



*Policy and Law for positive health outcomes*

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## POLICY BRIEF:

### **LAW ENFORCEMENT AND COVID-19 IN ZIMBABWE : A CASE FOR CAPACITY AND SAFETY IN ENFORCING INVOLUNTARY RESTRICTIONS IN PUBLIC HEALTH EMERGENCIES<sup>1</sup>.**

#### **About this Brief**

This brief seeks to make policy recommendations for law enforcement policy reform to address personal and public health security including human rights violations in enforcing involuntary restrictions. Recommendations are submitted within the spirit and context of Zimbabwe's National Preparedness and Response Plan for COVID-19 and its priority area of **Infection Prevention and Control**. Ministries of health, Defence home affairs and municipal authorities can derive policy imperatives in law enforcement and public health security from this brief. The policy brief contributes towards promoting **Sustainable Development Goal No.3** of ensuring healthy lives and promoting wellbeing.

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<sup>1</sup> Tinashe Mundawarara, Programme Manager , Special Projects , Zimbabwe Lawyers for Human Rights, and Nigel James , Health Law and Policy Consortium. CONTACT [research@healthpolicyconsortium.org](mailto:research@healthpolicyconsortium.org)

### Definition of Law Enforcement Agents

For the purposes of responding to COVID-19 as a Formidable Epidemic Disease (FED), **Law enforcement officer means;**  
A police officer, peace officer or member of the municipal police force established for any local authority. It includes members of the defence forces of Zimbabwe authorised by his or her commanding officer and acting by virtue of Section 213(2)(c) of the constitution  
{Statutory Instrument 77 of 2020 ; Statutory Instrument 82 of 2020}

## Introduction

A number of legal and policy issues surrounding the role of law enforcement agents in public health emergencies have emerged in the COVID-19 response in Zimbabwe. A key pillar for Zimbabwe's National Preparedness and Response Plan<sup>2</sup> for COVID-19 is **Infection Prevention and Control**, which currently, is a high priority area to stem the advance of the disease in Zimbabwean communities. This policy paper seeks to contribute to the policy imperatives for this key pillar. COVID-19 has since led to the declaration of a state of disaster in rural and urban areas of Zimbabwe through the Civil Protection (Declaration of State of Disaster: Rural and Urban Areas of Zimbabwe) (COVID-19) Notice, 2020<sup>3</sup>. Further, a national lockdown was declared and effected through the Public Health (COVID-19 Prevention, Containment and Treatment) (National Lockdown) Order, 2020<sup>4</sup> and its extension through SI 93 of 2020<sup>5</sup>. These three developments and setting up of a COVID-19 Response Cabinet Taskforce, evidently confirmed the securitisation of the COVID-19 response in Zimbabwe. Consequently, Zimbabweans have seen the widespread police and army deployments to enforce compliance with the lockdown order around the country. Police are deployed to fulfil their constitutional functions of maintaining law and order

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<sup>2</sup> The Zimbabwean Plan is aligned to the WHO (February 2020). 2019 Novel Coronavirus (2019-nCoV) Strategic Preparedness and Response Plan

<sup>3</sup> Statutory Instrument 76 of 2020

<sup>4</sup> Statutory instrument 83 of 2020, This SI set the lockdown from the 30<sup>th</sup> of March 2020 to the 19<sup>th</sup> of April 2020.

<sup>5</sup> The extension was gazette on 19 April 2020, and provided for an extension of the lockdown to the 3<sup>rd</sup> of May 2020.

(including enforcing the law) and securing the lives and property of the people in line with Section 219 (1) of the Constitution of Zimbabwe. The role of the army in public health security is well grounded in their constitutional function of national security as provided for in section 212 of the constitution. As at 16 April 2020, the Zimbabwe Republic Police confirmed that a total of 7 385 people were arrested for violating lockdown measures<sup>6</sup>. The right to health care as enshrined in section 76 of the constitution is of paramount importance in public health emergencies and law enforcement should facilitate rather than hinder its meaningful enjoyment. It is within this context of deployment of security forces in enforcing involuntary restrictions to control infectious diseases that the Health Law and Policy Consortium(HLPC) intervenes on a number of policy issues.

