



LEGAL LANDSCAPE ANALYSIS: TB LAWS AND LEGAL REMEDIES

ZIMBABWE

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I. Introduction & Acknowledgments

This legal landscape analysis is part of the Lawyers Alert Challenge Facility for Civil Society (CFCS) round 11 regional project for Anglophone Africa. The project aims for greater accountability among tuberculosis (TB) decision-makers and access to justice for people affected by TB in five Anglophone African countries: Ghana, Kenya, Malawi, Nigeria, and Zimbabwe.

This memorandum outlines the TB legal framework in Zimbabwe, analyzing constitutional law, legislation, administrative law, and other mechanisms to identify legal remedies and accountability mechanisms available to people affected by TB. The analysis further considers whether TB laws and policies adopt a human rights-based approach, fulfilling the right to health, prohibiting TB-based discrimination, and protecting privacy and confidentiality, among other things.

Brian Citro, CFCS 11 Expert Legal Consultant, researched and wrote this memorandum. **[Complete acknowledgments after Jointed Hands Welfare Organisation’s review.]**

II. Key Takeaways

This section lists the key takeaways from the Zimbabwe legal landscape analysis, highlighting existing legal remedies, accountability mechanisms, gaps, and opportunities for reforms. Each takeaway includes a link at the end to the section in the memorandum where it is discussed.

1. People affected by TB have legal standing under section 85 of the Constitution on the “Enforcement of fundamental human rights and freedoms” to bring court claims for violations of their constitutional rights represented by non-governmental organizations acting on their behalf (see section IV(A) below).
2. People affected by TB may bring constitutional claims for violations of their right to health care under section 76 of the Constitution related to challenges experienced before, during, or after their TB diagnosis or treatment, such as delayed diagnoses, poor quality healthcare, inappropriate treatment, drug



stock-outs, lack of access to TB medicines, treatment interruptions, or stigmatizing or discriminatory treatment in healthcare facilities (see sections IV(A, E) below).

3. People affected by TB may bring constitutional claims for violations of their rights to human dignity or equality and non-discrimination under sections 51 and 56 of the Constitution (subject to whether the Constitutional Court interprets section 56 narrowly or broadly) for stigmatizing or discriminatory treatment in healthcare, employment, education, housing, or other areas of life in the Constitutional, Supreme, High, or Labour Courts (see sections IV(A, 11) below).
4. People affected by TB may bring constitutional claims for violations of their right to privacy under section 57 of the Constitution, including the right "not to have their health condition disclosed" (see section IV(A) below).
5. People affected by TB may bring constitutional claims for violations of their right of access to information under section 62 of the Constitution related to the lack of accessible information about TB, referencing the 2020 High Court case by the Media Institute of Southern Africa (MISA) against the Ministries of Health and Child Care and Information, Publicity, and Broadcasting Services on the right to access information about COVID-19 (see sections IV(A, D) below).
6. The "Limitation of rights and freedoms" in section 86 of the Constitution, including for public safety, public order, and public health, along with the Constitutional and Supreme Courts' reliance on the doctrine of constitutional avoidance and the principle of subsidiarity might present barriers to constitutional remedies for people affected by TB (see section IV(C) below).
7. People affected by TB may consider ways to enforce their statutory rights to information (section 34), informed consent (section 35), confidentiality (section 39), and to participate in decisions affecting their health (section 44) in the *Public Health Act* by reporting violations to the relevant health authorities under section 125 and seeking remedies under section 128 (see section V(A)(15) below).
8. People affected by TB who experience poor quality healthcare before, during, or after their TB diagnosis or treatment, such as delayed diagnoses, inappropriate treatment, drug stock-outs, lack of access to TB medicines, treatment interruptions, or stigmatizing or discriminatory treatment in healthcare facilities may lay a complaint at the health facility in question using the mandated complaints system established in section 41 of the *Public Health Act* (see section V(A)(15) below).



9. People affected by TB, Jointed Hands Welfare Organization, and their partners should consider advocating in the Parliament of Zimbabwe for amendments to Part II of the *Prevention of Discrimination Act* to include health status, TB, and HIV as prohibited grounds for discrimination and Part III to include all public and private health facilities as places where discrimination is proscribed (see section V(B) below).
10. People living with HIV/TB co-infection, TB survivors living with HIV, or their associates may seek protective orders and remedies for employment discrimination based on their HIV status under section 5 of the *Labour Act* (see section V(C) below).
11. People affected by TB, Jointed Hands Welfare Organization, and their partners should also consider advocating in the Parliament of Zimbabwe for amendments to section 5 of the *Labour Act* to include TB and health status as prohibited grounds for employment discrimination (see section V(C) below).
12. People affected by TB without sufficient means to hire a lawyer may request legal aid through the Legal Aid Directorate established under the *Legal Aid Act* to consider their options to seek legal remedies for rights violations (see section V(D) below).
13. People affected by TB may consider filing complaints with the Medical and Dental Practitioners Council of Zimbabwe using the [online complaint form](#) to address poor quality healthcare or other challenges they face before, during, or after TB diagnosis, treatment, care, or support (see section VI(B) below).
14. Workers living with HIV/TB co-infection, TB survivors living with HIV, or their associates may rely on the *Labour (HIV and AIDS) Regulations*, in conjunction with the *Labour Act*, to seek protection and remedies for stigmatization and discrimination at the workplace and access to HIV information, testing, and prevention services (see section VI(C) below).
15. People affected by TB, Jointed Hands Welfare Organization, and their partners should consider advocating with the Minister of Labour and Social Services for labor regulations modeled on the *Labour (HIV and AIDS) Regulations* to protect and support workers affected by TB in accordance with the *Labour Act* (see section VI(C) below).



