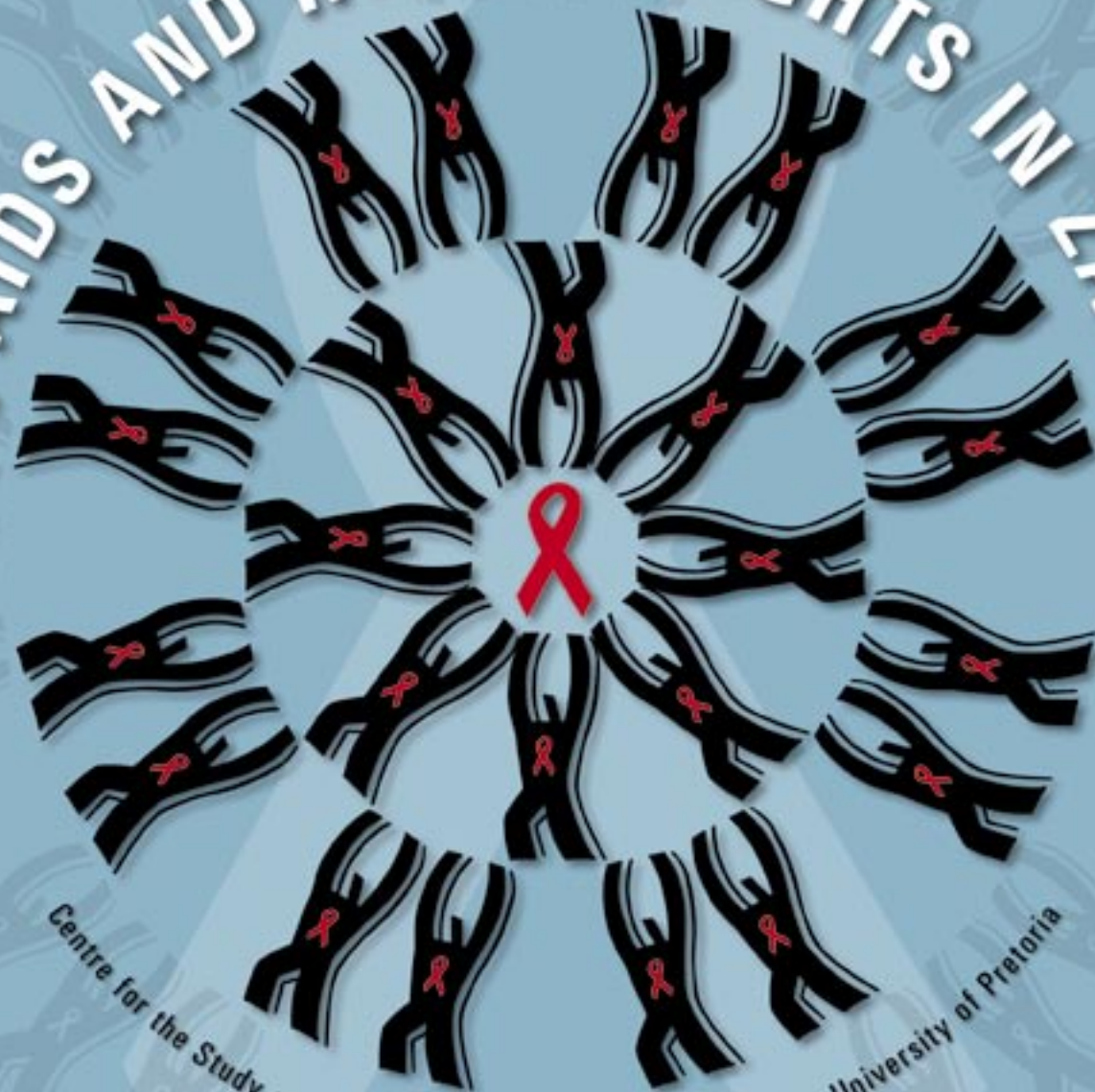


HIV/AIDS AND HUMAN RIGHTS IN ZAMBIA



Centre for the Study of AIDS and the Centre for Human Rights, University of Pretoria

Series title:

HIV/AIDS and human rights in SADC

Volume title:

HIV/AIDS and human rights in Zambia

Commissioning publishers:

Centre for the Study of AIDS and the Centre for Human Rights, University of Pretoria.

Series author:

Lirette Louw, LLB (UFS), LLM (University of Pretoria), LLD candidate (University of Pretoria).

Volume authors:

Ngaitila Phiri, LLB (Zambia), LLM (University of Pretoria).

Editors:

Robin Hamilton and Farhana Zuberi.

Series advisor:

Professor Frans Viljoen, Faculty of Law, University of Pretoria.

Funders:

Open Society Foundation.

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ISBN 0-620-293223-3



UNIVERSITY OF PRETORIA

Centre for the Study of AIDS

University of Pretoria

Pretoria 0002

South Africa

Tel: +27 (12) 420 4391

Fax: +27 (12) 420 4395

E-mail: CSA@up.ac.za

Website: www.csa.za.org

Centre for Human Rights, University of Pretoria

University of Pretoria

Pretoria 0002

South Africa

Tel: + 27 (12) 420 3034

Fax: + 27 (12) 362 5125

E-mail: CHR@postino.up.ac.za

Website: www.up.ac.za/chr

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1. INTRODUCTION

This country report on HIV/AIDS and human rights in Zambia is the result of a one-year joint project between the Centre for the Study of AIDS and the Centre for Human Rights, both based at the University of Pretoria, South Africa. The research project was made possible through funds provided by the Open Society Foundation. This report is one of a series of eight reports focusing on HIV/AIDS and human rights in the following countries within the Southern African Development Community (SADC): Botswana, Malawi, Mozambique, Namibia, South Africa, Swaziland, Zambia and Zimbabwe. These countries have some of the highest and fastest growing rates of HIV/AIDS infection in the world, with the number of reported cases of HIV infection having tripled since the mid-1980s.

This research project was inspired by the need to develop a new approach to the HIV/AIDS epidemic in the SADC, an approach that is rights-based and that guarantees basic human rights to all people living with or affected by HIV/AIDS in the region. The study was guided by the document *HIV/AIDS and Human Rights – International Guidelines*¹ of 1996, adopted by UNAIDS and the Office of the United Nations High Commissioner for Human Rights. The Foreword of these *Guidelines* declares:

“In the context of HIV/AIDS, an environment in which human rights are respected ensures that vulnerability to HIV/AIDS is reduced, those infected with and affected by HIV/AIDS live a life of dignity without discrimination and the personal and societal impact of HIV infection is alleviated.”²

The aim of this research report, within the *SADC HIV/AIDS Framework for 2000-2004*, is to assist decision-makers to make informed policy choices for individual SADC countries. It is also intended for legislators, the judiciary, members of non-governmental organisations and people living with or affected by HIV/AIDS. All of these groups need: firstly, to be informed about

those human rights in the context of HIV/AIDS that are already protected within their countries; secondly, to be able to identify areas where there is a gap and a need to lobby for change; and finally, to initiate change in an effort to move towards a rights-based approach to HIV/AIDS.

This report is a summary of national HIV/AIDS policies, strategic frameworks, legislation, guidelines and court cases in Zambia as they relate to HIV/AIDS and human rights. A national consultant in Zambia collected the relevant documents, answered a questionnaire that was developed to structure the research, and commented on the final report.³ This report begins by briefly sketching the HIV/AIDS background for SADC and Zambia, through listing some critical statistics. The report then provides an analysis of the most important international, regional and SADC principles for HIV/AIDS and human rights, providing an overall framework against which the country report should be seen. The country report is a summary of the legal and policy framework for the protection of the human rights of those living with or affected by HIV/AIDS in Zambia, and addresses areas such as labour, health, gender, children, prisons and criminal law. This is followed by a concluding chapter with some recommendations regarding moving towards a rights-based approach to HIV/AIDS in the SADC.

It needs to be emphasised that this study focuses on the legal framework alone and does not set out to establish empirically the extent to which the respective governments are implementing the provisions in place – that is beyond the scope of this study and will require further research. Furthermore, while all efforts have been made to ensure that the information presented is reliable and up-to-date at the end of 2003, the study's authors do not accept any responsibility for any errors or omissions in the country reports.

¹ Available at: <http://www.unhcr.ch/hiv/guidelines.htm>.

² The Foreword was written by Peter Piot, Executive Director of UNAIDS, and Mary Robinson, the former United Nations High Commissioner for Human Rights.

³ Ngaitila Phiri, LLB (Zambia), LLM (University of Pretoria).

2. BACKGROUND

The tables below provide statistical information on all the SADC countries, with the statistics for Zambia highlighted.

2.1 Geographical size and population

The following two tables illustrate the size and population of the SADC countries in this study:⁴

Geographical size			
Botswana	581 730 km ²	South Africa	1 220 088 km ²
Malawi	118 484 km ²	Swaziland	17 365 km ²
Mozambique	801 590 km ²	Zambia	752 614 km²
Namibia	824 268 km ²	Zimbabwe	390 759 km ²

Population size		
Country	Total population	Adult population
Botswana	1 564 000	762 000
Malawi	11 572 000	5 118 000
Mozambique	18 644 000	8 511 000
Namibia	1 788 000	820 000
South Africa	43 792 000	23 666 000
Swaziland	933 000	450 000
Zambia	10 649 000	4 740 000
Zimbabwe	12 652 000	5 972 000

⁴ Data from *Africa Fact Sheet*, published by African Institute of South Africa, July 1997.

⁵ According to the *Epidemiological Fact Sheets on HIV/AIDS and Sexually Transmitted Infections* (Update 2002), compiled by UNAIDS, UNICEF and WHO. Available at http://unaids.org/hiv/aidsinfo/statistics/fact_sheets/all_countries_en.html#N

⁶ Doctors in Princess Marina Hospital in Gaborone documented the first HIV/AIDS case in 1985.

⁷ Reported by UNAIDS in the *International Partnership against AIDS in Africa - Namibia Country Visit Report*, 1 May-4 June 1999.

⁸ Reported in the *National HIV/AIDS/STD/TB Policy* published in October 2001 by the Zambian Ministry of Health.

2.2 First reported instances of HIV infection⁵

Country	First reporting year	Number of cases
Botswana ⁶	1985	3
Malawi	1985	17
Mozambique	1986	1
Namibia ⁷	1986	1
South Africa	1982	2
Swaziland	1987	1
Zambia⁸	1984	1
Zimbabwe	1987	119

The first reported case of HIV/AIDS in Zambia was diagnosed at the University Teaching Hospital in Lusaka.

2.3 HIV prevalence rates

Currently 21.5% of the adult population of Zambia is living with HIV/AIDS. The government has described HIV/AIDS as “the most profound reversal of development gains in Zambia over the last 37 years.”⁹

The following figures are provided by the UNAIDS/WHO Working Group on Global HIV/AIDS and STI Surveillance, which works in close collaboration with national AIDS programmes.¹⁰

⁹ See page 1 of the draft *Zambian National HIV/AIDS/STI/TB Intervention Strategic Plan*, March 2002.

¹⁰ The estimates are from the *Table of Country-specific HIV/AIDS Estimates and Data, End 2001*, available at www.unaids.org/barcelona/presskit/barcelona%20reports/table.html. The estimates produced by UNAIDS/WHO draw on advice from the UNAIDS Reference Group on HIV/AIDS Estimates, Modelling and Projections. A measure of uncertainty applies to all estimates, depending on the reliability of the data available. Most of the data are from routine sentinel surveillance. For a detailed description of the general methodology used to produce the country-specific estimates, see Annexure 1 at <http://www.unaids.org/barcelona/presskit/barcelona%20report/annex1.html>.

