

A GUIDE

TO YOUR RIGHTS AND THE LAW

A HANDBOOK ON KEY AND VULNERABLE
POPULATIONS SRHR AND THE LAW



CONTENTS

A HANDBOOK ON KEY POPULATIONS AND THE LAW

About the Community Driven Interventions for KPs in Zimbabwe (CDHIKpZ).....	i
List of Acronyms 2.....	ii
Glossary.....	iii
PART 1: HANDBOOK RATIONALE, AUDIENCE AND PROCESS.....	1
Rationale for developing the handbook.....	1
Who can use the handbook?.....	2
Why you should read this handbook?.....	3
The Handbook Development process.....	5
PART 2: KEY POPULATIONS AND THE LAW.....	5
Sex Workers And The Law.....	6
Lgbt Community And The Law.....	7
People Who Use Drugs And The Law.....	8
PART 3: SERVICE PROVIDERS/REFERRALS LIST.....	8
Key guidelines for service provision.....	11
Minimum Package of Survivors centred services of Gender Based Violence and Time frame for service provision.....	11

ABOUT THE COMMUNITY DRIVEN INTERVENTIONS FOR KPS IN ZIMBABWE (CDHIKPZ)

The CDHIKP consortium is a partnership between My Age Zimbabwe Trust, Health Fonds Zimbabwe Trust and TransSmart. The consortium's thrust is to advocate and promote access to sexual and reproductive health and rights (SRHR) for people most marginalised and affected by HIV - including sex workers, people who use drugs, LGBTQI+ communities, people living with HIV, including adolescents and young people within these communities.

LIST OF ACRONYMS

ARC	Adult Rape Clinic
CDHIKPZ	Community-Driven Health Interventions for KPs in Zimbabwe
CSOs	Civil Society Organizations
DV	Domestic Violence
GBV	Gender-Based Violence
LGBT	Lesbians, Gays, Bisexuals and Transgender
PEP	Post Exposure Prophylaxis
PSZ	Population Services Zimbabwe
SGBV	Sexual Gender-Based Violence
SRH	Sexual Reproductive Health
SRHR	Sexual Reproductive Health Rights
SOGIE	Sexual Orientation and Gender Identity

GLOSSARY

Gender-Based Violence: Any form of violence, including physical and verbal abuse, related to social and cultural expectations of gender roles, often to sustain social power. It can include intimidation, bullying, the use of language to harass or undermine, and the use of physical force. Gender-based violence can affect both men and women. The term is most often used to underscore the fact that structural, gender-based power differentials between males and females around the world place females at risk of multiple forms of violence. The term is also used by some actors to describe violence against non-gender confirming persons and non-dominant sexual orientations.

Key populations: These are people who inject drugs, men who have sex with men, transgender persons, sex workers and prisoners. Around the world, key populations face much higher rates of HIV and AIDS than the general population and are most at risk for contracting HIV, and often lack access to services.

Priority populations: These are disadvantaged people such as those living with disabilities, chronic illness, minority ethnic groups and those living in remote and hard to reach communal areas.

Referral Pathway: A flexible mechanism that safely links survivors to supportive and competent services such as medical care, mental and psychosocial support, police assistance and legal/justice support.

Sexual and Reproductive Health: Sexual and Reproductive Health is a state of complete physical, mental and social well-being in all matters relating to the reproductive system. It implies that people are able to have a satisfying and safe sex life, the capability to reproduce, and the freedom to decide if, when, and how often to do so.

Sexual and Reproductive Health Rights: The concept of human rights applied to sexuality and reproduction.

Transgender person: a person who has a gender identity that is different from his or her sex at birth. Transgender people can be both male and female.

PART 1: HANDBOOK RATIONALE, AUDIENCE AND PROCESS

Rationale for developing the handbook

The purpose of this Handbook is to provide basic and simplified information about key populations rights and the Zimbabwean law. The lack of knowledge on rights and mechanisms to access redress for violations increases key population's vulnerability to continued abuse by law enforcement agents and members of the community. Hence, it is of paramount importance for communities to have access to simplified information to refer to upon facing arrests or any form of rights violations.

