBV within indigenous communities in the context of COVID-19. This has resulted in the continued marginalization of indigenous communities generally and indigenous women specifically in receiving the necessary support to address the pandemic and its effects.

---

[34] ARISA telephone interview with Kileni Fernando, Namibia, October 29, 2020.
[35] United Nations (2020). 'COVID 19 and Indigenous Peoples' Resilience', https://www.un.org/en/observances/indigenous-day. (accessed August 21, 2020)
[36] Reliefweb (2020), 'Gender-Based Violence and COVI-19: The complexities of responding to "The Shadow Pandemic", May 2020, https://reliefweb.int/report/world/gender-based-violence-and-covid-19-complexities-responding-shadow-pandemic-may-2020
[37] ARISA virtual discussion with women rights organization, Lesotho, April 2020. See also Medecins Sans Frontiers, 'South Africa: Sexual and Gender Based Violence, a concern during COVID-19 lockdown', April 7, 2007, https://www.msf.org.za/news-and-resources/latest-news/south-africa-sexual-and-gender-based-violence-concern-during-covid,
[38] ARISA telephone interview with Diphetogo Anita Lekgowa, Botswana, October 29, 2020.
[39] ARISA telephone interview with Women's Leadership Centre, Namibia, November 16, 2020.
[40] Ibid.
[41] IWIGIA, http://iwgia.org/images/yearbook/2020/IWGIA_The_Indigenous_World_2020.pdf
[42] UNDP (2020). 'UNDP Brief: Gender Based Violence and COVID 19', https://www.undp.org/content/undp/en/home/librarypage/womens-empowerment/gender-based-violence-and-covid-19.html

7. Inadequacy of Government Response Measures and Assistance Interventions

Indigenous peoples' organizations reported a lack of consultation with indigenous communities by governments in the region during the design and implementation of government assistance interventions. Many governments did not consider the lived realities of indigenous communities and the challenges that government restrictive measures would impose on them. In Botswana, for example, indigenous peoples face challenges in accessing basic services and commodities including access to water (an already scarce commodity for most San), food, soap, hand sanitizers and rations. Indigenous communities also face challenges in terms of physical distancing as required by health protocols to prevent the spread of COVID-19. In some communities, reports show that there can be as many as 11 people living in a two roomed house.[43]

When the Government of Botswana announced the first COVID-19 lockdown, it implemented regulations requiring people to have movement permits,[44] and only a limited number of permits could be issued per day. This presented challenges for communities in places such as D'Kar, where the closest town is Ghanzi – almost 40 kilometres away. There are over 2000 people in D'Kar but only five permits were issued per day for people to go for shopping or to perform any other activities. This resulted in several challenges including food scarcity in the community.[45]

In Namibia, there is a dearth of accessible COVID-19 health related information and education for the San. This is partially due to the nomadic nature of the San but also due to the lack of access to any forms of mainstream media. In the Omega community, San communities were given sanitizers but at one time were running low on food. In Tsumkwe west and east, there was no awareness raising on infection prevention at the beginning of the pandemic apart from the lockdown and the closing of informal liquor outlets and banning of alcohol. IPOs reported that the Namibian Office of Marginalised Communities provided little information to the community about the pandemic. Whilst government received donations from non-state actors and the international community, they provided little to no information to the San on how they could access and benefit from the donations.[46]

Whilst there was emergency income grants available to assist the vulnerable, they required identification and a cell phone to access—items that many of the San in Namibia do not possess. The European Union pledged 173 million Namibian Dollars (N$) to Namibia towards fighting the pandemic, with the American Embassy donating 100 million (N$) to Namibia. It was not clear how this money would be spent and whether it could be accessed by the most vulnerable.[47]

In Angola, the government had a food assistance program for the most vulnerable across the country that continued during its COVID-19 lockdown. The food assistance basic basket stipulated by the Angolan Government at the time was valued at Angolan Kwanza (AKZ) 8,500.00, ($15) but did not include rural areas or indigenous communities.[48] The restriction of movement on non-governmental organisations and their staff during the lockdown further isolated San communities in the country, as awareness-raising campaigns, community

---

[43] ARISA virtual discussions with IPOs from Angola, Botswana and South Africa, April 23, 2020
[44] U.S. Department of State, Overseas Security Advisory Council (2020), Health Alert, Botswana, April 23. https://www.osac.gov/Country/Botswana/Content/Detail/Report/7cd7ceb4-b642-48db-9721-188400978318
[45] ARISA virtual discussions with IPOs from Angola, Botswana and South Africa, April 23, 2020
[46] Ibid
[47] Ibid
[48] Ibid

mobilization and the distribution of necessities to San communities in the provinces of Cuando Cubango, Cunene, Huila and Moxico were stopped. The San in Angola already experience exclusion from government programs including political, economic and social programs.

