



17 February 2021

To: **Hon. Commissioner Mudford Zachariah Mwandenga**
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Cc: **Hon. Chairperson Solomon Ayele Dersso**
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AND

CC: **Hon. Commissioner Jamesina Essie L. King**

Attention: The Chairperson of ACHPR the Working Group on Economic, Social and Cultural Rights

Dear Commissioner Mwandenga,

Re: Appeal for urgent intervention for the protection of the rights to health and life in Zimbabwe: COVID-19 vaccination procurement and distribution plan

1. We address you on the basis of your mandate as the Chairperson of the Working Group on Economic, Social and Cultural Rights.
2. This is a joint appeal by the International Commission of Jurist (ICJ)¹ and the Zimbabwe Human Rights Association (ZimRights).² Both the ICJ and ZimRights have Observer Status with the African Commission on Human and Peoples' Rights (the African Commission).

¹ Composed of 60 eminent judges and lawyers from all regions of the world, the ICJ promotes and protects human rights through the rule of law, by using its unique legal expertise to develop and strengthen national and international justice systems. It aims to ensure the progressive developments and effective implementation of international human rights and international humanitarian law, secure the realization of civil, cultural, economic, political and social rights; safeguard the separation of powers; and guarantee the independence of the judiciary and legal profession. See <https://www.icj.org/regions/africa/>.

² Zimbabwe Human Rights Association (ZimRights), is a body corporate at law, being an association of citizens and organisations gathered together to fight and push for the protection of human rights in Zimbabwe. ZimRights has a membership of more than 200 000 people countrywide. See www.zimrights.org.zw.

3. The COVID-19 pandemic has had a major effect on populations across all countries of the world.³ COVID-19 vaccines are a critical component of countering the pandemic and its adverse impacts. Provision of access to the COVID-19 vaccines is therefore necessary for States, singly and collectively, through international cooperation, to meet their obligations to realize the human rights of all people.
4. Having seen the failure of the Government of Zimbabwe to exercise due diligence in its efforts to acquire vaccines and in the development of a COVID-19 vaccine deployment plan, and observing the grave risk to human rights posed by such inaction, we approach your esteemed office requesting you to implore the government of Zimbabwe to act in the best interest of the population by upholding the rights to health and life of all persons in Zimbabwe.
5. Zimbabwe, like other countries across the world, has been hard hit by the rampant COVID-19 pandemic,⁴ which is threatening constitutionally and internationally protected human rights of all its inhabitants.⁵ The emerging availability of COVID-19 vaccines has come as a relief to many around the world. However, unlike other countries such as neighbouring South Africa, Zimbabwe has developed no clear deployment plan for the much-needed vaccine. This leaves members of the general public without the expectation of protection from the State authorities, who have been largely uncommunicative on its vaccine readiness and strategy.⁶
6. As a result of this dearth of action and absence of transparency, ZimRights approached the High Court of Zimbabwe on an urgent basis with the aim of ensuring protection of the rights to life and health. The application was filed on 3 February 2021 and dismissed by the High Court on 8 February 2021 based on its view that the matter lacked urgency.⁷ As a result, the matter was removed from the urgent roll and will automatically be rolled on the normal roll. Due to the lockdown orders, the courts are only permitted to deal with urgent matters.⁸ An Appeal has since been lodged by ZimRights

³ WHO Coronavirus Dashboard, available at: https://www.who.int/emergencies/diseases/novel-coronavirus-2019?gclid=Cj0KCQiApY6BBhCsARIsAOI_GjZbnbQ3JMcn_ISfFCMKGNRuGCm2aF29a0rjnoToUoej0WwouUPQbiAmeOELw_wcB.

⁴ According to the Ministry of Health and Child Care Situation Report, as at 09 February 2021, Zimbabwe had recorded at least 34 864 cases, 29 471 recoveries and 1 364 deaths.

⁵ Section 48 of the Constitution of Zimbabwe Amendment (No.20)2013.

⁶ Newday "We don't know what vaccine to buy: Govt" (10 Feb 2020), available at: <https://www.newsday.co.zw/2021/02/we-dont-know-what-vaccine-to-buy-govt/>

⁷ High Court of Zimbabwe, Case Number HC 83/2021.

⁸ See Practice Direction 4 of 2021, available at: <http://www.jsc.org.zw/practicedirections>.

and the outcome is awaiting determination by the Supreme Court of Zimbabwe.