## Policy challenges

### Deployment of the army section of law enforcement

Policy considerations that led to the **early** deployment of the army were ill-thought as such a deployment was unnecessary and a waste of resources. Initial regulations<sup>7</sup> had not included the army as part of the law enforcement agents for the purposes of managing COVID-19 as a Formidable Epidemic Disease (FED). The army was later included under the definition of 'law enforcement by Statutory Instrument (SI) 82 of 2020<sup>8</sup> which amended SI 77 of 2020. Cost effectiveness of public health emergency responses should seek an effective use of resources and assets. In this regard, the military should be deployed relative to magnitude of the enforcement challenges and trajectory of the disease in the communities. The country is still at the preliminary stages of containing the disease and there has not been any scale-up of the response or widespread non-compliance to the involuntary restrictions to warrant such a deployment of army resources. The Public Health Act [*Chapter 15:17*] Section 50(1)(m) acknowledges that measures provided by regulations responding to notifiable diseases should set a continuum from small interventions to strong powers based on the level of threat to public health. This means that responses should follow a strategic phasing of interventions and resources(financial, diagnostic, medical, curative and law enforcement) depending on severity and scale of the problem. This is important to control use of scarce resources and

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<sup>6</sup> The arrests were as a result of contravening section 4(1)(c) of SI 83/20, section 4(1)(a) of SI83/2020, Section (5)(1) of SI 83/2020 and the Miscellaneous Offences Act according to Zimbabwe Republic Police through its twitter handle @PoliceZimbabwe on 16 April 2020

<sup>7</sup> Statutory Instrument 77 of 2020 ("the principal regulations")

<sup>8</sup> Public Health (COVID-19 Prevention, Containment and Treatment) (Amendment) Regulations, 2020(No.1)

managing state capabilities at every level of disease scenario. There were no reports that the police were overwhelmed at this level to warrant reinforcement and the role of the army is unclear and cannot be supported by coherent strategy. Public health is at the peripheral of the capacity of the army and there are no known public health emergency operational standards for the army in Zimbabwe. However, grounded epidemiological modelling would definitely inform disease scenarios befitting of military intervention.

### **COVID-19: Risk of infection of law enforcement agents and their role in public health security**

The current situation has shown that policies providing for protection of law enforcement agents in infectious disease control are either absent or weak. The risk of infection for law enforcement agents and their families remains huge and palpable. Deployments of law enforcement agents has been done without due regard to their protection and that of their families. Law enforcement agents remain at great risk of infection because they work on the frontline but are not provided with Personal Protection Equipment (PPE). It is important to highlight that law enforcement agents and their command authorities should be aware that Section 57 of the Public Health Act [Chapter 15:17] criminalises wilful and negligent public exposure in a manner likely to spread an infectious disease. Infected enforcement agents who continue to undertake duties equally pose a significant risk to the public. The National Preparedness Plan did not provide for their training and capacitation to respond to the challenges of enforcing involuntary restrictions in a public health emergency nor during general or routine law enforcement duties. Law enforcement officers require basic education on COVID-19 (transmission, prevention, control and management) to be able to protect themselves and their families. Law enforcement agents work at the frontline of enforcing quarantine orders and come into contact with infected persons as they discharge their duties in line with the Public Health (COVID-19 Prevention and Containment) Regulations, 2020<sup>9</sup>. The HLPC have witnessed law enforcement agents bundled together in trucks, with no social distancing and without PPE. Law enforcement agents at road blocks have been doing their work without antimicrobial gloves or handwashing resources. Law enforcement duties of stopping individuals, speaking to them, holding their identity documents and any other casual contact increases their risk of infection and infection of members of the public. Law enforcement agents have been conducting themselves in an ad-hoc manner which revealed a lack of training on how they are supposed to conduct themselves during policing duties in a public health emergency situation and other daily operations unrelated to COVID-19). Furthermore, routine law enforcement agents operations still lack operational guidelines in dealing with

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<sup>9</sup> Statutory Instrument 77 of 2020

infectious diseases during public health emergencies. The gender dimensions to COVID-19 infections are keenly felt by female law enforcement agents on account of the gender roles related to caring for children (with schools closed now) and the elderly at home. Infection may also disrupt their enjoyment of reproductive health rights where law enforcement agents are pregnant or breastfeeding and face prospects of quarantine, self-isolation during postnatal care. Suitability of any PPE to be used for female law enforcement agents need to be ascertained.

### **Violation of human rights by Law enforcement agents**

Widespread reports of rights violations, impropriety and arbitrariness by law enforcement agents have been widely reported ever since the lockdown started<sup>10</sup>. The incidences reported so far show a narrative of an ill-capacitated and ill-informed public health law enforcement strategy. The conduct of law enforcement agents has further entrenched a trust deficit between security forces and communities. The concept of public order in responding to pandemics is about community protection and it borders on community partnership and cooperation rather than fear, force and violence. Securing public health through securitisation does have negative impact especially when viewed from a community participation lens. Gross violations of constitutional rights to personal liberty<sup>11</sup>, rights of arrested and detained persons<sup>12</sup>, right to human dignity<sup>13</sup>, right to personal security<sup>14</sup>, freedom from torture<sup>15</sup>, right to privacy<sup>16</sup>, freedom of expression and freedom of the media<sup>17</sup>, right to health care<sup>18</sup>, right to food and water<sup>19</sup> have been reported a number of times since the lockdown was declared in Zimbabwe. Human rights violations

