



Southern African AIDS Trust

**REPORT**

**REGIONAL**

**2014**



**REVIEW – ZIMBABWE**

**LEGAL ISSUES SURROUNDING  
THE DISTRIBUTION OF  
HIV SELF-TESTING KITS**



# FOREWORD

While the focus of much of the global community may be moving on from HIV and AIDS to other issues, it cannot yet be said to be “the end of AIDS” in Africa. HIV & AIDS will continue to impact communities and public health systems in eastern and southern Africa for decades to come and both morbidity and mortality in the region will be significantly increased as HIV & AIDS influences health issues such as TB, maternal mortality, and sexual and reproductive health more broadly.

One of the key critical success factors in fulfilling the UNAIDS and global goal of zero new infections, zero deaths and zero discrimination is people knowing their own HIV sero-status and having the ability to act on the knowledge. Yet in eastern and southern Africa, despite decades of investment in HIV testing and counselling, many people still do not know their status.

Across the region there remain wide variations in data regarding the proportion of the general population who have accessed HTC. Figures for 2011<sup>1</sup> show Botswana at over 60% (2011), Malawi at 34%, and Zambia 15%. **Presently less than half of all Africans know their HIV status, and only 25% received an HIV test in 2012<sup>1</sup>.** Uptake and access to HIV testing is lower among members of key population communities who, while facing a higher HIV burden, also face issues of stigma, discrimination and other barriers to access.

It is in this context that SAT believes in thinking out-of-the-box. After decades of investment more of the same is unlikely to be a game changer with regard to increasing the number of people empowered by knowledge of their own status to take action.

HIV self-testing may be just such an ‘out-of-the-box’ solution. Defined as, ‘when a test is collected, performed and interpreted in private by the individual who wants to know their HIV status’, self-testing, in combination with other new thinking on HTC opens new possibilities for reach and engagement.

To explore this possibility, SAT commissioned a multi-country legal review of national policies and legislation that frame and provide the context for thinking about HIV self-testing.

With the generous coordination from the Thomson Reuters Foundation, SAT worked with a strong team of international and Southern African legal firms to conduct a review of the laws relevant to HIV self-testing (HIVST) in their respective jurisdictions, namely Botswana, Malawi, Mozambique, South Africa, Tanzania, Zambia and Zimbabwe as well as France, the UK (England) and the USA. All work conducted by the firms (see below) was done on a pro bono basis as a contribution to global development.

The review sought to answer key contextual questions that would frame any pilot or projects that countries might choose to take up to increase numbers of the population who know their HIV status. Included were questions such as, “Is HIV self-testing legal and, if so, under what conditions?”, “What

<sup>1</sup> UNAIDS 2013; WHO 2013

legislation governs the distribution of HIVST kits and what rules/conditions exist concerning this distribution?” and “What are the human rights issues surrounding HIVST?” The review looked across SAT’s countries of operating but also went broader to explore the situation in the USA, France and the UK – all of which have now legalised self-testing after thorough national debates and scientific input.

In the last stages of the review SAT and the University of Witwatersrand Reproductive Health Institute hosted a Consultative Workshop in March 2014 with participants from governments, National AIDS Councils, key population groups, community organisations, WHO, medical experts and researchers. The think tank worked with the emerging review as well as with evidence from two very successful research/pilot sites in the SADC region and explored what the possibilities and practicalities of implementing self-testing might be. The think tank report may also be accessed on the SAT website above.

The issue of self-testing is not uncontroversial, and it has been known to raise strong feelings both for and against. The think tank was useful and hearing from the research sites de-bunked many of the myths about self-testing such as “it is incompatible with referring people into the health system”, or “people will not understand how to use it or how to interpret the results”. Innovators in a number of places, not least in the SADC region, have worked hard and designed and tested solutions and in some cases products to overcome these challenges.

HIV self-testing is not a magic bullet. In combination with other innovative thinking, however, it may hold the key to increasing reach of testing, opening new options for hard to reach communities, making life easier for serodiscordant couples and supporting both prevention and treatment.

We are pleased to present to you the HIVST Legal Report for Zimbabwe. This report is intended to inform SAT and all its strategic partners about the legal framework and human rights implications relevant to HIVST in Zimbabwe.

The summary consolidated findings for all the above mentioned countries as well as individual country reports are available at SAT on request as well as on the website,

It is our fervent hope that the findings will have a catalytic effect on dialogues on this subject and forge a way for HIV self-testing in Zimbabwe and across the region.

Welcome to the conversation. We look forward to your feedback.

Jonathan Gunthorp



Executive Director - SAT

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SAT is grateful to Wits Reproductive Health Institute for all their technical support and input during the March 2014 HIV Self-Testing Consultative Workshop.

Last but not least, we would like to thank Thomson Reuters Foundation's global pro bono service, TrustLaw, who helped coordinate the project and brokered, free of charge, the relationships between SAT and the legal firms.

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RESEARCH



# ZIMBABWE

**ZIMBABWE**  
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**GILL, GODLONTON & GERRANS**  
LEGAL PRACTITIONERS

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## 1. INTRODUCTION/BACKGROUND<sup>1</sup>

- 1.1 Zimbabwe's history has resulted in the diverse range of sources and influences on its law. It is one of the few remaining Roman Dutch law jurisdictions in the world, along with South Africa and a number of other southern African countries. This means that the writings of the old Roman Dutch jurists are binding law in Zimbabwe. Zimbabwe is a common law system, which means that the decisions of Zimbabwe's higher courts also create binding law, according to the doctrine of precedent. Significant persuasive weight is placed upon the decisions made by higher courts in other Roman Dutch law jurisdictions (especially South Africa) as well as the English courts. The Zimbabwe Parliament passes legislation through Acts of Parliament and may also delegate its legislative power to certain authorities who may pass legislation through Statutory Instruments. A new Constitution of Zimbabwe was recently enacted by Parliament and signed into law in May 2013. The Constitution is the supreme law of Zimbabwe and any law inconsistent with it is invalid to the extent of the inconsistency.
- 1.2 There is no law in Zimbabwe specifically dealing with HIV self-testing (HIVST). Nevertheless, there are laws that have bearing upon the issue and other issues around HIV testing which will be discussed below.

## 2. SUMMARY OF ADVICE

### 2.1 Legality of HIVST

HIVST is not illegal in Zimbabwe, but it seems that it is not allowed at present by the Ministry of Health, as a matter of policy. The Ministry is, however, currently conducting an investigation into the appropriateness of HIVST in the Zimbabwean context.