16. People affected by TB, Jointed Hands Welfare Organization, and their partners should learn how to file a complaint with the Zimbabwe Human Rights Commission to report human rights violations they experience before, during, or after their TB diagnosis, treatment, care, or support, seeking appropriate remedies from the Commission or through a suit filed jointly in court with the Commission (see section VI(D) below).

III. Legal System Overview

This section provides an overview of Zimbabwe’s legal system, highlighting the legislature’s structure, court system, and executive bodies.

Zimbabwe is a unitary presidential republic. Under the 2013 Constitution, the President of Zimbabwe is the head of state and government and commander-in-chief of the defense forces. The President is elected by popular majority vote and has both executive and legislative powers.

A. Legislature

The Parliament of Zimbabwe is a bicameral legislature comprising the National Assembly and the Senate. The Senate is the upper house of Parliament with 80 members. Provincial councils elect 60 members, and the President appoints 20. The National Assembly is the lower house with 270 members; 210 are elected from single-member constituencies, and 60 seats are reserved for women. Women occupy the reserved seats from 10 six-seat constituencies in the country's provinces elected by proportional representation based on votes cast during a general election for political parties in each province. The Constitution only calls for the 60 reserved seats to exist during the first two Parliaments under the new Constitution. These were the 2013 and 2018 Parliaments.

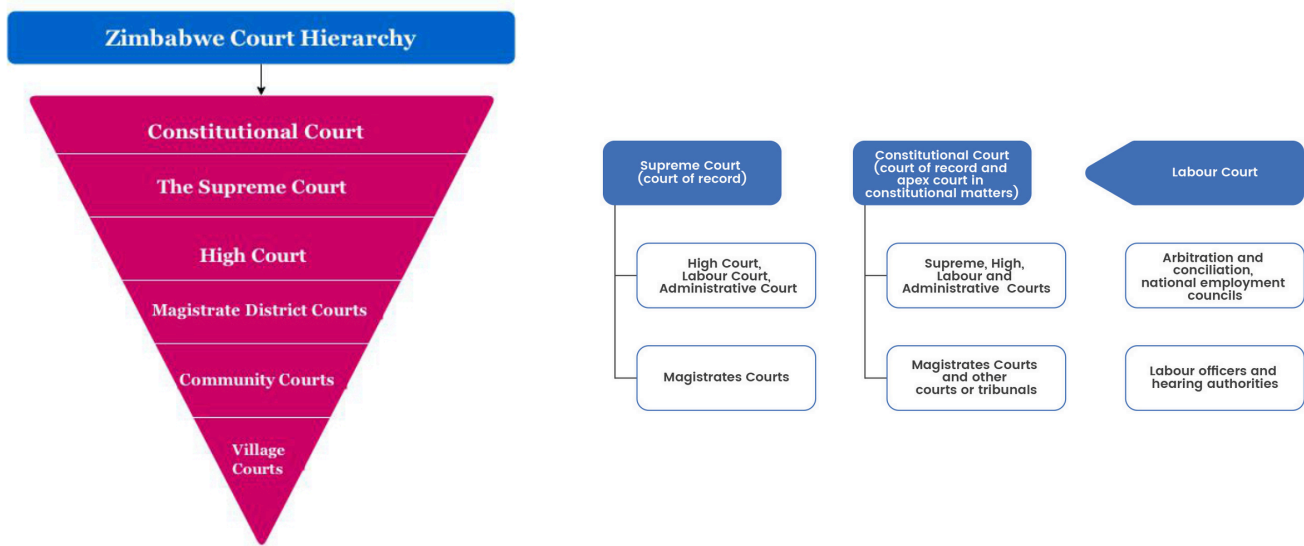
B. Courts

Zimbabwe has a mixed legal system comprised of Roman-Dutch civil law, English common law, and customary law. The President appoints the Chief Justice of the Supreme Court of Zimbabwe on the advice of the Judicial Service Commission. The Chief Justice serves as head of the judiciary. The Constitutional Court is the highest court for all constitutional matters. The Supreme Court is the highest court of appeal



for all other matters. The High Court has original jurisdiction in all civil and criminal matters. Below these are magistrates courts, customary law courts, and other subordinate tribunals. Zimbabwe also has several specialized courts. These include the Administrative Court, Anti-Corruption Courts, Commercial Court, Electoral Court, and Labor Court.