Who can use the handbook?

The primary users of this handbook are people most marginalised and affected by HIV – including sex workers, people who use drugs, LGBTQI+ communities, people living with HIV, including adolescents and young people within these communities. Secondary users include service providers, government departments and the private sector.

Why you should read this handbook?

This guide will give you basic information about your rights under Zimbabwean law. It will also give you a basic understanding of what you can do if your rights are violated. You can advise others on what their rights are and what they can do if their rights are violated. You will know who to call for assistance and advice when you need it.

The Handbook Development process

The handbook development process involved a rigorous and systematic review of relevant literature to develop content for the handbook. A stakeholder consultation with representatives of organisations led by communities including sex workers, people who use drugs, LGBTQI+ communities, people living with HIV, including adolescents and young people, face-to-face and telephonic key informant interviews and an online survey. Data was synthesised, cleaned and analysed to produce a report with content for the handbook. The toolkit was then developed guided by the report.

PART 2: KEY POPULATIONS AND THE LAW

Sex Workers And The Law

Sex workers in Zimbabwe face unacceptable levels of violence stigma and discrimination and other sexual reproductive health and rights violations. This makes them considerably more vulnerable to HIV/AIDS. Sex workers continue to face various forms of GBV including harassment, arbitrary arrests, beatings, police abuse, grievous bodily harm, stalking, rape, robbery and lack of access to health care and the justice system.

DID YOU KNOW?

Contrary to popular belief, sex work (also known as prostitution) is not a crime in Zimbabwe. Also, there is no law called "loitering for the purposes of prostitution!"

What does the law actually say is a crime

1) Soliciting for purposes of prostitution in a public place or any place to which the public has access to. To solicit

means to offer one's services. What is criminalized is the act of offering one's services in a public place. A public place can be any road, building, open space or another place of any description to which the public has access.

2) Soliciting for clients in print or electronic media for reception by the public e.g. using social media or a website and newspapers. What is criminalised is advertising one's services publicly through the media.

3) Living off or facilitating prostitution. The law intervenes when an individual keeps a brothel (a house where clients visit prostitutes) or is a pimp (a person who controls prostitutes and arranges clients for them, taking a percentage of their earnings in return)

4) Human trafficking for the purposes of prostitution and Child sexual exploitation. This includes procuring (recruiting) people to become prostitutes, coercing (forcing) or inducing people to engage in sexual conduct, detaining people for purposes of engaging in unlawful sexual conduct, permitting young persons to be in a place where they will engage in unlawful sexual conduct and allowing a child or children to become a prostitute/s.

Looking at the law it means :

- 1.If someone solicits in private, it IS NOT a crime. If a sex worker conducts his or her work indoors s/he is not committing any crime.
- 2.Calling or using Instant Messaging using SMS or WhatsApp targeting individual clients IS NOT a crime.
- 3.The actual act of engaging in sex for money or reward IS NOT a crime.

Lgbt Community And

The Law

Lesbian, Gay, Bisexual and Transgender(LGBT) people are often stigmatised with limited access to health care. As a result, they are disproportionately affected by HIV and AIDS. In Zimbabwe, the LGBT community continues to face a struggle to secure basic human rights and access to healthcare. Members of LGBT communities often face extreme stigma, discrimination, and violence at the individual, community, and structural level. Not only does this result in human rights violations against LGBT people, it also impedes their access to life-saving HIV services.

LGBTIQ+ AND THE LAW

Introduction

The Zimbabwean Constitution, adopted in 2013, includes the nation's most comprehensive Declaration of Rights to date. It enshrines the right to have one's human dignity respected, the right to equality and the principle of non-discrimination, and the right to privacy. Although sexual orientation, gender identity and gender expression are not included in the prohibited



You have the right to be protected by the law as much as other citizens! If you are attacked or arrested, the legal system is there to protect you as much as anyone else. Try to remember everything you can about the time of your attack or arrest - for example, exactly location, buildings, people- and write it down as soon as possible, to help you argue against statements by the police.

grounds of discrimination in the Constitution's equality clause, the inclusion of "on such grounds as" in section 56(3) indicates that the enumerated grounds are not a closed list but an illustrative list.