### 2.2 Distribution

The distribution of testing kits is not currently regulated by the Medicines Control Authority of Zimbabwe (MCAZ). The MCAZ is legally empowered to regulate testing kits but at present the scope of their regulation does not extend to testing kits.

### 2.3 Human rights

- 2.3.1 Right to testing: There is no specific right to HIV testing under Zimbabwean law. There is, however, a justiciable right to health care services in Zimbabwe's Constitution, which may be interpreted to include a right to HIV testing. The state must take reasonable measures to achieve the progressive realisation of the right within its available resources.
- 2.3.2 Disclosures: The right to privacy in the Constitution, which explicitly includes the right not to have a health condition disclosed, protects against the disclosure of people's HIV statuses. This right may only be limited by a law of general application and only to the extent that it is fair, reasonable, necessary and justifiable.
- 2.3.3 Compelled to be tested: A person accused of committing a sexual offence may be compelled to be tested. It is, however, untested whether the courts will consider this law a justifiable limitation of the constitutional right not to be subjected to the extraction or use of their bodily tissue, without informed consent. With regard to children, a child's parent's decisions regarding the medical treatment or testing of their children will generally be respected. However, when it is in the best interests of the child to be tested, this will override the parent's decision, and they may be compelled to have their child tested.
- 2.3.4 Discrimination: Employees have a specific right not to be discriminated on the basis of their HIV status. Outside the employment context, protection against discrimination on the basis of HIV status would be based on section 56(3) of the Constitution on the ground that discrimination on the basis of HIV status is an analogous ground that infringes the dignity of the complainant or on the ground that having an HIV-positive status constitutes a "disability" for the purposes of the section.

<sup>1</sup> L Madhuku *An Introduction to Zimbabwean Law* (2010).

## **2.4 Liability**

Liability for harm caused by a defective HIVST kit may arise out of the law of delict and the law of contract. Liability under the law of delict may arise whether the product was distributed freely or sold. If all the elements of delict are established, liability may extend to third parties who suffer loss as a result of a faulty testing kit, and may in addition to patrimonial loss, include damages for pain and suffering, loss of amenities of life, shortened life expectancy and other forms of non-patrimonial loss. Under contract law, liability is limited to the contracting party and as a general rule there is no liability for consequential loss caused by a defective product. The two exceptions to the general rule are as follows: when the seller is the manufacturer of the defective product or is a merchant seller who publicly professes to have attributes of skill and expert knowledge in relation to the kind of goods sold. In these two circumstances the seller may be held liable for full consequential loss. In terms of the Consumer Contracts Act, a party to a consumer contract may only exclude liability insofar as it is reasonably necessary to protect their interests.

## **2.5 Consent**

Informed consent is required before someone may be tested. Informed consent means that the person understands the test procedure and the implications of the test result. The requirements for this are set out in national policy. Written consent is not required. A youth is presumed to have capacity to consent to medical procedures from the age of 16 years. If the child is already pregnant, or otherwise deemed to be an emancipated minor, they may be considered competent to consent before the age of 16 years.

## **2.6 Counselling**

Both pre- and post-test counselling is required by national policy.

## **2.7 Confidentiality**

National policy, together with the constitutional right to privacy, dictates that the confidentiality of the results an HIV test must be respected. However, the concept of “shared confidentiality” (i.e. sharing the results with one’s partner and care-givers) is recommended.

## **2.8 Disclosure**

A duty to disclose one’s HIV status to one’s sexual partner arises from the crime of wilful transmission of HIV. There is no duty to disclose one’s HIV status to one’s employer or prospective employer. There is a duty to disclose material facts to an insurer. A person’s HIV-positive status is likely to be considered a material fact for certain types of insurance contracts.

## **2.9 Criminal implications of transmitting HIV**

It is a criminal offence in Zimbabwe to deliberately or recklessly transmit HIV to another person without their prior informed consent. It is not a defence that an accused person was married to the complainant/victim at the time of the offence. A person convicted of this offence may be sentenced to up to twenty year’s imprisonment. Transmitting HIV during the commission of any sexual offence or the crime of trafficking in persons will result in a harsher sentence.

### 3. IS HIV SELF-TESTING LEGAL AND, IF SO, UNDER WHAT CONDITIONS?

- 3.1 HIV self-testing is not prohibited by Zimbabwean law. In practice, however, it has not been allowed by the Ministry of Health. The Research Department of Parliament suggested that this is primarily due to concerns over how self-testing would be accompanied by counselling and linkage to care. Nevertheless, the Ministry is presently in the process of investigating whether HIV self-testing should be allowed in Zimbabwe.
- 3.2 The Ministry's *National HIV Testing and Counselling Strategic Plan 2013-2015* states that one of the implementation priorities to achieve the Ministry's objective of expanding coverage of HIV testing and counselling (HTC) is to pilot an HIV self-testing programme. Self-testing is not defined by the *Strategic Plan* but a technical definition of self-testing is currently being formulated as part of the process of drafting new HTC policy guidelines for Zimbabwe. The *Strategic Plan* states that the Ministry of Health will engage its implementation partners (including the private sector), at every stage of the process – from exploration and investigation to implementation. The *Strategic Plan* indicates that there is political will behind the introduction of HIV self-testing kits to Zimbabwe. As there is no legal barrier to HIV self-testing, and it seems that government policy is already moving towards the roll out of self-testing kits in Zimbabwe, it should not take too long for HIV self-testing to be approved in practice.
- 3.3 According to the *Strategic Plan* the timeline for the roll out of HIV self-testing is as follows: a national consultative meeting was to be held in the 3<sup>rd</sup> quarter of 2013 to review lessons learnt from the home based HTC pilot; next, guidelines and standard operating procedures for other “novel models” of HTC, including self-testing, were to be developed in the 4<sup>th</sup> quarter of 2013; lastly, the *Strategic Plan* envisions the gradual and strategic roll out of HIV self-testing in Zimbabwe, beginning in the 1<sup>st</sup> quarter of 2014. At the time of writing I was not able to establish what stages of the *Strategic Plan* the Ministry had achieved.
- 3.4 With regard to the conditions upon which HIV self-testing might be allowed in Zimbabwe, the *Strategic Plan* gives a brief indication. The *Strategic Plan* states that “*the appropriateness of self-testing in the Zimbabwe context will be investigated and piloted, with particular attention to issues of quality of results, psycho-social support and linkage to services.*” From that it can be extrapolated that HIV self-testing will only be allowed if the self-testing kits are able to consistently produce accurate results and that the obvious challenge of how to ensure that someone who tests themselves without the supervision of a medical practitioner receives adequate counselling and other services is addressed to the satisfaction of the Ministry.

