

**ZIMBABWEAN
HIV/AIDS &
HUMAN
RIGHTS
CHARTER**

ZIMBABWEAN HIV/AIDS & HUMAN RIGHTS CHARTER

Zimbabwe Lawyers for Human Rights (ZLHR) spearheaded and facilitated the development of this HIV/AIDS & Human Rights Charter for Zimbabwe. The Charter is based on nationwide multi-sectoral consultations with various institutions represented at the provincial and/or national level.

This Charter is not a legally binding document enforceable in court. Instead, it serves to assert the aspirations of various sectors within our society that seek to ensure that the rights of People Living with HIV and AIDS (PLWHA) are respected and upheld. Noteworthy is the fact that the rights declared in the Charter are rights that the state of Zimbabwe is obliged to uphold as enshrined in international and regional treaties that it has signed and/or ratified. The Charter is also a supportive document that serves to bring human rights to the forefront as enshrined and guaranteed in the Constitution of Zimbabwe and by international human rights instruments that include:

- ✚ The Universal Declaration of Human Rights
- ✚ The International Covenant on Civil and Political Rights
- ✚ The International Covenant on Economic, Social and Cultural Rights
- ✚ The International Convention on the Elimination of All Forms of Discrimination Against Women
- ✚ The Convention on the Rights of the Child
- ✚ The African Charter on Human and People's Rights
- ✚ The African Charter on the Rights and Welfare of the Child

At the domestic level, the state has instituted pieces of legislation and policies that seek to protect and promote human rights, amongst which are:

- ✚ The Constitution of Zimbabwe
- ✚ The Sexual Offences Act
- ✚ The Labour Act
- ✚ The Public Health Act
- ✚ The National HIV/AIDS Policy
- ✚ The National Gender Policy

The Charter therefore seeks to affirm these rights as they refer particularly to persons infected and affected by HIV/Aids.

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PREAMBLE

Realizing the high prevalence of HIV and AIDS in Zimbabwe and noting the effects of the pandemic on society and on the enjoyment of human rights,

Recognizing that people living with and affected by HIV and AIDS have continued to be stigmatized and discriminated against in all spheres of life,

And that stigma and discrimination have hindered people living with and affected by HIV/AIDS from enjoying their human rights and fundamental freedoms,

Recalling that the state is obliged to respect, protect, fulfill and promote fundamental rights and freedoms in terms of Chapter III of the Constitution of Zimbabwe,

Asserting that all human beings are inherently equal in dignity, rights and freedoms as enshrined in the Universal Declaration of Human Rights and the African Charter on Human and People's Rights,

Recalling the United Nations General Assembly Declaration of Commitment on HIV/AIDS in which the state committed to enact, strengthen or enforce, as appropriate, legislation, regulations and other measures to eliminate all forms of discrimination against, and to ensure the full enjoyment of all human rights and fundamental freedoms by, people living with HIV/AIDS and members of vulnerable groups, in particular to ensure their access to, inter alia, education, inheritance, employment, health care, social and health services, prevention, support and treatment, information and legal protection, while respecting their privacy and confidentiality and develop strategies to combat stigma and social exclusion connected to the epidemic, develop and accelerate the implementation of national strategies for women's empowerment and promote and protect women's full enjoyment of all human rights and the reduction of their vulnerability to HIV/AIDS through the elimination of all forms of discrimination,

Asserting the importance of a human rights-based approach in the response to HIV/AIDS and a need for society to be educated and take responsibility in contributing towards the prevention and amelioration of the impact of the pandemic,

The Charter seeks to highlight the human rights and fundamental freedoms of people living with and affected by HIV and AIDS in as far as all human rights are to be enjoyed without discrimination of any kind.