Laws affecting the LGBTIQ+ community in Zimbabwe

Laws remain in effect in Zimbabwe which directly discriminate against persons based on their real or imputed sexual orientation. These include:

- 1.Section 78 of the Constitution, which restricts marriage rights to heterosexual relationships;
- 2.Section 73 of the Criminal Law (Codification and Reform) Act [Chapter 9:23], which criminalises consensual same-sex sexual relations regardless of the age of the persons involved, and imposes a penalty of up to one year imprisonment and/or a fine;
- 3.Section 14(1)(f) of the Immigration Act [Chapter 4:02], which classifies "homosexuals" as prohibited persons, and sections 17(1) and 18(1)-(2) of the same Act, which ban prohibited persons from entering or remaining in the country, and empower immigration officers to ban persons from entering the country or to deport them based on their actual or imputed sexual orientation.

There are also laws which indirectly discriminate against LGBT persons. Although neutral prima facie, these laws have been weaponized by law enforcement against persons based on their actual or imputed sexual orientation or gender identity, especially in cases where the persons targeted cannot be charged with “sodomy”.

These include:

1. Section 41 of the Criminal Law (Codification and Reform) Act, on disorderly conduct; and
2. Section 46 of the same act, on criminal nuisance.

Global Press Journal “Zimbabwe’s Same-sex Marriage Ban Used to Justify Harassment of LGBT Community”,
<https://globalpressjournal.com/africa/zimbabwe/zimbabwes-sex-marriage-ban-used-justify-harassment-lgbt-community/> (26 June 2017).

The notorious Sodomy Law

(1) Any male person who, with the consent of another male person, knowingly performs with that other person anal sexual intercourse, or any act involving physical contact other than anal sexual intercourse that would be regarded by a reasonable person to be an indecent act, shall be guilty of sodomy and liable to a fine up to or exceeding level fourteen or imprisonment for a period not exceeding one year or both.

(2) Subject to subsection (3), both parties to the performance of an act referred to in subsection (1) may be charged with and convicted of sodomy...

Section 73’s criminalisation of consensual same-sex relations lies at the heart of the human rights violations perpetrated against LGBT and gender-diverse persons in the country. Its direct effect is to leave same-sex attracted persons at constant, heightened risk of arbitrary arrest and detention because they are essentially “unapprehended felons”. In addition to discriminating unfairly against same-sex attracted persons because of whom they love, the inclusion of “or any act involving physical contact other than anal sexual intercourse that would be regarded by a reasonable person to be an indecent act” in section 73(1) creates ambiguity as the scope of acts which would be considered indecent by a “reasonable person” is unclear. This leaves same-sex attracted persons in a position where even the simple act of holding hands in private could put them at risk of arrest if witnesses see fit to report them to the police. Moreover, given the lack of legal gender recognition in the country, the same risk even applies to different-gender couples i.e. transgender in relationship with a cisgender as transgender as identity may not be accepted or respected by law enforcement.

Employment

Zimbabwe has been experiencing an economic decline since 2016. Hyperinflation and mass unemployment have left many in poverty and with little access to disposable income. In such environments, the hardest hit are groups already experiencing discrimination and marginalisation. There are no protections against discrimination in employment based on sexual orientation or gender identity.

Access to Healthcare Services

The Ministry of Health issued a training manual for use by all healthcare professionals in the country in treating LGBT, sex workers as well as other Key and Vulnerable populations. The manual identifies male and female sex workers, men who have sex with men (MSM), transgender persons and intersex persons as vulnerable groups prevented from accessing healthcare services because of negative social and cultural attitudes towards them. The manual establishes that there is a link between marginalisation, stigmatisation and discrimination against these groups and their increased risk of HIV infection, which makes awareness raising amongst healthcare professionals and the removal of socio-political barriers essential to combatting the spread of HIV.

Domestic violence

In domestic violence situations, LGBT persons may not feel comfortable seeking assistance from the police or from the judicial system out of fear that their sexual orientations or gender identities will be publicised. Although the Domestic Violence Act [Chapter 5:16] extends protection against perpetrators of domestic violence to complainants who are in intimate relationships with them regardless of gender, GALZ has documented at least one case in which a man was assaulted by his intimate partner, but elected not to report the assault to the police because it was known in the community that they lived together as a couple.