### 4. WHAT LEGISLATION GOVERNS THE DISTRIBUTION OF HIVST KITS & WHAT RULES/ CONDITIONS EXIST CONCERNING THIS DISTRIBUTION?

- 4.1 The Medicines Control Authority of Zimbabwe (MCAZ) is empowered by the Medicines and Allied Substances Control Act [*Chapter 15:03*] to regulate the distribution of medicines and medical devices in Zimbabwe. HIV self-testing kits would be regarded as a medical device and therefore the MCAZ is authorised by law to regulate their distribution. However, the MCAZ does not, at present, regulate any testing devices. The only medical devices that MCAZ regulate at present are condoms and gloves.
- 4.2 In terms of section 28 of the Medicines and Allied Substances Act, the Minister may declare any medicine (the definition of medicine is broad enough to include testing kits) or class of medicines to be a “specified medicine”. The Minister declared “diagnostic agents” to be specified medicines through Statutory Instrument 542 of 1981. The term diagnostic agents was further defined in the Medicines and Allied Substances Control (General) Regulations, 1991 as including serological, skin tests, blood grouping, radiocontrast media, reagent strips and tablets and other diagnostic agents. While it might seem that an HIV self-testing kit would be considered a diagnostic agent, the MCAZ has confirmed that it does not consider testing kits to be specified medicines, and therefore does not expect them to be registered.
- 4.3 If, however, at any point in the future the Minister does declare testing kits to be a specified medicine then the following, more rigorous, controls would apply. In terms of section 29, it is illegal to sell (the definition of “sell” includes free distribution) a specified medicine unless it is registered. In order to be registered, the MCAZ must consider the availability of the medicine to be “in the public interest”, be satisfied that it is of its safety, quality and therapeutic efficacy, and that the manufacturing premises, if in Zimbabwe, are satisfactory. Registered medicines must comply with certain labelling standards specified in section 36 of the Act. According to section 40 of the Act, it is illegal to advertise a registered medicine to members of the public – they may only be advertised in a medical journal or to medical professionals. However, according to the MCAZ, products may be advertised to the public if the advertisement is approved by the advertising committee.

<sup>1</sup> L Madhuku An Introduction to Zimbabwean Law (2010).

## 5. WHAT ARE THE HUMAN RIGHTS ISSUES SURROUNDING HIVST?

- 5.1 Zimbabwe's new Constitution, which came fully into force August 2013, has a justiciable Declaration of Rights which enshrines a host of fundamental human rights in Zimbabwean law which were not previously protected by the country's domestic law. The Constitution places a duty on the State, as well as private persons, to respect, protect, promote and fulfill these constitutional rights. The Declaration of Rights has both "vertical" and "horizontal" application, that is to say that it applies to the State and to private persons, including juristic persons.
- 5.2 Due to the fact that the new Constitution came into force quite recently, there is limited jurisprudence on how the courts will interpret its provisions. However, some guidance as to how the courts should interpret the Declaration of Rights is given in the Constitution itself. Section 46 requires the courts to interpret the Declaration of Rights in order to give "full effect to the rights and freedoms" enshrined in it. Furthermore, the courts must take international law into account, and may take foreign law into account when interpreting the Declaration of Rights. It is probable that the courts will look to South African constitutional jurisprudence for guidance due to both the similarity of the legal systems in general as well as the similarity of the Constitutions of the two countries.

### 5.3 Does every person have a right to be tested?

- 5.3.1 The Zimbabwe National Guidelines on HIV Testing and Counselling (the HTC Guidelines) state that "it is every Zimbabwean's right to know his or her HIV status." This right has not yet been given explicit legal effect, but it could be said to be protected implicitly by a number of provisions of the Constitution of Zimbabwe.
- 5.3.2 The right to healthcare is enshrined in the new Constitution of Zimbabwe. Although the right does not expressly include a right to be tested for HIV, it includes some provisions from which such a right may be inferred. Section 76(1) of the Constitution states that "[e]very citizen and permanent resident of Zimbabwe has the right to have access to basic health-care services, including reproductive health-care services." The United Nation Population Fund (UNFPA) states that "access to prevention, treatment and care for sexually transmitted infections, including HIV" should be a priority concern for reproductive health services. HIV testing is key to the prevention of the spread of HIV infections as well as for giving HIV positive patients access to appropriate treatment. The provision is restricted to citizens and permanent residents of Zimbabwe.
- 5.3.3 Section 76(2) of the Constitution is also relevant. It provides that "Every person living with a chronic illness has the right to have access to basic healthcare services for the illness." HIV/AIDS is widely regarded as a chronic illness. Therefore, it seems clear that this provision includes people with HIV. An argument may be made that in order to vindicate this right people will need to be tested to establish whether or not they have a chronic illness (such as HIV), and therefore the right should include a right to be tested. These arguments remain untested in the courts, and no legislation has been passed in order to give effect to these rights as mandated by section 76(4) of the Constitution.
- 5.3.4 As is the case with the other socio-economic rights in the Declaration of Rights, the achievement of the right to health care is made subject to available resources. The state must take reasonable measures to achieve the progressive realisation of the right. How the courts will interpret this is yet to be seen.

### 5.4 Can a person be compelled to make any disclosures concerning a positive diagnosis and, if so, in what circumstances?

- 5.4.1 As a general rule, no one may be compelled to disclose their HIV status. Section 57 of the Constitution states that everyone has a right to privacy. Subsection (d) of that section specifically states that the right to privacy includes the right not to have a "health condition disclosed".
- 5.4.2 However, section 302A(5)(i) of the Criminal Procedure and Evidence Act [*Chapter 9:07*] allows the HIV status of a person convicted of a sexual offence to be revealed after the conclusion of the trial for the purpose of sentencing. This does not require the convicted person's consent, and indeed his or her HIV status may have been obtained via a compelled test (discussed further at section 5.5. below). Furthermore, the current *HTC Guidelines*, which at the time of writing were undergoing review, state that if a client has failed to disclose their HIV status to their sexual partner after three documented counselling sessions post receiving a positive HIV diagnosis and the counsellor feels that their client's partner is at risk of infection, then the counsellor may disclose that person's status to their sexual partner. Both of these constitute significant interferences with the constitutional right to privacy, and so it is not clear whether they will withstand constitutional scrutiny.