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<sup>10</sup> The Zimbabwe Human Rights NGO Forum has reported that they documented 51 assault cases involving security agents by day 10 of the lockdown with most cases going unreported. Among a plethora of violations and cases widely reported is the case of Lucia Masvondo, 26, who was assaulted by the army and police while she was cooking food in her yard. She had a dog unleashed on her and has since approached the High Court with her case. Journalists Alois Vinga and Mary Taruvunga also reported harassment at the hands of police and army. See <https://www.newsday.co.zw/2020/04/residents-fume-over-lockdown-brutality/>, <https://www.voanews.com/science-health/coronavirus-outbreak/zimbabwean-sues-government-end-lockdown-over-alleged-abuse>, <https://www.newzimbabwe.com/lockdown-soldiers-police-harrass-newzimbabwe-com-journalists-scribes-narrate-ordeal/>.

<sup>11</sup> Section 49 of the Constitution of Zimbabwe

<sup>12</sup> Section 50 of the Constitution of Zimbabwe

<sup>13</sup> Section 51 of the Constitution of Zimbabwe

<sup>14</sup> Section 52 of the Constitution of Zimbabwe

<sup>15</sup> Section 53 of the Constitution of Zimbabwe

<sup>16</sup> Section 57 of the Constitution of Zimbabwe

<sup>17</sup> Section 61 of the Constitution of Zimbabwe

<sup>18</sup> Section 76 of the Constitution of Zimbabwe

<sup>19</sup> Section 77 of the Constitution of Zimbabwe

during public health emergencies should be avoided. Such violations exacerbate vulnerability to infection which dislocates disease spread mitigation and containment efforts in communities. Violence against women (VAW) has been noted in various reports and incidents where women and girls bear the brunt of the heavy handedness of law enforcement agents which sometimes negatively impact on their rights and women's health issues. The rights violations on one hand and an ill-trained law enforcement agents on the other, resultantly promotes collision between security and public health rather than promote public health security. Human rights violations are at cross purposes to the COVID-19 containment measures because violations upset community participation to the response wherein responses to COVID-19 can be seen as "Us versus them" rather than a cooperative partnership responding to a health emergency.

## Policy Recommendations

**Recommendations - Training of law enforcement agents on COVID-19 and infectious disease management:** Law enforcement agents should be trained on COVID-19 towards basic knowledge of issues like symptoms, transmission, social distancing, contact with documents and protection measures. Overall, the training should cover human rights (e.g. privacy, confidentiality, dignity, health and security of the person), infectious disease risk management and use of personal protective equipment. Training will enable Law enforcement agents to understand their role as frontline workers who serve a public health function. Training initiatives can be implemented as joint trainings with health professionals through a 'train and respond together' approach to response. Law enforcement agents are an important vehicle for public messaging in public health emergencies and can be utilised as such in responses to COVID-19. Training of law enforcement agents in COVID-19 public messaging and risk communication is important for their work as frontline workers. Public messaging is part of promoting the right to information as an important ingredient of enjoying the right to health through behaviour change. Training content should also cover handling of vulnerable groups like persons with disabilities, women and girls in public health emergencies as they face increased vulnerabilities in times of emergencies.

**Recommendation- Protection of law enforcement agents and their families from COVID-19;** The law enforcement agents as frontline workers should be provided with PPE and adequate safety protocols should be implemented in the discharge of their duties. COVID-19 should be approached as a serious occupational health issue and existing occupational health policies and regulations for law enforcement agents should be revisited and look at the risk

of infection for law enforcement agents and subsequent risk to members of the public. There is need for PPE regulations for the security sector. Such regulations will define the constitutive elements of PPE for the security sector, duties of the responsible ministry in the provision of the PPE and address the gender dimensions for effective use of PPE.

**Recommendation - Withdraw the Zimbabwe National Army :** The Zimbabwe National Army should be withdrawn. Deploying the army should be triggered by certain socio-political and public health thresholds of disease progression that warrant such an elevated response in a public health emergency situation, e.g. where there are monumental disruptions of the health system and public order, which is not yet the case at the moment. Army should not be deployed at the moment as the disease scenario currently being faced does not warrant such a drastic measure to deploy military assets as this policy is not cost effective. There is no doubt that once called to duty within a military-civilian collaboration in a public health response framework, the army will make a positive difference in infectious disease control. There is need for an army unit on health and bio-security to handle public health security deployments and command when the army is eventually deployed. The Zimbabwe National Army does have the assets to set up such a unit in a short period of time<sup>20</sup>. If the disease is not suppressed, the participation and intervention of an army unit capacitated in public health will be inevitable and crucial to manage public health security.