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a. The right to life and inherent dignity

- ⓧ All persons, regardless of their HIV status, have the right to life; ought to be recognized as equal in dignity and rights; and are entitled to the enjoyment of their human rights and fundamental freedoms without discrimination of any kind.

b. Protection from torture or cruel, inhuman or degrading treatment or punishment

- ⓧ No person should be subjected to torture, cruel, inhuman or degrading treatment or punishment because of their HIV status. Efforts by the state and civil society must be aimed at eradicating stigma and discrimination that propel the cruel and inhuman treatment of People Living with HIV and AIDS (PLWHA).

c. Personal liberty, security of person and freedom of movement and association

- ⓧ All persons have the right to liberty, security and autonomy of person.
- ⓧ HIV status should not be used as a basis to deprive of the right to move and associate freely.

d. Equal protection of the law

- ⓧ All persons, irrespective of their HIV status, must be accorded equal treatment before the courts and protection of the law.
- ⓧ PLWHA must not be denied access to legal protection and support service provided by the both state and non-state institutions.

e. Counselling & Testing

- ⓧ Access to voluntary counselling and testing (VCT) facilities must be enhanced, especially for communities in rural and remote areas and reinforced by Information, Education and Communication (IEC) material on counselling and testing.
- ⓧ Effective pre- and post-test counselling must be provided at all sites where HIV testing is conducted.
- ⓧ HIV testing standards need to be reviewed to ensure that they are effective and accurate and should be in line with minimum internationally recognized HIV testing standards.
- ⓧ A minimum age for VCT should be set among young persons to facilitate access to ARVs and other related treatment. VCT centres should therefore be youth friendly and cater for the needs of young persons.
- ⓧ No person shall be subjected to compulsory HIV testing. Counselling and testing are voluntary processes that must be based on informed consent by the individual. This entails ensuring that an individual is provided with information from which they understand fully the purpose of testing, the meaning of test results and agrees to undergo testing by signing an informed consent form.
- ⓧ The state is called upon to ensure that VCT facilities are affordable and accessible to all persons and shall be encouraged to work together with AIDS Service Organizations (ASOs), Community Based Organizations (CBOs), Faith Based Organizations (FBOs) and other civil society organizations and community-based structures to achieve the outlined objectives.

f. Privacy & Confidentiality

- ⓧ Privacy refers to the right of an individual to hold information about themselves from other people while confidentiality entails the assurance that information shared with anyone will not be disclosed without the concerned individual's consent. The importance of shared confidentiality should be emphasized and reinforced by open dialogue on HIV and AIDS in an endeavour to fight stigma and discrimination and facilitate the administration of proper care, support and treatment.
- ⓧ Everyone has the right to privacy and is not compelled to disclose their HIV status to anyone.
- ⓧ However, relevant stakeholders are challenged to lobby for and encourage partner notification and shared confidentiality, especially between partners at risk while medical

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practitioners and counsellors have the onus to encourage PLWHA to disclose their status to spouses, partners, care givers and other persons who are deemed to be at high risk of infection.

- ⓧ Status disclosure can be a means of ensuring that adequate care, treatment and support are provided, while simultaneously fighting HIV/AIDS related stigma and discrimination.

g. Access to treatment, care and support

- ⓧ All persons should have access to treatment, care and support and must be guaranteed the highest attainable standard of physical and mental health.
- ⓧ Access to treatment, care and support ought to be reinforced by the provision of health services by professional and competent service providers guided by a standard of care for adequate treatment that is developed through consultation with relevant stakeholders. Information on Antiretroviral (ARV) and other treatment that is currently available or is developed in the future ought to be widely available to PLWHA.
- ⓧ The government must ensure that treatment is accessible and affordable to all.
- ⓧ Care givers should necessarily be provided with access to information on HIV/AIDS prevention and appropriate measures to care for the HIV infected. Care givers must also be provided with adequate resources necessary for the care of PLWHA.
- ⓧ The onus is placed on PLWHA to inform their care givers about their status in order to reduce the risk of infection or re-infection and to ensure that ample and appropriate care and support are provided.

h. Education, access to information and freedom of expression

- ⓧ All persons have the right to education. The state has the duty to ensure that everyone, including children and young persons, has access to information on HIV/AIDS prevention, treatment, care and support. All persons also have the right to access information relating to epidemiology of HIV and AIDS.
- ⓧ The media has a critical role to play in the dissemination of information and is obliged to ensure that information received by the public does not propel stigma and discrimination. Both civil society and the state ought to play a role in ensuring that everyone has access to correct information on HIV and AIDS.
- ⓧ The public must be availed with information on HIV/AIDS and related opportunistic and sexually transmitted infections, where to access treatment and support services and available treatment plans. Such information should be widely accessible to all persons and made available in the vernacular to ensure effective dissemination.
- ⓧ Government must ensure that PLWHA and grassroots communities are engaged in the development of community health programmes in order to increase efficiency, levels of acceptance and extent of reach.
- ⓧ The greater and meaningful involvement of PLWHA is essential at all levels of decision making and policy development processes to ensure effective and efficient implementation in an endeavour to protect and promote the rights of PLWHA.
- ⓧ Everyone must be accorded freedom of expression in terms of holding opinions, seeking, receiving and imparting information.