5.4.3 In terms of section 86 of the Constitution, rights and freedoms listed in the Declaration of Rights, such as the right to privacy, may only be limited by a law of general application and only to the extent that it is fair, reasonable, necessary and justifiable in a democratic society based on openness, justice, human dignity, equality and freedom, taking into account all relevant factors. Factors relevant to forced disclosure which are listed in the non-exhaustive list of relevant factors include public safety, public order, public morality, and public health. Section 302(5)(i) may meet this standard since it is a law of general application and there are perhaps arguments that could be made for why it is fair reasonable, necessary and justifiable. The provision of the *HTC Guidelines* however, fails at the first hurdle, since it is provided for by policy rather than by law. On this basis, the Ministry of Health is likely to remove this provision from the new guidelines which are currently being drafted in order to bring HTC policy into line with the Constitution.

## 5.5 Can a person be forced to take a test or compelled to have a child tested?

### Criminal law

5.5.1 Section 302A of the Criminal Procedure and Evidence Act [*Chapter 9:07*] allows for the forced testing of persons accused of committing a sexual offence for the purpose of sentencing if the accused person is subsequently convicted. Section 302A(2) provides that “... *when an accused person is first brought before a court for remand on a charge of committing a sexual offence, or at any later stage, the court shall direct that an appropriate sample or samples be taken from the accused person, at such place and subject to such conditions as the court may direct, for the purpose of ascertaining whether or not he or she is infected with HIV.*” Reasonably necessary force may be applied to the accused person in order to take the sample.

5.5.2 The above provision constitutes a grave invasion of the accused’s right to privacy (outlined above at section 5.4) as well as their right to bodily integrity enshrined in section 52 of the Constitution which includes the right “*not to be subjected to ... the extraction or use of their bodily tissue, without their informed consent.*” As acknowledged above, section 86 does allow (most) constitutional rights to be limited by law if certain requirements are met. However, it is doubtful whether the provision meets the requirements of section 86 that such limitation should be “fair, reasonable, necessary and justifiable”. It may, therefore, be struck down as unconstitutional if it is challenged in the courts, but until such time, persons can be forced to take an HIV test in terms of section 302A of the Criminal Procedure and Evidence Act.

### Labour law

5.5.3 There are better protections against forced testing in Zimbabwean labour law. Section 4(1) of the Labour (HIV and AIDS) Regulations states that “[*n*]o employer shall require, whether directly or indirectly, any person to undergo any form of testing for HIV as a precondition to the offer of employment.” The provision does not, however, prevent medical testing of persons for fitness for work. A concern has, however, been raised by the Research Department of Parliament that employers use the provision allowing them to test for fitness for work to indirectly test a prospective employee for HIV and then decide not to employ that person – concealing it by stating in broad terms that the prospective employee failed their medical.

5.5.4 Persons who are already in employment are protected by section 5 of the Regulations which ensure that “[i]t shall not be compulsory for any employee to undergo, directly or indirectly, any testing for HIV.”

### Children

5.5.5 Under Zimbabwean common law parents have the right to make decisions regarding their children’s medical treatment. However, section 76 of the Children’s Act creates an exception to that rule. Section 76(1) states:

Where the consent of a parent or guardian is necessary for the performance of any dental, medical, surgical or other treatment upon a minor and the consent of the parent or guardian is refused or cannot be obtained within a period which is reasonable in the circumstances, application may be made to a magistrate of the province where the minor is or is resident for authority to perform the treatment.

5.5.6 Once the magistrate has given the parents an opportunity to make representations to him or her regarding their reasons for refusal, he or she may grant an order for the medical treatment to be administered, if he or she is satisfied that it is in the best interests of the child to do so. This is in line with the Constitution which states that the “*child’s best interests are paramount in every matter concerning the child*” and that every child has the right to health care services.

## 5.6 What is the law regarding discrimination based on a person's diagnosis with HIV?

5.6.1 Section 5 of the Labour Act [Chapter 28:01] specifically provides protection for employees against discrimination based on their HIV/AIDS status. Outside of the labour context, protection from discrimination based on HIV status would be based on section 56(3) of the Constitution of Zimbabwe which ensures everyone has a right against unfair discrimination, but does not specifically mention HIV status. The section is worded as follows:

Every person has the right not to be treated in an unfairly discriminatory manner on such grounds as their nationality, race, colour, tribe, place of birth, ethnic or social origin, language, class, religious belief, political affiliation, opinion, custom, culture, sex, gender, marital status, age, pregnancy, disability, or economic or social status, or whether they were born in or out of wedlock.

5.6.2 Section 56(5) states that discrimination on any of the grounds listed in sub-section 3 is presumed to be unfair. Although HIV status is not explicitly included among the listed grounds, it may fall under "disability" or "social status" or may be regarded as an analogous ground. The point has not been decided in Zimbabwean law, and so it is useful to look to neighbouring jurisdictions. In the case of *Hoffman v South African Airways* (2000) 11 BCLR 1211 (CC) the South African Constitutional Court had to interpret a very similar provision in the South African Constitution which also does not expressly cover HIV status. The Court chose not to decide whether being HIV positive constituted a "disability", and instead found that discrimination based on HIV status was unfair discrimination on the basis that it was an analogous ground which impaired the dignity of a person.

## 6. WHAT IS THE LIABILITY, TO THE PATIENT AND/OR THIRD PARTIES, OF A SUPPLIER IF A KIT IS FAULTY/GIVES AN INACCURATE DIAGNOSIS? IS THE ANSWER DIFFERENT IF A KIT IS SOLD RATHER THAN SUPPLIED FREE OF CHARGE?

6.1 Product liability claims may be made under the law of delict or the law of contract. The law of delict will apply whether the HIVST kit is sold or distributed freely. While it is probably less likely that a contract would be created when the product is distributed freely, the absence of the doctrine of consideration in Zimbabwean law means that the law of contract also has the potential to apply in both circumstances. The Consumer Contracts Act [Chapter 8:03] will apply where there is a contract for the sale or supply of goods or services in which the seller or supplier is dealing in the course of business and the purchaser or user is not.

### Product liability under delict

6.2 Liability in delict for defective goods is sometimes referred to as "manufacturer's liability" as such claims are usually brought against the manufacturer of a defective product. In principle, however, it could be brought against others in the supply chain if all the elements are established.