In South Africa, San communities in Platfontein in the Northern Cape, rely on the Communal Property Association (CPA)[49] for information and food parcels. CPAs are landholding institutions established under the Communal Property Associations Act No. 28 of 1996 (the CPA Act). Beneficiaries of the land reform, restitution and redistribution programmes who want to acquire, hold and manage land as a group can establish legal entities to do so. The CPA Act provides for government registration of CPAs and government oversight to enforce the rights of ordinary members.[50] Platfontein forms one of the largest settlements of San in South Africa and they continued to receive limited assistance and services during the COVID-19 pandemic from the CPA. However, access to water and healthcare remain a challenge for these communities who must travel long distances to access both water and healthcare. Movement restrictions during the pandemic hampered their ability to travel and access water and healthcare.[51]

8. Lack of Legal Recognition leading to Exclusion

As highlighted, the four countries mentioned in this report, Angola, Botswana, Namibia and South Africa each implemented laws and regulations to slow down the spread of COVID-19 and ease the burden on their healthcare systems, limit impact on citizens' health and manage the economic and social impacts of the pandemic. However, these countries failed to adequately include indigenous communities in measures to prevent the spread of the pandemic and mitigate the impact of the crisis. According to IPOs that ARISA interviewed, indigenous communities were often not consulted and did not participate in pandemic prevention efforts or the many working groups of the pandemic that were formed.

In line with the World Health Organisation's (WHO) regulations, all the identified countries classified people over the age of 60, immunocompromised persons, persons with certain underlying health conditions, pregnant women and children under 12 as being more vulnerable to the pandemic. However, the vulnerability of indigenous peoples to COVID-19 was not specifically referenced by governments, although they are amongst the most vulnerable and marginalised[52] populations in the region. The lack of recognition of indigenous peoples as a specific group in the region likely contributed to this exclusion.

The issue of legal recognition of indigenous peoples in Southern Africa is controversial as most governments view all black people as indigenous to the region.

In Angola, indigenous peoples continue to face challenges such as a lack of social and economic inclusion and are denied many other human rights due to a lack of formal recognition by the government. There is no reference to indigenous peoples in either the Constitution or domestic law, nor does Angola recognise the concept of Indigenous Peoples as affirmed in international law.[53] This lack of formal recognition of indigenous peoples prevents proper policy making and

---

[49]Government of South Africa, https://www.gov.za/sites/default/files/gcis_document/201409/act28of1996.pdf
[50] Center for Law and Society, 'Community Property Associations',
http://www.cls.uct.ac.za/usr/lrg/downloads/Factsheet_CPAs_Final_Feb2015.pdf
[51] Ibid
[52]Center for Human Rights, Database on COVID-19, https://www.chr.up.ac.za/projects/covid19-regulations
[53]IWGIA, Angola country page, https://www.iwgia.org/en/angola.html

planning and allows the country to continue marginalising indigenous peoples by not providing them with certain social services.

Botswana has no specific laws on indigenous peoples' rights in the country, nor is the concept of Indigenous Peoples included in its Constitution.[54] Botswana, in what it refers to as its approach to nation building, refers to the San and other indigenous peoples as *remote dwellers.*[55] This has the effect of further marginalising these communities and, as highlighted in further sections of this paper, has led to the exclusion of indigenous peoples in government responses to the pandemic.

The Constitution of Namibia prohibits discrimination on the grounds of ethnic or tribal affiliation but does not specifically recognise the rights of indigenous peoples. There is a final draft White Paper on the Rights of Indigenous Peoples that is expected to be finalised soon.[56] However, the government uses the term "marginalised communities" when referring to indigenous peoples.[57] The government has also created a Ministry for Marginalised Communities which is under the Office of the Vice President in the Division of Marginalised Communities (DMC).[58] The Deputy Minister of Marginalized Communities is an indigenous person, as are most of the staff members in his office. This is an important step by the country in recognising and promoting the rights of indigenous peoples and ensuring that indigenous peoples take a direct and leading role in matters that affect them. Namibia responded to COVID-19 through a collective response of many stakeholders, both governmental and non-governmental. The government was quick to draw on lessons from other countries that had already been hit by the pandemic and received technical support from various stakeholders. The government also rolled out a healthcare programme to ensure that they had the health facilities needed to isolate and treat people, as well as all necessary equipment. COVID-19 has affected the global economy, and in a country with high levels of inequalities as is the case for Namibia, this had to be taken into consideration. A once-off income grant was given to the most vulnerable people in society, as well as food packages. Stimulus packages were also given to assist businesses that would need capital to keep their activities going. Most indigenous communities sustain their livelihoods from the informal sector which closed during the pandemic, leading to a grant as well as the stimulus package.[59]