DID YOU KNOW?

What does the law actually say about the LGBT Community?

Gay men

Criminal Law and Codification Reform Act, targets certain acts against gay men through the crime of "sodomy." Sodomy is classified as unlawful sexual conduct and defined in the Criminal Law Code as either anal sexual intercourse or any act involving physical contact that would be regarded by a reasonable person to be an indecent act between two consenting adult men. Men found guilty of sodomy can be sent to prison for 1 year or be made to pay a level fourteen fine or they can be sentenced both to imprisonment and payment of a fine.

Lesbian women

There is no specific law that explicitly describes and criminalises sex between lesbians. However provisions on public indecency in the Criminal Law Code affect lesbian women. These provisions (Section 77 of the Criminal Law Code) prohibit any person from indecently exposing him or herself or engaging in "indecent conduct" which causes offence to other people. This conduct can be in a public place, or in a private place. The crime attracts up to a level 9 fine or 6 months in prison.

Bisexuals

There is no specific law that defines and prohibits bisexuality. However Bisexual men would be charged with sodomy in instances where they are involved with other men and bisexual women would be charged with public indecency if they are involved with other women.

Transgender identity

There is no specific law that specifically speaks to being transgender. However where transgender people (who look like they are of one sex yet identify as the opposite sex) are involved with a person of the same sex as that which they are generally identified with, then they are seen as gay or lesbian and would be affected by the same laws that affect gay and lesbian people. It is legally permissible for an individual to change their name should they want to.

Same Sex Marriages

In Section 78, in no uncertain terms states that “persons of the same sex are prohibited from marrying each other.” This means that under no circumstances will individuals of the same sex be legally recognised as a couple. The Constitution however does not say what same sex means.

People Who Use Drugs And The Law

People who use drugs often face severe stigma and discrimination and lack access to much-needed health services. Even when these services are available, many drug users are afraid to make use

of them because of fear for imprisonment and human rights abuses. Injections and sharing of needles makes them more vulnerable to new HIV infections. Rather than framing people who use drugs as the problem, it is important to consider them as part of the solution in addressing problems associated with drugs and drug policies.

DID YOU KNOW?

What does the law say about people who use and sell drugs?

·Zimbabwe’s Dangerous Drugs Act [Chapter 15:02] makes it clear that the following types of drugs are illegal: Coca leaves, coca bush, cannabis plant or Indian hemp (both raw and prepared) also known as “bhang”, “camba”, “dagga”, “mbanje” or “intsanguand Opium (raw and prepared). The law prohibits and controls the production or manufacture, possession, sale, use or distribution of drugs and the cultivation of plants.

Medicinal opium, cocaine, morphine and other drugs are allowed but strictly in the quantities regulated by the Ministry of Health and can only be possessed, transported, manufactured and stored by legally licensed companies. Any prohibited drugs confiscated by the police will be destroyed 21 days after the conclusion of the case.

Drug use or abuse including acquiring or possessing a dangerous drug; ingesting, smoking or otherwise consuming a dangerous drug; or cultivating, producing or manufacturing a dangerous drug for own consumption is punishable by a maximum prison sentence of 5 years and a level 10 fine or one of two. In addition, if the person is a drug addict, he or she may be forced to undergo treatment for the addiction.

Crimes punishable under the Criminal Law Code relating to dealing in dangerous drugs include; unlawful possession or use of dangerous drugs, allowing one's premises to be used for the unlawful dealing in or use of dangerous drugs; hiding, disguising or benefitting from the proceeds of the unlawful dealing in dangerous drugs as well as possessing and using dangerous drugs. A person can be sent to prison for a period of 15 to 20 years plus ordered to pay a level fourteen fine for doing the following in relation to the trade of dangerous drugs.