Statistics are also obtained from the *Epidemiological Fact Sheets on HIV/AIDS and Sexually Transmitted Infections, 2002 Update*, issued by UNAIDS, UNICEF and the WHO.¹¹

Population with AIDS					
Country	Adults and children	Adults (15-49 years)	Adults (%)	Women (15-49 years)	Children (0-14 years)
Botswana	333 000	300 000	39,9%	170 000	28 000
Malawi	850 000	780 000	15%	440 000	65 000
Mozambique	1 100 000	1 000 000	13%	630 000	80 000
Namibia	230 000	200 000	22,5%	110 000	30 000
South Africa	5 000 000	4 700 000	20,1%	2 700 000	250 000
Swaziland	170 000	150 000	33,4%	89 000	14 000
Zambia	1 200 000	1 000 000	21,5%	690 000	150 000
Zimbabwe	2 300 000	2 000 000	33,7%	1 200 000	240 000

HIV prevalence rates in young people aged 15-24 years				
Country	Female		Male	
	Low estimate	High estimate	Low estimate	High estimate
Botswana	29,99%	44,98%	12,86%	19,29%
Malawi	11,91%	17,87%	5,08%	7,62%
Mozambique	10,56%	18,78%	4,41%	7,84%
Namibia	19,43%	29,15%	8,88%	13,32%
South Africa	20,51%	30,76%	8,53%	12,79%
Swaziland	31,59%	47,38%	12,18%	18,27%
Zambia	16,78%	26,18%	6,45%	9,68%
Zimbabwe	26,40%	39,61%	9,9%	14,86%

Tuberculosis (TB) infection rates	
Country	TB prevalence for the year 2000 (unless otherwise stated)
Botswana	8 649 ¹²
Malawi	22 570
Mozambique	Unknown
Namibia	10 497
South Africa	One sentinel site (Port Shepstone) outside major urban areas: 52% minimum, 52% median, 52% maximum.
Swaziland	2 143
Zambia	161 056. The average tuberculosis rate between 1964 and 1984 remained constant at 100 per 100 000 people. The rate of TB infections increased dramatically to nearly five-fold to over 500 per 100 000 people due to the impact of HIV/AIDS in 1996.¹³ TB co-infection has resulted in an increased mortality rate of TB patients on treatment by over 15%.¹⁴
Zimbabwe	51 805

11 Available at: http://www.unaids.org/hivaidinfo/statistics/fact_sheets/all_countries_en.html#N. The methodology used in updating and compiling these country-specific estimates is summarised in the publication as follows: "In 2001 and during the first quarter of 2002, UNAIDS and WHO worked closely with national governments and research institutions to recalculate current estimates of people living with HIV/AIDS. These calculations are based on the previously published estimates for 1997 and 1999 and recent trends in HIV/AIDS surveillance in various populations. A methodology developed in collaboration with an international group of experts was used to calculate the new estimates on prevalence and incidence of HIV and AIDS deaths, as well as the number of children infected through mother-to-child transmission of HIV. Different approaches were used to estimate HIV prevalence in countries with low-level, concentrated

or generalised epidemics. The current estimates do not claim to be an exact count of infections. Rather, they use a methodology that has thus far proved accurate in producing estimates which give a good indication of the magnitude of the epidemic in individual countries. However, these estimates are constantly being revised as countries improve their surveillance and collect more information."

12 Southern African Development Community *Health Annual Progress Report 2000-2001*.

13 *National HIV/AIDS/STD/TB Policy* published in October 2001 by the Ministry of Health of the Republic of Zambia. See par 1.2.3.

14 Ibid, par 1.2.4.

Number of pregnant mothers who are HIV positive								
Country	HIV prevalence in antenatal clinics in urban areas (%)				HIV prevalence in antenatal clinics outside major urban areas (%)			
	Year	Median	Min	Max	Year	Median	Min	Max
Botswana	2001	44,9%	39,1%	55,8%	2001	34,8%	25,8%	50,9%
Malawi	2001	20,1%	18,6%	28,5%	2001	16,1%	4,5%	35,8%
Mozambique	2000	14,4%	13,0%	15,7%	2000	10,6%	4,0%	31,2%
Namibia	2000	29,6%	28,2%	31,0%	2000	17,3%	6,6%	32,5%
South Africa	2000	24,3%	8,7%	36,2%	2000	22,9%	11,2%	29,7%
Swaziland	2000	32,3%	32,3%	32,3%	2000	34,5%	27,0%	41,0%
Zambia	2001	30,7%	30,7%	30,7%	1998	13,0%	5,2%	31,0%
Zimbabwe	2000	31,1%	30,0%	33,5%	2000	33,2%	13,0%	70,7%

According to the 2002 Epidemiological Fact Sheets on HIV/AIDS and Sexually Transmitted Infections, the highest prevalence of HIV infection was recorded amongst women aged 25-29 years.

2.4 AIDS deaths in adults and children in 2001

Botswana	26 000	South Africa	360 000
Malawi	80 000	Swaziland	12 000
Mozambique	60 000	Zambia	120 000
Namibia	13 000	Zimbabwe	200 000

2.5 Number of HIV/AIDS orphans (up to 14 years) by end of 2001

Botswana	69 000	South Africa	660 000
Malawi	470 000	Swaziland	35 000
Mozambique	420 000	Zambia	570 000
Namibia	47 000	Zimbabwe	780 000

3. OVERVIEW OF APPLICABLE INTERNATIONAL, REGIONAL AND SADC LEGAL NORMS

This section examines the international, regional and SADC framework for the protection of human rights, as it relates to HIV/AIDS, to form the backdrop against which the national framework of Zambia should be considered. The international and regional human rights treaties examined do not include any HIV/AIDS-specific provisions. Nevertheless, a number of articles can be highlighted in the various treaties as they indirectly impact on people living with HIV/AIDS or their families. For instance, the *International Covenant on Economic, Social and Cultural Rights (ICESCR)* affirms that state parties to the *Covenant* should recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.¹⁵ The *Covenant* then continues that state parties, in order to achieve this right, should prevent, treat and control epidemic, endemic, occupational and other diseases.¹⁶ These provisions would clearly apply to HIV/AIDS.

This section also briefly summarises the state reports submitted by Zambia in terms of its obligations under the various treaties that it has ratified, with a specific focus on HIV/AIDS reporting and recommendations made by the treaty monitoring bodies in relation to HIV/AIDS.¹⁷

Finally, SADC and Organisation of African Unity (OAU)/African Union (AU) HIV/AIDS instruments and policies are discussed, followed by a short discussion on *HIV/AIDS and Human Rights – International Guidelines*, issued by UNAIDS and the Office of the United Nations High Commissioner for Human Rights.

3.1 Applicable international legal norms

There are no HIV/AIDS-specific treaties within the international legal framework. The *International Covenant on Civil and Political Rights (ICCPR)* and the *International Covenant on Economic, Social and Cultural Rights (ICESCR)* both came into force in 1976, about four years before the first HIV/AIDS case was documented. Nevertheless, specific provisions of these treaties may be applied to various legal situations affecting people living with or affected by HIV/AIDS. The *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)* is similar, having been adopted in the early days of the epidemic. The *Convention on the Rights of the Child (CRC)*, however, was adopted in 1989, nearly ten years after the first reported case of HIV/AIDS. The fact that in the CRC no mention is made of HIV/AIDS with respect to children can be viewed as a missed opportunity to develop policy for this vulnerable group.

The status of these treaties is as follows (all dates denote ratification or accession, except when marked with 's,' in which case the treaty has only been signed by the state party):¹⁸

Country	ICCPR	ICCPR First Optional Protocol	ICESCR	CEDAW	CEDAW Optional Protocol	CRC
Botswana	08/01/2000			12/09/1996		13/04/1995
Malawi	22/03/1994	11/09/1996	22/03/1994	11/04/1987	7/09/2000 ^s	01/02/1991
Mozambique	21/10/1993			16/05/1997		26/05/1994
Namibia	28/02/1995	28/02/1995	28/02/1995	23/12/1992	22/12/2000	30/10/1990

¹⁵ Article 12(1) of the *ICESCR*.

¹⁶ Article 12(2)(c).

¹⁷ State reporting is a useful tool to monitor a state party's progress in implementing the various provisions of a treaty. Usually, states submit a report shortly after ratifying a treaty (initial report) and thereafter the state must report to the monitoring body every two

years. Unfortunately, most African states are behind in submitting reports internationally and regionally.

¹⁸ Status of ratification of international human rights treaties as of 02 November 2003 provided by the Office of the United Nations High Commissioner for Human Rights. Available at www.unhcr.ch/pdf/report.pdf. Date accessed: 24 November 2003.

Country	ICCPR	ICCPR First Optional Protocol	ICESCR	CEDAW	CEDAW Optional Protocol	CRC
South Africa	10/03/1999	28/11/2002	03/10/1994 ^a	14/01/1996		16/07/1995
Swaziland						06/10/1995
Zambia	10/07/1984	10/07/1984	10/07/1984	21/07/1985		05/01/1992
Zimbabwe	13/08/1991		13/08/1991	12/06/1991		11/10/1990

States parties submit reports to the various treaty monitoring bodies that are established in terms of the treaties. These reports may include details of measures taken by the state to address the issue of HIV/AIDS, but it is not compulsory to report in this form. Treaty bodies in turn examine the state reports and issue Concluding Observations.

In general, international treaties do not have a direct impact on the domestic legal systems of specific countries. These treaties can – and should – guide legislators to draft national laws to fulfil their obligations and to incorporate the treaty rights into domestic legislation. However, it will become clear in Section Four that this has seldom been the case.

Various provisions in the selected treaties that are particularly relevant for HIV/AIDS are described below.

International Covenant on Civil and Political Rights (ICCPR)

- *Article 2:*
 - (1) Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
 - (3) Each State Party to the present Covenant undertakes:
 - (a) To ensure that any person whose rights or freedoms as herein recognised are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
 - (b) To ensure that any person claiming such a remedy shall have his right thereto determined

by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that competent authorities shall enforce such remedies when granted.

- *Article 6:* (1) Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.
- *Article 7:* No one shall be subjected to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.
- *Article 17:*
 - (1) No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
 - (2) Everyone has the right to protection of the law against such interference or attacks.
- *Article 19:* (2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally in writing or in print, in the form of art, or through any other media of his choice.
- *Article 22:* Everyone shall have the right to freedom of association with others ...
- *Article 24:* (1) Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.
- *Article 26:* All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

First Optional Protocol to the International Covenant on Civil and Political Rights

- *Article 1:* A State Party to the Covenant that becomes a Party to the present Protocol recognises the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant. No communication shall be received

by the Committee if it concerns a State Party to the Covenant which is not a party to the present Protocol.

International Covenant on Economic, Social and Cultural Rights (ICESCR)

- *Article 2:*
 (1) Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognised in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.
 (2) The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
- *Article 6:* (1) The States Parties to the present Covenant recognise the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.
- *Article 7:* The States Parties to the present Covenant recognise the right of everyone to the enjoyment of just and favourable conditions of work which ensure in particular: ... (b) Safe and healthy working conditions; (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence ...
- *Article 9:* The States Parties to the present Covenant recognise the right of everyone to social security, including social insurance.
- *Article 10:* The States Parties to the present Covenant recognise that: ... (3) Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.
- *Article 11:* (1) The States Parties to the present Covenant recognise the right of everyone to

an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions ...

- *Article 12:*
 (1) The States Parties to the present Covenant recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
 (2) The steps to be taken by the States Parties to the present Covenant to achieve the full realisation of this right shall include those necessary for: (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child; (b) The improvement of all aspects of environmental and industrial hygiene; (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases; (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.
- *Article 13:* (1) The States Parties to the present Covenant recognise the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms ...
- *Article 15:* (1) The States Parties to the present Covenant recognise the right of everyone: ... (b) To enjoy the benefits of scientific progress and its applications ...

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

- *Article 1:* For the purposes of the present Convention, the term “discrimination against women” shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.
- *Article 2:* States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:
 (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law

- and other appropriate means, the practical realisation of this principle;
- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
 - (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
 - (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
 - (e) To take all appropriate measures to eliminate discrimination against women by any person, organisation or enterprise;
 - (f) To take all appropriate measures, including legislation, to modify or abolish existing law, regulations, customs and practices which constitute discrimination against women;
 - (g) To repeal all national penal provisions which constitute discrimination against women.
- *Article 10:* States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women: ... (f) The reduction of female student drop-out rates and the organisation of programmes for girls and women who have left school prematurely; (h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.
 - *Article 11:* (1) States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular: (a) The right to work as an inalienable right of all human beings; ... (e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave; (f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.
 - *Article 12:*
 - (1) States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.
 - (2) Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-

natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

- *Article 14:* (2) States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right: ... (b) To have access to adequate health care facilities, including information, counselling and services in family planning; (c) To benefit directly from social security programmes; (d) To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, inter alia, the benefit of all community and extension services, in order to increase their technical proficiency; ... (h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

Optional Protocol to the Convention on the Elimination of Discrimination against Women

- *Article 1:* A State Party to the present Protocol ("State Party") recognises the competence of the Committee on the Elimination of Discrimination against Women ("the Committee") to receive and consider communications submitted in accordance with Article 2.
- *Article 2:* Communications may be submitted by or on behalf of individuals or groups of individuals, under the jurisdiction of a State Party, claiming to be victims of a violation of any of the rights set forth in the Convention by that State Party ...

Convention on the Rights of the Child (CRC)

- *Article 1:* For the purposes of the present Convention, a child means every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier.
- *Article 2:*
 - (1) States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.
 - (2) States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, ex-

pressed opinions, or beliefs of the child's parents, legal guardians or family members.