Here are two depictions of the Zimbabwe court system:



C. Executive Branch

The President is the head of the executive branch of Zimbabwe. The President is elected by popular vote for a five-year term and is eligible for a maximum of two terms. The President appoints the cabinet ministers, the attorney general, and other senior government officials. Starting in 2023, voters will also elect two Vice Presidents by popular vote along with the President.

There are 20+ government ministries in the executive branch of Zimbabwe, including the Ministry of Health and Child Care (MoH). The MoH’s mission is:

To provide, administer, coordinate, promote and advocate for the provision of equitable, appropriate, accessible, affordable and acceptable quality health services and care to Zimbabweans whilst maximizing the use of available resources in line with the Primary Health Care Approach.



The MoH's functions include coordinating the development of health policies, programs, and strategies, establishing national standards and guidelines, and liaising with international health organizations and donor agencies.

IV. Constitutional Law

This section examines constitutional law in Zimbabwe, analyzing the text of the national constitution and relevant judicial opinions. The 2013 Constitution of Zimbabwe is the supreme law of the country. Legislation, policies, and regulations enacted or promulgated at all levels of government must conform with the Constitution. The rights enshrined in the Constitution establish protections and entitlements for people affected by TB and corresponding government obligations.

A. Chapter 4: Declaration of Rights

Chapter 4 of the Constitution sets forth an expansive "Declaration of Rights," directing "every institution and agency of the government at every level [to] respect, protect, promote and fulfil the rights and freedoms" (section 44). Chapter 4 also directs courts and other bodies to "take into account international law and all treaties and conventions to which Zimbabwe is a party" when interpreting the rights (section 46(1)(c)). The rights in Chapter 4 relevant to people affected by TB include:

- Right to life (§ 48)
- Right to personal liberty (§ 49)
- Right to human dignity (§ 51)
- Right to personal security, including individuals' right "not to be subjected to medical or scientific experiments, or to the extraction or use of their bodily tissue, without their informed consent" (§ 52)
- Rights to equality and non-discrimination (§ 56).
- Right to privacy, including individuals' right "not to have their health condition disclosed" (§ 57)
- Right of access to information (§ 62)
- Labour rights (§ 65)
- Freedom movement (§ 66)
- Right to administrative justice and a fair hearing (§§ 67-68)
- Environmental rights (§ 73)
- Right to education (§ 75)
- Right to health care (§ 76)
- Right to food and water (§ 77)



Chapter 4 also contains a part on the “Elaboration of Certain Rights,” including the rights of women, children, the elderly, and persons with disabilities. In a recent High Court case involving COVID-19 discussed below, the court affirmed judicial protection of social and economic rights, such as the right to health, holding that “[t]he justiciability of ... socio-economic rights is not in question, given their protection under the Constitution of Zimbabwe.”¹

Part 4 of Chapter 4 addresses the “Enforcement of Fundamental Human Rights and Freedoms.” It establishes broad legal standing to bring court claims for violations of Chapter 4 rights (section 85):

- a. [A]ny person acting in their own interests;
- b. any person acting on behalf of another person who cannot act for themselves;
- c. any person acting as a member, or in the interests, of a group or class of persons;
- d. any person acting in the public interest;
- e. any association acting in the interests of its members;

is entitled to approach a court, alleging that a fundamental right or freedom enshrined in this Chapter has been, is being or is likely to be infringed, and the court may grant appropriate relief, including a declaration of rights and an award of compensation.

B. Chapter 2: National Objectives

Chapter 2 of the Constitution establishes “National Objectives” to “guide the State and all institutions and agencies of government at every level in formulating and implementing laws and policy decisions” (section 8(1)). Gender balance, best interests of the child, protection of elderly persons, rights of persons with disabilities, labor relations, education, health services, and legal aid are among the Constitution’s national objectives. Section 29 on health services establishes that:

“The State must take all practical measures to ensure the provision of basic, accessible and adequate health services ... [and] take all preventive measures within the limits of the resources available to it, including education and public awareness programmes, against the spread of disease.”

Section 31 prioritizes legal aid as a national objective, stating:

¹ *Rodger Dean Stringer v. Minister of Health and Child Care and Sakunda Holdings*, p. 8, [2020] ZWHHC 259.



The State must take all practical measures, within the limits of the resources available to it, to provide legal representation in civil and criminal cases for people who need it and are unable to afford legal practitioners of their choice.

However, the Supreme Court has held that Chapter 2 rights are nonjusticiable, meaning people affected by TB cannot bring court claims for legal remedies based on these rights.²

C. Limitations on Constitutional Rights

Part 5 of Chapter 4 establishes the “Limitation of Fundamental Human Rights and Freedoms.” It states that the constitutional rights in Chapter 4 may be limited “only in terms of a law of general application and to the extent that the limitation is fair, reasonable, necessary and justifiable in a democratic society based on openness, justice, human dignity, equality and freedom” (section 86(2)). “[P]ublic safety, public order, public morality, [and] public health” are among the factors authorities must consider in limiting fundamental rights and freedoms in the Constitution (section 86(2)(b)).