PART 3: SERVICE PROVIDERS/REFERRALS LIST

Community Focal Persons/ Points

The first port of call for survivors of SGBV can be community focal persons. The focal persons can be some church elders, pastors, peer educators, and village health workers imparted with SGBV issues management skills. Government and CSOs should ensure the capacity strengthening of these community focal persons to equip them with appropriate knowledge of handling SGBV issues. Focal persons can use their informed discretion to decide if the case needs further referral or can be dealt with at the community level through mechanisms or strategies such as counselling.

The first port of call for survivors of GBV can be community focal persons. The focal persons can be some church elders, pastors, peer educators, village health workers imparted with GBV issues management skills. Government and CSOs should ensure capacity strengthening of these community focal persons to equip them with appropriate knowledge of handling GBV issues. Focal persons can use their informed discretion to decide if the case need further referral or can be dealt with at community level through

mechanisms or strategies such as counselling for survivor and maybe the perpetrator by the same focal persons if they have been imparted with some counselling skills during the course of their trainings. Cases involving abuse of minors (under 18 years) must be reported to the Social Services Department and Police. In more serious instances involving sexual assault survivors are referred to more formal justice systems such as the health care facilities and Victim Friendly Unit (VFU) run by the Zimbabwe Republic Police (ZRP).

Traditional and Community Leaders

Existing structures that should be made use of include community leaders, religious leaders and Community Care Workers (CCWs). For example, traditional leaders can also provide temporal safe spaces at their homes as havens to survivors while further specialized support will be arranged. Traditional leaders must be capacitated on the Victim Friendly System Referral Pathway where possible.

The Victim Friendly Unit (VFU)

The VFU is a unit within the ZRP and is manned by trained police details that

have specialized training on handling issues in relation to GBV, protection of GBV survivors and protecting the rights of women, girls and key populations experiencing SGBV.

During the lockdown VFU was operational however with limited human and financial resources to respond to cases of GBV. An urgent advocacy issue is to call for adequate resourcing of the VFU to respond to issues related to Key and Vulnerable populations. The services offered by the VFU stretch to include counselling of survivors to cope with and find solutions for their situation, and referral to health facilities to enable survivors, especially of sexual abuse, to access medical attention within the 72- hour timeframe. GBV is a criminal offence in which the perpetrators can be prosecuted in a court of law. The survivors are able to pursue legal means to solve their plight through help from the VFU department.

Health Facility - clinics /hospital

Health facilities remained open during lockdown as they were regarded as essential. Survivors of GBV may have to acquire medical assistance from local clinics or hospitals. Survivors may sustain some injuries from physical assault by their abusers which need medical attention. In the case of survivors of sexually abuse or rape, the survivors need to obtain SGBV counselling and post exposure prophylaxis (PEP) within 72 hours to help them prevent unwanted pregnancy and HIV/AIDS infection. It is important to note that

victims can approach a health facility first before making a police report as it has been acknowledged that health matters most and it should be accessed within the 3 days (72-hours) timeframe for administering of PEP. It is also important for women and girls to access emergency contraceptive within 120 hours (5 days) to prevent unwanted pregnancies. Termination of Pregnancy (ToP) and post-abortal care services are essential and women and girls should have access to them with the TOP Act. In partnership with Ministry of Health and Child Care, some organisations like AIDS Health Care Foundation (AHF) and Centre for Sexual Health and HIV/AIDS Research Zimbabwe (CeSHHAR) Population Services Zimbabwe.

Safe Shelter

In some instances, the survivors will need to recuperate in a safe shelter. For instance, survivors of sexual abuse or rape and physical assault and KPs who come out open are usually highly traumatized, may be expelled from homes such that their healing process is gradual and systematic as they need integrated help or support by professionals like doctors, nurses, psychologists and counselors. Going back to their residence immediately may further expose them to their abusers' hence further harm. In this regard some safe shelters have been established where victims are referred to. At the safe shelter the survivors receive services such as counselling, food and accommodation up until it becomes fit and safe to discharge them.

One Stop Centers

Organizations and some government departments have adopted the concept of one stop center in dealing or managing survivors of SGBV.