- *Article 3:* (1) In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
- *Article 6:*
 - (1) States Parties recognise that every child has the inherent right to life.
 - (2) States Parties shall ensure to the maximum extent possible the survival and development of the child.
- *Article 13:* (1) The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.
- *Article 15:* (1) States Parties recognise the rights of the child to freedom of association and to freedom of peaceful assembly.
- *Article 16:*
 - (1) No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.
 - (2) The child has the right to the protection of the law against such interference or attacks.
- *Article 17:* States Parties recognise the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health ...
- *Article 24:*
 - (1) States Parties recognise the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. State Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services;
 - (2) States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures: (a) To diminish infant and child mortality; (b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care; (c) To combat disease and malnutrition, including within the frame-

work of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water; (d) To ensure appropriate pre-natal and post-natal health care for mothers; (f) To develop preventive health care, guidance for parents and family planning education and services.

(3) States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

- *Article 26:* (1) States Parties shall recognise for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realisation of this right in accordance with their national law.
- *Article 27:* (1) States Parties recognise the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.
- *Article 28:* (1) States Parties recognise the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular: (a) Make primary education compulsory and available free to all; (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child and take appropriate measures such as the introduction of free education and offering financial assistance in case of need; (c) Make higher education accessible to all on the basis of capacity by every appropriate means; (d) Make educational and vocational information and guidance available and accessible to all children; (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.
- *Article 33:* States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances ...
- *Article 34:* States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent: (a) The inducement or coercion of a child to engage in any unlawful sexual activity; (b) The exploitative use of children in prostitution or other unlawful sexual practices; (c) The exploitative use of children in pornographic performances and materials.
- *Article 36:* States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

3.2 State reporting

Under all treaties, states must report periodically to the Committee established under the treaty.

Zambia did not make any reference to the HIV/AIDS epidemic in its second periodic State Report (CCPR/C/63/Add.3), under the ICCPR, submitted on 10 March 1995.¹⁹

3.3 Applicable regional legal norms

The *African Charter on Human and Peoples' Rights (ACHPR)* was adopted in 1981 but makes no specific reference to HIV/AIDS. The *African Charter on the Rights and Welfare of the Child (ACRWC)* was adopted nearly ten years later, in 1990, but still does not include any reference to HIV/AIDS. It is only within the *Guidelines on State Reporting to the African Committee on the Rights and Welfare of the Child* that mention is made of HIV/AIDS. The *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa*, which has been adopted but is not yet in force, mentions HIV/AIDS in a cursory manner.²⁰ This is very unfortunate, given the impact of HIV/AIDS on African women.

The status of these treaties in respect of the states under discussion is as follows (all dates denote ratification or accession, except when marked with 's,' in which case the treaty has only been signed by the state party):²¹

Country	ACHPR	ACRWC
Botswana	17 July 1986	
Malawi	17 November 1989	16 September 1999
Mozambique	22 February 1989	15 July 1998
Namibia	30 July 1992	13 July 1999 ^s
South Africa	09 July 1996	07 January 2000
Swaziland	15 September 1995	29 June 1992 ^s
Zambia	19 January 1984	28 February 1992^s
Zimbabwe	30 May 1986	19 January 1995

Excerpts from various provisions in the regional treaties that are particularly relevant for HIV/AIDS are listed below.

African Charter on Human and Peoples' Rights (ACHPR)

- *Article 2:* Every individual shall be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.
- *Article 4:* Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.
- *Article 5:* Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status ...
- *Article 6:* Every person shall have the right to liberty and to the security of his person ...
- *Article 9:*
 - (1) Every individual shall have the right to receive information.
 - (2) Every individual shall have the right to express and disseminate his opinions within the law.
- *Article 10:* (1) Every individual shall have the right to free association, provided that he abides by the law.

¹⁹ Zambia's second report under the ICCPR can be accessed at <http://www.unhcr.ch/tbs/doc.nsf>.

²⁰ Article 14(1) states that: "States Parties shall ensure that the right to health of women, including sexual and reproductive health, is respected and promoted. This includes:.... (d) the right to self protection and to be protected against sexually transmitted infections, including HIV/AIDS ..."

²¹ Status of ratification and signature of the ACHPR and ACRWC compiled by the University of Minnesota, Human Rights Library as of 1 January 2000. Available at www1.umn.edu/humanrts/instree/afchildratifications.html and www1.umn.edu/humanrts/instree/ratzlafchr.htm. Accessed: 13 September 2002.

- *Article 11:* Every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law, in particular those enacted in the interest of national security, the safety, health, ethics, and rights and freedoms of others.
- *Article 12:* (1) Every individual shall have the right to freedom of movement and residence within the borders of a State provided he abides by the law.
- *Article 15:* Every individual shall have the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work.
- *Article 16:*
 - (1) Every individual shall have the right to enjoy the best attainable state of physical and mental health.
 - (2) States Parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.
- *Article 17:*
 - (1) Every individual shall have the right to education.
 - (2) Every individual may freely take part in the cultural life of his community.
 - (3) The promotion and protection of morals and traditional values recognised by the community shall be the duty of the State.
- *Article 18:*
 - (1) The family shall be the natural unit and basis of society. It shall be protected by the State which shall take care of its physical health and morals.
 - (2) The State shall have the duty to assist the family which is the custodian of morals and traditional values recognised by the community.
 - (3) The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions.
 - (4) The aged and the disabled shall also have the right to special measures of protection in keeping with their physical or moral needs.
- *Article 19:* All peoples shall be equal; they shall enjoy the same respect and shall have the same rights. Nothing shall justify the domination of a people by another.
- *Article 24:* All peoples shall have the right to a general satisfactory environment favourable to their development.

African Charter on the Rights and Welfare of the Child (ACRWC)

- *Article 3:* Every child shall be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in this Charter irrespective of the child's or his/her parents' or legal guardians' race, ethnic group, colour, sex, language, religion, political or other opinion, national and social origin, fortune, birth or other status.
- *Article 4:* (1) In all actions concerning the child undertaken by any person or authority the best interests of the child shall be the primary consideration.
- *Article 5:* (1) Every child has an inherent right to life. This right shall be protected by law.
- *Article 8:* Every child shall have the right to free association and freedom of peaceful assembly in conformity with the law.
- *Article 10:* No child shall be subject to arbitrary or unlawful interference with his privacy, family home or correspondence, or to the attacks upon his honour or reputation, provided that parents or legal guardians shall have the right to exercise reasonable supervision over the conduct of their children. The child has the right to the protection of the law against such interference or attacks.
- *Article 11:*
 - (1) Every child shall have the right to an education.
 - (2) The education of the child shall be directed to: ... (h) the promotion of the child's understanding of primary health care.
 - (3) States Parties to the present Charter shall take all appropriate measures with a view to achieving the full realisation of this right and shall in particular: ... (e) take special measures in respect of female, gifted and disadvantaged children, to ensure equal access to education for all sections of the community.
- *Article 14:*
 - (1) Every child shall have the right to enjoy the best attainable state of physical, mental and spiritual health.
 - (2) State Parties to the present Charter shall undertake to pursue the full implementation of this right and in particular shall take measures: (a) to reduce infant and child mortality rate; (b) to ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care; (c) to ensure the provision of adequate nutrition and safe drinking water; (d) to combat disease and malnutrition within the framework of primary health care through the application of appropriate technology;

(e) to ensure appropriate health care for expectant and nursing mothers; (f) to develop preventative health care and family life education and provision of service; (g) to integrate basic health service programmes in national development plans ...

- *Article 21:* (1) States Parties to the present Charter shall take all appropriate measures to eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child and in particular: (a) those customs and practices prejudicial to the health or life of the child; and (b) those customs and practices discriminatory to the child on the grounds of sex or other status.
- *Article 24:* State Parties which recognise the system of adoption shall ensure that the best interest of the child shall be the paramount consideration ...
- *Article 25:* (2) State Parties to the present Charter: (a) shall ensure that a child who is parentless, or who is temporarily or permanently deprived of his or her family environment, or who in his or her best interest cannot be brought up or allowed to remain in that environment shall be provided with alternative family care, which could include among others, foster placement, or placement in suitable institutions for the care of children;
- *Article 27:* States Parties to the present Charter shall undertake to protect the child from all forms of sexual exploitation and sexual abuse and shall in particular take measures to prevent:
 - (a) the inducement, coercion or encouragement of a child to engage in any sexual activity;
 - (b) the use of children in prostitution or other sexual practices;
 - (c) the use of children in pornographic activities, performances and materials.
- *Article 28:* States Parties to the present Charter shall take all appropriate measures to protect the child from the use of narcotics and illicit use of psychotropic substances ...

According to Article 43(1) of the ACRWC, state parties must undertake to submit to the African Committee of Experts of the Rights and Welfare of the Child, through the Chairperson of the Commission of the African Union, reports on the measures that have been adopted to give effect to the provisions of the ACRWC, and the progress made in the enjoyment of the rights guaranteed in the Charter. The *Guidelines* for reporting specify that the state parties should

indicate what measures are in place for children in need of special protection, specifically in reference to AIDS orphans, in terms of Article 26 of the *Charter*.²² States are also encouraged to provide specific statistical information and indicators relevant to children in need of special protection.²³ The first report under ACRWC is due within two years of the state's ratification of the *Charter*, and thereafter reports are due every third year. Unfortunately, not one of the eight countries in this study has submitted reports to date.

3.4 SADC framework for addressing HIV/AIDS

In September 1997, the SADC Council of Ministers adopted the first relevant document addressing HIV/AIDS-related issues, the *Code of HIV/AIDS and Employment in SADC*, as developed by the Employment and Labour Sector. The main objectives of the *Code* are to sensitise employers to the issue of employee rights and HIV/AIDS, and to provide a framework for states to consolidate national employment codes on HIV/AIDS-related issues. It addresses public sector employers, legislators, employees and trade unions.

In August 1999, the 14 member states adopted the *SADC Health Protocol*.²⁴ Article 10 specifically deals with HIV/AIDS and sexually transmitted diseases (STDs). The article urges states parties to harmonise policies and approaches for the prevention and management of HIV/AIDS and STDs, and to develop regional policies and plans that work towards an inter-sectoral approach to the epidemic.

In December 1999, the SADC HIV/AIDS Task Force adopted the vision document *A SADC Society with Reduced HIV/AIDS*. It was adopted to guide the work of the SADC in the development and implementation of a multi-sectoral *HIV/AIDS Framework for 2000-2004* (hereinafter referred to as the *Strategic Framework*). The *Strategic Framework* is in principle guided by Article 10 of the *SADC Health Protocol*; all SADC sectors agree to use their comparative advantages to address the needs of those sectors and the communities they serve, whether transport, mining, tourism, etc. One of the principles that has been acknowledged as important in the development of the *Strategic Framework* is the respect for the rights of individuals.²⁵

²² Par 21(g) of the (Adopted) Guidelines for Initial Reports of State Parties under the ACRWC.

²³ Par 22.

²⁴ *SADC Health Protocol*. Available at: <http://196.36.153.56/doh/department/sadc/docs/protocol99.html>.

²⁵ *Managing the impact of HIV/AIDS in SADC*, August 2000, at page 8. Available at: <http://196/36/153/56/doh/department/sadc/docs>.

The only sector in the *Strategic Framework* that specifically mentions stigmatisation and discrimination is the Human Resources Development. This sector aims to provide information to reduce stigma and to change attitudes by, amongst other initiatives, integrating HIV/AIDS education and life skills into school curricula across the region.²⁶

In September 2000, the SADC Council of Ministers approved the *Health Sector Policy Framework Document*, as developed by the SADC Health Ministers.²⁷ A significant part of the programme focuses on HIV/AIDS and sexually transmitted diseases. One of the policy objectives in the programme, geared towards HIV/AIDS control, is to protect and promote the rights of individuals, in particular those living with or most vulnerable to HIV/AIDS.

A month prior to the adoption of the *Health Sector Policy Framework*, the SADC Health Ministers adopted *Principles to Guide Negotiations with Pharmaceutical Companies on Provision of Drugs for Treatment of HIV/AIDS-Related Conditions in SADC Countries*.²⁸ These principles focus on enabling SADC countries to make informed decisions in their negotiations with pharmaceutical companies and to consider factors such as sustainability, affordability, accessibility, appropriateness, acceptability and equity before accepting offers for free drugs or reduced prices on HIV/AIDS-related drugs.

In July 2003, the SADC Heads of Government signed the *SADC Declaration on HIV/AIDS*.²⁹ The *Declaration* affirms the commitment to address the pandemic and the issues relating to HIV/AIDS in the SADC region through multi-sectoral intervention. A new *SADC HIV/AIDS Strategic Framework and Programme of Action 2003-2007* was also issued.