i. Gender

- ⓧ Men and women who are infected by HIV/AIDS must be treated equally in terms of access to care, treatment and support services. Both men and women have the right to access the highest attainable standard of health care.
- ⓧ Realizing that Gender Based Violence (GBV) propels the prevalence of HIV and AIDS amongst women and girls, action must be taken to ensure that women and girls are empowered to protect themselves from violence and that the state institutes mechanisms

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aimed at protecting women and girls from violence and abuse, ensuring effective and efficient delivery of justice in such instances.

- ⓧ Women are acknowledged as the majority of primary care givers. This calls for a need to ensure access to relevant and sufficient information and resources for the prevention of HIV transmission and the care of PLWHA.
- ⓧ Women and men must be provided with adequate information and participate fully in matters relating to reproductive health and family planning.
- ⓧ Gender must be mainstreamed in all policies and programmes aimed at mitigating the effects of the pandemic.

j. Children and Young Persons

- ⓧ Children and young persons have the right to information on their fundamental freedoms and human rights in the context of their being HIV/AIDS infected and/or affected. This must include information on prevention, VCT, confidentiality and access to treatment, care and support.
- ⓧ Children and youth have the right to human dignity and are to be duly protected from stigma and discrimination, especially in terms of access to socio-economic resources.
- ⓧ The government and civic organizations are called upon to develop effective and efficient support structures for orphans and vulnerable children (OVCs), ensuring that children are protected from all forms of abuse and are guaranteed access to legal representation to facilitate expedient access to and delivery of justice.
- ⓧ Children and young persons must be viewed as major stakeholders in HIV/AIDS related policy processes and must be given the opportunity to fully participate in policy development, implementation and evaluation processes.
- ⓧ Child friendly health structures must be established, functional and maintained in order to reduce discrimination and related stigma in accessing medical facilities, especially in instances of children and young persons infected with HIV and/or Sexually Transmitted Infections (STIs).
- ⓧ In an endeavour to reduce transmission of HIV to the unborn child or infant, the government and civic organizations are challenged to educate the populace on Prevention of Parent to Child Transmission (PPTCT) in an effort to fight the stigma and discrimination faced by mothers enrolled in PPTCT programmes.
- ⓧ The government, supported by Community Based Organizations (CBOs), AIDS Service Organizations (ASOs) and other Non-Governmental Organizations (NGOs), should provide training on HIV/AIDS and children's rights.
- ⓧ The government must put in place policies and structures that encourage parents and guardians to consent to testing of children where there has been high risk of HIV infection in order to ensure that children are not denied access to necessary treatment as denial of such is ultimately a violation of the right to access treatment, the right to the highest attainable standard of health and the right to life.

k. Employment

- ⓧ No person should be subjected to HIV status related discrimination in the workplace in terms of access to employment opportunities, promotion, employee benefits and the right to freedom of assembly and association.
- ⓧ No persons should be discriminated in the workplace because of HIV/AIDS related opportunistic infections.
- ⓧ It is the employer's duty to ensure privacy and confidentiality in handling employee health related matters and the employee is not compelled to reveal their HIV status to their current or prospective employer.

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- Employers, with input from employees, ought to develop HIV/AIDS workplace policies that strive to educate and support employees on the epidemiology of the pandemic, prevention and treatment.

l. Prisoners

- Prisoners should be treated with human dignity and respect that ought to be accorded all persons. Prisoners must therefore be granted access to treatment; adequate nutrition, hygienic living conditions; and IEC material on HIV/AIDS prevention, treatment, care and support and access to VCT facilities.

m. Disabled Persons

- Persons with disabilities have the right to access information and should be accorded appropriately disseminated information (e.g. in Braille and sign language) on HIV/AIDS prevention, treatment, care and support. This must be reinforced by ensuring that disabled persons are included in deliberations on access to care, treatment and support and in policy development processes.