In *Stringer v. Ministry of Health and Child Care*, in 2020, the High Court of Zimbabwe allowed limitations on the constitutional right to a healthy environment, holding that the Constitution “envisages that ... fundamental human rights and freedoms may be limited where public safety, public health and the general public interest so demand.”³ In doing so, the court rejected the petitioner's claim that the construction of a hospital for COVID-19 patients in his neighborhood would violate his right to a healthy environment, stating:

“[T]he will or interests of an individual ... must be subservient to and yield to the needs of the populace, such that where the health of the people is in danger or threatened by danger the State must suspend the rights of the individual in order to give priority to the safety of society.”

Notwithstanding this ruling, the court declared that:

² See *Zimbabwe Homeless Peoples Federation v. Minister of Local Government and National Housing* [2021] ZWSC 78.

³ *Stringer*, note 1 at 10.



“What is fundamental is that the action taken to save the public health, welfare, good or interest must be right, just and fair ... [and] must not be more that is reasonably necessary protect the welfare of the public from the danger that is threatening it.”⁴

The Constitutional and Supreme Courts have recognized further limitations on constitutional rights as part of the doctrine of constitutional avoidance.⁵ The avoidance doctrine holds that courts should avoid ruling on constitutional issues whenever possible, instead resolving cases on other, often statutory, grounds. In particular, the principle of subsidiarity in Zimbabwean constitutional law holds that “a litigant may not approach a court on a constitutional basis and ignore the remedies at his disposal in order to deal with what he perceives to be an infringement of his rights.”⁶

D. Right to Information and COVID-19

During the COVID-19 pandemic, in 2020, the Media Institute of Southern Africa (MISA) filed a petition in the High Court against the Ministry of Health and Child Care and the Ministry of Information, Publicity, and Broadcasting Services on the right to access information about COVID-19 testing, isolation measures, and treatment.⁷ MISA argued in its petition that Zimbabwe citizens have “the right to comprehensible, accessible, timely and reliable information concerning the nature and level of the threat that COVID-19 poses to their health including evidence-based guidance on how to stay safe.”⁸ In April 2020, High Court judge Justice Mafusire ordered the ministries to promote citizens’ access to information about COVID-19. The court held that the government “shall publish and disseminate on all available platforms and in all official languages the following:

- The list of all private and public testing and treatment centres at national, provincial and district hospitals allocated for dealing with Covid-19 cases.

⁴ Ibid.

⁵ See *Sports and Recreation Commission v. Sagittarius Wrestling Club*, 2001 (2) ZLR 501; *Zimbabwe Homeless Peoples Federation*, note 2.

⁶ *Zimbabwe Homeless Peoples Federation*, *ibid.* at para. 53; see also *Moyo v. Sgt Chacha*, CCZ [2017] ZWCC 19.

⁷ The authors could not find the court order online. Information in this section comes from the petitioner, Media Institute of Southern Africa’s website. MISA Zimbabwe, *High Court orders information access on COVID-19* (Apr. 24, 2020), <https://zimbabwe.misa.org/2020/04/24/high-court-orders-information-access-on-covid-19/> (accessed Aug. 18, 2023).

⁸ Ibid.



- The type and quantity of medical equipment and any other resources needed, that is actually available, any further procurements as and when made and how members of the public and private players with capacity may assist.
- In addition to measures such as lockdown that have been implemented, the plans and strategies that have been put in place both during and after lockdown by the respondents to combat and contain the spread and transmission of Covid-19.⁹

E. Right to Health

A search for the “right to health” in the Zimbabwe Legal Information Institute (ZimLII) caselaw database identified eight judgments involving the constitutional right to health: five from the Harare High Court, two from the Supreme Court, and one from the Constitutional Court.¹⁰ Unfortunately, none of the cases are meaningfully relevant to potential claims brought by people affected by TB. Six of the cases involved claims related to COVID-19 restrictions, one involved child marriage, and the other was about the right to shelter. A broader search for “health” uncovered 504 judgments, but only a few involved human rights or constitutional law, and these are not directly relevant to people affected by TB.¹¹

Based on this ZimLII research, the meaning and scope of the right to health in the 2013 Constitution of Zimbabwe appears underdeveloped in the courts. This presents both opportunities and challenges for people affected by TB. On the one hand, they may successfully bring novel constitutional claims for violations of their right to health supported by solid evidence and legal arguments. On the other hand, there appears to be a lack of legal precedent for doing so at the constitutional level. Further research is required to determine whether other cases involving the constitutional right to health are directly relevant to people affected by TB.