3.5 Relevant OAU/AU resolutions on HIV/AIDS

Over the years, the Assembly of Heads of State and Government of the Organisation of African Unity (OAU, now called the African Union or AU) adopted a number of resolutions addressing the HIV/AIDS epidemic. Only those relevant to HIV/AIDS and human rights are discussed here.

In June 1994, the *Tunis Declaration on AIDS and the Child in Africa* was adopted by the OAU at the Assembly of Heads of State and Government in Tunis, Tunisia.³⁰ The *Declaration* declares a commitment to: "Elaborate a national policy framework to guide and support appropriate responses to the needs of affected children covering social, legal, ethical, medical and human rights issues."³¹

In July 1996, at the Thirty-Second Ordinary Session of the Heads of State and Government of the OAU, a *Resolution on Regular Reporting of the Implementation Status of OAU Declarations on HIV/AIDS in Africa* was adopted by the Assembly.³² The *Resolution* urged African leaders to implement those declarations and resolutions that had been adopted in the past, specifically referring to the *Tunis Declaration*.

On 27 April 2001, the Heads of State and Government gathered for a special summit devoted specifically to address the exceptional challenges of HIV/AIDS, tuberculosis and other related infectious diseases. This resulted in the *Abuja Declaration on HIV/AIDS, Tuberculosis and other Related Infectious Diseases*, and the *Abuja Framework for Action for the Fight against HIV/AIDS, Tuberculosis and Other Related Infectious Diseases*, aimed at implementation of the principles set forth in the *Abuja Declaration*.³³

In the *Abuja Declaration*, the Heads of State acknowledged that "stigma, silence, denial and discrimination against people living with HIV/AIDS increases the impact of the epidemic and constitutes a major barrier to an effective response to it."³⁴ The *Abuja Framework* conceptualises the

26 Ibid, at p 28.

27 Available at: <http://196.36.153.56/doh/departmentsadc/docs/framework/html>.

28 Available at: http://196.36.153.56/doh/departmentsadc/docs/negotiate_principles.html.

29 Available at: http://www.sadc.int/index.php?lang=english&pth=legal/declarations/&page=declaration_on_HIV_AIDS

30 AHG/Decl I (XXX) 1994.

31 Par 2(I).

32 AHG/Res 247 (XXXII) 1996. Available at: <http://www.unhcr.org/refugees/eng/Abuja%20Declaration.html>.

33 Available at: <http://www.unhcr.org/refugees/eng/Abuja%20Declaration.html>.

34 Par 12.

commitments made in the *Abuja Declaration* into strategies followed by subsequent activities to be implemented by member states in collaboration with all stakeholders. The protection of human rights is recognised as one of the priority areas, and the following strategies are identified:

- develop a multi-sectoral national programme for awareness of and sensitivity to the negative impact of the pandemic on people, especially vulnerable groups;
- enact relevant legislation to protect the rights of people infected and affected by HIV/AIDS and TB;
- strengthen existing legislation to: (a) address human rights violations and gender inequities, and (b) respect and protect the rights of infected and affected people;
- harmonise approaches to human rights between nations for the whole continent; and
- assist women in taking appropriate decisions to protect themselves against HIV infection.

3.6 International guidelines on HIV/AIDS and human rights

In 1996 UNAIDS, in collaboration with the Office of the United Nations High Commissioner for Human Rights, adopted *HIV/AIDS and Human Rights – International Guidelines*. The *Guidelines* focus on three crucial areas: “(1) improvement of governmental capacity for acknowledging the government’s responsibility for multi-sectoral co-ordination and accountability; (2) widespread reform of laws and legal support services, with a focus on anti-discrimination, protection of public health, and improvement of the status of women, children and marginalised groups; and (3) support for increased private sector and community participation in the response to HIV/AIDS, including building the capacity and responsibility of civil society to respond ethically and effectively.”³⁵

The *Guidelines* deal with the following human rights principles:

- *Guideline 1*: Encourage states to adopt a multi-sectoral approach through an effective national framework.
- *Guideline 2*: Enable community organisations to carry out activities in the field of ethics, human rights and law. Consult widely with such organisations in drafting all HIV policies.
- *Guideline 3*: Review and reform public health laws to adequately address HIV/AIDS.

- *Guideline 4*: Review and reform criminal laws and correctional systems to ensure that they are consistent with international human rights obligations and address HIV/AIDS without targeting vulnerable groups.
- *Guideline 5*: Enact or strengthen anti-discrimination laws to protect vulnerable groups. Ensure privacy, confidentiality and ethics in research involving human subjects.
- *Revised Guideline 6*: Enact legislation to provide for the regulation of HIV-related goods, services and information in order to ensure widespread availability of quality prevention measures and services, adequate HIV prevention and care information, and safe and effective medication at an affordable price. Ensure that all persons on a sustained and equal basis have access to quality goods, services and information for HIV/AIDS prevention, treatment, care and support, including anti-retroviral and other safe and effective medicines, diagnostics and related technologies for the treatment of HIV/AIDS and related opportunistic infections.³⁶
- *Guideline 7*: Implement and support legal support services to educate people affected by HIV/AIDS about their rights, develop expertise on HIV-related legal issues and use means other than courts such as human rights commissions to protect the rights of people affected by HIV/AIDS.
- *Guideline 8*: States, together with communities, should promote an enabling and prejudice-free environment for women, children and other vulnerable groups.
- *Guideline 9*: Promote the distribution of creative education, training and media programmes designed to change attitudes of discrimination and stigmatisation around HIV/AIDS.
- *Guideline 10*: Translate human rights principles into codes of conduct with accompanying mechanisms to implement and enforce these codes.
- *Guideline 11*: States should ensure monitoring and enforcement mechanisms to guarantee and protect HIV-related human rights.
- *Guideline 12*: States should share experiences concerning HIV-related human rights issues at an international level and through UN agencies such as UNAIDS.

³⁵ See Foreword in the *Guidelines*.

³⁶ Guideline 6 was revised in 2002 and is available at: <http://www.unhcr.ch/hiv/g6.pdf>.

4. LEGAL FRAMEWORK FOR THE PROTECTION OF HIV/AIDS AND HUMAN RIGHTS IN ZAMBIA

4.1 National legal system: General background

4.1.1 The form of government and the domestic legal system within the country

Zambia is a constitutional democracy, with the *Constitution* being the supreme law.³⁷ The 1964 *Constitution*, formulated immediately after independence, provided for a multiparty system, an independent judiciary, a bill of rights, separation of powers and a presidential system of government. The 1964 *Constitution* has since been subject to various amendments. In 1968, a referendum abolished the requirement for a referendum before making any changes to the clauses of the *Constitution*; in 1973, the *Constitution* was amended to provide for one-party politics; and in 1991 a new *Constitution* was adopted which re-introduced the referendum clause. In 1996, the *Constitution* was again amended; the changes introduced included the declaration of Zambia as a Christian nation, and the barring of chiefs from actively participating in politics.³⁸ Part III of the *Constitution* guarantees the protection of fundamental rights and freedoms of the individual.

The Zambian legal system is based on English Common Law. The *Constitution* recognises the application of customary laws in certain matters such as inheritance and marriage.³⁹ The judiciary established under Part VI of the *Constitution* is organised in a hierarchical structure and is comprised of the Supreme Court (which is the final court of appeal), the High Court, the Industrial Relations Court, the Magistrate Court and local courts.

4.1.2 Human rights provisions within the National HIV/AIDS Strategic Framework and the National HIV/AIDS Policy

The government first responded to the HIV/AIDS epidemic in 1986 by establishing the *National*

AIDS Prevention and Control Programme. This was followed in 1987 by an emergency short-term plan focusing mainly on ensuring safe blood and blood product supplies. The *First Medium Term Plan* was introduced in 1988 and covered the period up to 1992. The *Second Medium Term Plan* was in place from 1994 to 1998 and incorporated a multi-sectoral response. A *National Strategic Policy* was developed in October 2001. In March 2002, the National HIV/AIDS/STI/TB Council launched the *National HIV/AIDS/STI/TB Intervention Strategic Plan 2002-2005*.

The *Strategic Plan* has as one of its goals the utilisation of HIV/AIDS advocacy campaigns for support, services and to guarantee human rights for PLWHAs. The campaigns are to be undertaken through traditional structures, leadership and the workplace. Specific strategies to achieve this are:⁴⁰

- eliminating stigma associated with HIV/AIDS through a national communication campaign;
- securing basic health and hygiene, and access to good nutrition; and
- involving people living with HIV/AIDS in policies and programmes.

In February 2002, the Ministry of Health issued the *Zambian National HIV/AIDS/STI/TB Policy* to provide a framework for outlining the response to these diseases while also stating the vision, objectives, policy measures, institutional legal framework and roles to be performed by various sectors in government. One of the guiding principles of the *National Policy* is that: “human rights and dignity of all people, irrespective of their HIV status, should be respected and stigma and discrimination against people with HIV/AIDS must be eliminated.”⁴¹

37 Section 1(1) of the 1996 *Constitution* states: “Zambia is a unitary, indivisible, multi-party and democratic sovereign State.” The supremacy of the *Constitution* is declared in Section 1(3).

38 The 1996 *Constitution* was based on recommendations made by a Commission of Enquiry appointed in 1994 to review the 1991 *Constitution*.

39 Section 23(4)(c,d).

40 See page 17 of the *Strategic Plan*.

41 See page 18 of the *National Policy*.

On 30 August 2002, the *National HIV/AIDS/STI/TB Council Bill* was promulgated to provide for the establishment of a National HIV/AIDS/STI/TB Council and to define its functions and provide for its composition. The Council has the overall function of co-ordinating a national multi-sectoral response and is responsible for the development and co-ordination of policies, plans and strategies for the prevention of HIV/AIDS and related diseases.

In September 1999, the Ministry of Health in co-operation with the Central Board of Health (CBOH) published a report entitled *HIV/AIDS in Zambia - Background, Projections, Impacts and Interventions*. The report summarised the government's response at the time. The report contains a section entitled *HIV/AIDS and Human Rights* where it states that: "Zambia has identified respect for the basic human rights of all persons as one of the cornerstones of its national response to the HIV/AIDS epidemic."⁴² The report identifies important areas where human rights are as important in the fight against HIV/AIDS, such as stigma, testing and confidentiality, employment and information.

4.1.3 Domestication of international and regional human rights treaties

The legal framework in Zambia is dualist; international instruments are not self-executing and require legislative implementation to be effective as law. Thus, an individual cannot complain in a domestic court about a breach of Zambia's international human rights obligations unless the right has been incorporated into domestic law. Nevertheless, the courts have in certain cases given judicial notice to international instruments that Zambia has ratified or acceded to, even when not incorporated into domestic legislation, and have accordingly given redress.⁴³

No specific implementing legislation relating to ratified treaties exists. However, Zambia has adopted the *National Capacity Building Programme for Good Governance (NCBPGG)*, which prioritises constitutionalism and human rights, and acknowledges the problems created by lack of domestication. The government is currently addressing the possibility of incorporating treaties and instruments to which Zambia is a party into domestic law.

Amongst the policy measures included in the 2002 *National Policy*, the domestication of international instruments and declarations on HIV/AIDS is specifically mentioned. The 2002 *National Policy* states that the Government will:⁴⁴

- uphold the international declarations assented to on HIV/AIDS and translate them into strategies suitable to the local environment; and
- collaborate with international and regional organisations with similar objectives and strategies in addressing the HIV/AIDS epidemic.

4.2 HIV/AIDS-specific regulations

4.2.1 Litigation on HIV/AIDS and human rights within domestic courts

To date, no domestic court has dealt with questions relating to HIV/AIDS and human rights.⁴⁵

4.2.2 National legislation that addresses (directly or indirectly) issues in relation to HIV/AIDS

- *Constitution of the Republic of Zambia, 1996*
- *The National HIV/AIDS/STI/TB Council Bill, 30 August 2002*
- *The Employment Act*, Chapter 268 of the Laws of Zambia
- *The National Health Services Act*, Chapter 315 of the Laws of Zambia

4.2.3 HIV/AIDS policies, guidelines and programmes

- *Draft National HIV/AIDS/STI/TB Intervention Strategic Plan 2002-2005*, March 2002
- *Strategic Framework 2001-2003*, National HIV/AIDS/STD/TB Council, October 2000
- *National HIV/AIDS/STD/TB Policy*, October 2001
- *National HIV/AIDS/STD/TB Policy*, February 2002
- *National Gender Policy*, March 2000
- *Guidelines on HIV/AIDS Counselling in Zambia*, Ministry of Health, 2000

⁴² See page 64 of the report.