South Africa has also taken a commendable step in promulgating the Traditional and Khoisan Leadership Act of 2019. The Act gives recognition to indigenous communities and their traditional leaders. It however still falls short with regards to recognising indigenous peoples as provided for in international law. The Act has also been criticised for marginalising women and for adopting apartheid era systems in the management of customary land.[60] While the Act makes allowances for inclusion of indigenous peoples within the House of Traditional Leaders, this is still a far cry from full inclusivity and participation for indigenous peoples .

---

[54] Ibid

[55] Boko, Duma Gideon, 'Integrating the Basarwa Under Botswana's Remote Area Development Programme: Empowerment or Marginalisation?' [2002] AUJlHRights 19; (2002) 8(2) Australian Journal of Human Rights 153, http://classic.austlii.edu.au/au/journals/AUJlHRights/2002/19.html

[56] IWGIA, Namibia country page, https://www.iwgia.org/en/namibia/3589-iw-2020-namibia.html

[57] Ibid.

[58] Ibid.

[59] The Africa Report, 'Coronavirus: Namibia praised for containing the virus', May 28, 2020, https://www.theafricareport.com/28840/coronavirus-nambia-praised-for-containing-the-virus/

[60] Zukiswa Pikoli (2019) 'Traditional and Khoi-San Leadership Act brings back apartheid Bantustans', say activists' *Daily Maverick*, December 8, https://www.dailymaverick.co.za/article/2019-12-08-traditional-and-khoi-san-leadership-act-brings-back-apartheid-bantustans-say-activists/ (accessed August 22 2020)

Identity amongst indigenous groups is a right entrenched in Article 33 of the UNDRIP.[61] The failure by governments to recognise and understand *indigeneity,* in line with UN principles, makes it difficult for governments to develop appropriate policies and responses to address the rights and needs of indigenous peoples. Failure to develop such policies and responses is a challenge under normal circumstances but has proved to be a particularly huge problem during the COVID-19 pandemic. There is very little data and/or information available to date on indigenous peoples in Southern Africa and how the COVID-19 pandemic has affected them. This is extremely problematic as information and data are key in informing governments' responses to the pandemic and its impact on indigenous peoples. Without relevant information and data, it is impossible for governments to provide responses that are sensitive to the unique circumstances and needs of indigenous peoples. Furthermore, failing to provide information in a language that is understood defeats the purpose of providing the information, as it prevents certain populations, like indigenous peoples, from accessing and understanding relevant messages.

9. Impact of Government COVID-19 Enforcement Measures

The presence of security forces across the region at the height of the pandemic in Southern Africa between March and September—in both urban and rural areas—exposed indigenous peoples to government violence and other rights violations. Those who breached government movement restrictions in order to continue with their economic or subsistence activities or (in the case of urban areas) those who continued to work as street vendors or hawkers were continuously repressed and, in some cases, brutalized by government forces.

Research shows that indigenous peoples in Angola, Botswana, Namibia and South Africa are regularly subjected to numerous human rights violations by government officials, security forces and other non-state entities.[62] This includes being forced from their land, not being paid for working on farms or being paid with alcohol, arrests for petty offenses and general inhumane treatment. The restrictions on freedom of movement have had an impact on indigenous peoples, especially those seeking to sell products or engaged in casual labour. Those who disobey regulations restricting movement face arrests or beatings by security forces. For example, in the Kalahari region of the Northern Cape in South Africa, several community leaders were arrested for poaching after they killed animals on their land when they ran out of food as a result of pandemic movement restrictions.[63]

Indigenous people whose rights have been violated have been unable to seek redress. Administrative bodies set up to provide services to indigenous communities often fail in their duties to ensure access to the courts and other legal mechanisms for indigenous peoples in the region, unless cases are taken up by non-governmental organisations working specifically on indigenous peoples' rights.[64]

Within the context of the lockdown, IPOs reported that remote communities were unable to access courts in cases where their rights were violated. This has been the case in Tsumkwe,

[61] See Article 33, United Nations Declaration on the Rights of Indigenous Peoples (adopted 2007), https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf (accessed November 19, 2020).