F. Health-Based Discrimination

A search for “health” and “discrimination” in ZimLII identified 23 judgments from the Constitutional and Supreme Courts and the Harare and Bulawayo High Courts.

⁹ Ibid.

¹⁰ ZimLII: Zimbabwe Legal Information Institute, *Home » Search » ZimLII » “right to health” » Search*, <https://old.zimlil.org/search/site/%2522right%2520to%2520health%2522> (accessed Aug. 21, 2023).

¹¹ ZimLII: Zimbabwe Legal Information Institute, *Home » Search » ZimLII » “health” » Judgment » Search*, <https://old.zimlil.org/search/site/%22health%22?f%5B0%5D=bundle%3Ajudgment> (accessed Aug. 21, 2023).



However, none were meaningful to discrimination experienced by people affected by TB in healthcare, employment, education, etc.¹² A similar search for “HIV” and “discrimination” in ZimLII uncovered three judgments, two from the Constitutional Court and one from the Bulawayo High Court.¹³ None of the cases involve discrimination against people living with HIV challenged under the 2013 Constitution. One case involved child marriage, and another did not involve discrimination.

The third case, *S v. Mpofu*, involved a constitutional challenge to the *Criminal Law (Codification and Reform) Act*'s criminal prohibition of “deliberate transmission of HIV/AIDS” under the former Constitution of Zimbabwe (*not* the 2013 Constitution).¹⁴ The applicant argued that the criminalization of HIV transmission unconstitutionally discriminated against people living with HIV in violation of the former Constitution's prohibition of discrimination on the listed grounds of “race, tribe, place of origin, political opinions, colour, creed, sex, gender, marital status or physical disability” (section 23 of the former Constitution). The court rejected the applicant's claim, holding that the constitutional right to non-discrimination “is not a right not to be discriminated against on **any basis**,” but only the grounds explicitly listed in the Constitution.¹⁵ The court thus declared that “[d]iscrimination on the basis of HIV status is not prohibited” by section 23 of the former Constitution of Zimbabwe.¹⁶

Although *S v. Mpofu* applied the former Constitution of Zimbabwe, it raises the concern that the Constitutional Court will interpret section 56 in the 2013 Constitution in the same narrow way, limiting the prohibited grounds to only those listed in the text of the Constitution. Notably, the list includes neither health nor a catch-all “other status.” However, unlike section 23 of the former Constitution, the list of prohibited grounds in section 56 appears to be non-exhaustive because the words “on such grounds as” preface the list. People affected by TB may therefore argue that the

¹² ZimLII: Zimbabwe Legal Information Institute, *Home » Search » ZimLII » “health” and “discrimination” » Search*,

<https://old.zimlil.org/search/site/%2522health%2522%2520and%2520%2522discrimination%25223Ajudgment> (accessed Aug. 21, 2023).

¹³ ZimLII: Zimbabwe Legal Information Institute, *Home » Search » ZimLII » “HIV” and “discrimination” » Search*,

<https://old.zimlil.org/search/site/%2522HIV%2522%2520and%2520%2522discrimination%25223Ajudgment> (accessed Aug. 21, 2023).

¹⁴ *S v. Mpofu* [2016] ZWCC 16.

¹⁵ *Ibid.* at para. 15 (emphasis in the original).

¹⁶ *Ibid.* at para. 16.



Constitution protects against health-based discrimination, including discrimination based on TB, even though they are not listed in the Constitution's text. Further research is required to determine how the Constitutional Court has interpreted section 56 of the 2013 Constitution. In this respect, the author notes the Zimbabwe CRG Assessment draft Final Report states:

[T]here is ample evidence of the protection of the rights of persons to non-discrimination on the basis of their health status in Zimbabwean jurisprudence. The clause equally applies to TB patients, as they are equal human beings guaranteed of the right to healthcare services for TB without discrimination.¹⁷

V. Legislation

This section surveys legislation in Zimbabwe, considering the *Public Health Act*, *Prevention of Discrimination Act*, *Labour Act*, and *Legal Aid Act*.

A. Public Health Act

There is no TB-specific legislation in Zimbabwe. Instead, the *Public Health Act* of 2018 is the primary legislation governing the TB response. The *Public Health Act* aims to ensure "health care for all people in Zimbabwe ... [and] to provide for the rights, duties, powers and functions of all parties in the public health system" (recital). The law's preamble lists the full text of four provisions from the 2013 Constitution pertaining to health, including sections 29, 44, and 76 on health services, the right to health, and the duty to respect human rights and freedoms. The act contains separate parts on the administration of the public health system, health services, infectious and sexually transmitted diseases, international health regulations, non-communicable diseases, water and food supplies, infant and young children nutrition, sanitation and housing, public health emergencies, funding, and others.