6.3 Product liability is an area of the law of delict that is still in its infancy in Zimbabwe. To some extent, the same is true of South Africa.<sup>2</sup> Nevertheless, the scope of liability for defective products can, to some extent, be worked out from first principles notwithstanding limited case law, as the courts have placed product liability in delict under the broad Aquilian action. Under the Aquilian action it is necessary to prove, on a balance of probabilities, that all of the five elements of the law of delict are met. The five elements of delict are as follows: (1) conduct (2) wrongfulness (3) fault (intention or negligence) (4) factual and legal causation (5) harm.

6.4 The requirement of *conduct* may be established by an act or an omission by the defendant. This means that it is possible for a defendant to be held liable for *failing to do* something. However, when the conduct concerns an omission, there are special rules which apply to determine whether or not the defendant should be held liable. There is a general rule that negligent omissions that cause harm are not wrongful. However, the courts have developed an unclosed list of recognized situations which lead to a legal duty being imposed upon the defendant to take positive action. One of these is creation of a dangerous situation. The duty is on-going so manufacturers owe a duty to warn of dangers first identified after the product was supplied as a result of new knowledge derived from research or experience in the market. The courts have the power to recognise new additional categories and so ultimately it is a matter for judicial discretion whether to impose liability for an omission.

6.5 It is now trite law in Zimbabwe that in order to succeed in a delictual claim the plaintiff must plead both wrongfulness and negligence. The requirement of *wrongfulness* plays two important roles in the Zimbabwean law. Firstly, it decides whether there is any liability at all for a particular type of conduct, and secondly, to restrict the ambit of liability where liability is recognised. Wrongfulness is established when a legal duty was owed by the defendant to the plaintiff to act without negligence.<sup>3</sup> (It is similar to the English law requirement of "duty of care").

<sup>2</sup> Neethling, Potgieter & Visser *Law of Delict* (3<sup>rd</sup> ed) Butterworths: 1999 p 322.

<sup>3</sup> *Border Timbers Ltd v Zimbabwe Revenue Authority* HH-13-09.

- 6.6 In most cases the requirement poses no problem because the law of delict lays down that it is always wrongful (i.e. there is a legal duty imposed upon the defendant) if the conduct is a positive act which intentionally or negligently causes physical harm to a person or property resulting in financial loss.<sup>4</sup> For example, if a person becomes infected with HIV due to a decision taken on the basis of an inaccurate test result – such result being inaccurate due to negligent manufacturing (positive act) – and that person makes a claim against the manufacturer for medical expenses (patrimonial loss) incurred as a result of the infection (physical harm), then wrongfulness will be automatically established by law.
- 6.7 Manufacturers and (as applicable) suppliers owe a duty to take reasonable care in the design, manufacture and handling of products and in ensuring the provision of adequate warnings and instructions for use with the products they manufacture and/or supply. In relation to product information, care should be taken in considering what languages should be used as well as whether written warnings and labelling will be adequate in areas where literacy rates are low. In these circumstances, the supplier would have to discharge its duty of care via other reasonable means to ensure individuals who use the self-testing kits do so safely. There is no duty to warn of dangers that are obvious or a matter of common knowledge.
- 6.8 If, however, the harm was caused by an omission rather than a positive act, or if it was not physical harm, but rather psychological harm or purely financial loss, then the need to positively establish the requirement of wrongfulness becomes necessary. In exercising its judicial discretion the court will take into account reasonableness, policy and constitutional norms.<sup>5</sup>
- 6.9 The test for *negligence* is whether a reasonable person in the position of the defendant would have acted differently; and according to the courts the reasonable person would have acted differently if the unlawful causing of damage was reasonably foreseeable and preventable. Abnormal use of the product is generally not regarded as reasonably foreseeable. Otherwise the manufacturer (or other blameworthy distributor) will be liable to *anyone* who suffers damage on account of the defective product provided that it is reasonably foreseeable. If a court finds that it is reasonably foreseeable that third parties may make decisions based upon the results of the tests, and suffer harm if the basis for those decisions is false, then an organisations that distribute self-testing kits, as well as manufacturers, may be liable to anyone who uses the kits, as well as third parties who suffer harm, if the results are inaccurate. The labelling of the kits may, again, be important in this regard. If the label clearly states that a person should not rely solely on the result produced by the test, but should go for confirmatory testing, then that may absolve the distributor/manufacturer of the testing kits of responsibility for actions taken based upon the test result.
- 6.10 In order to establish *causation* the claimant must show both factual causation and legal causation. The traditional test for factual causation is the ‘but-for test’: the claimant must prove that, but for the defendant’s negligence the claimant would not have sustained the injury. For instance, a third party who would have engaged in unsafe sex regardless of the outcome of his/her partner’s test results could not prove causation. Legal causation ensures that the defendant is not liable for harm caused that is too remote. The test for legal causation is that of reasonable foreseeability or, put another way, whether it was within the range of ordinary human experience that the harm would result from the defendant’s conduct. It is not necessary to show that the precise manner in which the harm occurred or its exact degree or extent were foreseeable. All that is necessary is that harm of the kind in general was foreseeable.
- 6.11 *Damages* in delict are compensatory i.e. they are awarded to put the injured party into the position that person would have been in if the wrongful act had not occurred. Damages may be awarded for both patrimonial loss and certain types of non-patrimonial loss. Patrimonial loss would include medical expenses incurred due to a false positive test result and psychiatric medical treatment. A false positive test result may also give rise to damages for nervous shock suffered as a result of the diagnosis. Generally, the courts will only allow damages for nervous shock if it constitutes a recognized psychiatric injury. However, in *Thebe v Mbeve t/a Checkpoint Laboratory Services* 2000 (1) ZLR 578 (S), the Supreme Court allowed damages to be claimed for the transitory shock of receiving false HIV-positive test result, even though no evidence was adduced that the plaintiff had needed any medical treatment or counselling. A false negative test result may give rise to damages if the results lead to a delay in receiving treatment which is detrimental to the individual’s health or the user infects a third party, such as a breast-feeding child. Third parties who become infected with HIV due to inaccurate test results may be able to claim medical expenses both for HIV treatment for any psychiatric treatment, pain and suffering, loss of amenities of life, and shortened expectation of life. Liability may even extend as far as a close relation of such third party if that close relation suffers traumatic shock when they find out about the infection of the said third party or, for loss of support, if they are the legal dependents of a third party who dies. Pure economic losses which are not a consequence of physical injury are not generally recoverable.