⁴³ For example, see *R v Sarah Longwe, The People v John Banda* (1998).

⁴⁴ See page 20 of the National Policy.

⁴⁵ Increased awareness of the rights of PLWHAs has resulted in increased media coverage. In addition, NGOs working in this area are encouraging PLWHAs who have had their rights violated to seek redress. However, lack of resources continues to hinder access to justice.

- *Code of Ethics and Practice for Counselling in Zambia*, 1999
- *Zambia Poverty Reduction Strategy Paper 2002-2004*
- *Integrated Reproductive Health Plan of Action 2002-2006*, August 2001
- *Integrated Reproductive Health Plan of Action 2003-2005*, October 2002
- *Integrated Technical Guidelines for Front Line Health Workers*, May 1997
- *Guidelines for Setting up ARV Treatment Centres in Zambia*

The government, through the Ministry of Health (MOH), has made efforts to respond to the HIV/AIDS epidemic and has developed a framework to establish the National HIV/AIDS/STD/TB Council. The *HIV/AIDS/STI/TB Council Bill* currently awaits Presidential Assent.

4.2.4 Domestic incorporation of the International Guidelines on HIV/AIDS and Human Rights

Information available from the National AIDS Council confirms that the state is aware of the *HIV/AIDS and Human Rights - International Guidelines*.

4.2.5 HIV/AIDS within the government's social assistance plan

People living with AIDS in Zambia are not excluded from social security and assistance. Nevertheless, there is no policy specifically formulated to apply to PLWHAs. PLWHAs in Zambia do not qualify for disability grants.

The legislation that regulates the social security system is the *National Pension Scheme Act*. Branches of social security that are applicable to every Zambian include:

- free medical care provided for children under the age of 5 years and pregnant women and adults over the age of 60; and
- cash sickness benefits payable to those in formal employment whose illness is evidenced by a sick report. Once retired on health grounds, this is no longer payable.

Vulnerable groups are assisted through the *Public Welfare Assistance Scheme*, which is funded by the government, churches, NGOs, private companies and individuals.⁴⁶ Other programmes

such as drop-in centres are involved in food provision, education, and recreation for PLWHAs, but these are on a very small scale and generally under-funded.

4.3 Health sector

4.3.1 HIV/AIDS and the right of access to health care

The right to health care is provided for under the Directive Principles of State Policy contained in Part IX of the *Constitution*.⁴⁷ The *Public Health Act* Cap 295, the *National Health Service Act* Cap 315 and the *Employment Act* Cap 268 provide for the right to access to health care. In addition, government has issued a National Health Policy that implements some WHO primary health care standards. The government through the MOH has made efforts to respond to the HIV/AIDS epidemic and has developed a framework to establish the National HIV/AIDS/STD/TB Council.

The impact of HIV/AIDS on the health sector has been profound, and it continues to be of great concern. It is projected that AIDS patients will utilise 45% of all hospital beds by 2014, impacting on other patients.

The government through the MOH and the National HIV/AIDS/STD/TB Council has put the following measures in place to address the HIV/AIDS epidemic, and has embarked on the following programmes:

- VCT services are being provided in 22 centres spread throughout the country;
- provision of youth-friendly reproductive health services in order to encourage healthy behaviour and provide access to care to youth, and the creation of youth-friendly corners in the health centres;
- provision of technical and financial support to catalytic projects being run by either government departments or NGOs;
- assisting communities to create District Multi-Sectoral HIV/AIDS Task Force Committees to address issues pertaining to the smooth running of HIV/AIDS activities;

⁴⁶ It is still unclear whether PLWHAs would automatically fall under this category, although AIDS orphans do.

⁴⁷ The Directive Principles of State Policy are not in themselves binding and are subject to the availability of funds. See Section 110, 1996 *Constitution*.

- use of the home-based care concept. This was developed in 1986 at Chikankata Mission Hospital, and is now widely accepted by most communities. This programme is managed and supported by the community and has managed to reduce the demand for hospital beds by chronically ill patients;
- the prevention of MTCT programme is being tested in three districts out of 72. The major limitation on the programme being expanded is the cost of the required drugs;
- working with traditional healers to challenge existing myths and misconceptions about HIV/AIDS; and
- validation of the efficacy of traditional herbs claimed as HIV treatment by traditional healers.

4.3.2 HIV testing, notification and confidentiality

HIV/AIDS/STI/TB are notifiable diseases under the *Public Health Act (Infectious Diseases Regulations)*.⁴⁸ A policy on testing for HIV exists and is based on informed consent and pre- and post-test counselling. Section 3.9.2 of the *2002 National Policy* states the following in terms of partner notification: “In order to bring about shared confidentiality that is desirable to promote prevention, better care and coping with HIV/AIDS, government shall legislate against individuals who deliberately and knowingly withhold their HIV status from their partners/spouses.”⁴⁹ The principle of partner notification is also addressed in one of the policy statements in the *2000 Guidelines on HIV/AIDS Counselling in Zambia* which states: “Promotion of partner notification, social behaviour change and individual responsibility to prevent further HIV infection shall be an integral part of preventive counselling.”⁵⁰ The *Guidelines on HIV/AIDS Counselling* further mentions that compulsory and mandatory HIV testing is a violation of human rights and shall only be allowed in exceptional circumstances.⁵¹

4.3.3 Patients’ rights

HIV/AIDS patients have the same rights as every other Zambian when using public or private health care services. However some NGOs working in this area such as Family Health Trust

have entered into private agreements with government to run hospitals so that they are able to provide specific treatment for patients with HIV/AIDS.

4.3.4 Access to essential HIV/AIDS drugs

The government intends to strengthen the health care delivery system by the provision of adequate resources. It has provided for the importation of anti-retrovirals (ARVs) for over 10 000 HIV/AIDS patients in 2002. According to the *Draft National HIV/AIDS/STI/TB Intervention Strategic Plan*, the generic substitution of ARVs such as nevirapine (NVP) and zidovudine (AZT), the primary drugs used to prevent MTCT,⁵² is encouraged. Government intends to achieve this by engaging in price negotiations with manufacturers of ARV drugs, and making the drugs more accessible and affordable. Also, the *Draft Strategic Plan* states that government will ensure the registration of anti-retroviral drugs brought into the country in accordance with the regulations governing the procurement and use of drugs and medical supplies.

Since the 1990’s, treatment has included ARVs mainly in the private sector with the public sector providing laboratory support. At present, there is a pilot guided scheme on the use of ARVs in the public sector, beginning with three districts, with the view to later expand to all provincial centres. The scheme is to be subsidised and a revolving fund is to be established. The role of NGO networks in the delivery mechanism is defined under the *Draft Strategic Plan*.⁵³

One of the specific objectives listed in the *Draft Strategic Plan* is “to provide appropriate care, support and treatment to HIV/AIDS-infected persons and those affected by HIV/AIDS and other opportunistic infections by the year 2005 ... making treatment of TB and other opportunistic infection available and introducing ARVs into the public and private health sphere.”⁵⁴

4.3.5 Medical trials on human subjects

There are currently no clinical trials taking place in Zambia. The *Constitution* does not guarantee

⁴⁸ See page 15 of the *2002 National Policy*.

⁴⁹ See page 27 of the *2002 National Policy*.

⁵⁰ Page 4 of the *Guidelines on HIV/AIDS Counselling*.

⁵¹ Page 5.

⁵² See page 18 of the *Draft Strategic Plan*. Similar provisions are found in the *2002 National Policy*. See page 24 with regard to generic substitution of ARVs and the treatment of opportunistic infections.

⁵³ This forms part of the first level priority programmes within the HIV/AIDS interventions of the *Poverty Reduction Strategy Paper 2002-2004* issued by the Ministry of Finance and National Planning. Some of the other objectives and prioritised interventions at this level are: 1) The reduction of new HIV/AIDS infections through communication campaigns and improved condom distribution. 2) Reducing the socio-economic impact of HIV/AIDS by expansion of access to quality VCT plus services, community based home care and ARV treatment. 3) Improving the quality of life of orphans and vulnerable children. See pages 112-114 of the *Poverty Reduction Strategy Paper*.

⁵⁴ See page 18 of the *Draft Strategic Plan*.

the right to bodily and psychological integrity but provides for the protection from inhuman treatment.⁵⁵ Section 3.3.9 of the *Guidelines on HIV/AIDS Counselling* deals with research counselling and recommends the following policy guidelines in terms of HIV/AIDS research:⁵⁶

- approval for conducting research in HIV/AIDS counselling must be sought from the National HIV/AIDS Research Committee;
- research related to counselling shall not be carried out on children younger than 12 years where adults would form suitable subjects; and
- use of research information related to counselling shall be confined to content that can be disguised to ensure full protection of the identity of research subjects.

4.3.6 Condoms

According to the *Sexual Behaviour Survey 1998*, knowledge of condom use is high at about 95%, but usage is low at about 24%. Condoms are more accessible in the urban settings than in rural areas. Social marketing is the primary strategy for increasing the access and acceptability of condoms. Where condoms are sold, it is at a minimal cost of about 300-500 Kwacha (US \$0.07-0.11). Male condoms are more actively marketed than female condoms. Government, through the Central Board of Health (CBOH), various District Health Management Teams (DHMTs), and various NGOs, distributes both male and female condoms countrywide and free of charge.

The *Draft Strategic Plan* suggests the following strategies in terms of condoms:⁵⁷ (1) strengthen the public sector distribution of free condoms by increasing distribution points; (2) make condoms available at affordable prices through social marketing; and (3) promote the use of male and female condoms.

4.3.7 HIV/AIDS and the mentally ill

The *2002 National Policy* includes a section entitled “Differently Abled Persons.” It states: “In order to resolve the challenges associated with people with different abilities, government shall integrate the HIV/AIDS/STI/TB services required by people with different abilities in the existing health and social welfare delivery systems.”⁵⁸

4.4 Equality and non-discrimination

4.4.1 The Constitution and the right to equality and non-discrimination

Section 23(1) of the *Constitution* provides for protection against discrimination. Section 23(3) defines discriminatory as: “affording different treatment to different persons attributable, wholly or mainly to their respective descriptions by race, tribe, sex, place of origin, marital status, political opinions, colour or creed, whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.” The anti-discriminatory provision, however, does not specifically state that HIV status is a ground for non-discrimination.

4.4.2 Specialised legislation on equality and non-discrimination

Zambia’s Permanent Human Rights Commission (PHRC), established to promote and protect human rights, has played a very active role in resolving issues of discrimination against women, and has recently dealt with cases relating to discrimination due to HIV/AIDS status. However, the PHRC’s powers are limited; it can only make recommendations and has no mechanism to enforce its findings. Section 3.9.3 of the *2002 National Policy* states that in order to eliminate stigma and achieve human and constitutional rights for HIV-infected people, the government: “shall promote education and information to the public to eliminate discrimination against PLWHAs.”⁵⁹

4.5 Labour rights

4.5.1 HIV/AIDS in the workplace

There are no HIV/AIDS-specific mechanisms in place that protect employees living with HIV/AIDS. The *Employment Act* Cap 268 and the *Industrial Relation Act* Cap 269 currently protect workers against discriminatory practices. The *Employment Act* under Section 28 requires that a medical officer should medically examine every employee before he/she enters into a contract of service of at least six months duration. The purpose of this examination is to ascertain the

⁵⁵ Section 15 of the *Constitution*.

⁵⁶ Pages 10-11 of the *Guidelines on HIV/AIDS Counselling*.

⁵⁷ See page 13 of the *Draft Strategic Plan*.

⁵⁸ Section 3.9.4, page 28 of the *2002 National Policy*.

⁵⁹ See page 27 of the *2002 National Policy*.

fitness of the employee to undertake the work. The *Employment Act* does not require that prospective employees be tested for HIV/AIDS; however, some institutions do require testing. Currently the Zambian Defence Force requires all applicants to undergo an HIV test. If the recruit tests positive, the Defence Force will not accept him/her.

The *2000 Guidelines on HIV/AIDS Counselling* clearly state that pre-employment compulsory HIV screening as part of the assessment of fitness to work is unnecessary and shall not be required.⁶⁰ The *Guidelines on HIV/AIDS Counselling* further declare that: “Persons in the workplace shall not be tested for HIV infection, nor requested to leave employment on account of their HIV seropositivity unless they are medically unfit to work. No person must be discriminated, stigmatised or isolated because of his/her AIDS condition.”⁶¹

The Network for Zambian People Living with HIV/AIDS (NZP+) has a human rights referral centre that screens cases and makes referrals to appropriate services for legal redress and social services. The referral centre helps to ensure an appropriate service response by screening clients and referring them to organisations that have agreed to handle cases of discrimination, such as the National Legal Aid Clinic for Women, YWCA, and Women and Law in Southern Africa/Zambia (WILSA).