n. Media

- Media insensitivity in reporting on HIV/AIDS is a hindrance to the protection and promotion of human rights and perpetuates stigma and discrimination. The media therefore has a duty to duly inform the public and avoid inflammatory reporting that propels stigma and discrimination.
- Realizing their informative and educative role, the media ought to advocate for positive cultural values and disseminate information aimed at eradicating myths and misconceptions associated with HIV and AIDS.
- Legislative reforms must be put in place to strengthen the role of the media to inform and educate the public.
- Viewing the role of the media in the broadest context, media practitioners should strive to ensure that information is disseminated to the public in the vernacular and circulated as widely as possible to ensure effective dissemination of information.

o. Medical Aid

- In light of the adverse effects of HIV and AIDS, employers must acknowledge and act upon the increased need for medical aid by employees and strive to ensure that medical aid benefits are accessible to all employees.
- Medical aid societies are encouraged to treat HIV/AIDS as any other chronic disease and ensure that ARVs are affordable and accessible to all medical aid society members.

p. Religious Bodies & Institutions

- Religious bodies and institutions form important components of society that should strive to eradicate stigma and discrimination and should develop mechanisms and structures that offer effective psycho-social support to the infected and affected while simultaneously ensuring the right to privacy, encouraging HIV/AIDS and human rights education within its system and providing information on HIV/AIDS prevention, care, treatment and support.
- Religious leaders and communities must be sensitized and educated on treatment literacy, access to treatment, protection of privacy and the rights of PLWHA.
- The government is called upon to facilitate access to funds aimed at alleviating the effects of the pandemic by Faith-Based Organizations (FBOs).

q. Cultural and Traditional Practices

- Cultural practices that perpetuate discrimination must be abolished as they are a contributory factor to the high prevalence of HIV and AIDS, especially amongst women and girls.

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- ⚡ A legislative framework must be developed to protect women from gender based discrimination, including amendments to the Constitution of Zimbabwe to ensure that it is in line with human rights standards as enshrined in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).
- ⚡ Traditionally, vulnerable groups such as women and children are the most susceptible to human rights violations. The government, with the support of community leaders and civic organizations, is challenged to ensure that vulnerable groups are accorded their rights; including inheritance rights, property rights and access to legal representation.
- ⚡ Traditional and community leaders ought to play a major role in the provision of education on the promotion and protection of the rights of the infected and affected.

r. Disadvantaged Communities

- ⚡ Civic organizations and government institutions must initiate programmes aimed at economically empowering rural communities and develop mechanisms to ensure affordable and accessible information on HIV/AIDS and human rights.

s. Duties and Responsibilities

- ⚡ The state has a duty to protect, promote and fulfill the rights of people living with and affected by HIV and AIDS.
- ⚡ The government must make sure that PLWHA have free and/or affordable and accessible legal, medical, educational and social welfare services and should develop mutual relationships with NGOs that have the facility for provision of such services to PLWHA.
- ⚡ The state is called upon to develop and implement a package for HIV prevention, treatment and care with the aim of being close as possible to the goal of universal access to treatment by 2010 for all those who need it as adopted at the United Nations General Assembly World Summit in 2005.
- ⚡ The government is urged to consult widely and involve PLWHA in deliberations on legislation and national policies that are aimed at protecting the rights of PLWHA and reducing levels of HIV transmission.
- ⚡ The state is called upon to domesticate international human rights instruments that it has signed and/or ratified and ensure that legislation seeks to protect and promote the rights of people living with and affected by HIV/AIDS.
- ⚡ The government is encouraged to refrain from undue interference or over regulation of activities of those who wish to assist in alleviating the impacts of the pandemic on the rights of the infected and affected and ensure that there is legislation in place to promote such activities and to uphold the rights of the HIV/AIDS infected and affected.
- ⚡ Persons who know or suspect that they are HIV positive are called upon to act responsibly in order not to expose others to HIV infection.

t. Research

- ⚡ There is a need to advance HIV/AIDS related research efforts aimed at improving prevention measures, developing effective and efficient treatment regimes, and reducing levels of transmission through concerted efforts by the state, academia and society at large.