Part III on health services recognizes certain rights for people using the Zimbabwe health system. Section 34 creates a right to information in healthcare, requiring healthcare workers to provide users with a range of information in a language they understand, including the person's health status, their diagnostic and treatment

¹⁷ *Final Report: Community, Rights, and Gender Assessment for TB Response Efforts in Zimbabwe*, p. 12, Jointed Hands Welfare Organization and Ministry of Health and Child Care (Dec. 6, 2021) (on file with the authors).



options, and the benefits, risks, and costs. Healthcare workers who fail to provide users with this information may be fined or imprisoned. Section 35 creates a right to informed consent with some exceptions. It requires healthcare workers to provide patients with the information mentioned in section 34 so patients may provide their informed consent before receiving a specified health service. However, the law creates a notable exception allowing the “provision of a health service without informed consent [if it] is authorised in terms of any law or court order” (section 34(2)(c)). Section 39 establishes the right to confidentiality, stating that “[a]ll information concerning a user, including information relating to his or her health status, treatment or stay in a health establishment is confidential” (section 39(1)). Section 44 establishes a person’s “right to participate in any decision affecting his or her personal health and treatment.”

1. *Part IV: Infectious Diseases*

Part IV of the *Public Health Act* addresses infectious diseases. The law defines “infectious disease” to include more than 20 disparate diseases, from TB to plague to rabies and cholera. The part establishes procedures and empowers the Minister to make regulations for the notification and prevention of infectious diseases and contains “[s]pecial provisions regarding formidable epidemic diseases and conditions of public health importance” (sections 64-71).

The *Public Health Act* does not lay the foundation for a rights-based TB response. First, Part IV does not recognize any legal rights of people with infectious diseases. It only empowers the state to act through its health authorities to prevent and control disease. Second, the law fails to distinguish between the various types of infectious diseases and contagious and non-contagious people, treating all people with an infectious disease the same, regardless of the nature of the disease or whether they are contagious. Third, the law authorizes a host of coercive measures, including detention, quarantine, and involuntary isolation and hospitalization of people with TB, providing fines and imprisonment for anyone who contravenes the law or its implementing regulations. Fourth, section 58 includes disproportionate and discriminatory measures allowing the Minister to prohibit people with an infectious disease from using public transport.

Fifth, section 57 of the *Public Health Act* criminalizes the transmission of infectious diseases. The law punishes with fines and imprisonment anyone who “wilfully or



negligently exposes himself or herself in such manner as to be likely or liable to spread ... disease in any ... public place" (section 57(a)). However, in 2022, Zimbabwe enacted the *Marriages Act* that decriminalized the transmission of HIV by repealing section 79 of the *Criminal Law (Codification and Reform) Act*, which made it a criminal offense to transmit HIV in certain circumstances. Despite this, the *Public Health Act* and criminal law (section 78) still criminalize the transmission of other infectious diseases.

2. Legal Remedies and Complaints

The *Public Health Act* does not appear to create a private right of action, allowing people to bring claims directly in court for violations of the law. Instead, the law's enforcement seems to be the responsibility of the Minister of Health and Child Care, along with local and district health authorities. For example, section 125 establishes that "[a]ny person who becomes aware of cases where any of the provisions of this Act have been breached must report the matter as soon as practicable to the relevant authorities." The authority that receives the report "must take appropriate steps to investigate and address the report and must, within reasonable time, inform the person making the report of the findings of the investigations and the actions taken" (section 125(3)). Section 128 also creates a "duty to remedy breach[es]" of the law, but it requires the Minister to order "any person who has acted in contravention of this Act to implement measures ... to remedy any harm caused within a prescribed time period."

People affected by TB may consider ways to enforce their statutory rights to information (section 34), informed consent (section 35), confidentiality (section 39), and to participate in decisions affecting their health (section 44) in the *Public Health Act* by reporting violations to the relevant health authorities under section 125 and seeking remedies under section 128 of the law.

Notwithstanding the lack of a private right of action, section 41 in Part III establishes mandatory guidelines for a system for "laying complaints" about healthcare personnel. It states that "any person aggrieved by the conduct of health care personnel has the right to complain and to have the matter investigated and redressed by an appropriate authority" (section 41(1)(a)). The law directs all public and private health facilities to "formulate a procedure for the laying and redress of complaints against the conduct of any person associated with that establishment"



(section 41(1)(b)). The procedure must be “displayed ... in a manner that is visible for any person entering the establishment and ... communicated to users on a regular basis” (section 41(2)(a)). Complaints procedures must allow for referrals of complaints involving issues “not within the jurisdiction or authority of the health establishment to the appropriate body or authority” (section 41(2)(d)). Finally, section 41 establishes that “[a]ny person who does not comply with the provisions of this section shall be guilty of an offence and liable to a fine ... or imprisonment not exceeding six months or to both” (section 41(3)).

People affected by TB who experience poor quality healthcare before, during, or after their treatment for TB, such as delayed diagnoses, inappropriate treatment, drug stock-outs, lack of access to TB medicines, treatment interruptions, or stigmatizing or discriminatory treatment in healthcare facilities may lay a complaint at the health facility in question using the mandated complaints system established in section 41 of the *Public Health Act*.