### **Product liability under the law of contract**

- 6.12 Product liability under contract law in Zimbabwe is still largely governed by Roman Dutch common law as there has been only limited legislative intervention. The Consumer Contracts Act does not address the

<sup>4</sup> G Feltoe *A Guide to the Zimbabwean Law of Delict*

<sup>5</sup> *Border Timbers Ltd v Zimbabwe Revenue Authority* HH-13-09.

question of liability for defective products. The Act provides for relief against unfair consumer contracts, including cancelling, varying, or enforcing the whole or parts of the contract and awarding compensation. Section 5(1) outlines six circumstances in which a contract will be regarded as unfair for the purposes of the Act, two of which are of particular importance for product liability. Section 5(1)(d) of the Act states that a contract will be deemed to be unfair “if the consumer contract excludes or limits the obligations or liabilities of a party to an extent that is not reasonably necessary to protect his interests” or, in terms of section 5(1)(e), “if the consumer contract is contrary to commonly accepted standards of fair dealing”. These clauses do not, however, have a very significant effect on the common law relating to product liability.

- 6.13 Roman Dutch law provides a form of strict liability (that is liability which is not dependent upon proving fault) of the seller for the sale of defective goods. The *Aedilian* actions known as the *actio redhibitoria* and the *actio quanti minoris* hold the seller strictly liable based simply on the presence of a defect in the product at the time of the sale and delivery to the purchaser. However, neither of the remedies allow damages for consequential loss suffered as a result of the defect. The *actio redhibitoria* allows the return of the article to the seller in exchange for the purchase price, and the *actio quanti minoris* entitles a reduction in the purchase price. Therefore, neither of these remedies have any relevance if the product is distributed freely, and even when the product is sold the purchase price of an HIV self-testing kit is likely to be negligible in comparison to consequential loss that a faulty testing kit could cause.
- 6.14 There are, however, certain limited circumstances in Roman Dutch law where the seller of a defective product will be held strictly liable for full consequential loss. According to the *Pothier* rule the seller will be held strictly liable for the full consequential loss caused by a defective product if he or she was either the manufacturer of the product, or a “merchant seller” who professes to have special knowledge of the product sold. In such circumstances the seller would be liable, whether or not they were aware of the defect. The application of the *Pothier* rule with regard to the “merchant seller” was restricted in South African Roman Dutch law by the *Kroonstad Westelike Boere Ko-op Vereeniging v Botha* 1964 3 SA 561 (A) case to instances where he or she publicly professes to have attributes of skill and expert knowledge in relation to the kind of goods sold. The Zimbabwean Supreme Court referred to *Kroonstad* with approval in the case of *Transport and Crane Hire (Pvt) Ltd v Hubert Davies & Co (Pvt) Ltd* 1991 (1) ZLR 190 (SC). However, *Kroonstad* has been criticised in South Africa for watering down the *Pothier* rule, and ultimately the enactment of South Africa’s Consumer Protection Act has placed strict liability for consequential loss caused by latent defects upon the manufacturer and importer and a presumption of fault against the supplier. As stated above, Zimbabwe’s Consumer Contract Act provides very limited protection to the consumer, and so the consumer would need to rely on the *Pothier* rule or some other implied warranty that the goods were not defective.
- 6.15 A party to a contract may exclude liability which would arise under the common law. However, as stated above, the Consumer Contracts Act provides that such exclusion of liability must be reasonably necessary to protect their interests. What this means has not yet been defined by the courts. Furthermore, under Zimbabwean common law, a party may not exclude liability for a fundamental breach. A fundamental breach is one that goes to the root or purpose of the contract.

## 7. FURTHER ISSUES CONCERNING HIV REGARDING CONSENT, COUNSELLING, DISCLOSURE AND CONFIDENTIALITY

### 7.1 Must a person consent to testing (is written consent required)?

- 7.1.1 There is, generally, no distinction in Zimbabwean law between written and verbal consent. Therefore, it is acceptable for only verbal consent to be obtained before carrying out an HIV test, so long as it is informed consent.
- 7.1.2 The National Policy on HIV/AIDS for Zimbabwe, 1999 states that informed consent needs to be obtained before testing for HIV. This is reiterated in the Zimbabwe National Guidelines on HIV Testing and counselling (the HTC Guidelines) and the Zimbabwe National Guidelines for HIV Testing and Counselling in Children (the HTC Guidelines for Children).<sup>6</sup> The HTC Guidelines state that while informed consent may vary according to different settings, three crucial elements must always be present: “providing pre-test information on the purpose of testing, and on the treatment and support available once the result is known, ensuring understanding and respecting the individual’s autonomy.” The HTC Guidelines for Children further elaborate that the patient, or where appropriate the patient’s parents, should understand the benefits and potential difficulties associated with having access to information regarding their HIV status; an understanding of the HIV testing procedure; the implications of a positive test result on their life or on the life of their family; and on that basis make a decision whether or not to be tested.
- 7.1.3 Failure to obtain informed consent may give rise to delictual liability. In the South African case of *C v Minister of Correctional Services* 1996 (4) SA 292 (T) the court awarded delictual damages to a prisoner who been tested for HIV without informed consent. In that case the prisoner was aware that the test was for HIV and that he had a right to refuse to be tested, but the information given to the prisoner fell short of the requirements for informed consent. The court took into account that the Department of Correctional Services had itself adopted the concept of informed consent as a prerequisite for testing prisoners and had specified the requirements for it. Similarly in Zimbabwe, since informed consent has been adopted as the standard by numerous national policies, which also outline what is required for informed consent, it is likely that the courts will hold medical practitioners to that standard.

### 7.2 What is the legal age to give consent and what powers do parents/guardians hold in relation to consent process?

- 7.2.1 In terms of the Children’s Act [Chapter 5:06] and the *HTC Guidelines* and the *HTC Guidelines for Children*, the legal age of consent to HIV testing in Zimbabwe is 16 years. Therefore, by law, any child who is aged 16 years or above and is requesting HIV testing should be considered able to give full informed consent. The definition of a child in the Children’s Act, which defines a child as a person under the age of sixteen, is not consistent with the Constitution, which defines a child as any person under the age of 18 years. Nevertheless, it is unlikely that this will change the legal age of consent for HIV testing, as it is generally considered in the best interests of the child to allow them to be tested if they wish to do so.
- 7.2.2 The *HTC Guidelines for Children* state that consent of a parent/guardian is required before performing an HIV test on a child who is below 16 years of age. Children below 16 years of age who are already parents or pregnant should be considered “emancipated minors” who can give consent and should not be denied access to HIV testing services. The *Guidelines* provide that when a child has been sexually abused, an HIV test should be carried out as part of the standard of care for survivors of sexual abuse. This should be done as soon as possible after the incident, preferably not later than 72 hours. The *HTC Guidelines for Children* do not explicitly say that the parent/guardian’s consent is not needed in such circumstances, but this seems to be implied. The Parliamentary Portfolio Committee on Health and Child Welfare has made recommendations that the age of consent for HIV testing should be lowered in light of research which indicates that early sexual debut and sexual abuse of young children is prevalent in Zimbabwe.