A. Background: COVID-19 in Zimbabwe

7. Globally, domestic and international health authorities, such as the WHO, have responded to the pandemic through the rapid development and registration of COVID-19 vaccines. States have been fighting the COVID-19 virus through several different methods though their impact, effectiveness and compliance with human rights law standards have often fallen short.⁹
8. Notwithstanding the availability of COVID-19 vaccines on the global market, the Government of Zimbabwe has failed and/or neglected to put in place necessary measures to ensure the roll out and availability of the COVID-19 vaccines to its population, in compliance with its obligations under article 16(2)¹⁰ of the African Charter on Human and Peoples' Rights (the African Charter) and the articles 2 and 12 of International Covenant on Economic, Social and Cultural Rights (ICESCR).¹¹ Their failure has resulted in and will exacerbate unnecessary loss of life, a right also protected by the article 4 of the African Charter¹² and article 6 of the International Covenant on Civil and Political Rights.¹³
9. In short, it is our submission that the Government of Zimbabwe's acts and omissions constitute of their obligations to protect the rights of people in

⁹ ICJ "Living Like People Who Die Slowly: The Need for Right to Health Compliant COVID-19 Responses" (1 Sep 2020), available at: <https://www.icj.org/icj-new-global-report-shows-that-the-right-to-health-must-be-central-to-state-responses-to-covid-19/>.

¹⁰ Article 16 reads: "(1) Every individual shall have the right to enjoy the best attainable state of physical and mental health. (2) State Parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick."

¹¹ Article 12 of ICESCR reads:

"1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

- (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
- (b) The improvement of all aspects of environmental and industrial hygiene;
- (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
- (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness."

¹² Article 4 reads: "Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right."

¹³ See UN Human Rights Committee (HRC), *General comment no. 36, Article 6 (Right to Life)*, 3 September 2019, CCPR/C/GC/35, available at: <https://www.refworld.org/docid/5e5e75e04.html>, para 26 ("The duty to protect life also implies that States parties should take appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity").

Zimbabwe to life and health protected by the Constitution of Zimbabwe,¹⁴ the African Charter¹⁵ and ICESCR.¹⁶

10. This view is supported by the UN Committee on Economic, Social and Cultural Rights' (CESCR) December 2020 in a statement on universal and equitable access to vaccines, which stressed that: "every person has a right to have access to a vaccine for COVID-19 that is safe, effective and based on the application of the best scientific developments". It further implored States to "give maximum priority to the provision of vaccines for COVID-19 to all persons".¹⁷

11. COVID-19 vaccines are a necessary component of a set of required public health responses which present the only possibility of dealing effectively and permanently with COVID-19. Zimbabwe therefore has a duty in terms of domestic and international human rights law to plan to acquire and rollout COVID-19 vaccine access and communicate such a comprehensive plan to the public at large.¹⁸

B. Does Zimbabwe have a vaccine deployment and acquisition plan?

12. On 9 February 2021, President Emmerson Mnangagwa announced that Zimbabwe had received a donation from China of 200,000 Sinopharm vaccine dose and reportedly purchased an additional 600,000 doses of the same vaccine.¹⁹ He also indicated that a vaccine deployment strategy was being finalized that would see at least 60 percent of the population inoculated. No further details have been provided about this strategy.²⁰

¹⁴ See Sections 29, 48 and 79 of the Constitution of Zimbabwe Amendment (No.20) 2013. Section 29, in particular reads:

"29. Health services

1. The State must take all practical measures to ensure the provision of basic, accessible and adequate health services throughout Zimbabwe.
2. The State must take appropriate, fair and reasonable measures to ensure that no person is refused emergency medical treatment at any health institution.
3. The State must take all preventive measures within the limits of the resources available to it, including education and public awareness programmes, against the spread of disease."

¹⁵ Article 16 of the African Charter.

¹⁶ Article 12 of the International Covenant on Economic, Social and Cultural Rights.

¹⁷ "Statement on universal and equitable access to vaccines for the coronavirus disease" (COVID-19) E/C.12/2020/2 (15 Dec 2020), available at:

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E/C.12/2020/2&Lang=en.

¹⁸ UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 (Art. 2 of the International Covenant on Economic, Social and Cultural Rights))*, 11 August 2000, E/C.12/2000/4, available at:

<https://www.refworld.org/docid/4538838d0.html>, paras 43(d)(e),(f), 44(b), 54-55.

¹⁹ "Zimbabwe's vaccine procurement: what we know so far" (12 Feb 2021), available at:

<https://newswire.live/zimbabwes-vaccine-procurement-what-we-know-so-far/>.