4.5.2 HIV/AIDS and medical schemes

No medical schemes act is in place to regulate the functioning of medical schemes on a national level. There are also no measures in place to ensure that medical schemes offered by an employer do not discriminate against employees living with HIV/AIDS.

4.5.3 Insurance and HIV/AIDS

The insurance law does not regulate the granting of life insurance to PLWHAs. In cases where an HIV test is not undertaken, the following clause is standard in an insurance policy: “No benefits shall be payable under this policy in respect of a claim if the death of the one insured occurs within a period of five years from the date of acceptance where the death is as a result of AIDS or AIDS-related disease.”⁶²

Section 3.9.3 of the *2002 National Policy* encourages the insurance industry to develop and apply policies that take into account the insurance needs of persons with HIV/AIDS.⁶³ Certain insurance companies do provide for alternative plans such as the swift saving plan or the unit link plan.

Information pertaining to an individual’s HIV/AIDS status is kept confidential. Information about the HIV status of a client is taken personally from the underwriter to the personal doctor who in turn relays this information to the client.

4.6 Gender rights

4.6.1 Legal status of women and the role of cultural practices

The *Constitution* provides for the equality of women.⁶⁴ Men and women both enjoy the same basic human rights and freedoms without discrimination.⁶⁵ Zambia, like most African countries, has customary rules and traditions that it adheres to very strongly. HIV/AIDS has disproportionately affected women in Zambia as a result of certain cultural and traditional practices. These include:

- *Polygyny*: An accepted practice particularly in the rural areas.
- *Ritual sexual cleansing of widows/widowers*: The practice of sexual cleansing of the widow or widower increases the risk of HIV infection.
- *Dry sex*: The use of drying agents by females prior to sexual intercourse can create lesions or sores that increase vulnerability to HIV. A *Sexual Behaviour Survey* carried out in 1998 found that 4% of men and 18% of women reported engaging in dry sex in their last encounter with a non-regular sexual partner. About 2% of adolescent men and 15% of adolescent women said they engaged in dry sex.
- *The subordination of women*: This cultural practice prohibits women from insisting on safe sexual practices because they are taught at a very early age and at initiation ceremonies to

⁶⁰ Page 4 of the *Guidelines on HIV/AIDS Counselling*.

⁶¹ Ibid.

⁶² This clause is commonly referred to as the *AIDS Clause*.

⁶³ See page 27 of the *2002 National Policy*.

⁶⁴ Section 11 of the *Constitution*.

⁶⁵ Section 23 of the *Constitution*.

be submissive to men. It is considered taboo for a woman to demand the use of contraceptives such as condoms for purposes of safe sexual practices.

Although there is increased awareness of the danger posed by these cultural and traditional practices, they continue to occur, especially in rural areas. No legislative measures have been undertaken to change the manner in which these are practised.

4.6.2 Legislation and policies protecting women and the most vulnerable in society

Section 3.10 of the 2002 *National Policy* states in terms of gender: “Government shall strengthen the enforcement of existing legislation dealing with sexual harassment, abuse and violence.”⁶⁶

In March 2000, the Gender Development Division of the Office of the President enacted a revised *National Gender Policy*. Section 4(3) of the *National Gender Policy* deals with education and training, with subsection (k) stating that: “the government will integrate reproductive health education in the curriculum to prevent amongst others early pregnancy as well as HIV/AIDS.”⁶⁷ The *National Gender Policy* also addresses gender violence and recommends the following interventions in an attempt to reduce and ultimately eliminate all forms of gender violence:

- promote awareness through campaigns to change harmful and negative cultural practices of society and especially target health and media personnel, the police and other security and defence agencies in terms of gender issues; and
- promote and conduct awareness campaigns targeted at women and men about the existence of legal provisions in the *Penal Code*, *Intestate Succession Act* and other laws protecting women and those with disabilities against violence, sexual harassment and abuse.⁶⁸

The *National Gender Policy* further advocates for the strengthening, enforcement or enactment of laws and procedures to make all forms of gender violence such as rape punishable with harsher penalties.⁶⁹

The government is also addressing the education of women on HIV/AIDS and reproductive health through the October 2002 draft *Integrated Reproductive Health Plan of Action 2003-2005*.⁷⁰

The *Guidelines on HIV/AIDS Counselling* specifically refers to the counselling of women in Section 3.3.4 and mentions amongst its policy statements: “Persons who have unlawful sexual intercourse with women or men must undergo compulsory testing for HIV infection. In this case a court or other lawful authority may allow the results to be known to the concerned parties ... the traditional practice of cleansing by sexual intercourse must be discouraged and avoided.”⁷¹

Chapter XV, Section 132 of the *Penal Code* prohibits rape and also criminalises marital rape. Section 133 states the penalty for rape is imprisonment for life. Section 134 also makes life imprisonment the penalty for attempted rape. Defilement of girls under 16 is illegal in terms of Section 138(1) and Section 159 criminalises incest. In 1997, the police department established a Victim Support Unit (VSU) tasked with providing legal protection for girls, women and the elderly who have been subjected to sexual violence and abuse.

4.6.3 Administering ARVs to rape survivors

There are no measures in place to ensure the administration of ARVs to people who have been sexually abused.

4.6.4 Commercial sex workers

Prostitution is not illegal under Zambian law; however, it is illegal to solicit customers or to live off the earnings of someone engaged in sex work. Sections 146(1) and 147 of the *Penal Code* state:⁷² “Every male person who (a) knowingly lives wholly or in part on the earnings of prostitution; or

⁶⁶ See page 28 of the 2002 *National Policy*.

⁶⁷ Page 66 of the *National Gender Policy*.

⁶⁸ Section 4.18 pages 86-88 of the *National Gender Policy*.

⁶⁹ See Section 4.18 on policy measures aimed at strengthening the legal framework.

⁷⁰ This was preceded by another Draft in August 2001 outlining a plan of action for 2002-2006.

⁷¹ Page 7 of the *Guidelines on HIV/AIDS Counselling*. In Section 3.3.5, it is stated that the same policy is to be applied to children who have

been subjected to sexual abuse.

⁷² For a detailed discussion of sex work in Zambia see the November 2002 publication of Human Rights Watch *Suffering in Silence - The Links between Human Rights Abuses and HIV Transmission in Zambia*, pages 38-41. Human Rights Watch reports that police repeatedly arrested sex workers and then either freed them in the morning after paying a fine of 10 000 Kwacha or released them after demanding sexual services as payment.

(b) in any public place persistently solicits or importunes for immoral purposes; is guilty of a misdemeanour”. (147) Every woman who knowingly lives wholly or in part on the earnings of the prostitution of another or who is proved to have, for the purpose of gain, exercised control, direction or influence over the movements of a prostitute in such a manner as to show that she is aiding, abetting or compelling her prostitution with any person, or generally, is guilty of a misdemeanour.”

Section 3.8.2 of the 2002 *National Policy* states the following in terms of commercial sex work: “Government shall (a) enforce the provision of the existing law and provide facilities for rehabilitation of sex workers; (b) target clients of sex workers with appropriate information and education and encourage them to take responsibility for their partners’ sexual health.”⁷³

4.6.5 Homosexuality and HIV/AIDS

Same sex relationships are criminalised in terms of Sections 155 and 158 of the *Penal Code*. Section 158 focuses specifically on “indecent practices between males.” It appears that many homosexuals have been arrested and charged under the *Penal Code* but the charges are usually dropped due to publicity, a lack of evidence, or the parties are fined and released.⁷⁴

4.7 Children’s rights

4.7.1 Health care, orphans and HIV/AIDS

The *Constitution* guarantees the enjoyment of basic human rights and freedoms to all, including children. All children under the age of 5 years are entitled to receive free health care at any public health institution or facility in the country while the *Guidelines on HIV/AIDS Counselling* recommends that children with AIDS should be provided with free medical care.⁷⁵ At present, children living with HIV/AIDS do not have special access to health care facilities, and are subjected to the same conditions as adults.

Both the government and NGOs involved in HIV/AIDS programmes recognise the importance of a continuum of care. This continuum includes efforts to prevent HIV infection in the first instance and to provide counselling, spiritual and emotional support and medical care to persons who are HIV infected. Currently the government through the Ministry of Health and the CBOH has made the following interventions in a bid to reduce mother-to-child transmission (MTCT) of HIV:

- providing VCT and access to family planning services;
- reducing the transmission of HIV during breastfeeding by encouraging the use of alternative feeding; and
- using anti-retroviral therapy. In 2002, it is estimated that 800 HIV-positive pregnant women will receive free Nevirapine, to help prevent MTCT. This is through a USAID-funded project, Linkages, which has already trained 63 healthcare providers in Ndola on how to administer the drug. The CBOH has set up the Prevention of MTCT Project, which promotes the prevention of transmission of HIV from pregnant mothers to their babies at three pilot projects sites in Lusaka, Mbala and Monze.

The mother-to-child package is supported by 4 components, which are:

- provision of good quality voluntary and confidential counselling and HIV testing for women and their partners, including counselling on feeding options;
- integration of a minimum package of care, including anti-retroviral drugs (AZT or Nevirapine) into antenatal and delivery services;
- formation or strengthening of community support networks for the mothers and children; and
- advocacy and programme communication.⁷⁶

One of the specific objectives of the *Draft Strategic Plan* is the provision of improved care and support services for orphans and vulnerable children through, amongst other strategies, ensuring provision of education, shelter, clothing and other basic needs to orphaned children, particularly girls.⁷⁷

⁷³ See pages 26–27 of the 2002 *National Policy*.

⁷⁴ For a discussion on homosexuality in Zambia, see <http://www.mask.org.za/Archive%20Web%20Files/Updated%20060601/sections/AfricaPerCountry/organisations/ilgareport2000.htm>.

⁷⁵ See page 8 of the *Guidelines on HIV/AIDS Counselling*.

⁷⁶ See page 29 of the *Strategic Framework*.

⁷⁷ See page 20 of the *Draft Strategic Plan*.

4.7.2 HIV/AIDS and the educational system

The National Policy on Education gives high priority to the education of girls. The Ministry of Education (MOE) is trying to improve the girls' participation and retention in schools through the Programme for the Advancement of Girls' Education (PAGE).⁷⁸ The PAGE programme aims to:

- create girl-friendly schools;
- sensitise communities and parents about the need for education for girls;
- create single sex classes for girls;
- involve parents and guardians in the education of their daughters; and
- improve teaching methodology.

Teachers do not receive any special training to sensitise them to the needs of HIV-positive children. Anti-AIDS clubs have been established in various schools in Zambia; these clubs are run by NGOs. The MOE recognises the need for such educational activities and as a result has recommended the introduction of supplementary material such as the *Happy, Healthy and Safe Manual* developed by Family Health Trust into schools.

The 2002 *National Policy* recognises that the government must ensure that HIV/AIDS education which has been integrated in the school curricula is regularly reviewed and implemented.⁷⁹ The Policy also encourages and supports integration of positive HIV/AIDS education in traditional sexual socialisation institutions and activities.⁸⁰

The *Guidelines on HIV/AIDS Counselling in Zambia* recommends as part of its policy statements that no child must be discriminated against in any reasonable circumstances because of his/her AIDS condition.⁸¹

4.8 Criminal law and HIV/AIDS

There are no HIV/AIDS-specific provisions in Zambian criminal law. However various NGOs such as the YWCA have been advocating harsher sentences for rapists and other sex offenders for harmful HIV-related behaviour.

Section 3.9.1 (b) of the 2002 *National Policy* states that mandatory testing should be legalised in the case of persons charged with any sexual offence that could involve risk of HIV transmission.⁸² Moreover, Section 3.9.6 of the 2002 *National Policy* mentions the provision of a framework to deal with the wilful transmission of HIV, stating that the government shall legislate against wilful transmission of HIV and will put in place support systems for victims and offenders in the form of counselling, education, information, rehabilitation and appropriate therapy.⁸³

4.9 HIV/AIDS and prisons

There are approximately 13 000 men and women in Zambia's prisons. Prisoners' vulnerability to HIV/AIDS stems from engaging in unprotected sex, which is usually in the form of rape. There is an extremely high prevalence rate of STDs, and very low and inconsistent use of condoms in prisons. There are no official policies in place to stop the spread of HIV/AIDS in prisons; the distribution of condoms in prisons is prohibited by law⁸⁴ and there is no policy on HIV testing and education in prisons. The number of prisoners who are HIV positive is unknown. This is due to the fact that no prison has the testing facilities available to conduct HIV surveillance studies.