B. Prevention of Discrimination Act

The *Prevention of Discrimination Act* of 1998 prohibits discrimination based on race, tribe, place of origin, national or ethnic origin, political opinions, color, creed, and gender in public premises, commodities, services, and facilities, as well as immovable property and finance. The law creates a right of people who have suffered such discrimination “to recover damages ... in any court of competent jurisdiction” (section 7(1)). The act also allows for suspending or canceling a proprietor’s license if they have engaged in discrimination proscribed under the law.

However, the law does not prohibit health-based discrimination and thus does not protect people affected by TB. People affected by TB, Jointed Hands Welfare Organization, and their partners should consider advocating in the Parliament of Zimbabwe to amend Part II of the law to include health status, TB, and HIV as prohibited grounds for discrimination and Part III to include all public and private health facilities as places where discrimination is prohibited.

C. Labour Act

The *Labour Act* of 1985 establishes the fundamental rights of employees, defines unfair labor practices, and regulates the conditions of employment and other related



matters. Section 5 prohibits discrimination “against any employee or prospective employee on grounds of race, tribe, place of origin, political opinion, colour, creed, gender, pregnancy, HIV/AIDS status” or disability. The law does not prohibit employment discrimination based on TB or health status more broadly. The act provides for fines and imprisonment for persons violating the law. People who have experienced employment discrimination may seek damages and other redress through the law’s dispute resolution and arbitration provisions in Part XII or in the courts, including the Labour Court.

People living with HIV/TB co-infection, TB survivors living with HIV, or their associates may seek protection or remedies for employment discrimination based on their HIV status under the *Labour Act*. People affected by TB, Jointed Hands Welfare Organization, and their partners should also consider advocating in the Parliament of Zimbabwe for amendments to section 5 of the *Labour Act* to include TB and health status as prohibited grounds for employment discrimination.

D. Legal Aid Act

The *Legal Aid Act* of 1996 establishes rules and mechanisms to provide legal aid for indigent persons and creates a Legal Aid Directorate and Legal Aid Fund. The law supports the Constitution’s national objective, directing the state to “take all practical measures, within the limits of ... resources ... to provide legal representation ... for people who need it and are unable to afford legal practitioners” (section 31). A person is eligible for legal aid under the act if, in the opinion of the Director of the Legal Aid Directorate (section 8):

(a) he has insufficient means to obtain the services of a legal practitioner on his own account; and (b) he has reasonable grounds for initiating, carrying on, defending or being a party to the proceedings for which he applies for legal aid; and (c) he is in need of or would benefit from the services provided in terms of this Act in respect of the proceedings for which he seeks legal aid.

The law also details how to apply for legal aid and how an applicant’s means are assessed to determine eligibility.

People affected by TB without sufficient means to hire a lawyer may consider requesting legal aid through the Legal Aid Directorate to consider their options to seek legal remedies for rights violations.



VI. Administrative Law

This section reviews Zimbabwe's administrative bodies, rules, and processes, focusing on the Ministry of Health and national TB program, the Ministry of Labour and Social Relations, and the Zimbabwe Human Rights Commission.

A. Ministry of Health and National TB Program

The author could not identify a health complaints mechanism run by the Ministry of Health and Child Care, despite the *Public Health Act's* directive to health facilities to establish procedures for laying complaints. Further research is required to determine if there are central or local health complaints mechanisms operated by the Ministry of Health and Child Care or local health authorities.

The *National Strategic Plan for Tuberculosis Control (2021-2025)* guides the Zimbabwe national TB program. However, the author could not find the document online or review its content. Further research is required to obtain and review the plan to determine whether it addresses human rights concerns and provides complaints procedures or other mechanisms to ensure accountability and access to remedies for people affected by TB.

B. Medical and Dental Practitioners Council of Zimbabwe

The Medical and Dental Practitioners Council of Zimbabwe offers [an online mechanism for public complaints](#).¹⁸ The Council is a statutory body created under section 29 of the *Health Professions Act* of 2002 with the authority to regulate Zimbabwe's medical and dental professions. According to its website, the Council's "main mandate ... is to ensure that patients receive quality medical care and that they are safe and protected."¹⁹ The complaint form allows patients to message the Council about a healthcare concern and requires an email address. The Preliminary Inquiries Committee is responsible for investigating and adjudicating complaints and may refer issues to the Executive Committee for resolution. The Council has the authority to

¹⁸ Medical and Dental Practitioners Council of Zimbabwe, *Complaints*, <https://www.mdpcz.co.zw/the-public/complaints/> (accessed Aug. 24, 2023).