²⁰ ZBC News "Zimbabwe to receive 200 000 doses of Covid-19 vaccine from China" (9 Feb 2021), available at: <https://www.zbcnews.co.zw/zimbabwe-to-receive-200-000-doses-of-covid-19-vaccine-from-china/>.

13. On 9 February 2021, in a post-Cabinet briefing the Minister of Information, Publicity and Broadcasting services announced that the Cabinet had received updates from the Minister of Health and Childcare and the Minister of Finance and Economic Development regarding their intention towards procurement and rollout of the COVID-19 vaccines in Zimbabwe. It was also announced that a budget of 100 million dollars had been set aside for same by the State.²¹ However, no detailed plan has been provided beyond this expression of intent.
14. As of 3 February 2021, Zimbabwe had been allocated 1,152,000 doses under the World Health Organization COVAX facility. However, COVAX has issued a precautionary note that its indicative distributions was intended to provide an interim guidance to facility participants” and therefore it is “not binding and may be subject to change”²² Zimbabwe is also entitled three million doses procured through the African Union.²³
15. In our view, and on the publicly available information, the Government of Zimbabwe has failed to:
- *Provide clear and consistent, scientifically accurate information to its population about vaccines.* This contravenes the States obligation, which, as the CESCR underscored in its General Comment 14 (2000) requires access to information as an integral component of the right to health and is one of the overlapping dimensions to accessibility of the health facilities, goods and services.²⁴
 - *Provide consistent and complete information* about the availability of funds and resources for the acquisition of any COVID-19 vaccines.
 - *Establish clear measures, policies, regulations, protocols and a comprehensive plan* for the acquisition and rollout of COVID- 19 vaccines.
 - *Provide detailed information on the COVID-19 vaccine storage and distribution* infrastructure.

²¹ Live Cabinet Post-Decisions Matrix, available at:

<https://www.facebook.com/2648197815405968/videos/230548638711019>; “Cabinet gets updates on vaccines roll-out” (10 Feb 2021), available at: <https://www.herald.co.zw/cabinet-gets-updates-on-vaccines-roll-out/>.

²² The Covax Facility: Interim Distribution Forecast (3 Feb 2021), available at: https://www.who.int/docs/default-source/coronaviruse/act-accelerator/covax/covax-interim-distribution-forecast.pdf?sfvrsn=7889475d_5.

²³ “Zimbabwe’s vaccine procurement: what we know so far” (12 Feb 2021), available at: <https://newswire.live/zimbabwes-vaccine-procurement-what-we-know-so-far/>.

²⁴ UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 (Art. 2 of the International Covenant on Economic, Social and Cultural Rights))*, 11 August 2000, E/C.12/2000/4, available at: <https://www.refworld.org/docid/4538838d0.html>, para 12(b).

16. These failures to put in place the necessary measures that safeguard the rights to life and health of its population is in serious breach of Zimbabwe's international human rights obligations and the requirements of its domestic law. The Government's response regarding COVID-19 vaccines is costing – and will continue to cost – lives and exacerbate ill-health.

C. Violations of Zimbabwe's Human Rights Obligations

17. People in Zimbabwe have a right to life, in terms of domestic, regional and international law standards. In addition, they have a right to healthcare protected under Section 76 of the Constitution of Zimbabwe²⁵ and Article 16 of the African Charter, also read consistently with Article 12 of the ICESCR. Further Section 29 of the Constitution is incisive. It obligates the State authorities to take all practical measures to ensure the provisions of basic accessible and adequate health services throughout Zimbabwe. Section 29(3) in particular obligates the government to take all preventive measures within the limits of resources available to it, including education and public awareness programmes against the spread of diseases.²⁶

18. Section 76 of the Constitution, like Article 1 of the African Charter obligates the State to take legislative and other measures, within the limits of the resources available to it, to achieve the progressive realization of the right to health. It is our respectful contention that the Government of Zimbabwe by failing to produce a detailed policy framework, regulatory framework, and financial plan relevant to the acquisition and roll out of COVID-19 vaccines and further failing to provide detailed information on its plan of action in so far as COVID-19 vaccines are concerned, is in clear breach of domestic law and international law.

19. This in turn has amounted to a direct breach of the rights of individuals in Zimbabwe as protected in the African Charter in particular Article 16. As a State party to the African Charter, Zimbabwe is obliged to

²⁵ Article 76 reads:

"76. Right to health care

1. Every citizen and permanent resident of Zimbabwe has the right to have access to basic health-care services, including reproductive health-care services.
2. Every person living with a chronic illness has the right to have access to basic healthcare services for the illness.
3. No person may be refused emergency medical treatment in any health-care institution.
4. The State must take reasonable legislative and other measures, within the limits of the resources available to it, to achieve the progressive realisation of the rights set out in this section."