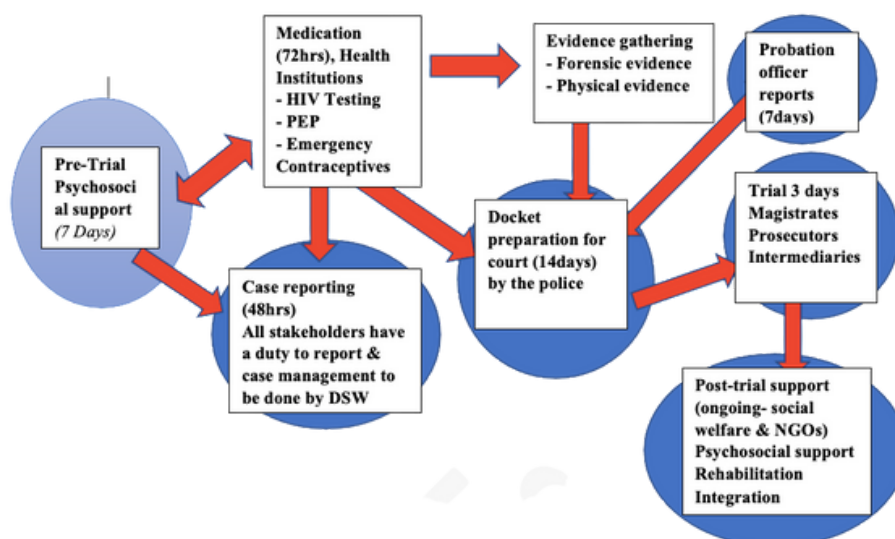
Organizations which have adopted or embraced one stop centers include the Ministry of Women Affairs at public hospitals. The one stop center concept is an integrated system in which all the services needed by survivors of GBV such as sexual and reproductive and family planning, shelter, food, medication and legal assistance are met at the center without having to travel from point A to B in search of services. The concept acknowledges that victims will have already been traumatized by the SGBV that they experienced and therefore the need to reduce the need to travel distances in seeking different services.

Key guidelines for service provision

- No decision is made without informed consent of the survivors
- No decision is made without informed consent of a caregiver or the state if the survivor is a minor
- Conduct decisions in private setting with same-sex staff
- Be -a good listener and non-judgemental
- Be patient: don't press for information a survivor doesn't want to share
- Ask only relevant questions
- Avoid the survivor having to repeat their story in multiple interviews
- Do not laugh, show disrespect or disbelief
- Never blame the survivor
- At all times, prioritize survivor and staff safety and security
- By law, all incidents of rape and sexual abuse of children must be reported to the police
- Always observe the guiding principles of confidentiality, safety, respect, and dignity
- By law, rape treatment and termination of pregnancy can be initiated before informing the police.

Source: Protocol on the Multi-Sectoral Management of Sexual Abuse and Violence in Zimbabwe, Judicial Service Commission, 2019

Minimum Package of Survivors centred services of Gender Based Violence and Time frame for service provision



Referral Organizations Providing SGBV, SRHR for KPs In Zimbabwe

Institution	Services	Locations	Contacts
GALZ	<ul style="list-style-type: none"> Information and resources Psychosocial Support Safe spaces Legal assistance /advice Health(HIV Testing , STI Screening , Treatment) and Social Services	Masvingo Harare Bulawayo Masvingo	0779585836 0772210836 0785211036 0783073042
Population Services Zimbabwe	<ul style="list-style-type: none"> Contraceptives Family Planning HIV Testing and Counselling Post Aortal Care Cervical Cancer Screening 	Belvedere Mbare Chitungwiza Epworth Bulawayo Kadoma Gokwe Gweru Mutare Emergency Team	0782740852 0772145228 0772145230 0787121729 0772147828 0782738898 0772145231 0772168714 0772145233 0787121728
CeSHHAR Zimbabwe	<ul style="list-style-type: none"> HIV testing services Self test kits Provision of PrEP Family planning services Adherence sisters training programme Male and female condom distribution Self-help groups STIscreening and treatment ART linkage Counselling 	Mbare	0773231167
Wilkins. Hospital for survivors of Sexual Gender Based Violence (SGBV).	Contraceptives Family Planning HIV Testing and Counselling SGBV Services Cervical Cancer Screening	Harare	(024) 2740433