An NGO called In But Free seeks to promote HIV/AIDS prevention in prisons using inmates and officers as key players in the intervention measures. These measures include:

- training inmates as peer educators (PEs);
- training prison officers as counsellors;

⁷⁸ Nevertheless Human Rights Watch reported in 2002 that significantly lower numbers of girls than boys are enrolled in schools and that there is a big dropout of girls after Grade Four. See *Suffering in Silence - The Links between Human Rights Abuses and HIV Transmission to Girls in Zambia*, pages 45-48, where it is reported that current government policy allows a girl to return to school once after falling pregnant but not a second time, whilst there is no sanction against boys who father children.

⁷⁹ See page 22 of the 2002 *National Policy*.

⁸⁰ Human Rights Watch, on the other hand, reports that despite the recent attempts to integrate an AIDS component into the curricu-

lum, nothing has materialised and most information is disseminated through NGOs instead of the formal education sector. See page 48 of *Suffering in Silence - Links between Human Rights Abuses and HIV Transmission to Girls in Zambia*.

⁸¹ Section 3.3.5, page 8 of the *Guidelines*.

⁸² See page 27 of the 2002 *National Policy*.

⁸³ See page 28 of the 2002 *National Policy*.

⁸⁴ Although the distribution of condoms is "encouraged" in the 2002 *National Policy*. See page 27.

- producing and distributing IEC materials;
- HIV/AIDS counselling and testing; and
- providing nutritional support for ill inmates.

Despite the efforts of In But Free, prisoners have little or no access to medical care, thus delaying the timely diagnosis and treatment of STDs. HIV-positive prisoners do not have access to ARVs. HIV-positive prisoners are not kept separately from other prisoners.

In June 1995, a pilot project was initiated at Kamfinsa Prison. The project focuses on the use of peer education activities to sensitise prisoners about the factors that make them vulnerable to HIV infection. The project also encourages VCT and the promotion of hygiene in order to reduce contagious diseases such as TB. To date, 443 inmates have been trained as peer educators, 64 prison officers have been trained as counsellors, and community mobilisation has been high. The project's intervention strategies cover some of the determinants of the prisoners' vulnerability to HIV infection, such as lack of information, the dangers associated with men having sex with men, and access to care and counselling. However, other issues and areas of concern, including rape, coercion, abstinence, congestion, exchange of sexual favours, sharing of shaving instruments, drug abuse, safe sex and access to condoms, are not addressed.

5. CONCLUSIONS AND RECOMMENDATIONS

This research project has shown that although HIV/AIDS has not been included in any international or regional treaties, relevant resolutions and guidelines do exist, and specific provisions in the major treaties will apply to the situations of people living with or affected by HIV/AIDS. Some states have included the measures that they undertook to address HIV/AIDS in their state reports, and the treaty monitoring bodies have often commented on these efforts in Concluding Observations. Clearly, most, if not all, of the 8 SADC countries surveyed have yet to incorporate treaty obligations into domestic legislation. It is also clear that most countries still operate with a policy-based approach to HIV/AIDS, rather than a rights-based approach, even though the UNAIDS and OHCHR *HIV/AIDS and Human Rights – International Guidelines* offers guidance to move from policy to rights.

It is against this background that the country reports should be analysed. Firstly, the aim is to identify those human rights principles that already exist which can assist with the adoption of a human rights-based approach, and secondly, to identify and make recommendations where the governments' responses have not included human rights.

Three general trends should be highlighted:

- Firstly, the HIV/AIDS responses in the various countries from the reporting of the first case in the mid-1980s has followed a very similar approach. Initially, in each country the Ministry of Health co-ordinated the response through a short-term plan, which focused mainly on issues of blood screening. This was followed by one or more medium-term plans in the mid-to late 1990s, ultimately heralding the multi-sectoral approach adopted by all the countries by the end of the 1990s. Thus, all eight countries adopted national strategic frameworks on HIV/AIDS and all except South Africa, Namibia and Mozambique adopted further national policies on HIV/AIDS to give effect to the goals in the strategic frameworks. To varying degrees, this development from short-term plans to multi-sectoral strategic frameworks was also

accompanied by a gradual inclusion of human rights provisions in the HIV/AIDS discourse. This coincided with an overall trend in the SADC countries to adopt new constitutions with a bill of rights. For example, new constitutions were adopted by Namibia in 1990, and by both South Africa and Malawi in 1994.

- Secondly, the legislative frameworks analysed indicate overwhelmingly that in addressing the HIV/AIDS epidemic, and affording protection to the rights of those affected or infected, states elect to respond by introducing policies, codes or guidelines, rather than legislation. This means that government interventions are not legally binding and generally cannot be enforced in the courts. Thus, people living with or affected by HIV/AIDS have few specific enforceable rights. Obligations with respect to human rights are further minimised by states' reluctance to transform ratified human rights treaties into domestic legislation.
- Thirdly, where legislation does address HIV/AIDS issues, it tends to be limited to the areas of criminal law and labour law. Countries are inclined to promulgate criminal laws that try to "contain" the disease based on a model of "control" over the spread of the disease. Botswana, Namibia, South Africa and Zimbabwe have amended their criminal laws to provide for harsher sentencing of HIV-positive sexual offenders, whilst Zimbabwe has also criminalised the deliberate transmission of HIV. Swaziland and Zambia have declared that they will follow suit in the near future. With the exception of South Africa (in relation to homosexuality), governments have targeted homosexuals and commercial sex workers, groups that are already stigmatised in society, by criminalising their behaviour. In terms of labour legislation, governments have attempted to secure economic stability by focusing on the "economic active," people between the ages of 19 and 45 years, which is the age group that is hardest hit by the epidemic. Mozambique, Namibia, South Africa and Zimbabwe have adopted workplace legislation that outlaws discrimination on the basis of HIV status, prohibits pre-employment testing and secures medical benefits for HIV-positive employees. These efforts with respect

to labour rights are commendable; however, governments' efforts should not end with employment, but rather with an attempt to guarantee human rights in all spheres.

To guide governments toward a more inclusive human-rights-based response, the following steps are recommended:

- Those countries that have not developed a national HIV/AIDS policy to complement the national strategic framework should do so.
- In revising the current strategic frameworks and national policies (usually revised every two or five years), the inclusion of human rights provisions in all spheres/sectors should be a priority. Currently, most frameworks merely mention discrimination and stigmatisation.
- Countries should comply with international and regional treaty obligations and domesticate the provisions of these treaties through national legislation.
- Countries should review and revise national legislation on social assistance and security to provide specifically for AIDS orphans, families caring for people with AIDS, and people living with AIDS. This would avoid the difficulties of interpreting claims in terms of disability grants.
- Countries should develop a separate national policy on voluntary HIV testing, pre- and post-test counselling and factors affecting confidentiality (such as informing an HIV-positive person's partner of his/her status), and avoid the principle of shared confidentiality.
- Countries should develop legislation protecting the rights of volunteers in medical trials testing the effects of new HIV drugs and vaccines. Legislation should also regulate the treatment of HIV-positive patients by private and public health care services, specifically prohibiting discrimination against HIV-positive patients.
- HIV/AIDS-specific legislation prohibiting discrimination on the grounds of HIV status should be developed for all spheres.
- Where countries have not developed HIV/AIDS-specific legislation for the workplace, this must be made a priority, focusing on issues such as non-discrimination against HIV-positive employees, prohibition of pre-employment HIV testing, offering medical benefits that cater for the special needs of HIV-positive employees, and ensuring that employees have access to information and educational programmes on HIV/AIDS.
- Governments should ensure that national strategic frameworks and policies address the needs of the mentally ill and the disabled. Currently, only Botswana has undertaken a programme

to ensure that people with disabilities have access to HIV/AIDS education and information.

- Where legislation does not already exist, states need to legislate on the rights and treatment of orphan children and children in difficult circumstances.
- Governments need to focus on the provision of HIV/AIDS medicines. The focus to date has been on negotiations with pharmaceutical companies for price reductions. The possibility of compulsory licensing and importation (production) of generic substitutes has not received much attention. The exceptions allowed for under the WTO's *Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)* should be exploited fully.
- Legislation should be promulgated to regulate public and private medical schemes in an effort to ensure that people living with HIV/AIDS are not discriminated against or excluded.
- Governments should investigate ways of addressing the issue of restrictions on HIV-positive persons applying for and being granted life insurance.
- Customary practices that increase the risk of HIV infection in women and men should be addressed through a comprehensive approach, including involving traditional leaders and healers, sensitising communities about the dangers of such practices, suggesting alternatives, and ultimately legislating against harmful (inhuman and degrading) practices.
- Practices that put women in a vulnerable position in society and increase their risk of HIV infection – such as domestic violence and restrictive inheritance laws – should be made a priority and legislation must be adopted to secure women's rights.
- Steps should be taken to decriminalise commercial sex work and homosexuality.
- Only Botswana and South Africa have specific policies on HIV/AIDS and prisons. The other countries in this study have included some guidelines in their national policies or strategic frameworks, but with the special conditions prevailing in prisons that increase the risk of HIV infection, every country should adopt a separate policy or legislation on HIV/AIDS and prisons. Issues that should be addressed include the dissemination of education on HIV/AIDS and STDs, voluntary testing and counselling, non-segregation of prisoners, condom distribution, and access to treatment for opportunistic infections.
- The lack of capacity to develop appropriate legislative frameworks has been invoked by states to explain the legislative impasse. A comprehensive model code on HIV/AIDS should be developed, providing a general framework for states to develop a specific legislative response to the pandemic.
- Heads of state need to take an active lead in the lobbying and reform efforts regionally and internationally.

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ANNEXURE:

HIV/AIDS and human rights in SADC – summary of findings

	Botswana	Malawi	Mozambique	Namibia	South Africa	Swaziland	Zambia	Zimbabwe
Form of government	Constitutional democracy	Constitutional democracy	Semi-presidential constitutional democracy	Constitutional democracy	Constitutional democracy	Absolute monarchy with no Constitution	Constitutional democracy	Constitutional democracy
Domestic legal system	English Common law and Roman-Dutch law	English Common law	Civil or Continental law system inherited from Portugal	English Common law and Roman-Dutch law	Roman-Dutch law and English Common law	Roman-Dutch law and Swaziland customary law	English Common law	Roman-Dutch law and English Common law
National HIV/AIDS Strategic Framework (NSF): time frame, human rights provisions	2003-2009 NSF refers to human rights	2000-2004 NSF refers to human rights	2000-2002 National Strategic Plan to Combat STDs/HIV/AIDS makes almost no reference to human rights	1999-2004 National Strategic Plan on HIV/AIDS (MTPII) refers to human rights	2000-2005 HIV/AIDS/STD Strategic Plan for South Africa refers to human rights	2000-2005 Swaziland National Strategic Plan for HIV/AIDS refers to human rights	2002-2005 National HIV/AIDS/STI/TB Intervention Strategic Plan refers to human rights	2000-2004 NSF provides for human rights
National HIV/AIDS Policy: human rights provisions	2002 National AIDS Policy refers to human rights	2002 Draft Malawi National HIV/AIDS Policy. Policy refers to human rights with emphasis on rights based approach.	None	None	None	1998 Swaziland Policy Document on HIV/AIDS and STD Prevention and Control refers to human rights	2002 National HIV/AIDS/STI/TB Policy refers to human rights	1999 National HIV/AIDS Policy refers to human rights
HIV/AIDS jurisprudence	Yes	None	None	Yes	Yes	None	None	None
HIV/AIDS specific legislation¹	Yes. (In realm of criminal law)	None	Yes (Labour law)	Yes	Yes	None	Yes	Yes
Government awareness of UNAIDS guidelines on HIV/AIDS and human rights	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Social security and PLWHA	No specific assistance is provided for PLWHA. Revising the <i>National Destitute Policy</i> to cater for PLWHA and orphans does form part of the NSF for 2003-2009	No special provisions are made to cater for the social assistance needs of PLWHA.	No special provisions are made to cater for the social assistance needs of PLWHA.	Social assistance is provided for PLWHA in terms of a disability grant and a special grant for HIV/AIDS orphans.	PLWHA can qualify for a disability grant in terms of the <i>Social Assistance Act</i> . In August 2002 the <i>National Guidelines for Social Services to Children Infected and Affected by HIV/AIDS</i> were published.	No special provisions, NSF however refers to access to social services for PLWHA.	No special provisions, do qualify for assistance applicable to all Zambians.	No special provisions, do qualify under general <i>Social Security Act</i> .