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ADDENDUM 1:

LIST OF INSTITUTIONS INVOLVED IN THE CONSULTATION PROCESS

- ⌘ Abilities
- ⌘ Arise
- ⌘ Bere Brothers Legal Practitioners
- ⌘ Catholic Commission for Justice & peace
- ⌘ Cheda & Partners Legal Practitioners
- ⌘ Child Protection Society
- ⌘ CIMAS Medical Aid Society
- ⌘ Coghlan & Welsh Legal Practitioners
- ⌘ Commercial Workers Union of Zimbabwe
- ⌘ Community Working Group on Health
- ⌘ Contact
- ⌘ Danziger & Partners Legal Practitioners
- ⌘ Deseret International
- ⌘ Domestic & Allied Workers Union
- ⌘ Dube & Company Legal Practitioners
- ⌘ Econet Wireless (Pvt) Ltd
- ⌘ Evangelical Fellowship of Zimbabwe
- ⌘ Family AIDS Counseling Trust (FACT)
- ⌘ Federation of African Media Women Zimbabwe (FAMWZ)
- ⌘ Family AIDS Support Organization (FASO)
- ⌘ Girl Child Network
- ⌘ Henning Lock Donagher & Winter Legal Practitioners
- ⌘ International Community of Women Living with HIV/AIDS (ICW)
- ⌘ Job Sibanda Legal Practitioners
- ⌘ Justice for Children Trust (JCT)
- ⌘ Legal Resources Foundation
- ⌘ Magistrate's Office
- ⌘ Matabeleland Aids Council (MAC)
- ⌘ Maunga & Associates Legal Practitioners
- ⌘ Ministry of Education, Sports and Culture
- ⌘ Ministry of Health & Child Welfare
- ⌘ Ministry of Justice, Legal & Parliamentary Affairs
- ⌘ Mugadza Mazengero Legal Practitioners
- ⌘ Musasa Project
- ⌘ Mutare Ministers Fraternity
- ⌘ National Association of Societies of the Care of the Handicapped
- ⌘ National Aids Council
- ⌘ National Association of Non Governmental Organizations
- ⌘ National Council for Disabled Persons Zimbabwe
- ⌘ Parliament of Zimbabwe
- ⌘ Population Services International
- ⌘ Railway Artisans Union
- ⌘ Red Cross Society, Zimbabwe
- ⌘ Southern African Aids Information Dissemination Services (SAfAIDS)
- ⌘ SHAPE Zimbabwe
- ⌘ Students Partnership Worldwide
- ⌘ Students Solidarity Trust
- ⌘ The Centre
- ⌘ The Daily Mirror
- ⌘ The Standard
- ⌘ The Zimbabwe Independent
- ⌘ United Nations Children's Fund (UNICEF)
- ⌘ United Nations Development Fund for Women (UNIFEM)
- ⌘ University of Zimbabwe, Faculty of Law
- ⌘ United States Agency for International Development(USAID)
- ⌘ University of Zimbabwe- University of California & San Francisco (UZ-UCSF) Collaborative Research Programme in Women's Health
- ⌘ Varichem Pharmaceuticals (Pvt) Ltd
- ⌘ Women & Law in Southern Africa (WILSA)
- ⌘ Women's Aids Support Network (WASN)
- ⌘ Word of Life Ministries
- ⌘ World Health Organization (WHO)
- ⌘ Zimbabwe Association of Crime Prevention and Rehabilitation of the Offender (ZACRO)
- ⌘ Zimbabwe Activists on HIV/AIDS (ZAHA)
- ⌘ Zimbabwe AIDS Network (ZAN)
- ⌘ Zimbabwe Aids Prevention Programme (UZ)
- ⌘ Zimbabwe Association of Doctors for Human Rights
- ⌘ Zimbabwe Business Council on AIDS (ZBCA)
- ⌘ Zimbabwe Congress of Trade Unions (ZCTU)
- ⌘ Zimbabwe Human Rights Association (ZIMRIGHTS)
- ⌘ Zimbabwe Lawyers for Human Rights (ZLHR)
- ⌘ Zimbabwe National Family Planning Council (ZNFPFC)
- ⌘ Zimbabwe National Network of PLWHA (ZNNP+)
- ⌘ Zimbabwe Nurses Association (ZINA)
- ⌘ Zimbabwe Republic Police (ZRP)
- ⌘ Zimbabwe Women Lawyers Association (ZWLA)

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