**Recommendation- Respect of human rights and freedoms:** The law enforcement agents should respect human rights in enforcing involuntary restrictions as part of a multi-agency response to COVID-19. The right to food, water, expression, health, security of the person and other constitutional rights are critical during this lockdown and any attempt to facilitate their enjoyment should not be met by heavy handedness. Any limitations to human rights should be in accordance with the *Siracusa Principles*<sup>21</sup>, that is, be in accordance with the law, proportionate, to meet a legitimate objective and necessary to achieve the objectives of the lockdown. Management of information obtained through ‘*information sharing*’ with health care officials should be done with respect to privacy, confidentiality and other rights, not to

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<sup>20</sup> The ZNA has many doctors with experience and competencies in public health management e.g. a Brigadier General was permanent secretary in the MoHCC for many years. Allocation of public health security duties in law enforcement should not be ad-hoc but should be capacity related.

<sup>21</sup> UN Commission on Human Rights, *The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights*, 28 September 1984, E/CN.4/1985/4

increase surveillance of citizens beyond public health objectives. Law enforcement agents have obligations to respect the rights enshrined in the Constitution of Zimbabwe and a number of regional and international human rights instruments including customary international law. The requirement of duty of service to the community set out in the U.N Code of Conduct for Law Enforcement Officials is understood and accepted as inherent to policing in a democracy. Providing aids and assistance in health emergencies is an explicit example of this service.

**Recommendation- Need for a Code of Conduct to guide law enforcement agents in public health emergencies** There is need for a robust Code of Conduct to provide rules of public engagement and also guide the conduct of law enforcement agents in enforcing involuntary restrictions to curb infectious diseases. Such a code of conduct should enable law enforcement agents to get a buy-in from communities and help bring communities into the response as partners. The code of conduct will guide law enforcement agents in their engagement with individuals, groups of people, persons in private properties and public spaces, persons infected with infectious diseases, and handling of uncooperative individuals. The code of conduct should promote constitutional rights of equality, non-discrimination, privacy, security of the person and health. Conduct of law enforcement agents when handling health information should observe high levels of privacy and non-disclosure. A code of conduct for the military in public health security management can be provided through regulations in terms of Section 113(1) of the Defence Act [*Chapter 11:02*], which provides that the Minister can make regulations that provide for a code of conduct for securing discipline of army personnel. Principles to govern code of conduct for police in public health emergencies can be drawn from the Southern African Regional Police Chiefs Cooperation Organisation (SARPCCO) code of conduct on human rights and policing<sup>22</sup>

**Recommendation - Operational guidelines to guide operations of police in infectious disease control;** There is need to address the policy gap of lack of operational guidelines for law enforcement in public health emergencies. The Minister of Home Affairs is empowered through Section 11 of the Police Act [*Chapter 11:10*] Section 11(2)(b) to give policy directions necessary in the public interest for the maintenance of the police force in a high state of efficiency. These guidelines need to acknowledge the lack of sufficient organisational expertise and systems in the security sector to deal with public health security protection. Guidelines will guide public health security operations at points of entry, road blocks, criminal investigations, dealing with

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<sup>22</sup> Human Rights Trust of Southern Africa (SAHRIT), SARPCCO Code of Conduct, Human Rights and Policing: Towards Ethical Policing, 2003



vulnerable groups like homeless, persons with disabilities, sex workers and the elderly. Operational guidelines provide clarity on public health security and security patrols; handling of PPE; procedure in cases of infection and management of occupational health at the police station; maintenance of public order in infectious disease situations; and cleaning of vehicles, buildings and equipment to prevent spread of COVID-19. Operational guidelines should provide a police direct contact for reporting violation of operational guidelines and special direct line for people to report human rights violations and complaints against law enforcement agents during lockdown and public health emergencies. This is an important element of accountability and for gaining community trust as part of an all-stakeholder response social contract. All operational guidelines should mainstream gender and embrace respect of rights and fundamental freedoms.

**Recommendation – There is need of a COVID-19 response law from the parliament of Zimbabwe ;** perhaps a COVID-19 Awareness Preparedness and Response Act is needed. This is meant to address the democratic deficit of executive law making where parliament surrenders its primary law making powers to the executive through Statutory Instruments. This Act will provide for governance of all issues relating to the COVID-19 response. Regulations from the Minister do not allow for consultations and other forms of public participation. They are not inclusive, undercut participatory democracy and obviate parliamentary committees and public hearings.

## Conclusion

The emergence of COVID-19 has seen the security sector in Zimbabwe mobilised to fight an invisible enemy within and actively participating in public health policy implementation. This is not a new phenomenon, elsewhere responses to sudden acute respiratory syndrome (SARS), influenza A (H1N1), avian influenza H5N1 and H7N9, and Ebola have benefited from security sector-civilian collaborations in infectious disease control. Human rights protection, capacity building, and protection of law enforcement agents and their families from infection provides policy imperatives for central government. Cost effectiveness in health policy implementation is a critical consideration in securitisation of public health.