¹ None of the eight countries that formed part of the study have a comprehensive HIV/AIDS specific law in place. This section was answered in reference to sections of existing or new legislation that included specific reference to HIV or AIDS.

	Botswana	Malawi	Mozambique	Namibia	South Africa	Swaziland	Zambia	Zimbabwe
Constitutional protection of the right to health	None	Equal access to basic health services is incorporated in the right to development, section 30(2) of the <i>Constitution</i> .	Article 94 of the <i>Constitution</i> guarantees the right to health subjected to the law in place.	Article 95 of the <i>Constitution</i> refers to public health but as a matter of state policy and not as a fundamental right.	Article 27(1)(a) of the <i>Constitution</i> .	<i>Constitution</i> is suspended, the drafting of a new <i>Constitution</i> is underway.	The right to health care is provided for under the <i>Directive Principles of State Policy</i> incorporated in Part IX of the <i>Constitution</i> . ²	None
HIV/AIDS as a notifiable disease	No	No, although it is foreseen in the draft <i>National HIV/AIDS Policy</i> of 2002.	No	No	No	Yes	Yes	No
Rights of HIV positive patients	No HIV specific guidelines exist currently within the health profession, according to Bonera ³ a policy is in the pipeline.	No special protection exists currently but it is foreseen in the draft <i>National HIV/AIDS Policy</i> of 2002.	Ethical guidelines for health workers are foreseen in the 2000-2002 <i>National Strategic Plan</i> .	HIV specific guidelines and a <i>Namibian Charter on HIV/AIDS</i> exist. (non-binding)	Protected by the 2001 HPCSA guidelines on the <i>Management of Patients with HIV Infection or AIDS</i> and the <i>SAMA Guidelines on Human Rights, Ethics and HIV</i> .	None	No special provisions.	Provisions within the (non-binding) <i>Patient's Charter</i> .
Constitutional and legislative protection of equality and non-discrimination	Section 15 of the <i>Constitution</i> lists grounds for non-discrimination (non-exhaustive list). HIV is not a listed ground. No special legislation addressing discrimination exists.	Section 20 of the <i>Constitution</i> lists grounds for non-discrimination (non-exhaustive list). HIV is not a listed ground. No special legislation addressing discrimination exists.	Section 66 of the <i>Constitution</i> lists grounds for non-discrimination (exhaustive list). HIV is not a listed ground. Law no 5/2002 deals specifically with discrimination against employees and candidate employees and HIV/AIDS is covered by the law.	Section 10 of the <i>Constitution</i> lists grounds for non-discrimination (exhaustive list). HIV is not a listed ground. Section 107(1) of the <i>Labour Act</i> lists grounds of non-discrimination in employment. Although it does not include HIV status, see the Labour Court ruling on exclusion. ⁴	Section 9(3) of the <i>Constitution</i> lists grounds for non-discrimination (non-exhausted list). HIV is not a listed ground. Specialised legislation on non-discrimination: <i>Promotion of Equality and Prevention of Unfair Discrimination Act</i> no 4 of 2000, section 34 provides for the possibility of including HIV status as a ground for non-discrimination.	Swaziland does not have a <i>Constitution</i> although negotiations around the drafting of a <i>Constitution</i> with a bill of rights are being considered.	Section 23 of the <i>Constitution</i> lists grounds for non-discrimination (exhausted list). HIV is not a listed ground. No special legislation addressing discrimination exists.	Section 23 of the <i>Constitution</i> lists grounds for non-discrimination (exhausted list). HIV is not a listed ground. <i>Statutory Instrument</i> 202 of 1998 prohibits discrimination on the basis of HIV status in the workplace.

² The Directive Principles of State Policy are not in themselves binding and are subject to the availability of funds under article 110.

³ Botswana Network on Ethics, Law and HIV/AIDS.

⁴ *Haindongo Nghidipohamba Nanditume v Minister of Defence* Case No. LC 24/98.

	Botswana	Malawi	Mozambique	Namibia	South Africa	Swaziland	Zambia	Zimbabwe
HIV/AIDS and the workplace: discrimination and pre-employment testing	Labour legislation does not address discrimination on the ground of HIV status and there are no legislative provisions on pre-employment HIV testing.	Labour legislation does not address discrimination on the ground of HIV status and there are no legislative provisions on pre-employment HIV testing.	Law no 5/2002 outlaws discrimination on the ground of HIV status in employment and prohibits pre-employment HIV testing.	Guidelines were promulgated in terms of section 112 of the Labour Act for the implementation of the <i>National Code on HIV/AIDS in Employment</i> and for application of relevant provisions of the <i>Labour Act</i> in respect of HIV/AIDS. The guidelines outlaw discrimination on HIV status and pre-employment testing for HIV.	Article 6 of the <i>Employment Equity Act</i> no 55 of 1998 lists HIV status as a ground for non-discrimination. HIV testing of an employee is prohibited by section 7(2) unless justifiable by the Labour Court in terms of section 50(4).	Labour legislation does not address discrimination on the ground of HIV status and there are no legislative provisions on pre-employment HIV testing.	Labour legislation does not address discrimination on the ground of HIV status and there are no legislative provisions on pre-employment HIV testing. The Defence Force requires HIV tests and do not recruit HIV positive candidates.	<i>Statutory Instrument</i> 202 of 1998 prohibits discrimination based on HIV status in the workplace and states that pre-employment testing should not be required except where fitness for work is a precondition to the offer of employment. <i>Labour Relations Amendment Bill</i> of 2001 includes HIV status as a ground for non-discrimination.
Legislative protection of PLWHA in medical schemes	No	No	No	No, although the 2002 <i>Health Plan</i> provides policy protection in terms of the Aid for AIDS benefit scheme.	Yes	No	No	No
HIV/AIDS and insurance policies	No legislative regulation, policies for PLWHA determined by companies at higher premiums or not at all.	Currently no legislative protection, the issuing of policies is up to the private company (no granting of life insurance to HIV positive people).	No legislative regulation of the insurance industry, life insurance policies do not cover PLWHA.	No legislative regulation of the insurance industry.	No legislative regulation of the insurance industry. The Life Office's Association's <i>HIV Testing Protocol</i> clearly states that life insurance will not be granted to people who test HIV positive. Those companies that do offer special packages do it at higher premiums or limit the amount of insurance.	No legislative regulation of the insurance industry.	No legislative regulation of the insurance industry.	No legislative regulation of the insurance industry.
Existence of cultural practices that enhance spread of HIV	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Legality of commercial sex work	Illegal	Illegal	Illegal	Illegal	Illegal	Illegal	Illegal	Illegal
Legality of same sex relationships	Illegal	Illegal	Illegal	Illegal	Legal	Illegal according to common law offence of sodomy, last case tried in 1983. Lesbianism seems legal according to 1992 judgment. ⁵	Illegal	Illegal

⁵ Mngomezulu case discussed on http://www.mask.org.za/SECTIONS/AfricaPerCountry/ABC/swaziland/swaziland_index.html.

	Botswana	Malawi	Mozambique	Namibia	South Africa	Swaziland	Zambia	Zimbabwe
HIV education in schools: non-discrimination in schools	HIV/AIDS education (for pupils and teachers) is provided for in the <i>1998 Policy on HIV/AIDS Education</i> , the <i>National Strategic Plan</i> and the <i>National Policy on HIV/AIDS</i> .	HIV/AIDS education is included in formal primary and secondary school curricula. This effort is expanded upon in the NSF and <i>National HIV/AIDS Policy</i> .	NSF sets forth the policy on education in schools whilst also declaring that implementation has been delayed. ⁶	<i>National Teachers Union Policy on HIV/AIDS</i> (2000) together with the <i>National Policy on HIV/AIDS</i> for the education sector (4th draft) 2002 provides for HIV education in schools and non-discrimination.	<i>1999 National Policy on HIV/AIDS for Learners and Educators in Public Schools, and Students and Educators in Further Education and Training Institutions</i> . The <i>South African Schools Act</i> protects learners from unfair discrimination.	NSF provides for integration of HIV education in pre-schools, schools and institutions of higher learning and provides for training of teachers.	HIV/AIDS education is integrated in the school curricula. No special training is provided for teachers. No specific policy on non-discrimination in schools exist.	AIDS education was introduced in schools in 1993. HIV/Life Skills Desk in Ministry of Education trains teachers and co-ordinates HIV teaching in schools. <i>National Policy on HIV</i> includes provisions on non-discrimination in schools.
Criminal legislation on HIV/AIDS	Harsher sentencing for HIV positive rapists in terms of the <i>Penal Code (Amendment) Act No 5 of 1998</i> .	No HIV/AIDS specific provisions in the Malawi criminal law rather the 2002 <i>National HIV/AIDS Policy</i> aims to promote the use of generic criminal law and not HIV specific criminal codes and to apply HIV status only as a mitigating or aggravating factor.	No HIV/AIDS specific provisions in Mozambique criminal law.	Harsher sentencing for HIV positive rapists provided in the <i>Combating of Rape Act of 2000</i> .	<i>Criminal Law Amendment Act of 1997</i> provides for harsher sentences for HIV positive rapists. <i>Criminal Procedure Second Amendment Act</i> – more difficult to obtain bail in rape cases involving HIV positive accused. New <i>Sexual Offences Bill</i> and <i>Compulsory HIV Testing of Alleged Sexual Offenders Bill</i> tabled in 2003.	No HIV/AIDS specific provisions in Swaziland criminal law although the <i>Public Health Bill</i> envisages penalties for knowingly transmitting HIV.	No HIV/AIDS specific provisions in Zambian criminal law. Rape carries life sentencing in the <i>Penal Code</i> regardless of HIV status. <i>National AIDS Policy</i> recommends criminalising of wilful HIV transmission.	<i>Sexual Offences Act No 8 of 2001</i> , harsher sentencing for HIV positive rapists and criminalizing of deliberate transmission of HIV.
HIV/AIDS and prisons: education, testing, condoms and separation	The following policies are in place; <i>National Policy on HIV testing and education in prisons</i> , the <i>Health Care Delivery Policy</i> , a <i>Policy on HIV/AIDS/STD for inmates</i> and a <i>HIV/AIDS Policy and Procedure Manual for Prison Staff and their families</i> .	No official policy on HIV/AIDS in prisons the only reference to prisons is found in the 2002 draft <i>Malawi National HIV/AIDS Policy</i> . Addressing issues such as voluntary testing and counselling, non-segregation of prisoners and the distribution of condoms.	No official policy on HIV/AIDS in prisons guidelines are however included in the <i>National Strategic Plan on HIV/AIDS</i> . Prisoners have access to education on HIV/AIDS and condoms. Prisoners are not separated.	No official policy on HIV/AIDS in prisons. Non-separation of HIV positive inmates. Condoms are not distributed. AIDS campaign training inmates to counsel fellow inmates exist, voluntary testing is provided.	<i>2002 Policy on Management Strategy of HIV/AIDS in Prisons</i> : 1) Voluntary testing, counselling and education. 2) Non-segregation. 3) Condoms are distributed.	The <i>Swaziland National Strategic Plan on HIV/AIDS</i> and the <i>Policy Document on HIV/AIDS</i> set forth guidelines on prisons on education, non-separation and voluntary testing and counselling. Condoms are not distributed.	No official policy on HIV/AIDS in prisons exist. Condoms are not distributed in prisons, prisoners are not separated.	Prisons are addressed in the <i>National Policy on HIV/AIDS</i> : 1) Voluntary testing and counselling together with education is provided. 2) Condoms are not distributed. 3) HIV positive prisoners are not separated.

The table above is not conclusive as to all the findings of the study for certain areas analysing access to essential HIV/AIDS drugs, the rights of volunteers in HIV/AIDS medical trials, condom distribution or discussions around legislation and policies protecting women and the most

vulnerable in society could not be comparatively tabled. For a discussion on these areas the individual country reports should be accessed.



The University of Pretoria established the Centre for the Study of AIDS in 1999 to 'mainstream' HIV/AIDS through all aspects of the University's core business and community-based activities. Its mission is to understand the complexities of the HIV/AIDS epidemic in South Africa and to develop effective ways of ensuring that all the students and staff of the University are prepared both professionally and personally to deal with HIV/AIDS as it unfolds in South African society.

Centre for the Study of AIDS

University of Pretoria
Pretoria 0002
South Africa

Tel: +27 (12) 420 4391
Fax: +27 (12) 420 4395
E-mail: CSA@up.ac.za
Website: www.csa.za.org



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Centre for Human Rights, University of Pretoria

University of Pretoria
Pretoria 0002
South Africa

University of Pretoria
Tel: + 27 (12) 420 3034
Fax: + 27 (12) 362 5125
E-mail: CHR@postino.up.ac.za
Website: www.up.ac.za/chr



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