²⁶ See in general, ICJ "A Guide for the Litigation of Economic, Social and Cultural Rights in Zimbabwe" (2015), available at: <https://www.icj.org/wp-content/uploads/2016/09/Zimbabwe-Guide-ESCR-web-Publications-Thematic-Report-2015-ENG.pdf> and ICJ "A Guide for the Legal Enforcement and Adjudication of Economic, Social and Cultural Rights in South Africa" (2019), available at: <https://www.icj.org/wp-content/uploads/2019/08/South-Africa-Guide-ESCR-Publications-Thematic-Report-2019-ENG.pdf>.

provide the highest attainable standard of both physical and mental health to its inhabitants. The government of Zimbabwe has not taken all necessary and reasonable measures to protect the right to health in relation to COVID-19.

D. Plea to the African Commission on Human and People's Rights

20. To address the general failure by Zimbabwe to fulfil its obligations, we request your assistance in bringing this matter before the African Commission on Human and Peoples' Rights (ACHPR) in your capacity as the Chairperson on the Working Group on Economic, Social and Cultural Rights.²⁷ By your intervention it may be possible to secure vital information from the Government of Zimbabwe about its national plan for COVID-19 vaccine procurement, distribution and roll-out, including any resources it has set aside for these efforts. We have not been able to access such information, despite attempts through judicial, executive and legislative channels.
21. In our view, it would also be apposite to remind the Government of Zimbabwe of its obligations under international law to take steps to realize the rights to health and life of all, and in particular, persons from marginalized and disadvantaged groups.
22. It is our continued fear that very few Zimbabweans will access the much-needed vaccine in an equitable and non-discriminatory manner if it's rolling out is shrouded in official secrecy. We fear that the real risk that the acquisition and administration of vaccines could be beset by corruption given the historically endemic nature of corruption and maladministration in Zimbabwe.²⁸ We therefore would request that you urgently urge the Government of Zimbabwe to:

²⁷ We are aware of and applaud the general guidance provided by the Commission thus far on human rights compliant COVID-19 responses in Africa. See, ACHPR/Res. 449 (LXVI) 2020, available at: <https://www.achpr.org/sessions/resolutions?id=480>; J King "Building Back Better—Can COVID-19 Renew African States' Commitment to African Charter ESCR Obligations?", available at: <http://opiniojuris.org/2020/12/07/covid-19-and-africa-symposium-building-back-better-can-covid-19-renew-african-states-commitment-to-african-charter-es-cr-obligations/>.

²⁸ The Guardian "Zimbabwe health minister facing coronavirus corruption charge sacked" (9 July 2020), available at: <https://www.theguardian.com/global-development/2020/jul/09/zimbabwe-health-minister-facing-coronavirus-corruption-charge-sacked>; Daily Maverick "Covid-19 and the epidemic of corrupt governments: 'A heart-wrenching, unscrupulous and filthy feeding frenzy'" (2 August 2020), available at: <https://www.dailymaverick.co.za/article/2020-08-02-covid-19-and-the-epidemic-of-corrupt-governments-a-heart-wrenching-unscrupulous-and-filthy-feeding-frenzy/>.

- **Budgeting:** Allocate and disclose its budget for COVID-19 vaccines and identifies the resources that will be required to purchase and distribute COVID-19 vaccines.
- **Acquisition and Distribution Plan:** Publish a detailed national acquisition and distribution plan for COVID- 19 vaccines with requisite time frames and implementation measures which should include the following information:
 - a. Which vaccines will be acquired, from which sources, in which quantities and at what cost?
 - b. When and how will vaccines be delivered to Zimbabwe?
 - c. When and how will the vaccines be registered in Zimbabwe?
 - d. When and how will vaccines be distributed in Zimbabwe?
 - e. When and how will vaccines be stored in Zimbabwe?
 - f. When and how will vaccine rollout begin? How will Zimbabwe ensure prioritization for vaccination complies with WHO guidelines and international human rights standards including the prohibition on discrimination?
 - g. At what stage is it estimated that the critical mass of 60% of the Zimbabwean population will be vaccinated?
- **International, including Regional, Cooperation:** Increase efforts in securing cooperation with the African Union and the Southern African Development Community to ensure access to vaccines in Zimbabwe and the region as a whole.
- **Access to Information:** Enhance efforts towards the promotion and dissemination of accessible, scientifically accurate of public information on vaccines and other COVID-19 health related information.

Signed



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