[62] South African Human Rights Commission (2016). 'Report of the South African Human Rights Commission: National Hearing Relating to the Human Rights Situation of the Khoi-San in South Africa', https://www.sahrc.org.za/home/21/files/National%20Hearing%20Report%20on%20the%20Humn%20Rights%20of%20the%20Khoi-San%20-%2014%20March%202018%20(003).pdf. (accessed August 22, 2020)

[63] ARISA interview with IPO representative and community leaders, Khoi-San community, September and October 2020

[64] Cultural Survival, https://www.culturalsurvival.org/

Namibia where there have been ongoing accusations of police violence against indigenous communities.[65] Cases brought by the communities about police violence are rarely investigated and members felt even further isolated during the lockdown.

10. Conclusion and Recommendations

Indigenous peoples in Southern Africa already face inequalities that shape the way their lives and livelihoods have been affected by the COVID-19 pandemic. The significant gaps in access to adequate and culturally appropriate health and social security highlighted in this report risk further impacting their rights. Institutional and government responses in controlling the pandemic must involve indigenous communities and should focus on overcoming barriers that indigenous peoples often face such as access to health, education and other socioeconomic opportunities. Furthermore, the recognition of indigenous people's identity plays a crucial role in ensuring that they receive the services and rights protections that they require. Despite its negative impact, the pandemic provides an opportunity for governments in the region to strengthen various protections for indigenous peoples, including those related to their traditions, culture and land.

The report presents the following recommendations for governments in Southern Africa, the SADC Secretariat, CSOs and the donor community:

To SADC Governments:
1. Guarantee representation and informed and effective participation of indigenous peoples in all efforts related to mitigating the effects of the pandemic and initiate projects in line with the principles of *Free and Prior Informed Consent (FPIC)*[66] and *Do No Harm*;
2. Respect indigenous peoples' strategies for managing the pandemic, including their use of traditional knowledge and practices such as voluntary isolation, sealing off their territories and other preventive measures;
3. Strengthen government institutions responsible for indigenous peoples' issues and ensure that strategies to tackle the pandemic respect the rights of indigenous peoples and reflect their realities and needs;
4. Provide communication and messaging to indigenous peoples in languages that they understand and on platforms that are accessible to them, such as sending out mass SMSs and WhatsApp messages on COVID-19 prevention and management, and ensure that they have access to information and resources for managing and preventing the pandemic;
5. Protect indigenous peoples' traditional lands and territories and ensure their access to natural resources and food;
6. Put in place measures that protect indigenous women from gender-based violence, including the provision of medical and psychosocial support and ensure that they have access to health and social services;
7. Implement the recommendations of the United Nations Declaration on the Rights of Indigenous Peoples, which set out the minimum standards for the survival, dignity and well-being of indigenous peoples;
8. Ratify ILO Indigenous and Tribal Peoples Convention, 1989 (No.169) and implement its provisions;

---

[65]ARISA virtual discussion with IPOs from Angola, Botswana and South Africa, April 23, 2020
[66]United Nations Office of the High Commissioner for Human Rights, 'Free, Prior and Informed Consent of Indigenous Peoples', https://www.ohchr.org/Documents/Issues/ipeoples/freepriorandinformedconsent.pdf

9. Arrest and bring to account those responsible for violating the rights of indigenous people and ensure redress in cases where rights have been violated;
10. Collect and provide disaggregated data on indigenous peoples to determine possible risk factors, and assess, monitor and provide suitable strategies for addressing the impact of COVID-19.

To the Southern Africa Development Community:
1. Hold SADC governments accountable for the protocols, treaties and charters that they have signed and ratified at SADC, African Union and international levels that protect the rights of all citizens, including indigenous peoples.

To Civil Society Organizations and the donor community:
1. Engage with governments and advocate for the inclusion and assistance of the San and other marginalised communities in efforts to manage the COVID-19 pandemic;
2. Support and complement the efforts of indigenous leaders and IPOs to provide information on the pandemic to communities;
3. Lobby governments to allow community radio stations in indigenous languages, especially in Botswana where regulations for radio stations are stringent;
4. Coordinate responses, communication, preparation and training related to the pandemic, ensure community engagement and address the social consequences of the ongoing pandemic such as fear; stress and domestic violence;
5. Support IPOs and assess their needs and requirements to prevent and respond to the COVID-19 pandemic;
6. Ensure the inclusion, participation and consultation of indigenous peoples' views and needs in the design, implementation, monitoring and evaluation of programmes and aid strategies responding to the COVID-19 pandemic.