<sup>6</sup> Note that a process of reviewing, updating and harmonising the both of the HTC Guidelines is already underway. Therefore the information drawn from both of these Guidelines will become outdated when the new Guidelines are adopted.

## 7.3 What are the rules/norms concerning the provision of counselling to those with a positive diagnosis?

### Pre-test counselling

7.3.1 The guiding principle is that the counsellor should answer honestly all questions raised by the person who is to be tested, using appropriate language. In some cases, there may need to be several pre-test counselling sessions before the person reaches a decision whether or not to proceed with the HIV test. Areas to be covered in the pre-test counselling session include:

- Reasons for HIV testing;
- Basic facts about HIV and AIDS;
- Assessment of the person's risk of infection, need and readiness for HIV test;
- Advantages, limitations and implications of HIV test results;
- Discussing risk reduction;
- Disclosure of test results to the person and how this disclosure may be undertaken;
- Exploration of care and support system;
- Obtaining consent from the person to be tested for HIV.

### Post-test counselling

7.3.2 Post-test counselling must be provided for both HIV positive and HIV negative persons. Major components of the post-test counselling session include:

- Preparing the person to cope with the HIV result;
- Reviewing their risk reduction plan;
- Discussing positive living, ongoing care and support system, including psychosocial support, and referral linkages;
- Discussing the disclosure of test results and partner referral.

Follow up counselling, care and support should also be provided to both HIV negative and HIV positive patients

### Disclosure

7.3.3 The *HTC Guidelines* state that HIV test results should be disclosed in person only to the patient, unless the patient is a minor. The *HTC Guidelines for Children* refer to the distinction between partial disclosure and full disclosure. Partial disclosure does not use the term "HIV" or refer to the virus directly, while full disclosure does so. Full disclosure should not necessarily be done straight away. A number of sessions may be needed to complete the process of disclosure, especially with children.

## 7.4 Confidentiality of test results

7.4.1 As stated above, it is a constitutional right not to have one's HIV status disclosed without one's consent. According to the *National Policy on HIV/AIDS for Zimbabwe*, confidentiality regarding a person's HIV status should be respected. The *HTC Guidelines* state that confidentiality is one of the guiding principles for the provision of HIV testing.

### Confidential record keeping

7.4.2 According to the *HTC Guidelines*, all medical records, including those with HIV-related information, must be managed in accordance with appropriate standards of confidentiality. Only persons with a direct role in the management of the patient should have access to these records.

### Anonymity

7.4.3 Persons are not required to give their true name when having an HIV test. They may have the test conducted under a pseudonym. This provides some measure of confidentiality of test results. Service providers are still required to maintain the same standards of confidentiality, even when a pseudonym is used.

7.4.4 Where tests are conducted for the purposes of obtaining surveillance data, the data is collected through unlinked anonymous screening in selected sites among sentinel groups throughout the country. This ensures the confidentiality of the statuses of those who participate in the surveys.

## **Disclosure to third parties**

- 7.4.5 As a general rule disclosure of HIV tests results should only be made to the patient themselves in person. Disclosure of the results to anyone else should only be done with the patient's consent, which should be documented.
- 7.4.6 All patients and clients should be encouraged to disclose their status to their sexual partners. On-going counselling should be provided to facilitate this process. However, as it has already been discussed at paragraph 5.4.2, the *HTC Guidelines* provide that where a client has failed to disclose their status to their sexual partner after three documented counselling sessions and the counsellor feels that their client's partner is at risk of infection, the counsellor can disclose the information to the partner.
- 7.4.7 The Public Health Act [*Chapter 15:09*] places a duty upon medical practitioners and principals of schools and orphanages to disclose medical information to the local authority relating to persons in their charge with certain infectious diseases. The "local authority" is defined broadly in the Act as a municipal council or town council, any local board, any rural district council, or any other body or authority. However, HIV/AIDS has not been declared an infectious disease, despite the Minister having the power to do so, and so the provisions do not, at present, apply to persons infected with HIV.

## **7.5 Duties of disclosure to partner/employer/insurer**

### **Partner**

- 7.5.1 The existence of the crime of deliberate transmission of HIV means that there is a duty on a person who is aware that they are HIV positive to disclose that information to their partner, or risk being prosecuted under that criminal offence. The wording of the criminal offence makes it clear that the duty applies even in the case where the two persons are married.

### **Employer**

- 7.5.2 There is no duty to disclose one's HIV status to one's employer. Section 5(2) of the Labour (HIV and AIDS) Regulations, 1998 states that "*[n]o employer shall require any employee, and it shall not be compulsory for any employee, to disclose, in respect of any matter whatsoever in connection with his employment, his HIV status.*" Further protection of employee's right to non-disclosure is provided by section 5(3) which prohibits the disclosure of an employee's HIV status by any person who acquired the knowledge of the employee's HIV status in the course of their duties, unless it is with the written consent of the employee or required by another law.

### **Insurer**

- 7.5.3 Section 83A of the Insurance Act [*Chapter 24:07*] states that there is a duty to disclose to an insurer every fact or circumstances that would materially affect the calculation of the risk insured or the decision whether or not to enter into, renew, vary or reinstate an insurance policy. Furthermore, the duty to disclose such a fact or circumstance exists whether or not the insured has been asked about it. A person's HIV-positive status would probably be considered a material fact to certain types of insurance, most notably health insurance and life insurance. However, the section also places a duty on the insurer to inform the insured, before entering into, renewing, varying or reinstating a policy, that they have a duty to disclose this information. If the insurer fails to do so, they shall not be entitled to avoid any liability under the policy concerned on the ground of non-disclosure of a material fact or circumstance, unless the non-disclosure was fraudulent

## 8. WHAT ARE THE CRIMINAL IMPLICATIONS OF TRANSMITTING – OR BEING RECKLESS AS TO TRANSMISSION OF – HIV?

8.1 Criminal prosecutions in Zimbabwe are brought by the National Prosecuting Authority. Much of Zimbabwe's criminal law has been codified in a single Act, the Criminal Law (Codification and Reform) Act [Chapter 9:23]. In terms of section 18(1) of that Act, all the essential elements of a crime must be proved beyond a reasonable doubt for a person to be convicted of that crime.