¹⁹ Medical and Dental Practitioners Council of Zimbabwe, *About Complaints*, <https://www.mdpcz.co.zw/about-complaints/> (accessed Aug. 24, 2023).



order penalties, reprimand healthcare practitioners, and suspend or impose conditions or limitations on a practitioner's license to practice. The Council does not have the authority to provide financial compensation to complainants, and it can only investigate complaints against healthcare workers who are registered with the Council.²⁰

The Council describes the complaints process as follows:

"The investigation into your complaint is an unbiased process based on the doctor's response to the complaint and a comprehensive review of medical records and other necessary documentation. Where necessary the complainant and the accused are both invited for interview. Every complaint is reviewed and assessed on its own merits by the Inquiries Committee. Council attempts to resolve most complaints in a corrective manner, seeking to understand the circumstances surrounding the event and how a similar incident can be avoided in future."²¹

People affected by TB may consider filing complaints with the Medical and Dental Practitioners Council of Zimbabwe using the [online complaint form](#) to address poor quality healthcare or other challenges they face before, during, or after their TB treatment.

C. Ministry of Labour and Social Relations

The *Labour (HIV and AIDS) Regulations* of 2014, promulgated by the Minister of Labour and Social Services under the *Labour Act*, "serve as a guide on the management of HIV and AIDS at the workplace" (section 2). The regulations impose obligations on employers to share information about HIV with their workers and take certain preventive measures at the workplace. Among these are a duty to share information about the "dangers of HIV and TB co-infection" and the rights of employees affected by HIV and "to endeavour to provide counselling and other forms of psycho-social support to workers" affected by HIV (sections 6(1) and 8(2)). Section 11 addresses stigma and discrimination, declaring that "[n]o employer shall discriminate against or stigmatise workers ... on the grounds of real or perceived HIV status." It also calls for "reasonable accommodation" to support workers living with HIV in carrying out their work, if necessary (section 11(5)). The HIV regulations require that workers living with HIV are afforded "the same conditions relating to sick leave as

²⁰ Ibid.

²¹ Ibid.



those applicable to any other employee” under the *Labour Act* (section 13). The rules further require employers to make the regulations available for their employees, providing fines and imprisonment for any employer who contravenes the regulations.

Workers living with HIV/TB co-infection, TB survivors living with HIV, or their associates may rely on the regulations, in conjunction with the *Labour Act*, to seek protection and remedies for stigmatization and discrimination at the workplace and access to HIV information, testing, and prevention services. People affected by TB, Jointed Hands Welfare Organization, and their partners should also consider advocating with the Minister of Labour and Social Services for similar regulations to protect and support workers affected by TB in accordance with the *Labour Act*.

D. Zimbabwe Human Rights Commission

The 2013 Constitution established the Zimbabwe Human Rights Commission (ZHRC), and the *Zimbabwe Human Rights Commission Act* of 2012 set forth the Commission’s procedures. The Constitution delineates the ZHRC’s functions, including to “receive and consider complaints from the public and to take such action ... as it considers appropriate,” “secure appropriate redress ... where human rights or freedoms have been violated,” and “recommend to Parliament effective measures to promote human rights” (section 243(1)). The act also lists the Commission’s functions and powers to include “conduct[ing] investigations on its own initiative or on receipt of complaint” and “ensur[ing] and provid[ing] appropriate redress for violations of human rights and for injustice” (section 4(d)).

The act lays out a few rules for filing human rights complaints with the Commission. The law states (section 9(2)):

Any person affected by any actual or perceived human rights violation arising out of any action or omission on the part of any authority or person may make a written complaint to the Commission requesting it to investigate such action or omission.

Complainants must file their complaints within three years of the incident. The Commission will not investigate a complaint if it is the subject of civil proceedings in court. The law directs the ZHRC to describe in regulations how complaints should be made, including requiring evidence and documentation. However, the law further states that the Commission “shall not refuse to investigate a complaint solely on the grounds that the complaint is not in proper form or not in compliance with the



prescribed requirements or that it is not accompanied by the required documentation” (section 10(3)).

The act grants the ZHRC certain powers of investigation, such as “issu[ing] summons to any authority or person ... to attend before the Commission and to produce any document or record relevant to any investigation” (section 12(1)(a)). When the Commission finds that a human rights violation has occurred, it can suggest that the complainant seek redress in court or recommend a payment of compensation to the victim or their family. The ZHRC may also request that the authority implicated in the violation notify the Commission within a specified time of the steps it proposes to take to give effect to the Commission’s recommendation. The ZHRC may also institute an action in court on behalf of a complainant to redress a human rights violation, in which it may be joined as a legal party with the complainant or a class of complainants.

Notwithstanding the Constitution and ZHRC legislation, the author of this memorandum could not find the complaint form online.²² The link on the Commission’s website to report a human rights violation was not working:

LODGE A COMPLAINT

Report Human Rights Violation

Report Maladministration Case

People affected by TB, Jointed Hands Welfare Organization, and their partners should learn how to file a complaint with the ZHRC to report human rights violations people experience before, during, or after their TB treatment, seeking appropriate remedies from the Commission or through a suit filed jointly in court with the Commission.

²² The Zimbabwe Human Rights Commission’s website is located here: <https://www.zhrc.org.zw/>.