### **Criminality of transmitting HIV**

8.2 The Criminal Law (Codification and Reform) Act makes it a criminal offence to deliberately or recklessly transmit HIV to another person without their prior informed consent. Section 79(1) of the Act provides as follows:

*Any person who (a) knowing that he or she is infected with HIV; or (b) realising that there is a real risk or possibility that he or she is infected with HIV; intentionally does anything or permits the doing of anything which he or she knows will infect, or does anything which he or she realises involves a real risk or possibility of infecting another person with HIV, shall be guilty of deliberate transmission of HIV, whether or not he or she is married to that other person, and shall be liable to imprisonment for a period not exceeding twenty years.*

8.3 According to the *National Policy on HIV/AIDS for Zimbabwe* this crime should not cover mother to child transmission. However, if an HIV positive mother knowingly refuses to allow the testing or treatment of her child, or intentionally disregards advice not to breast feed her child, the courts may find that she is guilty of the offence.

8.4 Section 51(4)(b) of the Magistrates Court Act [Chapter 7:10] grants regional magistrates the power to give a more onerous sentence in the case of the crime of deliberate transmission of HIV (up to twenty years) than their normal jurisdiction would allow.

8.5 There were no reported cases up to December 2012 of anyone being prosecuted for deliberately or recklessly transmitting HIV. However, there have been reports in the media of people being charged with the offence where the charge was subsequently dropped.<sup>7</sup>

### **Implications for sentencing**

8.6 Transmitting HIV also has implications for the sentencing of a person convicted of certain other crimes. Section 80 of the Criminal Law (Codification and Reform) Act imposes a minimum ten year sentence for a person convicted of certain sexual offences if it is shown that they were infected with HIV at the time of the commission of the crime, whether or not the convicted person was aware of their infection. The only reported case up to December 2012 that dealt with this issue was the case of *S v Safiko* HH-31-05. In that case, the equivalent provision in from the Sexual Offences Act [Chapter 9:12] was not applied due to the fact that the HIV test was carried out later than 30 days after the offence meaning that no presumption could arise that he was infected with HIV at the time of the offence.

8.7 Section 3(3)(f) of the Presidential Powers (Temporary Measures) (Trafficking in Persons Act) Regulations, 2014 makes it an aggravating circumstance to the crime of trafficking in persons if the victim is infected with HIV as a result of or on the occasion of the crime of trafficking.

<sup>7</sup> VOA Zimbabwe News 'Willful Transmission of HIV in Spotlight as Zimbabwe Lawmaker Prosecuted' (30/062011). Available at <http://www.voazimbabwe.com/content/zimbabwe-journalist-says-lawmaker-infected-her-with-hiv-124673269/1458775.html>.

## 9. FURTHER INFORMATION

9.1 We have no further information to add.

## 10. REFERENCES

### 10.1 Legislation<sup>8</sup>

- 10.1.1 Children's Act [*Chapter 5:06*]
- 10.1.2 Constitution of Zimbabwe Amendment (No. 20) Act 1 of 2013.
- 10.1.3 Consumer Contracts Act [*Chapter 8:03*]
- 10.1.4 Criminal Law (Codification and Reform) Act [*Chapter 9:23*].
- 10.1.5 Criminal Procedure & Evidence Act [*Chapter 9:07*].
- 10.1.6 Labour Act [*Chapter 28:01*]
- 10.1.7 Magistrates Court Act [*Chapter 7:10*]
- 10.1.8 Medicines and Allied Substances Act [*Chapter 15:03*].
- 10.1.9 Public Health Act [*Chapter 15:09*].

### 10.2 Statutory Instruments

- 10.2.1 Labour (HIV and AIDS) Regulations, 1998.
- 10.2.2 Medicines and Allied Substances Control (General) Regulations, 1991.
- 10.2.3 Presidential Powers (Temporary Measures) (Trafficking in Persons Act) Regulations, 2014.
- 10.2.4 Statutory Instrument 542 of 1981.

### 10.3 Case Law

- 10.3.1 Zimbabwean cases
  - 10.3.1.1 *Thebe v Mbewe t/a Checkpoint Laboratory Services* 2000 (1) ZLR 578 (S).
  - 10.3.1.2 *Border Timbers Ltd v Zimbabwe Revenue Authority* HH-13-09.
  - 10.3.1.3 *Transport and Crane Hire (Pvt) Ltd v Hubert Davies & Co (Pvt) Ltd* 1991 (1) ZLR 190 (SC).
- 10.3.2 South African cases
  - 10.3.2.1 *Kroonstad Westelike Boere Ko-op Vereeniging v Botha* 1964 3 SA 561 (A).
  - 10.3.2.2 *C v Minister of Correctional Services* 1996 (4) SA 292 (T).
  - 10.3.2.3 *Hoffman v South African Airways* (2000) 11 BCLR 1211 (CC).

### 10.4 Government Documents

- 10.4.1 Zimbabwe National Guidelines on HIV Testing and Counselling, 2005.
- 10.4.2 Zimbabwe National Guidelines for HIV Testing and Counselling in Children, 2008.
- 10.4.3 National HIV Testing and Counselling Strategic Plan, 2013-2015.
- 10.4.4 Zimbabwe National HIV/AIDS Strategic Plan, 2011-2015.
- 10.4.5 National Policy on HIV/AIDS for Zimbabwe, 1999.

### 10.5 Other Documents

- 10.5.1 G Feltoe A Guide to the Zimbabwean Law of Delict (2001).
- 10.5.2 Neethling, Potgieter & Visser *Law of Delict* 3<sup>rd</sup> ed (1999).
- 10.5.3 L Madhuku An Introduction to Zimbabwean Law (2010).
- 10.5.4 D J McQuoid-Mason 'Common-Law Protection of the Consumer in South Africa'.
- 10.5.5 Snyman 'Products Liability in modern Roman Dutch Law'.
- 10.5.6 T Woker 'Why the need for consumer protection legislation? A look at some of the reasons behind the promulgation of the National Credit Act and the Consumer Protection Act'.

<sup>8</sup> All Acts of Parliaments are available online from the website of the Parliament of Zimbabwe: <http://www.parlzim.gov.zw/>.





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